

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Appeal of Relocation
Costs For Notice and Order to Vacate &
Repair Substandard and Dangerous
Structure:

Code Enforcement Case No. 236628

OAH No. 2017080555

CASA DE LAS PALMAS, LLC
C/O John Nobel & Mahin Nobel, Trustees of
the Nobel Family Trust dated February 18,
1998,

Appellants,

v.

CITY OF SAN DIEGO, DEVELOPMENT
SERVICES DEPARTMENT, CODE
ENFORCEMENT DIVISION,

Respondent.

ADMINISTRATIVE ENFORCEMENT DECISION

Administrative Law Judge Michael A. Scarlett, State of California, Office of
Administrative Hearings, heard this matter in San Diego, California on November 3, 2017.

James P. Finigan, Attorney at Law, appeared on behalf of Casa De Las Palmas, LLC,
C/O John Nobel & Mahin Nobel, Trustees of the Nobel Family Trust dated February 18,
1998 (Appellants).¹ Appellants were not present at the hearing.

Patricia Ann Miranda, Deputy City Attorney, represented the City of San Diego,
Development Services Department, Code Enforcement Division (respondent or City). Kim
Wallace-Ross, Code Enforcement Coordinator, also appeared on behalf the City.

¹ Finigan appeared at hearing and argued several prehearing motions. However, after
a recess, neither Finigan, nor any other representative for Appellants, returned to the hearing
to present evidence on the merits of the appeal. Consequently, the City proceeded with the
presentation of their case without opposition from Appellants.

Basirwa Halisi, an employee of Catholic Charities, assisted in interpreting for the refugee tenants from the Democratic Republic of Congo (Congo) who spoke the Congolese/Kinyarwanda dialect of Swahili. Although Halisi is not a certified court interpreter, he is an immigrant from the Congo and is proficient in speaking the tenants' dialect of Swahili. Halisi swore under oath that he would accurately interpret the tenants' testimony. Appellants' counsel objected to the use of a non-certified court interpreter. However, the City offered proof that they had attempted without success to obtain a certified court interpreter who spoke the Swahili dialect required. Appellants' counsel was allowed to voir dire Halisi on his cultural background and proficiency in the language. It was sufficiently demonstrated that Halisi was competent to serve as an interpreter in this case.

The matter was submitted on November 3, 2017.

ISSUE

The issue is whether Appellants must pay the relocation costs advanced by the City to seven of Appellants' tenants who were required to vacate Appellants' apartment units due to Health and Safety Code and San Diego Municipal Code violations. Specifically, the issues to be decided are:

- 1) Whether the Appellants maintained or used the property in violation of the provisions of the Health and Safety Code and the San Diego Municipal Code.
- 2) Whether Appellants are liable to pay relocation benefit payments, advanced by the City, to each of Appellants' seven tenants for a total of \$34,278 due to Health and Safety Code violations that endangered the tenants' immediate health and safety and a \$10,000 civil penalty pursuant to Health and Safety Code section 17975.5.
- 3) Whether Appellants are liable to pay the City for administrative costs, \$6,845.14; and if so, whether the total amount requested is reasonable.

FACTUAL FINDINGS

1. On April 26, 2017, the Development Services Department, Code Enforcement Division (CED) of the City received a complaint of an "abandoned apartment complex" located at 5344 Rex Avenue, San Diego, California. On June 7, 2017, the City CED conducted an inspection of the property, and determined that the property was in disrepair and severely substandard, and was in violation of multiple Health and Safety Code and San Diego Municipal Code (SDMC) provisions. On July 17, 2017, the City issued a Notice and Order to Vacate & Repair Substandard and Dangerous Structure; and Abate Public Nuisance (Notice) to Appellants. The Notice contained a request that Appellants pay \$51,123.14 in relocation costs and actual costs incurred by CED as a result of the necessity for the City to relocate seven tenants from Appellants' apartments because of Code violations. This amount

included \$34,278 in relocation costs, and a \$10,000 civil penalty pursuant to Health and Safety Code section 17975.5, and investigative and administrative costs in the amount of \$6,845.14. The Notice also required Appellants to repair the apartment complex and to vacate the substandard building immediately, but no later than July 31, 2017. On July 26, 2017, Appellants filed an appeal of the City's Notice and the order to pay the tenant's relocation costs, and this hearing ensued.

2. Casa De Las Palmas, LLC acquired the property located at 5344 Rex Avenue, San Diego, California 92105 (Property) on August 5, 2004. John I. Nobel and Mahin Nobel (Owners) are the owners of the Property and are legally responsible for the Property. JN Financial Services manages the Property. John I. Nobel and Mahin Nobel are officers for JN Financial Services. Devdatt Patel, a.k.a. David Patel is the property manager and Chief Financial Officer for John I. Nobel.

3. The Property was developed as a 12-unit apartment complex in 1980 with a pool in the courtyard. The Property is a two- to three-story multi-unit complex consisting of 12 apartments of which seven apartments were leased to families with small children at the time of the City's Notice. The site is within the Residential Multiple Unit (RM) 1-2 Zone which allows residential use of the Property.

The Tenants

4. In 2016, employees of Catholic Charities in San Diego were assisting refugee families to find housing in the San Diego area. Catholic Charities worked with refugees from the Congo who speak the Congolese/Kinyarwanda dialect of the Swahili language and vaguely understand and speak English. The Catholic Charities contacted JN Financial Services to place refugee families at the Property as follows:

A. On September 1, 2016, Kessie Nyamvura rented Unit 2 at the Property, a two bedroom apartment, and entered into a lease agreement to pay \$1,500 per month for rent and paid a \$1,500 deposit. She lived in Unit 2 with eight family members, including, six children.

