

1 Ruth Martin Pro Per



2
3
4
5
6
7 **SUPERIOR COURT OF CALIFORNIA**
8 **COUNTY OF ORANGE**
9

10
11 **RUTH MARTIN,**

12 Plaintiff,

13 v.

14 **CITY OF SAN CLEMENTE, DOES 1**
15 **through 50, Inclusive**

16 Defendants.
17
18
19

Case No.
Hon.
Courtroom

UNLIMITED JURISDICTION
COMPLAINT FOR:

1. **Private Nuisance, Health and Safety Code Section 46000 et seq.**
2. **Public Nuisance**
3. **Failure to Notice Conversion of Tennis Courts into Pickleball Courts**
4. **Violation of CEQA**
5. **Injunction**

20 Date Action Filed: - --, 202X
21
22
23
24
25
26

27 1. Plaintiff, Ruth Martin (“Plaintiff”), alleges against Defendant(s), and each of them, as
28 follows:

1 **INTRODUCTION**

2 2. Plaintiff files this Complaint as a result of the acts and/or omissions of Defendant City
3 of San Clemente (“City” or “Defendant”), as set-forth herein, concerning a nuisance created at,
4 and on, Defendant’s property.

5 3. Plaintiff is a resident of the City of San Clemente, which includes a home located on
6 Via San Gorgonio in the City of San Clemente, California, 92672 (the home and all of which
7 property is referred to herein as the “Property”).

8 4. The City of San Clemente is the sole owner of San Gorgonio Park, which park is
9 located across the street from Plaintiff’s Property. San Gorgonio Park is often referred to by the
10 name SanG.

11 5. San Gorgonio Park was created sometime after the City acquired the real property on
12 which San Gorgonio Park is situated in the late 1970’s from the state of California.

13 6. Plaintiff’s Property is within 40 feet of San Gorgonio Park and in close proximity,
14 approximately 350 feet, to the eight pickleball courts currently located within San Gorgonio Park.

15 7. Plaintiff has misophonia, a condition which is triggered by repeated sounds including,
16 but not limited to, the noise from pickleball play.

17 8. Defendant’s acts and/or omissions include, but are not limited to, nuisances resulting
18 from noise from pickleball at San Gorgornio Park as well as from crowds that create crowd noise
19 at the courts and while walking on Via San Gorgonio which occurs partly because there are no
20 sidewalks in the vicinity of San Gorgonio Park with pedestrians being forced to walk on the
21 street.

22 9. Each of the nuisances complained of, and described herein, affect many residents and
23 owners of properties in the neighborhood surrounding San Gorgonio Park and create a
24 disturbance and nuisance at or near their properties.

25 10. These interferences are substantial, unreasonable, offensive, and inconvenient to the
26 neighbors of San Gorgonio Park.

1 ▪ **History of San Gorgonio Park and Pickleball Issues**

2 11. The San Gorgonio Community Park is located at 2916 Via San Gorgonio, San
3 Clemente, California. It is owned and operated by Defendant the City of San Clemente.

4 12. Upon information and belief, San Gorgonio Park was built on or around 1979. Prior
5 to being built, the land was undeveloped.

6 13. Upon information and belief, for more than 60 years, pickleball courts were not
7 located within San Gorgonio Park.

8 14. Upon information and belief, two tennis courts were converted by the City into eight
9 pickleball courts with 4 players per court during the years of 2018 to 2021.

10 15. Upon information and belief, four to eight tennis players (dependent upon whether the
11 tennis players were playing singles or doubles) were increased to up to 32 pickleball players on
12 those two courts.

13 16. Upon information and belief, when the City converted the two San Gorgonio Park
14 tennis courts into pickleball courts, the City did not make or include any findings on additional
15 noise that would be created by the conversion, nor any findings relating to additional street
16 parking, street pedestrian and car traffic that would increase due to the conversion.

17 17. Upon information and belief, in making the determination to convert the San Gorgonio
18 tennis courts into pickleball courts, the City did not perform an E.I.R. or make required negative
19 declarations.

20 18. Upon information and belief, the determination and vote to move pickleball courts to
21 San Gorgonio Park did not discuss that, under the original San Gorgonio Park Environmental
22 Assessment, all noise-creating activities were required to be in the I-5 Freeway adjacent right of
23 way (as far as possible from residential homes).

24 19. The Parks & Recreation Commission assured residents in the late 1970's, before
25 approving building San Gorgonio Park, that at most street parking would be required up to 3
26 days per year, and recommended increasing parking from 85 - 100 spaces.

27 20. Upon information and belief, the City in adopting the change from tennis courts to
28 pickleball courts failed to take into consideration, or properly evaluate, the issues of noise from

1 crowds, or noise from play, or the increase in parking and traffic due to overflowing San
2 Gorgonio Park parking spaces.

3 21. Upon information and belief, in addition to noise created on the pickleball courts by
4 the sound of paddles striking pickleballs (and the noise referred to above), sound is also created
5 by “boom” boxes played at high-levels on or near the pickleball courts.

6 22. Upon information and belief, placing the noise-producing pickleball courts anywhere
7 other than in close proximity to the I-5 Freeway right-of-way is in direct violation of the City’s
8 findings and promises when the park was approved and then built by the City.

9 23. The ongoing use of the pickleball courts has resulted in unreasonable interference with
10 Plaintiff’s and her neighbors’ use and enjoyment of her and their homes and property, including
11 the loud and irritating noise of paddle strikes, and the noise of boisterous players and spectators,
12 and increased traffic and parking on the neighborhood streets, and pedestrians walking on public
13 streets.

14 24. Upon information and belief, when the City heard complaints from residents near San
15 Luis Rey Park regarding pickleball courts, at times from around 2018 to 2019, the City voted to
16 relocate all pickleball use to San Gorgonio Park.

17 25. Both City and state laws that regulate nuisances, including noise, excessive parking in
18 their neighborhood, walking in the streets to ingress and egress the park, etc., have been, and
19 continue to be, violated by the City of San Clemente.

20 **▪ Acquisition of San Gorgonio Park and Environmental Assessment**

21 26. Upon information and belief, during 1976, the City obtained both Linda Lane Park and
22 San Gorgonio Park from the State of California and at approximately the same time, obtained
23 funds from the County of Orange in the amounts of \$70,000 and \$100,000, respectively, to
24 build/create those parks. The properties were acquired from the State of California as state
25 surplus property.

26 27. Upon information and belief, when the City acquired San Gorgonio Park, the City
27 performed an Environmental Assessment (“Assessment”).
28

1 28. Because pickleball did not exist at the time, pickleball, and the related noise and traffic
2 issues, were not included in the Assessment.

3 29. The Assessment stated that the park would create environmental traffic and noise
4 impacts to the surrounding communities that could not be measured at the time of the
5 Assessment. (See, Assessment, page 2).

