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 7 CITY OF OAKLAND

8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**

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 11 CITY OF OAKLAND, a municipal corporation,  
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 Plaintiff,  
 13  
 vs.  
 14 MORTIMER HOWARD, THE MORTIMER  
 15 HOWARD TRUST and DOES, 1-20,  
 16  
 Defendants.

Case No. C 06-7390 CW

**PLAINTIFF'S NOTICE OF MOTION  
 AND MOTION TO REMAND  
 COMPLAINT**

Date: January 19, 2007  
 Time: 10:00 a.m.  
 Courtroom: 2, 4<sup>th</sup> Floor  
 Judge Claudia Wilken

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1 **NOTICE OF MOTION**

2 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on January 19, 2007, at 10:00 a.m. or as soon thereafter as  
4 the matter may be heard in the above captioned court, located at Courtroom 2, 4<sup>th</sup> floor of the  
5 above-entitled court, Plaintiff City of Oakland will and hereby does move the Court for an Order  
6 granting its Motion to Remand the Complaint.

7 This motion is made pursuant to 28 U.S.C. Section 1447 and Federal Rule of Civil  
8 Procedure 12(h)(3), on the grounds that the district court lacks subject-matter jurisdiction because  
9 none of the claims in the removed Complaint arise under federal law.

10 This motion is based on this notice, the points and authorities in support of the motion, the  
11 complete files of this case, and any evidence or argument the court may entertain at the hearing of  
12 this matter.

13 **I. INTRODUCTION**

14 Plaintiff, City of Oakland ("the City") filed suit in state court against Mortimer Howard and  
15 the Howard Mortimer Trust ("Defendants"), seeking relief for alleged violations of California and  
16 local statutory laws. Thereafter, Defendants filed a notice of removal of the action to district court  
17 on subject-matter jurisdiction grounds.

18 The city brings this motion to remand its complaint back to state court because the district  
19 court lacks subject-matter jurisdiction over its claims. Defendants' removal was improper as the  
20 face of the complaint reveals no basis for federal court jurisdiction.

21 **II. STATEMENT OF FACTS**

22 On October 31, 2006, the City filed a complaint in the Alameda County Superior Court  
23 against Defendants alleging four causes of action. (See Request for Judicial Notice ("RJN") in  
24 Support of Motion to Remand, Exhibit A.) The first cause of action is for violation of California  
25 Government Code Section 65863.10. This claim alleges that defendants failed to give the City the  
26 requisite notice of the termination of a subsidy contract thereby denying the City the necessary time

1 to preserve the subsidized housing or ameliorate the harm caused by its loss or time to attempt to  
2 relocate the tenants and mitigate the effects of dislocation for them. (RJN, Exhibit A at 5:20-6:8.)  
3 The second cause of action is for violation of Government Code Section 65863.11 for failure to  
4 give the city "Notice of the Opportunity to Offer Purchase." (Id. at 6:17-7:3.) The third cause of  
5 action is for violation of Oakland's Rent Control Ordinance (O.M.C. Section 8.22 et. seq. attached  
6 to Plaintiff's RJN as Exhibit B). The fourth cause of action is for violation of the Just Cause  
7 Eviction Ordinance (O.M.C. Section 8.22.300 et. seq. attached to RJN as Exhibit C). (RJN, Exhibit  
8 A at 7:16-8:7.) And the fifth cause of action is for violation of California Civil Code Section  
9 1954.53 (Costa-Hawkins Act) for defendants' attempt to establish new tenancies at the property in  
10 less than three years after the termination/non-renewal of defendants' Section 8 Housing Assistance  
11 Payments contract ("H.A.P. contract"). (Id. at 9:20-10:5.)

12 The complaint seeks injunctive relief to prevent defendants from adjusting the rent above  
13 the rent currently paid by the tenants until they cure the notice and other violations. On November  
14 8, 2006, the City filed a motion for preliminary injunction noticing a hearing date of December 13,  
15 2006. On December 1, 2006, Defendants filed an answer to the complaint and a Notice of Removal  
16 of the action on subject-matter jurisdiction grounds. (See RJN, Exhibit B and C respectively.)

17 Time is of the essence for removal here because the low income tenants of the Park Village  
18 Apartments only have six weeks until defendants' deadline for filing the unlawful detainer actions  
19 against them. In the interest of justice, the City needs to have the case remanded to get the  
20 preliminary injunction (or a Temporary Restraining Order) back on the superior court's calendar to  
21 prevent those tenants from losing their homes until the city's state law claims against the defendants  
22 have been resolved.

