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7 **FLINTSTONE LLC & FLORENCE FANG**

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN MATEO**

10 **TOWN OF HILLSBOROUGH,**) CASE NO. 19CIV01442
11 Plaintiff,)

12 vs.) **CROSS COMPLAINT FOR DAMAGES
AND DECLARATORY RELIEF:**

13) 1. **Violation of the Fair Housing Act,42**
14 **FLORENCE FANG, Flintstone LLC,**) **USCS § 3601.**
Does 1 through 20.;) 2. **Race Discrimination, 42 USC § 1982;**
15) 3. **Race Discrimination, Civil Code § §**
16 Defendants.) **51 52;**
4. **Declaratory & Injunctive Relief -**

17 **FLINTSTONE LLC, FLORENCE**) **Facially Unconstitutional Municipal**
18 **FANG,,**) **Ordinance.;**
19 **v.**) 5. **Declaratory & Injunctive Relief -**
Cross- Complainants,) **Facially Unconstitutional Municipal**
20) **Ordinance.;** &
21) 6. **Declaratory & Injunctive Relief -**
TOWN OF HILLSBOROUGH,) **Unconstitutional Municipal**
TIMOTHY ANDERSON, ELIZABETH) **Ordinance. as Applied .**
22 **CULLINAN, Does 1 through 30;**)

23) **JURY TRIAL DEMANDED**
24 Cross- Defendants)

25 **1. INTRODUCTION**

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1. This proceeding concerns the real property located at 45 Berryessa Way, Hillsborough, San Mateo County, California. It will be referred to in this Cross-Complaint as either "The Flintstone House" or "45 Berryessa Way."
2. Cross Complainant Florence Fang is an individual of Chinese and Asian Ancestry.
3. Cross Complaint Flintstone LLC is a California Limited Liability Company, established on August 30, 2018.
4. Cross Defendant Town of Hillsborough is a municipality duly organized pursuant to the laws of the State of California. It will be referred to in this Cross-Complaint as either "Town" or "Hillsborough."
5. Cross Defendant Tim Anderson is and was at all times herein relevant employed as the Building Official by Cross-Defendant Town.
6. Cross Defendant Elizabeth Cullinan is and was all times herein relevant employed by Defendant Town as the Director of Building and Planning.
7. Cross-Complainants are ignorant of the true names or capacities of the Cross-Defendants sued here under the fictitious names DOE 1 through DOE 30, inclusive. Cross-Complainants are informed and believe that each DOE Cross-Defendant was responsible in some manner for the occurrences and injuries alleged in this Cross-Complaint.
8. At all times mentioned in the causes of action into which this paragraph is incorporated by reference, each and every Cross- Defendant was the agent or employee of Cross-Defendant Town or was acting or refusing to act upon the request or instigation of the Town.

STATEMENT OF FACTS

- 1
- 2 9. Florence Fang bought the property at 45 Berryessa Way, Hillsborough, San
- 3 Mateo,, California in June 2017.
- 4 10. 45 Berryessa Way is a very distinctive house. The house was designed by
- 5 architect William Nicholson and built in 1976. It is commonly known as the
- 6 "Flintstone House" because its appearance evokes the Television cartoon series,
- 7 "the Flintstones" which ran from 1960 through 1966.
- 8 11. On June 30, 2017, Mrs. Fang submitted a proposed plan for the Town to review
- 9 regarding the retaining wall she proposed to construct at the Flintstone House.
- 10 12. Town Officials reviewed the plan submitted, from the very outset they had
- 11 "neighborhood compatibility issues" with Mrs. Fang's plans.
- 12 13. Immediately, City Planner Elizabeth Cullinan called Mrs. Fang and offered to get
- 13 her all of the necessary permits to demolish (i.e., tear down) the famous
- 14 Flintstone House. Mrs. Fang immediately rejected the offer and told Cullinan she
- 15 intended to make the Flintstone House really the Flintstone House. Mrs. Fang
- 16 was very surprised that Hillsborough wanted to tear the house down, especially
- 17 since it has architectural significance and is within a mere four years of becoming
- 18 a California Historical Landmark.
- 19 14. From June 2017, up to the present day, the Town of Hillsborough has refused to
- 20 give Mrs. Fang or her appointed agent the records pertaining to the Flintstone
- 21 House. The response has always been that "We can't find them."
- 22 15. In November 2017, Hillsborough granted a permit to build a two foot retaining
- 23 wall in the front yard.
- 24 16. In early December 2017, Hillsborough Building Official Tim Anderson went to
- 25 the home to sign off on the permits for the retaining wall and the driveway.
- 26 After inspecting the retaining wall, Anderson then headed to the backyard. Mrs.
- 27 Fang's contractor, Jose Granados, was there and objected to anyone being in the
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1 back of the property without express permission. Inspector Anderson ignored
2 Granados' objections and entered the backyard. At that point, Anderson noticed
3 several concrete figures, or statues, in the backyard. Those statues included
4 dinosaurs, figures of Flintstone cartoon characters and small concrete colored
5 mushrooms. None of these objects in the back yard are seen from any town
6 street.