6 30. The Assessment indicated the scope of activities for development in San Gorgonio
7 Park: “two baseball fields, 9 tennis courts, a football and soccer field, handball courts, children’s
8 play areas, and areas for passive recreation and picnicing [*sic*].”

9 31. Upon information belief, the greatest noise-creating activity, baseball, was situated
10 with the field(s) being located along the I-5 Freeway right-of-way, which is the farthest point
11 from the residential neighborhood that borders San Gorgonio Park.

12 32. The Assessment, page 2, contained the following:

13 33.
14 Environmental Impact of the proposed action.

15 ... Any potential adverse environmental effects which cannot be
16 avoided if the proposal is implemented are predominately related to
17 traffic and noise. The project has the potential to increase traffic in a
18 residential area and increase the noise level as a result of the outdoor
19 activities.

20 ...
21 The variety of uses and the number of facilities will increase traffic into
22 the area and during peak activity periods will increase the noise level.
23 Both the traffic and noise levels are variables and the anticipated
24 increases cannot be determined at this time.

25 Mitigation Measures Proposed to Minimize Adverse Impacts.

26 The design of the park indicates that the most active recreational
27 activities will take place next to the Freeway right-of-way which should
28 minimize the noise to the residents on San Gorgonio and Vista
Torito. ...

29 34. Upon information and belief, before building San Gorgonio Park, the City was aware
30 of possible parking issues, i.e., insufficient parking during normal activities and when special
31 events occurred, and as a result the City agreed to review the adequacy of parking in Phase III of
32 the development.

1 35. Upon information and belief, the City did not review the noise and parking impacts
2 that resulted from converting San Gorgonio Park tennis courts into pickleball courts.

3 36. Upon information and belief, at the time of the conversion, the City was aware of
4 potential noise issues, parking, traffic; both pedestrian and cars.

5 37. Upon information and belief, and most important, the City’s Environmental
6 Assessment informed residents that activities at San Gorgonio Park creating the greatest noise
7 would be located “**next to the Freeway right-of-way.**”

8 38. For the August 22, 1978 Parks & Recreation Commission meeting, the Minutes reflect
9 that the commissioners were aware that parking was a neighborhood concern. The Minutes
10 record that Commissioner Johnston stated that residential parking “might happen two or three
11 times a year, but would not be a daily problem, however, he could give no guarantee to the
12 people that spaces would always be available to them. He also commented that apparently the
13 question was not of access as much as parking problems in front of their homes.”

14 39. Upon information and belief, when the City reviewed moving pickleball to San
15 Gorgonio Park, the Agenda Report provided to Council Members as background failed to include
16 any reference to the above formation studies and documents, and in additiona failed to inform the
17 Council Members that noisy activities were required to be located near the I-5 Freeway Right-of-
18 Way. Nor did the Agenda Report mention that parking in the neighborhood was not supposed to
19 exceed three days per year.

20 40. Upon information and belief, before approving the pickleball courts in San Gorgonio
21 Park, the Agenda Report to City Council Members failed to inform them about any details of the
22 initial considerations of building San Gorgonio Park or the impacts that were considered at the
23 time (approximately 1978-1979).

24 ▪ **Locating Pickleball at San Gorgonio Park**

25 41. Upon information and belief, in spite of the initial determinations, findings, and
26 promises referenced above, and in violation of Plaintiff’s right to rely on the Assessment and
27 City determinations, when the City converted pickleball courts at San Gorgonio Park, the City
28

1 failed to locate those converted courts next to the I-5 Freeway right-of-way, as required in the
2 Assessment – notwithstanding that the determination is binding on the City.

3 42. Upon information and belief, before approving the conversion of tennis courts into
4 pickleball courts at San Gorgonio Park, the City failed to perform an environmental analysis.

5 43. Upon information and belief, before approving the conversion of tennis courts into
6 pickleball courts at San Gorgonio Park, the City failed to perform testing of noise levels and did
7 not analyze noise tests.

8 44. Upon information and belief, when questioned, Samantha Wylie, the City’s Beaches
9 and Parks Director, falsely informed Council Members that moving pickleball from San Luis
10 Rey (where pickleball play had become a nuisance) was necessary to eliminate noise, but that
11 doing so would not create a noise issue at San Gorgonio Park.

12 45. Upon information and belief, Ms. Wylie’s statement was untrue when made, and
13 resulted not only misleading the Council Members and based thereon, they determined to convert
14 the tennis courts at San Gorgonio Park to pickleball courts in spite of the true and actual impact
15 of making such a conversion – increased noise; moreover, the untrue statements induced the
16 Council Members to fail to consider the actual consequences.

17 46. Upon information and belief, Ms. Wylie’s statement was erroneous as a matter of basic
18 physics, as well as acoustics.

19 47. Upon information and belief, the City Council has discussed or held hearings related
20 to converting tennis courts into pickleball courts at San Gorgonio Park without considering the
21 noise-related issues referenced above.

22 48. Upon information and belief, Defendant determined that pickleball noise was a
23 nuisance for nearby residents that lived in close proximity to San Luis Rey Park and therefore
24 pickleball courts were closed at San Luis Rey Park. In short, Defendant moved the pickleball
25 courts from the San Luis Rey Park to San Gorgonio Park because the residents in close proximity
26 to the San Luis Rey Park found the noise generated by pickleball play to be a nuisance.

1 49. Upon information and belief, to offset the loss of pickleball courts within the City of
2 San Clemente, the City intentionally relocated the court(s) and related noise and crowd nuisance
3 to San Gorgonio Park.

4 50. Upon information and belief, before voting to locate or relocate pickleball at San
5 Gorgonio Park, the City failed to discuss or consider, or make findings regarding, alternatives
6 including, but not limited to, a) the Community Center, b) the Boys and Girls Club, and c) the
7 old Staples building (at least on a temporary basis) that has remained unoccupied for more than
8 five years.

9 51. Upon information and belief, the reason for moving the courts to San Gorgonio Park
10 and closing the courts at San Luis Rey Park was simple; because there were few complaints at
11 the City level from residents near San Gorgonio Park.

12 52. Upon information and belief, the decision to add courts at San Gorgonio Park was
13 intentional, unreasonable, negligent, and reckless as the City was aware, or should have been
14 aware, that relocating the courts would result in the stated nuisance and harm and would result in
15 abnormally dangerous activities.

16 ▪ **Noise Level Discussion**

17 53. The nuisances created by pickleball are public nuisances, as well as private nuisances.
18 See, for example, Civil Code Sections 3479, 3480, and 3501, and San Clemente Municipal Code
19 Sections 8.48.010, et seq., 8.48.090, and Health & Safety Code Section 46000 et seq.

20 54. The San Clemente's Municipal Code Section 8.48.010 states, under subsection A:

21 In order to control unnecessary, excessive and annoying sounds
22 emanating from incorporated areas of the City, it is hereby declared to
23 be the policy of the City to prohibit such sounds generated from all
24 sources specified in the chapter.