B. On September 2, 2016, Kadogo Kanyamihigo rented Unit 7 at the Property, a three bedroom apartment, and entered into a lease agreement to pay \$1,700 per month for rent and paid a \$1,700 deposit. He lived in Unit 7 with 11 family members, including, eight children.

C. On September 2, 2016, Habimana Ndagizimana rented Unit 12 at the Property, a three bedroom apartment, and entered into a lease agreement to pay \$1,700 per month for rent and paid a \$1,700 deposit. He lived in Unit 12 with 14 family members, including, seven children.

D. On August 12, 2016, Mloko Kweli rented Unit 11 at the Property, a four bedroom apartment, and entered into a lease agreement

to pay \$1,650 per month for rent and paid a \$1,650 deposit. He lived in Unit 11 with 10 family members, including, six children.

E. On August 12, 2016, Jack Ndrundroma rented Unit 9 at the Property, a two bedroom apartment, and entered into a lease agreement to pay \$1,450 per month for rent and paid a \$1,450 deposit. He lived in Unit 9 with seven family members, including, four children.

F. On July 20, 2016, Mmbumba Nguomoja rented Unit 8 at the Property, a four bedroom apartment, and entered into a lease agreement to pay \$2,250 per month for rent and paid a \$2,250 deposit. He lived in Unit 8 with nine family members, including, five children.

G. On July 20, 2016, Ramazani Ali rented Unit 4 at the Property, a three bedroom apartment, and entered into a lease agreement to pay \$1,500 per month for rent and paid a \$1,500 deposit. He lived in Unit 4 with seven family members, including, four children.

5. After moving into the Property, the tenants began contacting Catholic Charities and complaining about the unlivable condition of the apartments. The tenants at the Property had complained to the property manager about the condition of their apartments and requested repairs to be made to no avail. Malila Monololo, Nancy Ruiz, and Victoria Hoang, employees of Catholic Charities who assisted in placing the refugee tenants at the Property, all received complaints from the tenants. They went to the Property, viewed the apartments and observed the damage and conditions of disrepair complained of by the tenants. Catholic Charities employees contacted JN Financial Services to request the management group to fix and repair the problems complained of by the tenants. JN Financial Services failed to respond to the requests to repair the apartments. Malila Monololo, Nancy Ruiz, and Victoria Hoang testified that the apartments were in unlivable condition, that they attempted to get JN Financial Services to address the tenants' complaints and that JN Financial Services failed to adequately repair the apartments. To the contrary, JN Financial Services claimed that the tenants were responsible for the damage and disrepair to the apartment units.

6. Kessie Nyamvura in Unit 2, had complained about the condition of the Property to Appellants and/or the property manager since the day she did the walk through of the apartment, but no repairs were made by Appellants.

7. Kadogo Kanyamihigo in Unit 7, complained to Appellants and/or the property manager about a bathroom leak in his apartment, but no repairs were made. The bathroom leak had been present since he and his family moved into Unit 7 and he believed the condition was bad for his children. Kanyamihigo testified that there were "so many problems in his apartment," including the shower leaking water into the apartment below and the doors in the apartment being broken. He "called all the time" in an attempt to get repairs done, but repairs were never made.

8. Habimana Ndagizimana in Unit 12, complained to Appellants and/or the property manager about the condition of the kitchen in his apartment, but repairs were never made. Ndagizimana testified that the apartment was "old" and that everything in the kitchen was old and broken. He also testified that the "restrooms" were broken. He called the "landlord" about the problems but got no response and the problems were never fixed. Ndagizimana told investigators that appellants made some repairs that were not requested like installing a fan in the living room and changing a toilet; but the replacement toilet was in need of repairs as well.

9. Mloko Kweli in Unit 11, complained to Appellants and/or the property manager about an ongoing leak under the kitchen sink. He placed a pan to catch the water leak but the wet area caused extensive black mold under the sink. He also complained of broken closet doors in one bedroom and several toilets that were functioning but needed to be replaced. One toilet had a broken seat. Kweli testified that he had to fix the toilets with wires. He also testified that he requested Appellants to fix the stove and the stove was repaired. Kweli testified that the roof of the apartment also leaked when it rained but Appellants fixed that problem.

10. Jack Ndrundroma in Unit 9, complained that Appellants and/or the property manager did not repair anything at the Property, even though he had asked for repairs to be made. Ndrundroma testified that there were "so many things broken" that he asked to be fixed. He made phone calls to request repairs but nothing was done. Ndrundroma stated the doors in the bedroom and bathroom were broken and were not fixed until they moved out of the apartment. He also stated his apartment had roaches but nothing was done to address this problem. Ndrundroma testified that the stove and refrigerator in the apartment were broken but Appellants did replace these items.

11. Mmbumba Nguomoja in Unit 8, complained to Appellants and/or the property manager about a sink which had leaked for several months and had standing water under the sink. He also complained that the toilet needed repairs. Nguomoja testified that his apartment had many problems including a kitchen sink that leaked, the building "creaking" like it was falling apart, and problems with the toilets. He testified that he asked the property manager several times to repair the problems, but no repairs were ever made.

12. Ramazani Ali in Unit 4, complained to Appellants and/or the property manager about "so many rats" in his apartment, and stated that no repairs were ever made to the apartment. Ali testified that his apartment was "completely broken." He stated there were problems with the heating, the doors, the restroom, and the apartment was always "leaking." Ali called to request repairs, but nothing was ever fixed in his apartment.

