

1 MARA W. ELLIOTT, City Attorney  
JOHN C. HEMMERLING, Assistant City Attorney  
2 DAVID E. MILLER, Deputy City Attorney  
California State Bar No. 174469  
3 Office of the City Attorney  
Community Justice Division/Code Enforcement Unit  
4 1200 Third Avenue, Suite 700  
San Diego, California 92101-4103  
5 Telephone: (619) 533-5500  
Facsimile: (619) 533-5696  
6 millerde@sandiego.gov

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7 Attorneys for Plaintiff

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 CITY OF SAN DIEGO, a municipal  
corporation,

11 Plaintiff,

12 v.

13 MITCHELL INVESTMENTS, INC., a  
California Corporation;  
14 JAMES M. SHAPIRO, an individual;  
MATTHEW R. DEVINE, an individual;  
15 and DOES 1 through 50, inclusive,

16 Defendants.

Case No. 37-2017-00030943-CU-MC-CTL

UNLIMITED JURISDICTION

COMPLAINT FOR INJUNCTION,  
CIVIL PENALTIES, AND OTHER  
EQUITABLE RELIEF

17  
18 Plaintiff City of San Diego, appearing through its attorneys, Mara W. Elliott, City  
19 Attorney and David E. Miller, Deputy City Attorney, alleges the following, based on information  
20 and belief:

21 **JURISDICTION AND VENUE**

22 1. Plaintiff City of San Diego, by this action and pursuant to San Diego Municipal Code  
23 (SDMC) sections 12.0202 and 121.0311, and California Code of Civil Procedure section 526,  
24 seeks to enjoin Defendants from using or maintaining a property in violation of the SDMC as  
25 alleged in this Complaint, and seeks a temporary restraining order, preliminary injunction and  
26 permanent injunction prohibiting Defendants from using or maintaining a property in violation of  
27 the law, as alleged in this Complaint, and also seeks to obtain civil penalties, costs and other  
28 equitable relief for the Defendants' violations of law.



1 9. As the property owner, Mitchell Investments is strictly liable for all code violations  
2 occurring at the PROPERTY, pursuant to SDMC section 121.0311 and applicable California law.

3 10. As an officer of Mitchell Investments, Mitchell is strictly liable for all code violations  
4 occurring at the PROPERTY, pursuant to SDMC section 121.0311 and applicable California law.

5 11. As the tenant at the PROPERTY, Devine is strictly liable for all code violations  
6 occurring at the PROPERTY, pursuant to SDMC section 121.0311.

7 12. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the  
8 provisions of California Code of Civil Procedure section 474, their true names and capacities  
9 being unknown to Plaintiff. The City is informed and believes that each of Defendants DOES 1  
10 through 50, is in some manner responsible for conducting, maintaining or directly or indirectly  
11 permitting the unlawful activity alleged in this Complaint. Plaintiff will ask leave of the court to  
12 amend this Complaint and to insert in lieu of such fictitious names the true names and capacities  
13 of DOES 1 through 50, when ascertained.

14 13. At all relevant times mentioned in this Complaint, all Defendants were and are agents,  
15 principals, servants, lessors, lessees, employees, partners, associates and/or joint venturers of each  
16 other. Defendants at all times were acting within the course, purpose and scope of said  
17 relationship and with the authorization or consent of each of their co-defendants.

### 18 **PROPERTY**

19 14. The legal address of the PROPERTY where the building violations exist is 1815 -  
20 1845 Main Street, San Diego, California 92113, also identified as Assessor's Parcel Number 538-  
21 470-07-00, according to Quit Claim Deed (Deed) recorded on May 4, 1949 as Document Number  
22 39110 in Book 3192, Page 14 in the Official Records of the San Diego County Recorder's Office.