25 55. Municipal Code Section 8.48.090 states, under subsection C:

26 Activities conducted on any park or playground provided such park or
27 playground is owned and operated by a public entity, provided the
28 activities do not include amplified sound or noise from said activities
 does not exceed 80dB(A), unless permitted pursuant to a special event
 permit or other City-issued approval.

1 56. Upon information and belief, the City Municipal Code requires the sound reading to
2 be measured at 20 feet from the sound source.

3 57. Upon information and belief, tennis creates much less noise than pickleball for, at a
4 minimum, the following reasons:

5 58. **RACKET:** Tennis rackets have nylon or synthetic gut strings that are flexible;
6 pickleball rackets are made of a flat, hard surface, wood.

7 59. **BALL:** A tennis ball is made from rubber covered in felt. So even if a player were to
8 use a tennis ball on a pickleball paddle, doing still would not create as loud a sound on impact as
9 using a pickleball ball. By contrast, a pickleball ball is made from hard plastic, and when a
10 player impacts plastic ball with the flat wood surface (or surface of fiberglass, graphite, or carbon
11 fiber), the impact generates a loud, echoing noise.

12 60. **SOUND:** Because the pickleball court is more compact, there can be multiple
13 pickleball courts for each tennis court, which permits more games to be played simultaneously,
14 which in turn generates more noise. This means that there is more constant noise which could
15 exacerbate how loud it is. This is multiplied by the increase in courts from dramatically
16 increased use. Play proceeds more rapidly as well, cause more contact noise due to that factor
17 alone. And because pickleball is wildly popular at the moment, the courts are utilized with much
18 greater frequency than tennis courts.

19 61. **DECIBEL LEVELS:** Pickleball noise often exceeds 80 decibels. On the other hand,
20 tennis only reaches between 55 and 60 decibels – significantly less than pickleball.

21 62. **ANNOYANCE LEVEL:** A beeping sound is more annoying than a rumble sound,
22 even if those two sounds are of the same dB level. Tennis produces ball-striking sounds that have
23 a lower pitch than the ball-striking sounds of pickleball, making tennis less annoying.

24 63. Upon information and belief, not only does the noise emanating from pickleball courts
25 at San Gorgonio Park exceed City statutory limits, but the sound is like a hammer blow on a
26 blacksmith's anvil and the noise filters into every part of Plaintiff's home an Property. Plaintiff is
27 aware that the same thing is true of her neighbors' homes and property.
28

1 64. The sound of a pickleball paddle strike is less like the low-frequency strike of a tennis
2 racket, and, instead more like the high-frequency strike of a wooden ping pong paddle. The
3 abrupt, high-frequency, and irritating sound of paddle strikes on the pickleball can be heard on
4 the Plaintiff's property both inside and outside of her home as well as her neighbors' homes and
5 property.

6 65. At some higher levels of noise, hearing can be damaged. It is recommended that
7 humans avoid extended periods of exposure to noise levels above 80 dBA.

8 66. Sound levels above 90 dBA is considered dangerous according to the Occupational
9 Safety and Health Association (OSHA) standards.

10 67. Each increase by 10 decibels increases sound twofold and is therefore twice as loud.
11 An increase of 40 decibels is (10dB+10dB+10dB+10dB) or 2x as loud x 2x as loud x 2x as loud
12 x 2x as loud, or 16 times as loud, an increase of 30db is 6 dB is 8 times as loud.

13 68. A reading of 111dB is more than 8 times that level of noise of 80dB.

14 69. Upon information and belief, pickleball noise creates a human health risk including
15 hypertension, heart disease, etc.

16 70. Upon information and belief, pickleball noise exceeds the limits set in objective,
17 science-based community noise ordinances, including those in the City of San Clemente.

18 71. Upon information and belief, pickleball noise exceeds accepted U.S. and international
19 standards and guidelines (such as those produced by the United States Environmental Protection
20 Agency, World Health Organization, etc.) for community and environmental noise
21 emissions/levels.

22 72. Upon information and belief, there are no effective means, other than enclosing the
23 entire pickleball court in a well-designed building, of significantly reducing the noise emitted by
24 the pickleball courts such as noise walls, barriers or screens.

1 73. Upon information and belief, although these types of solutions are frequently
2 suggested, they are not effective (for reasons of fundamental physics) and will not reduce the
3 noise to acceptable levels.¹

4 **▪ DECIBEL SOUND EQUIVALENTS:**

- 5 74. 0 dBA – The softest sound a person can hear with normal hearing
6 10 dBA – normal breathing;
7 20 dBA – whispering at 5 feet
8 30 dBA – soft whisper; quiet rural areas²
9 40 dBA – quiet residential area on a calm day; library
10 50 dBA – steady rainfall: quiet suburbs
11 60 dBA – normal conversation:
12 70 dBA – freeway traffic; Passenger car at 65 mph at 25 feet (77 dB)
13 85 dBA – noisy restaurant
14 90 dBA – shouted conversation; Boeing 737 or DC-9 at one nautical mile before
15 landing (97 dB)
16 100 dBA – nearby snowmobile; Jet takeoff at 305 meters; Jet flyover at 1,000 feet
17 (103dB)
18 110 dBA – shouting into an ear; live rock music (106 - 110 dB)

19 **▪ Actions Related to Creating and Relocating Pickleball Courts**

20 75. Upon information and belief, the Beaches, Parks & Recreation Commission Minutes
21 for its meeting of August 14, 2018 reflect that the Commission considered a Park Master Plan
22 Amendment to add pickleball to both San Luis Rey Park and San Gorgonio Park.

23 76. Upon information and belief, on or about September 4, 2018, the City Council
24 considered a Master Plan Amendment to San Luis Rey and San Gorgonio parks to allow one
25 tennis court at each park to be converted into pickleball courts.

26
27

¹ The City added noise barrier fencing and it resulted in little effective reduction in the noise level produced at
the San Gorgonio Park pickleball courts and surroundings.

28 ² Descriptions after the ; are from [www.wenet.net/\(tilde\)hpb/dblevels.com](http://www.wenet.net/(tilde)hpb/dblevels.com), and
www.chem.purdue.edu/chemsafety/Training/PPETTrain/dblevels.htm.

1 77. Upon information and belief, the September 4, 2018 Agenda Report, at Item 9A,
2 states:

3 It is also recommended that the recommended play time be considered
4 a “pilot pickleball program”, with an option to return to Council in one
5 year to review the success of the program and address any issues that
6 may have evolved since implementation.

7 78. Upon information and belief, the September 4, 2018 Agenda Report at Item 9A
8 glaringly omitted mention of noise, crowds, etc.

9 79. Upon information and belief, the “one year to review” required review did not occur.