13. All of the tenants credibly asserted and/or testified that they did not cause the problems, damage or disrepair that resulted in the unlivable conditions of their apartments.

Inspections by CED

14. Based on the tenant complaints filed with Catholic Charities, Bryan Monaghan, Senior Combination Inspector for CED, conducted a site visit at the Property on May 10, 2017. He described the general state of the Property as dilapidated. Monaghan observed human waste, an abandoned water heater, and a lot of waste and debris on the Property. He also observed that recent repair had been performed on one of the exterior staircases on the Property. Monaghan discovered that no permits had been obtained for the repair and opined that the repair work was substandard and deficient. At the invitation of the tenants, Monaghan viewed the inside of Unit 1 and Unit 12 and spoke with the tenants. Following the site visit, Monaghan contacted John Nobel and requested access to the Property to conduct a full inspection of the Property.

15. On June 7, 2017, Monaghan conducted a full CED inspection of the Property. David Patel of JN Financial Services, Malila Monololo of Catholic Charities, and a maintenance contractor accompanied Monaghan during the inspection. Monaghan inspected the exterior of the Property and the interior of all 12 units at the Property. He determined that there were numerous violations which existed at the Property that made it substandard and a public nuisance pursuant to the Health and Safety Code. Monaghan found the following Health and Safety Code, SDMC, California Building Code (CBC)², and California Electrical Code (CEC)³ violations during his inspection of the Property:

- (1) **Inadequate sanitation** – There is a lack of adequate heating for all residents at the property. (Health & Saf. Code, § 17920.3, subd. (a)(6).)
- (2) **Inadequate sanitation** – There is lack of, or improper operation of required ventilating equipment. Units 1 and 3 lack required operable bathroom exhaust fans. (Health & Saf. Code, § 17920.3, subd. (a)(8).)
- (3) **Inadequate sanitation** – There is lack of natural light and ventilation in Units 1, 4, 5, 7, 8, 10, 11, and 12. The addition of two unpermitted bedrooms in Units 1, 5, 8, and 11 lacked required light and ventilation. The addition of one unpermitted bedroom in Units 4, 7, 10, and 12 lack required light and ventilation. (Health & Saf. Code, § 17920.3, subd. (a)(7).)
- (4) **Inadequate sanitation** – There is lack of required electrical lighting. Unit 2 lacks required operable exterior light fixture for the entry door. Unit 9 lacks installed bedroom light fixtures and an operational switch. There is lack of required stair and landing illumination for exterior stairs. Required light

² The California Building Code is found in California Code of Regulations, title 24, Part 2.

³ The California Electrical Code is found in California Code of Regulations, title 24, Part 3.

fixtures at exterior entry doors are missing, broken, and/or lacking light covers. (Health & Saf. Code, § 17920.3, subd. (a)(10).)

- (5) **Inadequate sanitation** – Infestation of insects, vermin, or rodents. Units 3, 5, 7, and 8 have infestations of cockroaches and spiders. There is severe infestation of roaches, rodents, and spiders throughout the interior and exterior of the property. (Health & Saf. Code, § 17920.3, subd. (a)(12).)
- (6) **Inadequate sanitation** – There is visible mold growth in Unit 7. (Health & Saf. Code, § 17920.3, subd. (a)(13).)
- (7) **Inadequate sanitation** – There is general dilapidation or improper maintenance throughout the exterior common areas of the property. The unpermitted repairs to the exterior stairs, landings and guardrails are severely substandard and have compromised the structural integrity creating a safety hazard and dangerous living condition for all tenants occupying the building. (Health & Saf. Code, § 17920.3, subd. (a)(14); CBC §§ 1011.6, 1011.13, 1014.1, 1014.2, & 1014.3.)
- (8) **Structural hazard** – The carport area is in need of repairs to the required fire rated assembly including stucco repair to the walls, ceilings, and load bearing support/columns. (Health & Saf. Code, § 17920.3, subd. (b)(5).)
- (9) **Any nuisance** – The compromised structural integrity of the stairs, landing, and rails, the blocked egress, and the exposed electrical wiring create safety hazard and public nuisance. The unpermitted electrical installations and presence of uncovered incandescent light fixtures within 12 inches of a shelf with combustible material (clothing) in a closet create a fire hazard. The creation of changes in elevation within walking paths without proper identifiable markings (yellow stripes). The graffiti on the property constitutes a public nuisance. (Health & Saf. Code, § 17920.3, subd. (c); SDMC §§ 121.0302, subd. (b)(4), 129.0202, 129.0302, 129.0402, & 129.0602, subd. (e).)
- (10) **All wiring not in good and safe condition and working properly** – There is exposed wiring and open electrical junction boxes at the exterior common areas of the property. There is lack of required “dead-front” cover for an electrical sub-panel located adjacent to the main electrical panel and meter. Electrical work and modification converting the pool equipment room into a laundry room under one set of exterior stairs was done in such poor manner that it creates a fire and safety hazard and dangerous condition. Unit 6 lacks required electrical outlet covers. Units 3, 4, 5, 6, 7, 8, 9, 10, and 12 lack required light covers or lenses. Unpermitted and improper electrical installation of kitchen light fixture in Unit 9. (Health & Saf. Code, § 17920.3, subd. (d); SDMC §§ 121.0302, subd. (a), 129.0111, 129.0202, & 129.0302; CEC §110.27.)