7 17. Hillsborough Building Official Tim Anderson has a history of discriminatory
8 animus toward individuals of Asian origin or ancestry and/or not of the
9 Caucasian race. He has told at least one individual of Asian origin that "*You
10 have to speak English when you are in Hillsborough.*"

11 18. The discriminatory animus of Anderson is shared by other employees and agents
12 of Hillsborough, including attorneys.

13 19. Anderson was not happy with Mrs. Fang and about what he found in the
14 backyard of the Flintstone House. Anderson estimated that the landscaped area
15 in which the statues stood was more than 10,000 square feet, although he did not
16 actually measure it. If the landscaped area is 10,000 feet or more, the statues
17 would, in Anderson's view, require permits. Mrs. Fang had the landscaped area
18 measured and was told by the contractor that the back yard was less than 10,000
19 square feet.

20 20. However, there is no provision in Hillsborough's Municipal Code or Ordinances
21 that requires a permit for a statue or any yard art. There is a reference to
22 "unenclosed structures" in the Hillsborough Development Standards but that only
23 applies to structures within the 20 foot interior setbacks. None of the figures in
24 Mrs. Fang's backyard are in those setbacks, which has been acknowledged by the
25 Town.

26 21. Based upon Anderson's warrantless and unconsented "inspection" of the
27 Flintstone House backyard and his "estimate" that the size of the landscaped
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area measured 10,000 square feet or more, a draconian "Stop Work Order" was issued on December 11, 2017, which required Mrs. Fang to stop all work on the property, bring all plans to the City for review and to seek permits for all the statues on the property.

22. On December 29, 2017, Ms. Fang bought a "No Trespassing" sign to put on the entry to the Flintstone House backyard, her own private property. City officials told Mrs. Fang that the Town would have to give her permission before she put the sign up.

23. On January 12, 2018, Consulting Planner Cynthia Richardson demanded that Fang prepare an expanded survey of the backyard with all the new improvements and dinosaur pads. Richardson relied upon information obtained from Anderson's nonconsensual and warrantless inspection of the Flintstone House Backyard.

24. On January 12, 2018, Hillsborough issued a second stop work order to stop Fang having repairs done on the drive way, repairs which were authorized under the permit that had been previously issued.

25. On February 26, 2018, Fang submitted an application for Planning Approval of the Dinosaurs and other statues in the backyard. The application had all the boundaries, set backs and locations of the newly installed improvements (i.e., statues or figures).

26. This information was not enough for the Town of Hillsborough, which rejected the application on March 14, 2018, because it was "incomplete." Mrs. Fang was instructed to redo the application "to include sufficient detail to fully document the project" and "to include all aspects of [her] project," which is what she had already done. The Town wanted details of the various improvements Fang had indicated she wished to make, a new parking area, and plantings. The Town wanted Fang to provide a written "planting plan" which was to include "the

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size, type and location of all new plantings." In other words, the Town told Mrs. Fang she was supposed to get its approval before she planted *anything* in her yard. No authority exists in the Hillsborough Municipal Code permitting it to dictate where and what residents may plant on their own property. Mrs. Fang was specifically instructed to install landscaping "below all walls to help soften the look of the walls," even if she did not want to put plants in those locations.