23 15. The legal description of the PROPERTY is:

24 All that portion of Block 83 of Mannassee and Schiller's Addition,  
25 according to map thereof No. 209, filed in the office of the County  
Recorder of San Diego County, California, described as follows:

26 Beginning at a point in the Northeasterly line of said Block 83, distant 200  
27 feet Northwesterly thereon from the most Easterly corner of said Block  
28 83; thence Northwesterly along the Northeasterly line of said Block 83, a  
distance of 225 feet to a point on said Northeasterly line distant thereon  
175 feet from the most Northerly corner of said Block

1 83, being the Northeast corner of land described in the deed from San  
2 Diego & Arizona Eastern Railway Company to Bolivar Packing  
3 Company, dated October 9, 1941, recorded in Book 1273, page 38 Official  
4 Records; thence Southwesterly parallel with the Northwesterly line of said  
5 Block 83, along the Southeasterly line of Bolivar Packaging Company's  
6 land, a distance of 175 feet; thence Southeast parallel with the  
7 Northeasterly line of said Block 83 a distance of 225 feet; thence  
8 Northeasterly parallel with the Southeasterly line of said Block 83, a  
9 distance of 175 feet to the point of the beginning.

10 16. The Deed recorded with the San Diego County Recorder's Office on May 4, 1949,  
11 lists the owner of the PROPERTY as "MITCHELL GLASS & PAINT COMPANY, a  
12 corporation."

13 17. Another Deed, a Corporation Grant Deed, recorded on December 20, 1977, as  
14 Document Number 77-524182 in the Official Records of the San Diego County Recorder  
15 purports to transfer the same PROPERTY from and to the same parties (i.e. from SAN DIEGO  
16 GLASS AND PAINT COMPANY to MITCHELL GLASS & PAINT COMPANY, a California  
17 Corporation). The Corporation Grant Deed differs from the Grant Deed by including a more  
18 detailed description of the PROPERTY transferred.

19 18. On May 13, 1993, according to the Restated Articles of Incorporation of MITCHELL  
20 GLASS & PAINT COMPANY, Document No. A432158, filed with the office of the Secretary of  
21 State of the State of California on May 13, 1993, MITCHELL GLASS & PAINT COMPANY  
22 changed its name to Mitchell Investments.

23 19. On May 3, 2006, according to the Amended and Restated Articles of Incorporation of  
24 Mitchell Investments, Document No. A0644444, filed with the office of the Secretary of State of  
25 the State of California on May 3, 2006, Mitchell Investments changed its name to Mitchell  
26 Investments, Inc. Therefore, the current owner of the PROPERTY is Mitchell Investments, Inc.

27 20. The PROPERTY is located within the Barrio Logan Planned District, Redevelopment  
28 Subdistrict in the City of San Diego. The PROPERTY consists of two warehouse buildings with  
an adjoining wall.

### FACTUAL ALLEGATIONS

21 21. According to the Commercial-Industrial Building Record, recorded with the San  
22 Diego County Assessor's records, the PROPERTY was developed in two stages. The first, an

1 approximately 6100 square foot warehouse, was constructed on or about July 1945. The second,  
2 an approximately 5,000 square foot warehouse with an approximately 2,200 square foot  
3 mezzanine, most of which was later removed, was constructed on or about March 1947. Both  
4 structures were approved for warehouse use.

5 22. On October 4, 1962, the City of San Diego Department of Inspection conducted a  
6 compliance inspection of the PROPERTY, which was recorded on Permit A55156. The Permit  
7 indicates that the PROPERTY was being used as a warehouse with an F-2 occupancy  
8 classification (a method of classifying a structure for fire and building purposes that is related to  
9 how a building is used).

10 23. On October 22, 1963, the City of San Diego Department of Inspection conducted a  
11 compliance inspection of the PROPERTY, which was recorded on Permit A66567. The Permit  
12 indicates that the PROPERTY was being used for storage with an F-2 occupancy classification.

13 24. On or about October 30, 2014, a Fire Prevention Supervisor with the City's Fire  
14 Department (Fire Inspector) contacted Defendant Devine (Devine) to schedule an annual  
15 Combustible, Explosive and Dangerous Materials (CEDMAT) inspection of the PROPERTY.

16 25. Devine told the Fire Inspector to contact his representative Rondi Vasquez (Vasquez).

17 26. The Fire Inspector contacted Vasquez, and Vasquez informed her that the  
18 PROPERTY was undergoing renovation that would take approximately two to three weeks. The  
19 Fire Inspector and Vasquez scheduled the CEDMAT inspection for November 20, 2014.