10 80. Upon information and belief, while the September 4, 2018 Agenda Report at Item 9A
11 states that it is proving “Notification: Interested Parties - Properties within 300 feet of San
12 Gorgonio Park and San Luis Rey Park,” the list of persons who were notified did not include
13 Plaintiff and many of her neighbors, which is a violation of state law and City policy and law.

14 81. Upon information and belief, while the City was informed of this failure to provide
15 required notice, the City failed to take any corrective measures to rectify the failure.

16 82. Upon information and belief, pickleball courts were added to both parks sometime
17 thereafter during 2018.

18 83. Upon information and belief, as set forth above, the City subsequently eliminated
19 pickleball courts from San Luis Rey Park due to noise complaints by neighbors, and converted a
20 second court at San Gorgonio Park to replace the closed San Luis Rey Park court.

21 84. Upon information and belief, the City failed to discuss, or even consider, why
22 doubling the pickleball courts at San Gorgonio Park would not create a similar or even greater
23 noise issue for the neighbors of San Gorgonio Park. Increasing the number of players increases
24 the noise and frequency of the pinging impact sound when more paddles strike more pickleballs.

25 85. Upon information and belief, the decision to modify the San Gorgonio Park tennis
26 court(s) into pickleball courts, but eliminating the court at San Luis Rey Park due to noise
27 complaints, is evidence and/or proof of the City’s contempt for residents living in close
28 proximity to San Gorgonio Park.

1 86. The City through its Beaches, Parks, and Recreations Department has offered five
2 separate classes to San Clemente adults taught by outside instructors that has increased the
3 number of players and in doing so adds to the noise levels at San Gorgonio Park.

4 87. Upon information and belief, eliminating pickleball court(s) at San Luis Rey Park was
5 an admission by the City that pickleball related activities create a noise nuisance.

6 88. Upon information and belief, the City failed to perform a required E.I.R. or make a
7 negative declaration regarding sound and other nuisances that would result from converting
8 tennis courts into pickleball courts at San Gorgonio Park, which was required before the City
9 could make the conversion from tennis to pickleball.

10 89. Upon information and belief, when considering the conversion of tennis courts into
11 pickleball courts at San Gorgonio Park, the City failed to follow its own directive from the late
12 1970's that required activities with high noise levels be located at the back of the park (the area
13 farthest from surrounding residences) near the I-5 freeway right-of-way.

14 90. Upon information and belief, the Minutes of discussion of closing the pickleball court
15 at San Luis Rey Park and relocating the court to San Gorgonio Park reflect that Beaches, Parks &
16 Recreation Commissioners commented about "Concerns raised about San Luis Rey regarding
17 noise and parking make San Gorgonio a better fit for pickleball." The Commissioners did not
18 comment on the noise and parking effects of adding one or more pickleball courts at San
19 Gorgonio Park.

20 91. Upon information and belief, the Commission passed, by a vote 6 - 1, to "rescind the
21 recommendation for the conversion of court #4 at San Luis Rey to permanent pickleball courts,
22 to recommend one of the tennis courts at San Gorgonio Park be dual striped for pickleball and
23 tennis use."

24 92. Upon information and belief, on August 13, 2019, the Beaches, Parks & Recreation
25 Commission Minutes reflect comments by the public including:

26 Yvette Sanville ... stated pickleball noise is constant with many players,
27 radios, parties, and lessons beginning as early as 6:15am and
28 continuing until 10pm (at San Luis Rey Park); opined that noise from
 pickleball use and users is impactful and she is unable to open her

windows or enjoy her patio; stated players can be heard from the street; ...

93. Upon information and belief, on August 13, 2019, the Beaches, Parks & Recreation Commission Minutes reflect that Commissioners commented as follows:

A problem has been created by adding pickleball to San Luis Rey Park. San Gorgonio Park does not have a problem with noise.³ Pickleball at San Luis Rey Park should be eliminated or time restricted. San Luis Rey Park is not the location for pickleball due to impacts to residents and the golf course. ...” Motion carried 5 - 1 “to recommend the City Council eliminate pickleball usage at San Luis Rey Park and convert Court #4 back to tennis use, dual stripe court #1 at San Gorgonio Park for pickleball, and dedicate five days per week to pickleball play.

94. Upon information and belief, the City Council Minutes for its meeting on September 28, 2021, reflect that a speaker, Al Cullen, informed the Council about concerns that the proposed addition of pickleball to San Gorgonio Park “**are ill advised** ...”

95. Upon information and belief, on November 2, 2021, the City Council Minutes reflect a speaker informing the Council about concerns with pedestrian safety in the vicinity of San Gorgonio Park, noting a lack of sidewalks that forces pedestrians to walk in the street.

96. Upon information and belief, on November 16, 2021, the City Council Minutes reflect a speaker informing the Council that the pickleball courts pose a public noise nuisance.

97. Upon information and belief, on December 7, 2021, the City Council Minutes reflect speakers informing the Council:

(Frances Alordo) “related that pickleball play poses a noise and traffic nuisance for residents in the vicinity of San Gorgonio Community Park; urged Council to relocate pickleball play to the Vista Hermosa Sports Park where residents will not be negatively impacted.”

(Susan Chick) “stated she lives seven blocks from the pickleball courts at San Gorgonio Community Park, but is still negatively impacted from the noise ...”

(Anonymous (Plaintiff)) “that pickleball play at San Luis Rey Park was discontinued because of the noise impact on residents and ... play at the San Gorgonio Community Park also impacts surrounding residents. ...”

³ This statement was proven false when later the City tried to reduce the noise by installing an expensive wind barrier fencing, which proved not to be effective to reduce noise.

1 (Susan DiStefano) “urged Council to decommission pickleball play in
2 all residential areas; opined that the current situation violates City Code
3 Chapter 8.48 related to noise control.”

4 98. Upon information and belief, on December 7, 2021, the City Council Minutes reflect
5 that Mayor James, supported by Council Members Ferguson and Duncan, agendized the issue of
6 noise emanating from pickleball play at San Gorgonio Community Park.

7 99. Upon information and belief, on December 21, 2021, the City Council Minutes reflect
8 the agendized Item 9F resulted in numerous speakers.

9 (Amanda Quinn) stated “pickleball courts in residential zones be
10 decommissioned ...”

11 (Sue DiStefano on behalf of the Hyde’s) “pickleball courts negatively
12 affect their lives. ... the City has not considered the health and safety
13 of San Clemente residents and has failed to honor the City’s noise
14 ordinance.”

15 (Kristy Pittman on behalf of ...) “urged Council to remove pickleball
16 courts from residential areas ...”

17 (Susan Chick) “reported that she is in possession of a petition
18 containing 182 signatures from Shorecliffs (sic) residents that oppose
19 the disturbances that pickleball has on the Shorecliffs neighborhood;
20 opined that current conditions (at San Gorgonio Park) violate California
21 Civil Code 3480 relating to public nuisance.”
22 [Other speakers discussed sound and nuisance issues at San Gorgonio
23 Park.]