27. In March 2018, Mrs. Fang attempted to retain the services of landscape architect Mike Callan to address the concerns expressed in the Stop Work Orders. Callan met with Mrs. Fang on at least two occasions. However, after Callan later met with Defendant Tim Anderson, Callan ceased returning Fang's telephone calls and performed no services for Fang. Cynthia Richardson of the Town of Hillsborough and Stanley Lo of the town of Hillsbough explained to Mrs. Fang that Inspector Tim Anderson met with Mr. Callan and that now he was no longer interested in helping Mrs. Fang. Mrs Fang wrote to Mr. Lo begging for help and Mr. Lo wrote back to Ms Elizabeth Cullinan and told her that Mr Callan "is no longer going to work for Mrs. Fang." Ms Cullinan did not tell Mrs. Fang until July of 2018, that Mr. Callan would not be working with her. At that point Mrs. Fang had done all she could to get help and literally no one would help her. She became very distressed and worried that her project would not continue forward.

28. On July 15, 2018, Cross Defendant Cullinan told Mrs, Fang "I hear Mike Callan is not working with you." Cullinan then provided Mrs, Fang with a list of landscape architects "approved" by the Town of Hillsborough. Cullinan told Fang "I want to help you towards success."

29. Mrs. Fang contacted the landscapers named on the list, none of them would work with her. She was rejected by all of them.

30. Fang is informed and believes that Defendant Anderson communicated with the

- 1 landscape contractors on the list Cullinan gave Mrs. Fang and that as a result of
2 that communication they would not work with her.
- 3 31. In July 2018, Fang put the large letters "Yabba Dabba Doo" on the ground in the
4 Flintstone House backyard. They are on a small knoll not visible from the street.
5 They are only visible from the front yard looking up towards the street. They are
6 are not visible from the houses of the neighbors
- 7 32. On August 1, 2018, the Town of Hillsborough issued a third "Stop Work" order
8 regarding the letters "Yabba DabbaDoo." Either Defendant Anderson or a
9 subordinate again entered the Flintstone House backyard without Fang's
10 knowledge or consent, or the Town was employing a drone to spy on Mrs. Fang.
- 11 33. Fang eventually retained a landscape architect, Stephanie O'Rourke, who was
12 not on the approved list provided by Cullinan, O'Rourke conferred several
13 times with Building Official Anderson and, upon information and belief,
14 Anderson may have intimidated O'Rourke.
- 15 34. On August 2, 2018, O'Rourke went into the Town's Planning Department to
16 review the file maintained by the Town in connection with 45 Berryessa Way. O'
17 Rourke was denied access based upon representation that the file could not be
18 located.
- 19 35. O'Rourke returned to the Town Planning Department on August 7, 2018, for the
20 purpose of reviewing the records pertaining to 45 Berryessa Way. While there,
21 O'Rourke encountered Defendant Anderson. O'Rourke asked Anderson to
22 allow her to review the Town's records on 45 Berryessa Way. Anderson
23 responded that the records were "unavailable."
- 24 36. Upon information and belief, the files or records requested by O'Rourke were
25 intentionally withheld by City Officials, acting upon the direction of Defendant
26 Anderson and/or other high level officials.
- 27 37. In the meantime, Cynthia Richardson of the Town instructed Mrs. Fang that the
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1 mushrooms in the garden that are different colors must all be painted white or
2 tan. Mrs. Fang agreed to cooperate, notwithstanding the fact that it is her private
3 backyard and that they were mandating a certain color for the art on her private
4 property.

5 38. Another mandate was for Mrs. Fang to plant trees in front of the Dinosaurs so
6 that they could not be seen. Mrs Fang, in a gesture of cooperation, planted trees
7 in front of the dinosaurs. But, the Town then told her, they were not the right
8 trees and, moreover, they were too small so she had to plant larger trees. Every
9 single time that Mrs Fang attempted to do as she was instructed, the Town
10 moved the goal post even further. At a meeting between Building Official Tim
11 Anderson, Dominic Chu and Stephanie O'Rourke, it was agreed that the trees
12 were be sufficient. As soon as the trees were planted , they suddenly did not
13 suffice.