20 27. On or about November 18, 2014, Vasquez contacted the Fire Inspector and explained  
21 that the renovations would not be complete prior to the scheduled inspection. They agreed to  
22 reschedule the inspection for December 11, 2014.

23 28. On or about December 11, 2014, the Fire Inspector arrived at the PROPERTY to  
24 conduct the CEDMAT inspection of the PROPERTY.

25 29. During the Inspection, in what was supposed to be a warehouse, the Fire Inspector  
26 observed a two-level structure comprised of twenty-one office/studio spaces, a ½ bathroom, sink,  
27 with associated electric and plumbing. The structure, electric, and plumbing all appeared to be  
28 . . . . .

1 recently constructed and installed, which was consistent with the prior statement by Vasquez that  
2 renovations were occurring at the PROPERTY.

3 30. Vasquez informed the Fire Inspector that the building was being used as artist studios,  
4 a gallery, and an event space (“A”/”B” occupancy classifications). In addition, the Fire Inspector  
5 observed that the artists used glass blowing ovens, kilns, and welding torches in the creation of  
6 their works.

7 31. When she returned from the CEDMAT inspection, the Fire Inspector conducted a  
8 search to determine whether any permits had been issued for the construction or the change in  
9 occupancy classification (from F-2 to A/B) that she had observed at the PROPERTY. She found  
10 none. SDMC requires that permits be obtained prior to the type of construction, electrical and  
11 plumbing/mechanical work, as well as the change in use and occupancy classification, observed  
12 at the PROPERTY.

13 32. On or about January 5, 2015, the Fire Inspector informed Vasquez that she was unable  
14 to locate permits for the improvements or the change in use that she observed within the  
15 warehouse at the PROPERTY.

16 33. On or about January 6, 2015, the Fire Inspector referred the case to the City’s Code  
17 Enforcement Division (CED) of the Development Services Department (DSD) for investigation  
18 and enforcement of the SDMC, if required.

19 34. On or about February 23, 2015, a City Senior Combination Building Inspector (CBI)  
20 and the Fire Inspector conducted a joint inspection of the PROPERTY.

21 35. During the inspection, the CBI observed the following conditions:

- 22 a) Twenty-one, individual, artist studios had been constructed without  
23 required permits, inspections and approvals in the existing one-story  
24 warehouse shell. The unpermitted artist studios span two (2) floors and  
25 include added walls, floors, ceilings, doors, staircases, catwalks, and  
26 landings. The unpermitted construction violates SDMC sections  
27 121.0302(a) [unlawful to maintain or use any premises in violation of the  
28 Land Development Code without a required permit; 121.0302(b)(1)  
[unlawful to erect, construct, convert, alter, use, maintain, equip, or  
improve any structure in violation of the Land Development Code];  
129.0111 [unlawful to perform work for which building, electrical,  
plumbing, demolition/removal, fire, and mechanical permits are required  
without required inspection]; 129.0111(b) [unlawful to occupy or use a  
structure prior to final inspection]; ; and 129.0202(a) [unlawful to erect,

1 construct, enlarge, alter, improve, or convert a structure without first  
2 obtaining required permits].

- 3 b) The occupancy classification and use of the building had been changed  
4 from an "F-2" (previously used and approved as a warehouse) to a  
5 "A"/"B" (now used and occupied as artist studios and gallery) without a  
6 final inspection, the approval of the building official, obtaining a  
7 Certificate of Occupancy, and making the structure comply with the  
8 current codes in violation of SDMC sections 129.0113 [unlawful to use or  
9 occupy a structure unless the building official has issued a Certificate of  
10 Occupancy approving such change in use] and 145.0103, adopting  
11 California Building Code (CBC) sections 3408 [unlawful to change  
12 occupancy or use of any building, unless such building is made to comply  
13 with current requirements of CBC for such new use or occupancy].
- 14 c) Interior electrical feeders (wiring that carries power from a transformer to  
15 a distribution/subpanel), sub panels (essentially a circuit breaker box  
16 between the main panel and branch circuits), branch circuits (the circuits  
17 that emerge from the subpanel), wiring, and devices that supply power to  
18 the unpermitted suites had been installed/constructed without required  
19 permits, inspections, and approvals in violation of SDMC sections  
20 129.0302 [unlawful to install, alter, add or replace existing wiring, device,  
21 appliance or equipment in a structure without first obtaining an Electrical  
22 Permit] and 129.0314 [all construction work authorized by an Electrical  
23 Permit shall be inspected].
- 24 d) Interior plumbing fixtures to create a half bathroom on the first floor and a  
25 sink on the second floor had been installed without the required permits,  
26 inspections and approvals in violations of SDMC sections 129.0402  
27 [unlawful to install, alter, add, or replace a plumbing system or portion of  
28 plumbing system without first obtaining a Plumbing/Mechanical Permit]  
and 129.0415 [all construction work authorized by a  
Plumbing/Mechanical Permit shall be inspected].