24 100. Upon information and belief, on December 21, 2021, the City Council voted to 4 - 1 to:

25 1. Direct Staff to obtain decibel readings at the property line across the
26 street from the courts before and after “windscreens” are installed,

27 2. Approved \$35,000 for the “purchase of noise-reducing windscreens.

28 3. Reduced hours of pickleball play to 7:00 a.m. to dusk Monday
through Friday and 8:00 a.m. to dusk Saturday and Sunday. ...

5. Direct Staff to prioritize the construction of at least four pickleball
courts at Steed Park before other park construction projects.

6. Directed that Staff provide an analysis of the potential noise impact
that would result from the construction of four pickleball courts at San
Gorgonio Community Park near the I-5 before Council is asked to
approve a construction project.”

101. Upon information and belief, in August, 2022, after Plaintiff took 3 minutes to discuss
the nuisance-noise issues and code violations at City Council under Open Communications,

1 Council member Laura Ferguson asked the City Attorney who was present in Scott Smith's place
2 whether the City was permitted to violate its own laws.

3 102. Upon information and belief, the City Attorney stated she did not know, and was
4 deferring to Scott Smith, who had not appeared at a City Council meeting for months, but then
5 further stated she was unaware when Scott Smith would return from his vacation.

6 103. On September 6, 2022, upon return to the Council meeting, City Attorney Scott Smith
7 informed the Council that the City is required to enforce its own laws. While the City Attorney's
8 law firm prepared a related memorandum, Defendant and/or the City Attorney takes the position
9 that the memorandum should be considered subject to attorney-client communication privilege
10 and, in accordance with that position, refused to disclose the document to the public. As a result,
11 that document has been distributed only to Council members.

12 104. Upon information and belief, the City has not moved forward on planning, funding,
13 and/or building pickleball courts at Steed Park or at the rear of San Gorgonio Park.

14 105. Upon information and belief, the City has not studied the impacts of building four or
15 eight pickleball courts at San Gorgonio Community Park near the I-5, even though more than 8
16 months have passed since Council voted to direct staff to prepare that report.

17 106. Samantha Wylie, City of San Clemente Parks & Recreation Manager, sent either an
18 email or internal communication⁴ to Adam Atamiun, who at the time was the Code Enforcement
19 Director, and stated, in full:

20 I met with James [City Manager Makshanoff, who was no longer City
21 Manager in 2022] yesterday regarding a complaint from a resident near
22 San Luis Rey Park who is upset with the noise coming from the
23 pickleball/tennis court at the park. James requested that one of your
24 officers perform a decimal (sic, decibel) reading to identify the true
25 volume⁵ of the noise. The best day to perform the reading will be
26 either Thursday between 3-7pm or Sundays from 9am-9pm.⁶
27 Let me know if I can provide any other information.

28 ⁴ While the date of the internal communication is unknown, it appears to be in advance of the City's April 10,
2022 noise testing.

⁵ A decibel meter does not measure the "volume" of sound.

⁶ It is not clear why these days and times were selected by Ms. Wylie.

1 107. On January 4, 2019, at 5:53 pm, Adam Atamiun sent an email to Ms. Wylie son the
2 stated subject: “Re: pickleball Noise - San Luis Rey Park.”

3 CE staff (Code Enforcement) went by yesterday around 4:30.
4 Maximum dB level was 81. ... The complaint may be more related to
5 the pitch of the noise the pickleball makes rather than the loudness of
6 that noise. Certain high-pitched noises seem to bother people more than
7 other noises that are actually louder. Hope this info helps.

8 108. An email from Samantha Wylie dated January 6, 2019, at 8:53 am, to City Manager
9 Makshanoff and Assistant City Manager Erik Sund, contained the subject line: “Fwd: pickleball
10 Noise - San Luis Rey Park.”

11 FYI. See below. CE performed a decibel reading at the park. The
12 exterior noise should technically not exceed 50dB, however according
13 to our noise ordinance, activities that take place in the parks are
14 excluded from this.

15 I’m heading over to the park this morning to observe the activities for a
16 little bit.

17 109. This email pointed out the level of acceptable noise for activities (other than parks) in
18 San Clemente and stated that level was a maximum of 50dB. The exception of up to 80 dB in
19 certain park areas exceeds the level of noise allowed elsewhere in the City, and the reason for
20 that exception is not described in any document that Plaintiff has been able to locate.

21 110. Upon information and belief, the pickleball noise can be heard from residences as far
22 as 1,500 feet from San Gorgonio Park.

23 ▪ **City Noise Testing**

24 111. Upon information and belief, the City took decibel sound readings at City-owned
25 pickleball courts and found noise levels exceeded, at times, 111dB’s. “110 dBA – shouting into
26 an ear.”

27 112. Upon information and belief, the City requested and Anthony Kurtz provided the City
28 6 separate decibel tests of pickleball noise. Yet the reports did not indicate how many courts
were being used during the tests, how many other pickleballers were waiting for their time to
play, or whether or not anyone was playing a boom box.

1 113. An March 19, 2022 11:52 am test results from the City of San Clemente,
2 “Measurement Report” prepared by Anthony Kurtz includes testing of LAS peak at 111.6 dB and
3 LAE at 90.4 dB, and $L_{\text{peak(max)}}$ 111.6 dB.

4 114. An March 19, 2022 12:00 pm test results from the City of San Clemente,
5 “Measurement Report” prepared by Anthony Kurtz includes testing of LAS peak at 105.3 dB and
6 LAE at 81.6 dB, and $L_{\text{peak(max)}}$ 105.3 dB.

7 115. An April 9, 2022 2:14 pm test results from the City of San Clemente, “Measurement
8 Report” prepared by Anthony Kurtz⁷ includes testing of LAS peak at 95.8 dB and LAE at 81.9
9 dB, and $L_{\text{peak(max)}}$ 95.8 dB.

10 116. An April 10, 2022 12:19 - 12:24 pm test results from the City of San Clemente,
11 “Measurement Report” prepared by Anthony Kurtz includes testing of LAS peak at 111.2 dB and
12 LAE at 82.1 dB, and $L_{\text{peak(max)}}$ 111.2 dB

13 117. An April 10, 2022 12:33 - 12:38 pm, test results from the City of San Clemente,
14 “Measurement Report” prepared by Anthony Kurtz includes testing of LAS peak at 94.4 dB and
15 LAE at 80.1 dB, and $L_{\text{peak(max)}}$ 94.4 dB.

16 118. Upon information and belief, during discussions at City Council meetings, and
17 through emails and oral communications, City staff members stated on occasions that the City
18 was unaware of any violations of the City’s noise ordinance, in spite of the fact that these staff
19 members were aware of the City sound testing that resulted in several readings over 80dB up to
20 111dB.