14 39. The Town has claimed that the Dinosaurs in Mrs, Fang's backyard are a
15 nuisance. But at one point, as described above, with trees high enough to conceal
16 them Town officials said the dinosaurs would no longer a nuisance. That is, as
17 also described above, until the trees were actually planted. Once they were
18 planted, Town Officials decided that the Dinosaur statues were still a nuisance.

19 40. A hearing regarding 45 Berryessa Way was held before the Hillsborough
20 Administrative Panel on October 29, 2018. Neither Fang nor her representative
21 were allowed to review the records maintained by the Town in connection with
22 45 Berryessa Way before the hearings. Neither Fang nor her representative were
23 given notice of the identities of the Administrative Panel before the hearing.
24 Mrs. Fang was discouraged from actually participating in the hearing herself.
25 She was told not to speak and not to offer any documents, but was told to sit
26 and listen to the proceeding. No Chinese language interpreter was offer to
27 facilitate Mrs. Fang's understanding of the proceedings. Mrs. Fang sat there
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1 attempting to cooperate every step of the way as she had been doing for the prior
2 18 months, but she was denied the ability to understand since she had no
3 documents of the land and didn't even know who the Administrative Panel
4 members would be.

5 41. During the hearing Mrs. Fang was stunned to see and hear the Town's
6 presentation. The committee went on and on about the "neighbors having an
7 opportunity" but nearly all of the neighbors can not see the backyard. And the
8 one neighbor that can see into the backyard has never complained. So when the
9 committee was discussing "all of the neighbors" no one defended Mrs. Fang by
10 rebutting that allegation. The Town employees knew that very well but said
11 nothing. The Flintstone House is on a very secluded cul de sac and there are no
12 neighbors who can see the back yard.

13 42. Additionally, the 12 inch sculpture replicas of Chinese Terra cotta guardians
14 that Mrs. Fang has in the front of her home to protect her home, like saints, were
15 shown on the screen in the hearing to be almost life size. Mrs. Fang was shocked
16 and yet she could not say anything. Every Town representative or official who
17 had been to the house knew that the guardians are a foot high, not six feet high.
18 Yet they made representations that the Terra cotta guardians were six feet tall.

19 43. That same day as the hearing, October 29, 2018, the Administrative Panel issued
20 a draconian six page, single spaced order requiring the removal of all
21 improvements except for the side yard retaining wall, deck, stairs, driveway
22 gates and columns and parking steps which could be retained provided Fang
23 applied for and received more permits. Any improvements for which a permit is
24 not applied for, must be removed by December 31, 2018. The Stop Work Orders
25 remained in effect. Contractors found working on the property would be
26 referred to the City Attorney's Office for revocation of their business licenses.
27 Finally, the Order imposed a \$ 200 fine on Mrs. Fang, which she paid.
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- 1 44. Subsequent to the October 29, 2018, hearing Mrs. Fang and/or her agents met
2 with officials from Cross Defendant Town on numerous occasions attempting to
3 address the concerns expressed in the Decision and Order of the Administrative
4 Panel and to obtain the Town's acquiescence to the Dinosaurs, Flintstone figures
5 and mushrooms in the backyard and armed sentry figures in the frontyard of 45
6 Berryessa Way. Each time the request was rebuffed.
- 7 45. On January 31, 2019, the Town of Hillsborough's lawyer sent Mrs. Fang a letter
8 threatening to sue her if the dinosaurs and other improvements were not
9 removed forthwith from 45 Berryessa Way immediately.
- 10 46. Without any further notice, the Town of Hillsbough sued Mrs. Fang in the
11 Superior Court of the State of California. Just days before she was served, she
12 was working with the Town to somehow resolve the issues. So when she
13 received the lawsuit she was shocked and profoundly distressed by the lawsuit
14 and the many months of harassment she endured from the Town, Defendant
15 Anderson and other officials of the Town.
- 16 47. Following service of the lawsuit, Cross Defendant Cullinan sent Mrs. Fang a
17 three page, single spaced letter dated April 5, 2019, with numerous demands and
18 instructions, including a demand that Mrs. Fang submit a list stating all the
19 changes that she has made since buying the property. The letter demanded,
20 among many other things, that: Mrs. Fang Submit the town a paint chip showing
21 the color of (any) new walls; Advise the town of the specific material used to
22 screen the underside of the deck; Ordering that native shrubs be planted along
23 the edge of the newly installed artificial turf to "soften" it; plant more native
24 plants; and demanded "justification for" or "elimination of" the Terra cotta
25 guardians at the front of the house. These are just some of the highlights. In
26 addition, the letter appeared to complain of the impact of the backyard
27 improvements on State Route 280, which is not within the jurisdiction of the
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1 Town. The letter instructed Mrs. Fang that the improvements to the property
2 "be consistent with the home's architectural style," notwithstanding that the
3 Town's enforcement activity, including the present lawsuit, is aimed at forcing
4 Mrs. Fang to remove all Flintstone themed objects from her backyard.