- (11) **All plumbing not maintained in good condition or in good and safe condition and working properly and free of cross connections and siphonage between fixtures** – Improper and unpermitted water heater replacement or relocation in Units 1, 2, 3, 4, and 5. (Health & Saf. Code, § 17920.3, subd. (e); SDMC §§ 121.0302, subd. (a), 129.0111, 129.0202, & 129.0402.)
- (12) **All mechanical equipment not maintained in good condition or in good and safe condition or working properly** – Mechanical additions and modifications converting a pool equipment room to a laundry room located under one set of exterior stairs was done in such poor manner that it creates a fire hazard and dangerous condition. (Health & Saf. Code, § 17920.3, subd. (f); SDMC §§ 121.0302, subd. (a), 129.0111, 129.0202, & 129.0402.)
- (13) **Accumulation of junk, debris, garbage, which constitutes fire, health, or safety hazards** – There is an accumulation of storage and bicycles on the balconies and landings blocking required paths of egress. There is accumulation of trash, rubbish, and debris throughout the exterior common areas of the property. (Health & Saf. Code, § 17920.3, subd. (j); SDMC §§ 121.0302, subd. (a), & 142.0111.)
- (14) **Any building or portions thereof that is determined to be an unsafe building due to inadequate maintenance** – Unpermitted repairs to the exterior stairs, landings and guardrails are severely substandard and have compromised the structural integrity creating a dangerous living condition for all tenants occupying the building. Electrical, plumbing, and mechanical additions and modifications converting a pool equipment room to a laundry room located under one set of exterior stairs was done in such poor manner that it creates a fire hazard and dangerous condition. (Health & Saf. Code, § 17920.3, subd. (k); CBC § 1011.7.4.)
- (15) **Inadequate exit facilities** – Storage and bicycles on the balconies and landing block required paths of egress. Inadequate hardware for the property security doors located at the front and rear of the property hinder egress and create a dangerous condition in case of a fire. There is a lack of exit/egress signage throughout the property. The addition of two unpermitted bedrooms in Units 1, 5, 8, and 11 lacks required secondary emergency egress openings for fire rescue or self-preservation. The addition of one unpermitted bedroom in Units 4, 7, 10, and 12 lacks required secondary emergency egress openings for fire rescue or self-preservation. The multiple bunk-beds in Units 4, 7, and 11 block the required secondary egress (bedroom windows). (Health & Saf. Code, § 17920.3, subd. (l); CBC § 1030.1.)

- (16) **All buildings or portions thereof are not provided with the fire-resistive construction or fire extinguishing systems or equipment** – There are missing or expired fire extinguishers throughout the exterior common areas of the property. All 12 Units lack required smoke detectors and carbon monoxide detectors. (Health & Saf. Code, § 17920.3, subd. (m); CBC §§ 420.6 & 906.1.)
- (17) **Maintaining graffiti** – There is graffiti throughout the property. (SDMC §§ 121.0302 & 54.0405, subd. (b).)
- (18) **Non-permitted construction** – Unpermitted elimination or filling of a swimming pool located in the courtyard area. Unpermitted bedroom additions in Units 1, 4, 5, 7, 8, 10, 11, and 12 without required permits, inspections, and approvals. The reconstruction of the stairs, landings, and balcony guardrails and other miscellaneous improvements without the benefit of permits. (SDMC §§ 121.0302, subd. (a), 129.0202, & 129.0111.)
- (19) **Non-permitted electrical installation** – Unpermitted installation of can lights in kitchen area of Units 3, 4, and 5. Unpermitted installation of electrical wall heaters in Units 4, 7, 9, and 11. Unpermitted electrical installations throughout the property. (SDMC §§ 121.0302, subd. (a), & 129.0302.)
- (20) **Non-permitted plumbing/mechanical installation** – Unpermitted installation of window replacement in Unit 1. (SDMC §§ 121.0302, subd. (a), & 129.0402.)
- (21) **Lack of change in elevation markings/indicators** – The unpermitted creation of changes in elevation within walking paths without identifiable markings (yellow stripes). (SDMC §§ 121.0302, subd. (a), and 129.0602, subd. (e); CBC 1003.5.)
- (22) **Use of required parking spaces** – The elimination of all required off street parking by boarding up and blocking access to the carport area. (SDMC §§ 121.0302, subd. (a), and 142.0510, subd. (a).)

16. Monaghan credibly testified that the code violations documented in the Notice were present during his inspections of the Property. His testimony was corroborated and supported by photos taken during the inspections, and an inspection checklist he completed with a schematic drawing of the property with Monaghan's contemporaneous notes taken during his inspections.

17. Monaghan testified that all 12 Units in the Property had interior and exterior deficiencies that constituted code violations. He stated that the Property was the most dangerous property he had ever seen in his five years of conducting inspections. Monaghan

testified that all 12 units of the Property were originally built as two-bedroom units and that no permits had been obtained by Appellants for the additional bedrooms added to the units.

18. Monaghan conducted a follow-up inspection on June 15, 2017, to check if the violations cited during his inspection had been fixed or corrected. He testified that Appellants had not repaired or corrected any of the Code violations cited.