21 119. Plaintiff elected to first pursue alternative avenues rather than filing a complaint. In
22 particular, Plaintiff spent months in attempts to obtain relief through available City
23 administrative procedures including, but not limited to, numerous emails to City staff and
24 Council members, and frequent and continuous appearances at City Council Open
25 Communications where she spoke for up to 3 minutes per session and in many cases included a
26 Power-point presentation outlining both the law(s) and violations.

27
28

⁷ TransparentCalifornia.com lists Mr. Kurtz as a Code Enforcement Tech.

1 120. Upon information and belief, there are pickleball paddles and balls that significantly
2 reduce not only the noise levels, but eliminate the “pinging” sound. See, for example, see
3 **GAMMA Foam Quiet Balls**, and **Tourna Foam Balls**. For non-tournament and casual play,
4 these balls are useful, viable, and could possibly bring the sound to below 80dB.

5 121. Upon information and belief, on Labor Day, Monday September 5, 2022, when the
6 courts were locked, the pickleball players climbed the fence in order to play pickleball, thus
7 creating noise and trespassing on the locked City courts, until, later in the day, when Marty
8 Weinberg, the San Clemente pickleball ambassador, called Beaches, Parks, and Recreation
9 Director Samantha Wylie. Ms. Wylie “located a key” and personally unlocked the courts.⁸

10 122. Upon information and belief, the noise and crowd nuisance from play at San Gorgonio
11 Park Pickleball has substantially interfered, and continues regularly to interfere, with Plaintiff’s
12 use and enjoyment of her Property.

13 123. Upon information and belief, any other person would reasonably be annoyed or
14 disturbed by the nuisance resulting from Defendant’s conduct and decision to allow pickleball at
15 the San Gorgonio Park tennis courts.

16 124. Upon information and belief, Plaintiff and her neighbors did not consent to
17 Defendant’s conduct regarding converting tennis courts into pickleball courts at San Gorgonio
18 Park.

19 125. Upon information and belief, Plaintiff has been, and will continue to be, harmed by the
20 private and public nuisances of Defendant caused by allowing nuisances to occur at Defendant’s
21 San Gorgonio Park and the public streets surrounding San Gorgonio Park.

22 126. Upon information and belief, Defendant’s decisions and conduct were a substantial
23 factor in causing Plaintiff’s harm.

24 127. Upon information and belief, the seriousness of the harm from the nuisance outweighs
25 the public benefit of Defendant’s conduct and decisions to convert tennis courts into pickleball
26 courts at San Gorgonio Park.

27
28

⁸ When asked by Plaintiff where she got the key on a holiday, Ms. Wylie refused to answer.

1 128. Upon information and belief, as of the date of filing this complaint, the City and
2 Council failed to take actions that resulted in significant reduction of the nuisance(s) and the
3 windscreen did not result in substantial or significant reduction in noise levels.

4 129. Upon information and belief, Plaintiff has been, and will continue to be, seriously
5 injured unless Defendant's nuisance and related activities complaint of herein are not
6 preliminarily and permanently enjoined.

7 130. Plaintiff will suffer irreparable injury of a continuing nature that cannot adequately be
8 calculated or compensated solely in money damages because of her ongoing, continuous loss of
9 quiet enjoyment of her Property.

10 **PARTIES**

11 131. Plaintiff Ruth Martin is, and at all times herein relevant was, an individual residing in
12 the City of San Clemente, California at her residence on Via San Gorgonio.

13 132. Plaintiff Ruth Martin' home is less than 117 yards (350 feet) from the pickleball and
14 tennis courts at San Gorgonio Park.

15 133. Defendant City of San Clemente is a municipal corporation under the laws of the State
16 of California and is a General Law city located in Orange County, California.

17 134. Defendant City of San Clemente is the entirely responsible for the actions and
18 decisions of its Beaches, Parks, and Recreation Department, City staff, and its City Council
19 regarding impacts from the decision to locate pickleball courts at San Gorgonio Park.

20 135. City of San Clemente is being sued in its own right and on the basis of the acts of its
21 staff, officials, agents, employees, and Council.

22 136. The true names and capacities of Defendants named herein as DOES 1 through 50 are
23 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names, and Plaintiff
24 will amend this Complaint to show their true names, involvement and capacities when same has
25 been ascertained.

26 137. Plaintiff is informed and believes, and on that basis alleges, that each of the
27 Defendants named herein as DOE was in some manner responsible for the harm and losses
28 suffered by Plaintiff and/or will be responsible for immanent harm and losses to Plaintiff.

1 **ADDITIONAL FACTUAL ALLEGATIONS**

2 138. Plaintiff incorporates by reference the allegations set forth above and below.

3 139. Plaintiff and her neighbors reside in close proximity to San Gregornio Park and the
4 pickleball courts located at that park during the entire time since the City added pickleball to San
5 Gregornio Park.

6 140. As a result of Defendant’s conduct and breach of the noise ordinance and state
7 nuisance laws, the value of Plaintiff’s home and property been materially diminished.

8 141. Upon information and belief, on or about April 20, 2022, Plaintiff Ruth Martin filed a
9 Notice of Claim with the City of San Clemente.

10 142. Upon information and belief, the City sent Plaintiff’s claim to Carl Warren &
11 Company.

12 143. Upon information and belief, on or about April 22, 2022, Emily Gutierrez of Carl
13 Warren & Company informed Ms. Martin she would consider the claim on behalf of the City.

14 144. Upon information and belief, on or about May 26, 2022, the City of San Clemente
15 rejected Plaintiff’s claim. Johanne Thordahl, Human Resources Manager, sent Plaintiff a
16 certified letter stating Plaintiff’s claim was denied.

17 145. Upon information and belief, before converting tennis courts into pickleball courts
18 sometime around 2018 - 2019, the City failed to do sound studies, and failed to perform an E.I.R.
19 or state it was making a negative declaration.

20 146. Upon information and belief, on or about 2019, the City was aware that the noise that
21 emanates from pickleball courts including pickleball courts located at San Luis Rey Park in the
22 southern portion of San Clemente in close proximity to the municipal golf course exceeds the
23 City’s allowable limits and constitutes a nuisance.

24 147. Upon information and belief, on or about 2019-2022, the City’s determined that the
25 noise created a recognized nuisance of the neighbors who lived near San Luis Rey Park
26 pickleball courts, and for that reason relocated the pickleball court to San Gorgonio Park. This is
27 an admission that the City found that pickleball noise and/or traffic creates a nuisance in the
28 neighborhoods surrounding pickleball courts.

1 148. Upon information and belief, prior and subsequent to filing the Claim against the City,
2 and before filing this lawsuit, Plaintiff sent numerous emails to City staff and Council members
3 and spoke repeatedly at City Council meetings about violations of noise and other nuisance laws
4 that occurred because pickleball courts were created at San Gorgonio Park.