5 **V. CLAIMS FOR RELIEF**

6 **FIRST CAUSE OF ACTION**
7 **Violation of the Fair Housing Act**
8 (By Fang as to Town of Hillsborough only)

- 9 48. Cross Complainants incorporate by reference all of the allegations contained in
10 paragraphs 1 through 47 with the same force and effect as if fully pleaded at
11 length herein.
- 12 49. There is a fundamental public policy in favor of fair housing throughout the
13 United States, including, but not limited to, the State of California and the Town
14 of Hillsborough. Said public policy is embodied in the Fair Housing Act, 42
15 USCS § 3601.
- 16 50. The Town of Hillsborough had and has a practice of discrimination against
17 property owners who are not Caucasians, specifically Asians, such as Mrs. Fang.
- 18 51. Mrs. Fang bought and took possession of the property at 45 Berryessa in defiance
19 of the discriminatory practice of the Town of Hillsborough.
- 20 52. The acts alleged herein were taken by the Town with the intent to intimidate,
21 threaten and coerce Mrs. Fang to vacate the property at 45 Berryessa Way.
- 22 53. Mrs. Fang is an aggrieved person for purpose of 42 USCS § 3613.
- 23 54. As a direct and proximate result of the acts of intimidation, threats and coercion,
24 Mrs. Fang has suffered economic damages in an amount to be proven at trial.
- 25 55. As a result of the aforesaid acts of intimidation, threats and coercion, Mrs. Fang
26 has been held up to great derision and embarrassment with her neighbors,
27 professional colleagues, friends, members of the community and family, and
28 continues to suffer emotional distress because Cross Defendant Town attempted

1 to and did in fact interfere with her possession and occupation of 45 Berryessa.
2 Town acted unreasonably because it knew and/or should have known that its
3 conduct was likely to result in additional, severe mental distress. Further, Mrs.
4 Fang had arranged several social occasions or "get togethers" with friends and
5 acquaintances at the Flintstone House that had to be cancelled or postponed due
6 to the controversy caused by the actions of Hillsborough. Mrs. Fang therefore
7 seeks damages for such emotional distress in an amount to be proven at time of
8 trial.

9 56. In bringing this action, Mrs. Fang has been required to retain the services of
10 counsel. Pursuant to 42 USC § 3613 (c) (2) . She is entitled to and hereby
11 requests an award of attorney and expert witness fees.

12 **SECOND CAUSE OF ACTION**

13 42 USC Section 1982

14 (By Fang as to Town of Hillsborough only)

15 57. Cross Complainants incorporate by reference all of the allegations contained in
16 paragraphs 1 through 46 with the same force and effect as if fully pleaded at
17 length herein.

18 58. Florence Fang has the same right to hold real property as any other citizen of the
19 United States.

20 59. The Town of Hillsborough had and has a practice of discrimination against
21 property owners who are not Caucasians, specifically Asians, including but not
22 limited to Mrs. Fang.

23 60. The acts described herein were meant to interfere with Mrs. Fang's right to hold
24 ownership of 45 Berryessa Way and to intimidate, threaten and coerce her into
25 surrendering such ownership.