19 36. On June 1, 2015, CED issued and Civil Penalty Notice and Order (CPNO) to  
20 Defendant Mitchell Investments, notifying Defendant of the above-mentioned code violations and  
21 requiring Defendant to correct the code violations by: 1. Immediately ceasing all unpermitted  
22 interior and exterior tenant improvements and other activities that do not comply with the Land  
23 Development Code; 2. Immediately begin the planning process to legalize all unpermitted  
24 operations occurring in the warehouse space or return the space to its previously approved  
25 warehouse use; and 3. Within thirty (30) calendar days, submit plans to legalize the unpermitted  
26 construction or remove it. The CPNO included detailed requirements for plan submittals and  
27 timeframes.

1 37. On or about June 30, 2015, the CBI received an email from an architect hired by  
2 Devine (Architect) in which he stated that he would submit plans within 4 weeks.

3 38. On or about July 1, 2015, the CBI sent an email to Architect stating that he is available  
4 to answer questions.

5 39. On or about August 5, 2015, the CBI called Architect to check on the status of the  
6 plans. Architect returned the call and stated that he needed two more weeks.

7 40. On or about November 24, 2015, Architect brought plans to City. They were stamped  
8 complete and circulated for review. City staff reviewed the plans and found 89 issues/problems  
9 with the plans that needed correction prior to being able to conduct further review.

10 41. On or about January 25, 2016, City staff contacted Architect, informed him of that  
11 there were significant issues with the plans that required correction prior to the City being able to  
12 conduct any further plan review, and that the plans would be left out at the front counter for  
13 retrieval.

14 42. Over the next fourteen (14) months, City staff reached out by phone and email to  
15 Defendants, their representatives and architects (Defendant Devine had changed architects at least  
16 three times), numerous times to check on the status of the plan corrections, as no new plans had  
17 been submitted.

18 43. On or about March 21, 2017, a CBI emailed Devine and informed him that he had  
19 very limited time to obtain the permits: The permit application would expire on May 16, 2017.

20 44. On or about May 5, 2017, Defendant Devine's newest architect finally submitted a  
21 complete set of plans; however, permit review could not be completed in the 11 days left before  
22 the permit application would expire.

23 45. After the permit application expired, City representatives requested that Defendant  
24 Devine submit a new application, so review could continue. To date, no application has been  
25 submitted and neither Defendants nor anyone acting on Defendants' behalf have obtained the  
26 permits required by the SDMC to remedy the code violations and the PROPERTY remains in  
27 violations of the SDMC.

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1 46. City Building Inspectors and the City's Fire Chief have determined that the  
2 unpermitted construction and current use of the PROPERTY are life safety hazards that present  
3 an immediate threat to the health and safety of the occupants and the public and that continued  
4 use and occupancy of the PROPERTY in its current condition in violation of the building code  
5 could result in death or serious bodily injury.

6 47. Unless the Defendants are restrained by order of this Court, they will continue to use,  
7 occupy, and maintain the PROPERTY in violation of the building code, which will result in  
8 irreparable injury to the health, safety and welfare of the occupants and the citizens of the City of  
9 San Diego.