Relocation of the Tenants by the City

19. On June 25, 2017, the City CED opened a case against the Property and Appellants based on the June 7, 2017 inspection and the cited Code violations. On July 17, 2017, the Notice was issued and the City advanced relocation payments to the tenants of the Property due to the substandard and dangerous conditions at the Property. The City advanced the following relocation payments to the respective tenants:

- Unit 2, Tenant: Kessie Nyamvura, \$3,482
- Unit 4, Tenant: Ramazani Ali, \$5,014
- Unit 7, Tenant: Kadogo Kanyamihigo, \$5,014
- Unit 8, Tenant: Mmbumba Nguomoja, \$6,136
- Unit 9, Tenant: Jack Ndrundroma, \$3,482
- Unit 11, Tenant: Mloko Kweli, \$6,136
- Unit 12, Tenant: Habimana Ndagizimana, \$5,014

Total Relocation Payments Advanced: \$34,278

20. The City calculated the relocation payments pursuant to Health and Safety Code section 17975.2 which provides that the amount of relocation payment “. . . shall be the sum equal to two months of the established fair market rent for the area as determined by the Department of Housing and Urban Development [HUD] and . . . shall include an amount sufficient for utility service deposits as determined by the local enforcement agency.” The fair market rent for the substandard units as determined by HUD is found in the fair market rent schedule provided in HUD’s “Final FY 2017 Fair Market Rent Documentation System” which documents local rents based on the number of bedrooms in the particular rental accommodation. Using the HUD rent schedule, the relocation payments were calculated as follows:

Fair Market Rent (FMR x 2 = fair market value) for two bedroom dwelling unit according to HUD: $\$1,741 \times 2 = \$3,482$.

Fair Market Rent (FMR x 2 = fair market value) for three bedroom dwelling unit according to HUD: $\$2,507 \times 2 = \$5,014$.

Fair Market Rent (FMR x 2 = fair market value) for four bedroom dwelling unit according to HUD: $\$3,068 \times 2 = \$6,136$.

The City did not include additional costs for utility service deposits.

Personnel and Administrative Costs

21. The City seeks \$6,845.14 for personnel and administrative costs in this case which were incurred from April 26, 2017 through September 20, 2017. The City provided a document entitled "Code Enforcement Itemized Accounting of Relocation Benefit Payments and Costs" which included an itemized list of the personnel and administrative costs expended in this case. These costs included \$3,073.04 for Monaghan's inspection costs, \$1,768.46 for Zoning Inspector Tracy Tryon's costs, \$706.24 for City personnel costs (Kim Wallace-Ross, Silvia Ybarra, and Joana Flores), and \$1,297.40 for other City costs, including \$1,155 for copies, \$42.40 for mailing, and \$100 for the Office of Administrative Hearings filing fee. These costs are deemed reasonable and justified.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. "The City bears the burden of proof at an administrative enforcement hearing to establish the existence of a violation of the Municipal Code or applicable state code." (SDMC § 12.0408, subd. (b).) The standard of proof in a hearing to assess civil penalties is preponderance of the evidence. (*Id.* at subd. (c).)

Authority and Scope of Administrative Enforcement Order

2. SDMC section 12.0809 provides that:

(a) Once all evidence and testimony are completed, the Enforcement Hearing Officer shall issue an Administrative Enforcement Order which affirms or rejects the Director's Notice and Order or which modifies the daily rate or duration of the civil penalties depending upon the review of the evidence. The Enforcement Hearing Officer may increase or decrease the total amount of civil penalties and costs that are assessed by the Director's Notice and Order.

(b) The Enforcement Hearing Officer may issue an Administrative Enforcement Order that requires the Responsible Person to cease from violating the Municipal Code or applicable state codes and to make necessary corrections.

(c) As part of the Administrative Enforcement Order, the Enforcement Hearing Officer may establish specific deadlines for the payment of penalties and costs and condition the total or

partial assessment of civil penalties on the Responsible Person's ability to complete compliance by specified deadlines.

(d) The Enforcement Hearing Officer may issue an Administrative Enforcement Order which imposes additional civil penalties that will continue to be assessed until the Responsible Person complies with the Hearing Officer's decision and corrects the violation.

(e) The Enforcement Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the Administrative Enforcement Order.

Relocation Benefit Payments

3. Health and Safety Code section 17975 provides that "any tenant who is displaced or subject to displacement from a residential rental unit as a result of an order to vacate or an order requiring the vacation of a residential unit by a local enforcement agency as a result of a violation so extensive and of such a nature that the immediate health and safety of the residents is endangered, shall be entitled to receive relocation benefits from the owner as specified in this article. The local enforcement agency shall determine the eligibility of tenants for benefits pursuant to this article." Section 17975.2 provides that "the relocation payment shall be made available by the owner or designated agent to the tenant in each residential unit and shall be a sum equal to two months of the established fair market rent for the area as determined by the Department of Housing and Urban Development pursuant to Section 1437 of Title 42 of the United States Code." The relocation payment shall include utility service deposits, and shall be paid by the owner in addition to the return of any security deposits held by the owner. (Health & Saf. Code, § 17975.2.) Any tenant who has caused or substantially contributed to the condition giving rise to the order to vacate the property is not eligible to receive relocation benefit payments. (Health & Saf. Code, § 17975.4.)

4. Health and Safety Code section 17975.5 subdivision (a), provides:

If the owner or designated agent fails, neglects, or refuses to pay relocation payments to a displaced tenant or a tenant subject to displacement, except in the situations described in Section 17975.4, the local enforcement agency may advance relocation payments as specified in Section 17975.2. If the local enforcement agency, pursuant to locally adopted policies, offers to advance relocation payments in accordance with Section 17975.2, the local enforcement agency shall be entitled to recover from the owner any amount paid to a tenant pursuant to

this section except payments made pursuant to subdivision (c) of Section 17975.4.

5. Health and Safety Code section 17975.5 subdivision (c), provides, in relevant part, that:

. . . If the owner or designated agent contends that not all of the benefits are chargeable to the owner or designated agent because the recipients were not displaced tenants, no benefits were payable pursuant to Section 17975.4, or on other grounds, the owner or designated agent shall submit a written appeal to the director of the local enforcement agency within 20 days after receipt by the owner or designated agent of the itemized accounting. The director, or the director's designee, shall hold an administrative hearing for the purpose of determining the amount of benefits paid that are chargeable to the owner or designated agent, and any penalties or costs the local enforcement agency may recover pursuant to subdivision (a). . .