26 61. As a direct and proximate result of the acts of intimidation, threats and coercion,
27 Mrs. Fang has suffered economic damages in an amount to be proven at trial.

28 62. As a result of the aforesaid acts of intimidation, threats and coercion, Mrs. Fang

1 has been held up to great derision and embarrassment with her neighbors,
2 professional colleagues, friends, members of the community and family, and
3 continues to suffer emotional distress because Town attempted to and did in fact
4 interfere with her possession and occupation of 45 Berryessa. Town acted
5 unreasonably because it knew and/or should have known that its conduct was
6 likely to result in additional, severe mental distress. . Further, Mrs. Fang had
7 arranged several social occasions or "get togethers" with friends and
8 acquaintances at the Flintstone House that had to be cancelled or postponed due
9 to the controversy caused by the actions of Hillsborough. Mrs. Fang therefore
10 seeks damages for such emotional distress in an amount to be proven at time of
11 trial.

12 63. In bringing this action, Mrs. Fang has been required to retain the services of
13 counsel. She is therefore entitled to and hereby requests an award of attorney and
14 expert witness fees and costs of suit.

15 **THIRD CAUSE OF ACTION**
16 **Civil Code §§ 51 & 52**
17 (By Fang as to all Cross -Defendants)

18 64. Cross Complainants incorporate by reference all of the allegations contained in
19 paragraphs 1 through 46 with the same force and effect as if fully pleaded at
20 length herein.

21 65. The Town of Hillsborough had and has a practice of discrimination against
22 property owners who are not Caucasians, specifically Asians. Including but not
23 limited to Mrs. Fang.

24 66. Mrs. Fang bought and took possession of the property at 45 Berryessa Way in
25 defiance of the discriminatory practices of the Town of Hillsborough.

26 67. The acts alleged herein were taken by the Town with the intent to intimidate,
27 threaten and coerce Mrs. Fang to vacate the property at 45 Berryessa Way.

28 68. Cross Defendant Town of Hillsborough in issuing its Decision and Order

1 discriminated against Mrs. Fang on account of her Asian ethnicity and on
2 account of the fact she does not belong to the Caucasian race, all of which is in
3 violation of the Unruh Civil Rights Act, Civil Code Section 51.

4 69. Cross Defendant Tim Anderson aided and incited the issuance of the Decision
5 and Order against Mrs. Fang. In so doing, Anderson discriminated against Fang
6 on account of her Asian national origin and on account of the fact that she does
7 not belong to the Caucasian race, all which is in violation of the Unruh Civil
8 Rights Act. violation of the Unruh Civil Rights Act, Civil Code Section 51.

9 70. Cross Defendant Elizabeth Cullinan aided and incited the issuance of the
10 Decision and Order against Mrs. Fang. In so doing, Anderson discriminated
11 against Fang on account of her Asian national origin and on account of the fact
12 that she does not belong to the Caucasian race. In addition, Cullinan issued the
13 letter of April 5, 2019, in retaliation for Mrs. Fang's opposition to the
14 discriminatory practices of Defendant Town and in furtherance of said
15 discrimination itself. These acts by Cullinan are all in violation of the Unruh Civil
16 Rights Act, Civil Code Section 51.

17 71. Defendant now believes that Anderson, fueled by this discriminatory animus
18 toward Asians, an animus which was either directed by or fueled by the town,
19 purposefully disobeyed Defendant's request not to enter her backyard. The
20 resulting stop work orders and "Decision and Order" are thus all fruit of the
21 poisonous tree.

22 72. Pursuant to Civil Code Section 52(a), Cross Defendants Town of Hillsborough
23 and Anderson are liable to Fang for each and every act of discrimination.

24 73. As a result of the aforesaid acts of discrimination, Mrs. Fang has been held up to
25 great derision and embarrassment with her neighbors, professional colleagues,
26 friends, members of the community and family, and continues to suffer emotional
27 distress because Defendant Town attempt to and did in fact interfere with her
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adjacent properties; “

79. The Cross-Complainants or any other person of common intelligence did not and could not know in advance what conditions would qualify as being “so out of harmony or conformity with the maintenance standard of adjacent properties.”