10 48. Plaintiff City of San Diego is informed and believes that Defendants are willfully  
11 violating state and local laws and will continue to maintain the building code violations in the  
12 future unless the Court enjoins and prohibits such conduct. Absent effective injunctive relief, the  
13 City is unable to enforce its building laws and regulations, designed for the protection of the  
14 general public, and therefore unable to ensure the safety of its citizens and the public in general.  
15 Furthermore, allowing the violations to continue unabated dilutes the effectiveness of the City's  
16 building regulations under the SDMC to the point where they are rendered meaningless, leaving  
17 the public unprotected from the direct impacts of Defendants' willful disregard of local building  
18 laws. This dilution of law, the continued violations of the SDMC, and the increased risks to the  
19 public, due to the intensification of use of the PROPERTY caused by the unpermitted change of  
20 occupancy, will result in irreparable injury to the health, safety and welfare of the public in  
21 violation of local law.

22 **FIRST AND ONLY CAUSE OF ACTION**

23 **VIOLATIONS OF THE SAN DIEGO MUNICIPAL**  
24 **CODE ALLEGED BY PLAINTIFF CITY OF SAN DIEGO**  
25 **AGAINST ALL DEFENDANTS**

26 49. Plaintiff City of San Diego, incorporates by reference all allegations in paragraphs 1  
27 through 48 of this Complaint as though fully set forth here in their entirety.

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1 50. SDMC section 121.0302(a) states that “It is unlawful for any person to maintain or use  
2 any premises in violation of any of the provisions of the Land Development Code<sup>2</sup>, without a  
3 required permit, contrary to permit conditions, or without a required variance.”

4 51. SDMC section 129.0202(a) provides that “no structure regulated by the Land  
5 Development Code shall be erected, constructed, enlarged, altered, repaired, improved,  
6 converted...unless a Building Permit has first been obtained from the Building Official.”  
7 Beginning on an exact date unknown to Plaintiff, but at least since February 23, 2015, Defendants  
8 constructed and maintained a two-level, twenty-one office structure, which is regulated by the  
9 Land Development Code, without first obtaining required Building Permits in violation of SDMC  
10 sections 129.0202(a) and 121.0302(a).

11 52. SDMC section 129.0113 provides that no structure may be used or occupied, and no  
12 change in the existing use of occupancy classification of a structure shall be made unless and until  
13 the Building Official issues a Certificate of Occupancy. Beginning on an exact date unknown to  
14 Plaintiff, but since at least February 23, 2015, Defendants changed the existing use of the  
15 PROPERTY and have continuously used the PROPERTY without obtaining a Certificate of  
16 Occupancy in violation of SDMC sections 129.0113 and 121.0302(a).

17 53. SDMC section 129.0302 provides that no electrical wiring, device, appliance, or  
18 equipment shall be installed within or on any structure or premises nor shall any alteration,  
19 addition, or replacement be made in any existing wiring, device, appliance, or equipment unless  
20 an Electrical Permit has been obtained for the work. Beginning on an exact date unknown to  
21 Plaintiff, but since at least February 23, 2015, Defendants installed, altered and/or added to  
22 existing wiring and devices within the PROPERTY and maintained such electrical equipment at  
23 the PROPERTY without first obtaining an Electrical Permit in violation of SDMC sections  
24 129.0302 and 121.0302(a).

25 54. SDMC section 129.0402(a) provides that no plumbing system, or portion of a  
26 plumbing system, shall be installed within or on any structure or premises, nor shall any  
27

28 <sup>2</sup> SDMC § 111.0101(a) states that Chapters 11 through 15 of the San Diego Municipal Code shall be known collectively, and may be referred to, as the Land Development Code.

1 alteration, addition, or replacement be made in any existing plumbing system, unless a  
2 plumbing/Mechanical Permit has been obtained for the work. Beginning on an exact date  
3 unknown to Plaintiff, but since at least February 23, 2015, Defendants installed, altered and/or  
4 added to the existing plumbing system within the structure at the PROPERTY and maintained  
5 such additions to the plumbing system at the PROPERTY without first obtaining a  
6 Plumbing/Mechanical Permit in violation of SDMC sections 129.0402(a) and 121.0302(a).