Authority to Assess and Award Civil Penalties

6. The administrative assessment of civil penalties for violations of the SDMC is governed by SDMC sections 12.0801-12.0810. SDMC section 12.0803 provides that:

(a) Any person violating any provision of the Municipal Code or applicable state code may be subject to the assessment of civil penalties pursuant to the administrative procedures provided in Sections 12.0804 through 12.0810 of this Division.

(b) Each and every day a violation of any provision of the Municipal Code or applicable state code exists constitutes a separate and distinct violation.

(c) Civil penalties may be directly assessed by means of a Notice and Order issued by the Director or affirmed by a City Manager's Enforcement Hearing Officer. Civil penalties may be recovered by assessment of a Code Enforcement Lien pursuant to Division 2 of Article 3 of Chapter 1 or subsequent legal action brought by the City Attorney.

(d) Civil penalties for violations of any provision of the Municipal Code or applicable state codes shall be assessed at a daily rate determined by the Director or Enforcement Hearing Officer pursuant to the criteria listed in Section 12.0805 of this Division. The maximum rate shall be \$10,000 per violation.

The maximum amount of civil penalties shall not exceed \$400,000 per parcel or structure for any related series of violations.

7. Where the owner fails, neglects, or refuses to pay relocation payments to displaced tenants, and the local agency advances relocation benefit payments to the tenants as the City has done in this case, the local enforcement agency shall be entitled to recover from the owner an "amount equal to the sum of one-half the amount paid as relocation benefit payments, but not to exceed ten thousand dollars (\$10,000), as a penalty for failure to make timely payment to the displaced tenant, and the local enforcement agency's actual costs, including direct and indirect costs, of administering the provision of benefits to the displaced tenant." (Health & Saf. Code, § 17975, subd. (a).)

Authority to Assess and Award Administrative Costs

8. SDMC section 12.0806 provides that:

A Director or Enforcement Hearing Officer is authorized to assess all reasonable costs. Costs may include, but are not limited to: staff time to investigate and document violations; laboratory, photographic, and other expenses incurred to document or establish the existence of a violation; and scheduling and processing of the administrative hearing and all actions. Any determination that documented costs are not reasonable must be supported by written findings.

Applicable Law

9. Health and Safety Code, section 17920.3 provides, in pertinent part, that:

Any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building:

(a) Inadequate sanitation shall include, but not be limited to, the following:

[¶] . . . [¶]

(6) Lack of adequate heating.

(7) Lack of, or improper operation of required ventilating equipment.

(8) Lack of minimum amounts of natural light and ventilation required by this code.

[¶] . . . [¶]

(10) Lack of required electrical lighting.

[¶] . . . [¶]

(12) Infestation of insects, vermin, or rodents as determined by a health officer or, if an agreement does not exist with an agency that has a health officer, the infestation can be determined by a code enforcement officer, as defined in Section 829.5 of the Penal Code, upon successful completion of a course of study in the appropriate subject matter as determined by the local jurisdiction.

(13) Visible mold growth, as determined by a health officer or a code enforcement officer, as defined in Section 829.5 of the Penal Code, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their properly functioning and intended use.

(14) General dilapidation or improper maintenance.

[¶] . . . [¶]

(b) Structural hazards shall include, but not be limited to, the following:

[¶] . . . [¶]

(5) Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety.

[¶] . . . [¶]

(c) Any nuisance.

(d) All wiring, except that which conformed with all applicable laws in effect at the time of installation if it is currently in good and safe condition and working properly.

(e) All plumbing, except plumbing that conformed with all applicable laws in effect at the time of installation and has been maintained in good condition, or that may not have conformed with all applicable laws in effect at the time of installation but is currently in good and safe condition and working properly, and that is free of cross connections and siphonage between fixtures.

(f) All mechanical equipment, including vents, except equipment that conformed with all applicable laws in effect at the time of installation and that has been maintained in good and safe condition, or that may not have conformed with all applicable laws in effect at the time of installation but is currently in good and safe condition and working properly.

[¶] . . . [¶]

(j) Those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rodent harborages, stagnant water, combustible materials, and similar materials or conditions constitute fire, health, or safety hazards.

(k) Any building or portion thereof that is determined to be an unsafe building due to inadequate maintenance, in accordance with the latest edition of the Uniform Building Code.

(l) All buildings or portions thereof not provided with adequate exit facilities as required by this code, except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of their construction and that have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

When an unsafe condition exists through lack of, or improper location of, exits, additional exits may be required to be installed.

(m) All buildings or portions thereof that are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required by this code, except those buildings or portions thereof that conformed with all applicable laws at the time of their construction and whose fire-resistive integrity and fire-extinguishing systems or equipment have been adequately

maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

[¶] . . . [¶]

10. SDMC section 121.0302 provides, in pertinent part, that:

(a) It is unlawful for any person to maintain or use any *premises* in violation of any of the provisions of the Land Development Code, without a required permit, contrary to permit conditions, or without a required variance.

(b) It is unlawful for any person to engage in any of the following activities, or cause any of the following activities to occur in a manner contrary to the provisions of the Land Development Code:

[¶] . . . [¶]

(4) To maintain or allow the existence of any condition that creates a *public nuisance*.