80. Cross-Complainants contend that the language of Section 8.16.035 (P) is unconstitutional on its face because it does not give sufficient notice of the acts or conditions that would be “so out of harmony or conformity with the maintenance standards of adjacent properties.” For that reason, they are denied a reasonable opportunity to know what is prohibited.

81. Cross-Complainants contend that the language of Section 8.16.035 (P) is unconstitutional on its face because it delegates the legislative job of defining what is prohibited to “Building Officials,” “inspectors,” and neighbors, creating a danger of arbitrary and discriminatory application.

82. Cross-Complainants contend that the language of Section 8.16.035 (P) is unconstitutional on its face because it is so vague that it has a chilling and inhibiting effect on how they can utilize their property.

83. A present controversy exists between Cross-Complaints and the Town of Hillsborough over whether Section 8.16.035 (P) is unconstitutional on its face.

84. Cross-Complainants are entitled to a declaration of this Court that Hillsborough Municipal Code Section 8.16.035 (P) is unconstitutional and unenforceable.

85. Cross-Complainants are further entitled to an order of this Court enjoining Cross-Defendant Town of Hillsborough from enforcing the provisions of Hillsborough Municipal Code Section 8.16.035 (P).

FIFTH CAUSE OF ACTION
Declaratory Relief
(By all Cross-Complainants as Hillsborough)

86. Cross Complainants incorporate by reference all of the allegations contained in paragraphs 1 through 47 with the same force and effect as if fully pleaded at

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length herein.

- 87. Cross- Complainants have both paid taxes that have benefited the Town of Hillsborough.
- 88. The Town of Hillsborough , through its legislative authority, enacted as part of its Municipal Code Section 8.16.035, entitled "Nuisances - Property", The first sentence of that statute states: "The following are expressly declared to be public nuisances adversely affecting the public health, peace, safety or welfare and are deemed to be an offense against property:" and then several subsections follow that state specific examples.
- 89. Subsection M of Section 8.16.035 states: "Neglect of premises: 1. To spite neighbors, 2. To influence zone changes, or 3. To cause a detrimental effect upon nearby property or property values."
- 90. The Cross-Complainants or any other person of common intelligence do not and could not know in advance what conditions would qualify as being "to spite neighbors" or "to influence zone changes" or "cause a detrimental effect on nearby property or property values."
- 91. Cross-Complainants contend that the language of Section 8.16.035 (M) is unconstitutional on its face because it does not give sufficient notice of the acts or conditions which would be violative. For that reason, Cross-Complainants are denied a reasonable opportunity to know what is prohibited.
- 92. Cross-Complainants contend that the language of Section 8.16.035 (M) is unconstitutional on its face because it delegates the legislative job of defining what is prohibited to "Building Officials," "inspectors," and neighbors, creating a danger of arbitrary and discriminatory application.
- 93. Cross-Complainants contend that the language of Section 8.16.035 (M) is unconstitutional on its face because it is so vague that it has a chilling and inhibiting effect on how they can utilize their property.

- 1 94. A present controversy exists between Cross-Complaints and the Town of
2 Hillsborough over whether Section 8.16.035 (M) is unconstitutional on its face.
3 95. Cross-Complainants are entitled to a declaration of this Court that Sub section
4 8.16.035 (M) is Unconstitutional and unenforceable.
5 96. Cross-Complainants are further entitled to an order of this Court enjoining Cross-
6 Defendant Town of Hillsborough from enforcing the provisions of Hillsborough
7 Municipal Code Section 8.16.035 (M).