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### III. LEGAL ARGUMENT

#### A. The Case Must Be Remanded Because The District Court Lacks Subject-Matter Jurisdiction Over The Claims Alleged In The City's Complaint.

Whenever it appears, at any time before final judgment, that the district court lacks jurisdiction, the case must be remanded. 28 U.S.C. Section 1447(c); see also FRCP 12(h)(3). Federal jurisdiction must appear on the face of the complaint in order to remove a state claim to federal court. Gully v. First Nat'l Bank, 299 U.S. 109 (1936). Accordingly, federal-question jurisdiction extends only to those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action, or that the plaintiff's right to relief necessarily depends upon the resolution of a substantial question of federal law. Evans v. Sentry Property Management Corporation, 852 F.Supp. 71 citing Commonwealth of Massachusetts v. V&M Management Inc., 752 F.Supp. 519 (1990), aff'd, 929 F.2d 830 (1<sup>st</sup> Cir. 1991). When ruling on a motion to remand, the court looks to the plaintiff's complaint, as it is stated at the time of removal, and the defendant's notice of removal. See Miller v. Grgurich, 763 F.2d 372 (9th Cir. 1985).

Here, the well-pleaded City's Complaint alleges claims for violations of state and local laws. It contains no federal claims. And it neither establishes that federal law creates the causes of action, nor that the City's rights are dependent upon the resolution of federal law.

In the Notice of Removal, Defendants wrongly assert that the city's action arises under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f, et. seq. seemingly because the complaint refers to the United States Department of Housing and Urban Development and the Section 8 Housing Assistance Payment Contract. (Notice of Removal of Action at 2:13-23.) Defendants are misguided. The resolution of the state claims does not require a determination of whether or not Defendants complied with the Section 8 notice requirements or any other HUD guidelines. Indeed, the city has not alleged that any violation of Section 8 or any other HUD guidelines have been violated. Any reference in the Complaint to HUD or the Section 8 H.A.P contract are merely factual allegations triggering the notice requirements set forth in the

1 Government and Civil Codes. All that must be determined is whether or not defendants have  
2 complied with the notice requirements set forth in those state statutes. No analysis of federal law is  
3 necessary.

4 Similarly, the issues of whether or not defendants have violated Oakland's local rent control  
5 or just cause eviction ordinances do not involve federal questions. The unlawful rent adjustment  
6 claim in the third cause of action is based on defendants' alleged failure to provide tenants with  
7 notice regarding the existence and scope of the Rent Adjustment Ordinance and tenants' rights to  
8 petition against certain increases as required by the Municipal Code. (RJN, Exhibit A at 7:20-8:14.)  
9 The eviction without just cause claim in the fourth cause of action is based on the allegation that  
10 defendant is not legally entitled to demand rent of \$1192.00 pursuant to a proposed new rent  
11 agreement under section 8.22.300(A)(1) of the Municipal Code.

12 Finally, under Civil Code Section 1954.53(a)(1)(A) "an owner who terminates or fails to  
13 renew a contract or recorded agreement with a governmental agency that provides for a rent  
14 limitation to a qualified tenant may not set an initial rent for three years following the date of the  
15 termination or non-renewal of the contract or agreement." The fifth cause of action in the complaint  
16 alleges that defendants have violated that Civil Code Section by setting rent increases in less than  
17 three years following the non-renewal of the H.A.P. contract. Whether or not defendants have  
18 indeed violated that provision of California law is not a federal question.

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1 **IV. CONCLUSION**

2 The City's well-pleaded Complaint does not allege violations of any federal laws. All of the  
3 claims arise under state law, and defendants' attempt to characterize them as arising under Section  
4 8 of the United States Housing Act is unavailing. Therefore, federal jurisdiction under 28 U.S.C.  
5 §1331 is lacking, and removal under 28 U.S.C. §1441(b) was improper. For these reasons and for  
6 the reasons stated above, the City's motion to remand must be granted.

7 Dated: December 14, 2006

Respectfully Submitted,

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10 JAMES F. HODGKINS, Supervising Trial Attorney  
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13 By: /S/ KANDIS A. WESTMORE

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15 CITY OF OAKLAND  
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