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06CV2434 JAH(NLS)

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [Signature]

AMICUS BRIEF IN SUPPORT OF PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING ORDER

1 The San Diego County Apartment Association, the California Apartment Association
2 and the National Apartment Association respectfully request that this Court grant Plaintiffs'
3 Application for a Temporary Restraining Order immediately restraining the City of
4 Escondido from implementing and/or enforcing Ordinance No. 2006-38 R (the
5 "Ordinance"). The Ordinance, which seeks to ban renting an apartment to an "illegal alien"
6 or allowing such a person to live in an apartment, severely penalizes property owners and
7 presents serious constitutional and statutory legal issues. The public interest requires that its
8 enforcement be stayed in order to prevent irreparable harm and dislocation.
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11 Amicus curiae represent thousands of residential rental property owners and real
12 estate professionals in the State of California and nationwide, including the owners and
13 operators of more than 22,000 such units in the City of Escondido. The issuance of a TRO
14 pending resolution of the Ordinance's legality is of utmost concern to Amici's members.
15 Absent a TRO, the Ordinance will immediately and adversely impair their ability to conduct
16 their businesses and professions by placing them in a prototypical "no-win situation." They
17 must either attempt to comply with the unlawful ordinance, thereby inviting an incalculable
18 number of lawsuits brought on behalf of their current and prospective tenants for violations
19 of federal and state housing, anti-discrimination, and privacy laws, or face the Ordinance's
20 draconian punishment provisions, including losing their contractual right to collect rent on
21 their properties in the City of Escondido (even those occupied by lawfully present tenants)
22 and be stripped of their business licenses and subjected to onerous fines and/or six months in
23 jail.

24 The impact on Amici's members and their tenants in Escondido is undeniable. The
25 Ordinance virtually compels owners to delve into their tenants' private affairs. Not only
26 must owners obtain, and report to the City, certain personal information regarding their
27 tenants, but also the personal information of their tenants' families and guests, in order to
28 ensure that the premises are not "occupied" by an "illegal alien." Property owners,

1 attempting to comply with the Ordinance, may then potentially be subjected to liability for
2 violation of several important privacy laws, including the right to privacy guaranteed by the
3 California Constitution, and the Federal Credit Reporting Act (15 U.S.C. § 1681, et seq.),
4 which prohibits the use of a consumer's personal information for purposes other than those
5 expressly authorized by the Act.

6 Fines and penalties for failure to comply with the Ordinance can be imposed without
7 a pre-determination hearing or other formal process. Further, the Ordinance provides no
8 defined methodology or clear process for property owners to assess a tenant's or prospective
9 tenant's or resident's lawful immigration status, and with thousands of forms of national and
10 international identification, property owners simply cannot hope, nor are they trained, to
11 identify false birth certificates, drivers' licenses, visas, resident alien cards, and other legal
12 documents.

13 Moreover, even where the City of Escondido "determines" that a particular resident is
14 an "illegal alien," and an owner attempts to comply with the Ordinance, he or she faces the
15 imminent threat of personal liability if such action is in fact prohibited by federal and/or
16 state law. This scenario grows more complicated and troubling due to the fact that the
17 Ordinance also fails to provide any direction to owners assessing whether a rented unit is
18 "occupied" for purposes of the regulation when it is visited by guests and family members
19 who may be "illegal aliens," or how to handle units rented by a so-called "illegal alien" and
20 his or her U.S. or lawful resident spouse, or his or her U.S. resident dependent children.

21 The potential impact and effect of the Ordinance also extends well beyond the City of
22 Escondido. The Ordinance is one of several local immigration regulations recently adopted
23 across the country, and therefore, is of particular concern to *all* of Amicus curiae's statewide
24 and national members. Absent judicial intervention, similar unlawful but politically popular
25 municipal regulations are likely to proliferate throughout California and the nation, greatly
26 magnifying the significant threat to the public, and specifically, to amicus curiae's members'
27 ability to lawfully conduct their businesses and professions.

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1 We respectfully request that the legality of the Ordinance be determined before it is
2 implemented and before the threat of significant irreparable harm is realized. Amicus
3 curiae, therefore, ask that this Court grant Plaintiffs' Application for a Temporary
4 Restraining Order, prohibiting the City of Escondido from implementing or enforcing
5 Ordinance No. 2006-38 R.

6 Dated: November 14, 2006

Respectfully submitted,

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9 By: 

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11 Diego Apartment Association, The
12 California Apartment Association and The
13 National Apartment Association
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