8 **SIXTH CAUSE OF ACTION**
9 **Declaratory Relief**
(By all Cross-Complainants as Hillsborough)

- 10 97. Cross Complainants incorporate by reference all of the allegations contained in
11 paragraphs 1 through 47 with the same force and effect as if fully pleaded at
12 length herein.
13 98. The Town of Hillsborough , through its legislative authority, enacted as part of its
14 Municipal Code Section 8.16.035, entitled "Nuisances - Property", The first
15 sentence of that statute states: "The following are expressly declared to be public
16 nuisances adversely affecting the public health, peace, safety or welfare and are
17 deemed to be an offense against property:" and then several subsections follow
18 that state specific examples.
19 99. Subsection P of Section 8.16.035 states: "Maintenance of premises so out of
20 harmony or conformity with the maintenance standards of adjacent properties as
21 to cause substantial diminution of the enjoyment, use or property value of such
22 adjacent properties;"
23 100. Cross-Complainants contend that Section 8.16.035 (P) as applied to them is
24 Unconstitutional pursuant to the United States and California Constitutions on
25 the following grounds:
26 A. Treated Cross- Complainant unfavorably on account of Fang's
27 Asian ethnicity in comparison to similarly situated Caucasian
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1 individuals in violation of the Equal Protection Clause of Amendment
2 XIV to the United States Constitution and Article 1, Section 7 (a) to the
3 California Constitution;

4 B. Took the property of Cross-Complainant Fang without payment
5 of just compensation in violation of the Equal Protection Clause of Amendment
6 XIV to the United States Constitution and Article 1, Section 7 (a) to the
7 California Constitution;

8 C. Impeded or attempted to impede the free exercise of religion by Cross-
9 Complainant Fang in violation of the First Amendment to the United States
10 Constitution and Article 1, Section 4 of the California Constitution;

11 D. Abridged Fang's freedom of speech in violation of the First Amendment to
12 the United States Constitution and Article 1, Section 2 of the California
13 Constitution;

14 E. Intruded upon and compromised Fang's right of privacy as guaranteed by
15 Article 1, Section 1 of the California Constitution;

16 F. Utilized an administrative hearing process that was unfair to Cross-
17 Complainant Fang; and

18 G. Conducted an administrative hearing in such a fashion as to deprive Fang of
19 due process.

20 101. A present controversy exists between Cross-Complaints and the Town of
21 Hillsborough as the latter party believes that its attempt to enforce Subsection P
22 of Section 8.16.035 as to the Flintstone House does not violate any of the
23 provisions of the Federal or State Constitution as described above, while the
24 Cross Complainants contend that Subsection P of Section 8.16.035 as applied in
25 the Decision and Order is Unconstitutional for all the reasons stated in paragraph
26 Supra,

27 102. Cross Complainants hereby request this Court issue a declaration that the
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1 application of Hillsborough Town Ordinance, Section 8.16.035 subsection P is
2 Unconstitutional as applied to the Flintstone House property in the Decision and
3 Order for all the reasons stated supra.

4 103. Cross Complainants seek and are entitled to the issue of injunctive relief
5 compelling the Town of Hillsborough to vacate and cease enforcement of the
6 Decision and Order.

7 *****

8 Cross-Complainants hereby demand a trial by jury.

9 *****

10 Cross- Complainants hereby request this court grant them the following relief:


- 11 1. Compensatory Damages according to Proof as to Cross Complainant Fang;
- 12 2. Emotional Distress Damages according to Proof as to Cross Complainant Fang;
- 13 3. All monetary damages awarded be trebled pursuant to Civil Code § 52;
- 14 4. Hillsborough Municipal Code Section 8.16.035 (p) be declared unconstitutional;
- 15 5. Hillsborough Municipal Code Section 8.16.035 (m) be declared unconstitutional.
- 16 6. Enjoin the Town of Hillsborough from all enforcement of Municipal Code Section
17 8.16.035 (p);
- 18 6. Enjoin the Town of Hillsborough from all enforcement of Municipal Code Section
19 8.16.035 (M);
- 20 7. Enjoin the Town of Hillsborough from any further enforcement of the Decision
21 and Order and to immediately vacate said Decision and Order;
- 22 8. For reasonable attorney fees;
- 23 9. For Expert Witness Fees;
- 24 10. Costs of Suit; and

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11. All further relief this Court deems just.

Date: May 8, 2019

LAW OFFICES OF JOSEPH L. ALIOTO
& ANGELA ALIOTO



Angela Alioto
Attorney for Cross- Complainants