[¶] . . . [¶]

11. SDMC section 54.0405, subdivision (b), provides:

It is unlawful for any responsible person, to maintain *graffiti* that has been placed upon, or to allow *graffiti* to remain upon, any surface within that person's control, possession or ownership when the *graffiti* is visible from the street or other public property.

12. SDMC section 129.0111 provides:

All work for which Building Permits, Electrical Permits, Plumbing Permits, Demolition/Removal Permits, Fire Permits and Mechanical Permits are issued shall be subject to inspection by the Building Official. The Building Official is authorized to inspect, or cause to be inspected, the work prior to and subsequent to the issuance of the applicable permit or permits. Inspections shall be performed in accordance with the inspection procedures established by the Building Official, except as may be exempted by the Land Development Code.

13. SDMC section 129.0202 provides:

(a) No *structure* regulated by the Land Development Code shall be erected, constructed, enlarged, altered, repaired, improved, converted, permanently relocated or partially demolished unless a Building Permit has first been obtained from the Building Official, except as exempted in Sections 129.0202(b) and 129.0203.

(b) Separate Building Permits are not required for a dwelling and associated *accessory structures* located on the same property and described in the Building Permit application, plot plan, and other drawings.

(c) The placement of factory-built housing, meaning one or more factory assembled components comprising a single *structure* suitable for human occupancy that is brought to the job site for connection to a foundation, requires a Building Permit in accordance with this division.

14. SDMC section 129.0302 provides:

No electrical wiring, device, appliance, or equipment shall be installed within or on any *structure* or *premises* nor shall any alteration, addition, or replacement be made in any existing wiring, device, appliance, or equipment unless an Electrical Permit has been obtained for the work, except as exempted in Section 129.0303.

15. SDMC section 129.0402 provides:

(a) No plumbing system, or portion of a plumbing system, shall be installed within or on any *structure* or *premises*, nor shall any alteration, addition, or replacement be made in any existing plumbing system unless a Plumbing/Mechanical Permit has been obtained for the work except as exempted in Section 129.0403.

(b) No heating, ventilating, air conditioning, or refrigeration system or part thereof shall be installed, altered, replaced, or repaired unless a Plumbing/Mechanical Permit has been obtained for the work except as exempted in Section 129.0404.

16. SDMC section 129.0402, subdivision (e), provides that a grading permit is required for:

(e) Any *grading* that includes the following conditions:

(1) *Excavation* or *fill* that results in a slope with a gradient of 25 percent or greater (4 horizontal feet to 1 vertical foot) and for which the depth or height at any point is more than 5 feet measured vertically at the face of the slope from the top of the slope to the bottom of the slope;

(2) *Excavation* or *fill* for which the depth or height at any point from the lowest *grade* to the highest *grade* at any time during the proposed *grading* is more than 5 feet measured vertically;

(3) *Grading* that creates manufactured slopes at a gradient exceeding that specified in Section 142.0133;

(4) *Grading* for which the graded area is more than 1 acre;

(5) *Grading* that adversely affects the existing drainage pattern by altering the drainage pattern, concentrating runoff, increasing the quantity of runoff, or increasing the velocity of runoff to adjacent properties;

(6) Placing *fill* material that contains more than 5 percent, by volume, of broken concrete, asphalt, masonry, or construction debris;

(7) Placing *fill* material that has any piece larger than 12 inches in any direction; or

(8) *Grading* that includes blasting or other use of explosives.

17. SDMC section 142.0510, subdivision (a), provides:

Use of Required Parking Spaces. Required *off-street parking spaces*, parking areas, and transportation facilities shall be used only for parking operable vehicles of residents, employers, employees, customers, and visitors as appropriate to the allowed uses of the applicable zone.

18. CBC section 420.6 relating to required smoke alarms provides that fire alarm systems and smoke alarms shall be provided in Group R-1, R-2, R-2.1, and R-4 occupancies, and single- or multiple-station alarms shall be provided in Groups R-2, R-2.1, R-3 and R-4.

19. CBC section 906.1 specifies that portable fire extinguishers are required to be installed in Group R-1 and R-2 occupancies, among other occupancies, and in specified areas.

20. CBC section 1003.5 provides that “where changes in elevation of less than 12 inches (305 mm) exist in the means of egress, sloped surfaces shall be used. Where the slope is greater than one unit vertical in 20 units horizontal (5-percent slope), ramps complying with Section 1012 shall be used. Where the difference in elevation is 6 inches (152 mm) or less, the ramp shall be equipped with either handrails or floor finish materials that contrast with adjacent floor finish materials.”

21. CBC section 1011.6 relating to stairway landings provides that there shall be a floor or landing at the top and bottom of each stairway. The width of the landings must be at least the width of the stairway served, and doors opening onto a landing shall not reduce the landing to less than one-half the required width. When fully open, the door shall not project more than 7 inches (178 mm) into the landing.

22. CBC section 1011.7.4 provides that “there shall not be enclosed usable space under the exterior exit stairways unless the space is completely enclosed in 1-hour fire-resistance-rated construction. The open space under exterior stairways shall not be used for any purpose.”

23. CBC 1011.13 relating to guardrails provides that guardrails shall be provided along stairways and landings where required by Section 1015 and shall be constructed in accordance with Section 1015. Section 1015.2 provides that guardrails shall be located along open-sided walking surfaces, including mezzanines, equipment platforms, aisles, stairs, ramps and landings that are located more than 30 inches measured vertically to the floor or grade below at any point within 36 inches horizontally to the edge of the open side. Guardrails must be adequate in strength and attachment.