7 55. SDMC section 145.0103 adopts the 2013 California Building Code and incorporates  
8 its provisions, with certain exceptions and amendments, into the City's Land Development Code.

9 56. CBC section 3408 provides that it is unlawful to change the use or occupancy of a  
10 building that would place the building in a different group of occupancies, unless the building is  
11 made to comply with the requirements for the CBC for the new group of occupancies. Beginning  
12 on an exact date unknown to Plaintiff, but at least since February 23, 2015, the Defendants  
13 changed the use or occupancy from an F-2 occupancy classification to an A and/or B occupancy  
14 classification without causing the building to comply with the requirements of the CBC for such  
15 groups of occupancies in violation of SDMC sections 145.0103 and 121.0302(a).

16 57. Since the first inspection on December 11, 2014, when the City informed the  
17 Defendants that there may be an issue with respect to the legality of the construction and the use  
18 they were making of the PROPERTY, the City corresponded, called, and met with the Defendants  
19 and/or their representatives to inform them of the violations, follow up on the status of  
20 corrections, explain the process for remedying the violations, and express the urgency of  
21 correcting the violations at least 30 times.

22 58. To date, Defendants have not complied with the CPNO issued by the City on June 1,  
23 2015, and the PROPERTY remains unpermitted and continues to be occupied and used in  
24 violation of law and in a manner that places the occupants and visitors at risk of serious injury or  
25 death.

26 59. Plaintiff has no adequate remedy at law, and unless Defendants are enjoined and  
27 restrained by an order of the Court, Defendants will continue to violate the SDMC, thereby  
28 causing irreparable injury and harm to the public's health, safety, and general welfare.

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**PRAYER**

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. That the PROPERTY be declared in violation of:

**San Diego Municipal Code sections**

121.0302 (a)	129.0302
129.0202(a)	129.0402(a)
129.0113	145.0103

2. That pursuant to SDMC sections 12.0202, 121.0311, and 121.0202, Code of Civil Procedure section 526, and the Court’s inherent equity powers, the Court grant a temporary restraining order, preliminary injunction and permanent injunction enjoining and restraining Defendants and their agents, servants, employees, partners, associates, officers, representatives and all persons acting under or in concert with or for Defendants, from keeping, allowing, or maintaining violations of the SDMC at the PROPERTY.

3. That Defendants immediately cease leasing and/or subleasing the PROPERTY and/or any portion of the PROPERTY, until such time as City issues a Certificate of Occupancy for the PROPERTY.

4. That Defendants immediately vacate the PROPERTY of any and all tenants.

5. That Defendants, tenants and/or subtenants be prohibited from re-entering the PROPERTY, except for the sole purpose of performing those approved/permitted acts necessary to bring the PROPERTY into compliance with the SDMC.

6. That Defendants ensure that the PROPERTY remain vacant until compliance with the SDMC has been achieved and a Certificate of Occupancy issued by the City.

7. That Defendants restore the PROPERTY to its last approved configuration and obtain any and all permits and approvals required prior to commencing any work on the PROPERTY.

8. That Defendant allow personnel from the City of San Diego access to the PROPERTY to inspect and monitor for compliance upon 24 hour verbal or written notice. Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m.

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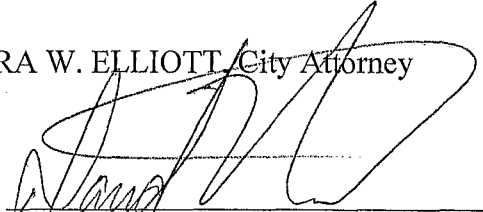
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9. That Plaintiff City of San Diego, recover all costs incurred by Plaintiff, including the costs of investigation, as appropriate from Defendant, its heirs, successors, and assigns.

10. That pursuant to SDMC section 12.0202(b), Defendant be assessed a civil penalty of \$2,500 per day for each and every SDMC violation maintained at the PROPERTY.

11. That Plaintiff be granted such other and further relief as the nature of the case may require and the Court deems appropriate.

Dated: August 21, 2017

MARA W. ELLIOTT City Attorney  
  
By \_\_\_\_\_  
David E. Miller  
Deputy City Attorney

Attorneys for Plaintiff