5 149. Upon information and belief, while Council voted during 2019 to move the pickleball
6 courts to a new location at Steed Park in the next few years, no specific plan or expenditures
7 were approved and the pickleball at San Gorgonio Park was allowed to continue unabated.

8 150. Upon information and belief, the proposed cost is over \$3,500,000 to build pickleball
9 courts and that amount is currently unfunded and not approved.

10 151. Upon information and belief, the prior and existing sound and crowd nuisance as well
11 as traffic and pedestrian traffic and the related nuisance(s) for pickleball related activities at San
12 Gorgonio Park are an unreasonable invasion of Plaintiff and her neighbors' health and safety.

13 152. Upon information and belief, the noise at San Gorgonio Park that emanates from
14 pickleball use, players, and crowds as well as traffic and pedestrian travel interferes with
15 Plaintiff's enjoyment of her daily life and use of her Property and has similar effects on her
16 neighbors.

17 153. Upon information and belief, pickleball activities in San Gorgonio Park including
18 noise, traffic, and pedestrians (there are no sidewalks) is a private and a public nuisance.

19 154. Plaintiff believes that the noise is, and has been, offensive to a reasonable person in
20 similar circumstances.

21 155. Plaintiff believes that the pedestrian street movement and parking on or near her home
22 is and has been offensive to a reasonable person in similar circumstances.

23 156. Plaintiff believes that the crowd noise generated by players and spectators including
24 use of boom boxes and other amplified sound at or near the pickleball courts at San Gorgonio
25 Park rises to the level of a public and private nuisance.

26 157. Upon information and belief, the Defendant City did not state that its decision in
27 converting tennis courts to pickleball courts is exempt from CEQA.
28

1 158. Upon information and belief, the Defendant City did not state that its decision in
2 converting tennis courts to pickleball courts was considered after preparing and reviewing an
3 E.I.R.

4 159. Upon information and belief, converting tennis courts to pickleball courts is not
5 exempt under Article 19 of the CEQA Guidelines (14 Cal. Code Regs., § 15301) because the
6 noise generated is not similar to the noise generated from tennis courts and because each tennis
7 court has been converted into multiple pickleball courts, thus substantially changing the prior use.

8 160. California State Government Code Section 65302 mandates that noise elements be
9 included as a part of a city general plan and that cities adopt comprehensive noise ordinances.

10 161. Government Code Section 65302 (f)(3) states:

11 The noise element shall include implementation measures and possible
12 solutions that address existing and foreseeable noise problems, if any.
13 The adopted noise element shall serve as a guideline for compliance
with the state's noise insulation standards.

14 162. Upon information and belief, the City's General Plan, the Centennial Plan, states:

15 Noise

16 Excessive noise can adversely affect human health and well-being,
17 economic productivity, and property values, especially in areas where
18 sensitive land uses such as senior housing, schools, child care, and
19 hospitals are located. Mobile and stationary noise sources contribute to
overall noise levels, and the impacts of both must be analyzed when
considering environmental effects of new development. Bisected by
Interstate 5, San Clemente's primary noise source is from automobile,
truck and motorcycle traffic.

20 Plan S-6 Passenger and freight rail services utilize a rail line that skirts
21 the coastline and are also significant mobile noise sources. The City has
22 successfully used federal tools to reduce train noise near sensitive land
uses.

23 The General Plan is a tool for managing noise by planning for and
24 maintaining compatibility between sensitive land uses and noise
sources. Specific standards regulating the noise environment are
provided by the San Clemente Noise Ordinance [staff to provide link].

25 GOAL: Minimize exposure to excessive noise levels by taking
26 appropriate actions to avoid or mitigate the detrimental effects of
27 exposure to excessive noise levels on humans and animals and in
particular, on sensitive land uses.

28 POLICIES:

1 S-4.01. Noise Control. We effectively control ambient and stationary
2 noise conditions by maintaining baseline information, monitoring
3 conditions, following State guidelines, and enforcing locally adopted
4 ordinances and building codes.

5 163. Upon information and belief, Defendant City's General Plan does not adequately
6 address existing and foreseeable noise problems.

7 164. Upon information and belief, Defendant City did not maintain a baseline for noise at
8 the tennis courts, or the pickleball court(s).

9 165. Upon information and belief, Defendant City did not, monitor noise conditions, follow
10 state guidelines, and enforce locally adopted ordinances which limit noise.

11 166. Upon information and belief, noise, including pickleball, crowd noises, traffic, and
12 pedestrian, plus over-loading of the residential neighborhood with cars and people, constituted,
13 and continue to constitute a nuisance, and deprive Plaintiff of the safe, healthy, and comfortable
14 use of her home and property as proscribed under California Health and Safety Code Sections
15 46000 *et seq.*, common law, and San Clemente Municipal Code Sections 8.48.010 *et seq.*

16 167. State law provides that excessive noise is a serious hazard to the public health and
17 welfare and is a nuisance.

18 168. State law provides that exposure to certain levels of noise can result in physiological,
19 psychological, and economic damages.

20 169. Upon information and belief, Defendant City has exposed Plaintiff to a level of noise
21 that is prohibited by state law.

22 170. Upon information and belief, state law provides that a City has a responsibility to
23 protect the health and welfare of its citizens by the control, prevention, and abatement of noise
24 and other nuisances.

25 171. State law, Health and Safety Code Section 46000(f), states that:

26 All Californians are entitled to a peaceful and quiet environment
27 without the intrusion of noise which may be hazardous to their health
28 or welfare.

172. State law, Health and Safety Code Section 46000(g), states that:

It is the policy of the state to provide an environment for all
Californians free from noise that jeopardizes their health or welfare. To

1 that end it is the purpose of this division to establish a means for
2 effective coordination of state activities in noise control and to take
3 such actions as will be necessary to achieve the purposes of this section.

4 173. Even after notice of the nuisances by Plaintiff to Defendant City, Defendant failed to
5 abate the nuisances, as required by law.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **PRIVATE NUISANCE**

9 (Against All Defendants)

10 174. Plaintiff hereby incorporates by reference all paragraphs above as though fully set
11 forth herein.

12 175. Health and Safety Code Section 46000, provides, in part:

13 ... (f) All Californians are entitled to a peaceful and quiet environment
14 without the intrusion of noise which may be hazardous to their health
15 or welfare.

16 (g) It is the policy of the state to provide an environment for all
17 Californians.

18 176. Health and Safety Code, Section 46001, provides in part:

19 No provision of this division or ruling of the Office of Noise Control is
20 a limitation or expansion: ...

21 (e) On the right of any person to maintain at any time any appropriate
22 action for relief against any private nuisance as defined in the Civil
23 Code or for relief against any noise pollution.

24 177. Under the guidelines of Section 415 of the California Penal Code, it is illegal for any
25 resident to knowingly create loud and unreasonable noises as a means of disturbing another.

26 Those convicted of violating this law face a maximum of 90 days in jail and/or a maximum fine
27 of \$400.00. Unnecessary noise can be a violation at any time. The City is not exempt from this
28 statute, and neither are the players who are potentially liable for criminal violations.

178. The nuisance conditions at Plaintiff's home resulted from the negligently and
intentionally caused nuisance within, but not limited to, the meaning of Civil Code Section 3479,
et seq., as well as relevant City codes, and state law in that said conditions related to pickleball
activities in San Gorgonio Park were, and are, injurious to the health and safety of Plaintiff,

1 indecent and offensive to the senses of Plaintiff and did, and continue, to interfere substantially
2 with Plaintiff's comfortable enjoyment of her home and Property.

3 179. Defendant would not have allowed pickleball courts to be located near Plaintiff's
4 home had it followed the Environmental Assessment and Beaches, Parks, and Recreation
5 Commission decisions and required the courts to be located in the area near the I-5 right-of-way
6 and ensured that sufficient parking was provided in order that over-flow neighborhood parking
7 did not occur more than 3 times per year.

8 180. Such nuisances have been, and are, ongoing.

9 181. Such nuisances have caused, and will continue to cause, Plaintiff to suffer general and
10 special damages.

11 182. The conditions including but not limited to dangerous and defective conditions
12 resulting from pickleball at Defendant's San Gorgonio Park constituted and constitute nuisances,
13 and have deprived and continue to deprive Plaintiff of the safe, healthy, and comfortable use of
14 her Property.

15 183. Upon information and belief, even after being noticed of the nuisance created by the
16 play and traffic around the San Gorgonio Park pickleball courts, Defendant City failed to
17 adequately abate the nuisance(s) as required by the City's own laws, as well as state laws.

18 184. Upon information and belief, as a result of Defendant's conduct including breach of
19 the City's Noise Ordinance, the City's General Plan, as well as state law, the value of Plaintiff's
20 home has been materially diminished.

21 185. Plaintiff has sustained general, special, and property damages in amounts to be
22 determined at trial and has been forced, as a result of Defendant's violations, to retain counsel to
23 enforce her rights, and has incurred and will continue to incur costs and reasonable attorneys'
24 fees in connection with this complaint/lawsuit, recovery of which Plaintiff is entitled to
25 according to proof.

26 186. As a further and proximate result of Defendant's conduct and breach of the City's
27 Environmental Assessment for San Gorgonio Park, the City's Noise Ordinance, the City's
28 General Plan, and state nuisance and noise laws, Plaintiff has been injured in her health, strength,

1 and activity, sustaining injury to her body and shock and injury to her nervous system and person,
2 all of which injuries have caused and continue to cause Plaintiff great mental, physical, and
3 nervous pain and suffering.

4 187. Plaintiff is informed and believes and therein alleges that said injuries will result in
5 some permanent disability to Plaintiff, in an as yet unascertained amount, that exceeds the
6 minimum jurisdiction of this Court.

7 188. WHEREFORE, Plaintiff prays for judgment against Defendant, and each of them, as
8 herein set forth.

9 **SECOND CAUSE OF ACTION**

10 **PUBLIC NUISANCE**

11 (Against All Defendants)

12 189. Plaintiff hereby incorporates by reference all paragraphs included above and below, as
13 though fully set forth herein.

14 190. The conditions of the Property that Defendant negligently and intentionally caused to
15 exist constitute a nuisance within, but not limited to the meaning of Civil Code Section 3479, *et*
16 *seq.*, and Health & Safety Code Section 46000 *et seq.*, in that said defective conditions were and
17 are injurious to the health and safety of Plaintiff, indecent and offensive to the senses including
18 hearing of Plaintiff and did and continue to interfere with Plaintiff's comfortable enjoyment of
19 life and her Property.

20 191. Such nuisances have been, and are, ongoing.

21 192. Such nuisances have caused, and will continue to cause in the future, Plaintiff to suffer
22 general and special damages.

23 193. Pursuant to Civil Code Sections 3479 and 3480, Plaintiff brings this civil action for
24 public nuisance.

25 194. The conditions including dangerous and defective conditions at and around the
26 Defendant's San Gorgonio Park affected and continues to affect Plaintiff's home and Property
27 and constitute and constituted nuisances, and deprived and deprive Plaintiff of the safe, healthy,
28 and comfortable use of her home and her Property.

1 195. Plaintiff and the public are injured by ongoing, constant, and repeated disturbance
2 caused by noise and vibrations from pickleball activities at San Gorgonio Park which is owned
3 and operated by the City of San Clemente, which park is directly adjacent to Plaintiff and other
4 members of the public's homes and residences and properties.

5 196. Plaintiff is especially injured by the noise and vibrations emanating from the City of
6 San Clemente's San Gorgonio Park pickleball courts, crowd noise at the pickleball courts, boom
7 box and other amplified sound that occurs at or around the pickleball courts, as well as traffic
8 and pedestrians, all of which cause Plaintiff extreme discomfort and annoyance, significantly
9 affects Plaintiff's ability to use her Property, inside and out, impacts her ability to rest and/or
10 sleep, and causes her to move to other areas of her home or leave her home entirely in an effort
11 to get away from the noise and congestion.

12 197. Plaintiff worries about the health risks associated with the long-term exposure to
13 excessive noise and annoying repetitive noise.

14 198. Plaintiff worries and is concerned with the health and safety risks of break-ins,
15 robberies, and other adverse incidents that may or have been caused by adding so many
16 additional uses of the pickleball courts as compared with the number of users prior to the
17 allowance of pickleball at San Gorgonio Park when those courts were limited to tennis.

18 199. Defendant would not have allowed pickleball courts to be located near Plaintiff's
19 home had it followed the Environmental Assessment and Beaches, Parks, and Recreation
20 Commission decisions and required the courts to be located in the area near the I-5 right-of-way
21 and ensured that sufficient parking was provided in order that over-flow neighborhood parking
22 did not occur more than 3 times per year.

23 200. As a further and proximate result of Defendant's conduct and breach of the City's
24 Environmental Assessment for San Gorgonio Park, the City's Noise Ordinance, the City's
25 General Plan, and state nuisance and noise laws, Plaintiff has been injured in her health, strength,
26 and activity, sustaining injury to her body and shock and injury to her nervous system and person,
27 all of which injuries have caused and continue to cause Plaintiff great mental, physical, and
28 nervous pain and suffering.

- e. For reasonable attorneys' fees and costs, if Plaintiff incurs legal fees and costs, under any applicable statute or common law, including but not limited to the California private attorneys' general law, and costs and for related expenses of litigation, in an amount to be determined by proof at trial;
- f. With regard to all Causes of Action, for any prejudgment or other interest according to law; and
- g. With regard to all Causes of Action, for any other and further relief that this Court deems appropriate.

Dated: _____, 2022 Respectfully submitted

Ruth Martin

Ruth Martin - Pro Per