24. CBC section 1014.1 relating to handrails provides that handrails serving stairways, ramps, stepped aisles and ramped aisles shall be adequate in strength and attachment. CBC section 1014.2 provides that handrail height, measured above stair tread nosings, or finish surface of ramp slope, shall be uniform, not less than 34 inches and not more than 38 inches. CBC section 1014.3 provides that a handrail’s graspability must comply with Section 1014.3.1, which specifies graspability for Type I and Type II handrails in relation to the perimeter of the handrails.

25. CBC section 1030.1 provides that provisions must be made for emergency escape and rescue openings in Group R occupancies. “Basements and sleeping rooms below the fourth story above grade plane shall have at least one exterior emergency escape and rescue opening.”

26. CEC section 110.27, relating to the “guarding of live parts,” provides that live parts of electrical equipment operating at 50 volts or more shall be guarded against accidental

contact by approved enclosures, or by being located in a room, vault, or similar enclosure that is accessible only to qualified persons; by suitable permanent, substantial partitions or screens; by location on an elevated suitable balcony, gallery, or platform; by elevation above the floor or other working surface.

Determination of Issues

APPELLANTS MAINTAINED AND USED THE PROPERTY IN VIOLATION OF THE HEALTH AND SAFETY CODE, SDMC, CBC, AND CEC

27. The evidence established that, as of the date of the City's inspection and Notice, Appellants' Property did not meet the minimum building and habitability standards required in the Health and Safety Code, SDMC, CBC and CEC. The Property's substandard condition was caused by a general state of disrepair and dilapidation, the lack of maintenance, and unpermitted and insufficient construction work performed on the structure. This substandard condition was to an extent and degree that it endangered the life, limb, health, property, safety, or welfare of the public and/or the occupants of the Property.

28. The Property had several areas of unpermitted work and construction, and the quality of the work was insufficient to meet code requirements and presented a dangerous and unsafe environment. For example, the supporting columns in the carport area were missing required fire rating protective covering in violation of Health and Safety Code section 17920.3, subdivision (b)(5), and rendered the entire carport area susceptible to fire exposure, which compromised the entire structure.

The unpermitted repair and replacement of exterior balconies, guardrails, stairs, and landings are insufficient and prone to collapse due to poor workmanship, and creates a hazardous condition, in violation of Health and Safety Code section 17920.3, subdivisions (a)(14), and (k); and CBC sections 1011.6, 1011.7.4, 1011.13, 1014.1, 1014.2, and 1014.3. The stairs of the Property are also uneven which causes a tripping hazard, and lack proper illumination. Guardrails were also not anchored properly which created a hazard as well. Balconies, guardrails, stairs, and landings were improperly replaced or repaired, resulting in dangerous conditions, and these areas are the main path of egress for tenants on the second and third floors (10 of 12 units). This created dangerous conditions for all occupants and emergency services personnel responding to fire and/or natural disasters.

Several of the original two bedroom units in the Property have been converted into three and four bedroom units without permits, approval or inspections, in violation of Health and Safety Code section 17920.3, subdivisions (a)(8), and (l), and SDMC sections 121.0302, subdivision (a), 129.0202, and 129.0111, and CBC 1030.1. These additional bedrooms are substandard and dangerous in that they have improper ventilation and light, smoke detectors, and lacked the required secondary emergency egress openings for fire rescue and self-preservation. The additional unpermitted bedrooms were used as sleeping rooms for children which made the dwelling especially dangerous for the occupants.

The Property was also cited for infestation of rodents, roaches and spiders, the lack of required heating, the presence of trash, rubbish, and debris, lack of required exterior lighting, expired fire extinguishers, exposed electrical wiring, mold and lack of sufficient or safe egress in both exterior and interior areas. These conditions violated multiple Building Codes as confirmed by Inspector Monaghan's June 7, 2017 inspection and specified in the City's Notice.

29. The Property was substandard and constituted a public nuisance pursuant to Health and Safety Code section 17920.3, by reason of Factual Findings 5 through 18. Accordingly, the violations cited in the City's Notice were justified and supported by a preponderance of the evidence at hearing.

APPELLANTS ARE LIABLE TO PAY THE RELOCATION COSTS ADVANCED TO THE TENANTS BY THE CITY

30. Appellants are liable to pay the costs to relocate the tenants of the Property if the City has determined that Building Code violations at the Property are so extensive and of such a nature that the immediate health and safety of the residents is endangered. (Health & Saf. Code, § 17975.) As stated above, a preponderance of the evidence established that Appellants' Property was substandard and dangerous and presented an immediate threat to the health and safety of the tenants residing at the Property. The City advanced relocation costs to seven tenants at the Property due to the substandard and dangerous conditions that existed at the Property. (Factual Findings 19 and 20.) The City expended \$34,278 in relocation benefit payments to these seven tenants. The tenants did not cause or substantially contribute to the substandard and dangerous conditions at the Property. (Health & Saf. Code, § 17975.4.) The relocation benefit payments were properly calculated pursuant to Health Safety Code section 17975.2, and the benefit payments were paid to the tenants.

31. Accordingly, a preponderance of the evidence established that the City is entitled to reimbursement from Appellants of relocation benefit payments in the amount of \$34,278, pursuant to Health and Safety Code sections 17975, and 17975.5, subdivision (a).

THE ADMINISTRATIVE COSTS INCURRED BY THE CITY ARE REASONABLE AND APPELLANTS ARE LIABLE TO PAY THE CITY'S ADMINISTRATIVE COSTS

32. The evidence established that the City CED incurred personnel and other costs as result of the violations cited in its July 17, 2017 Notice to Appellants and the actions required to abate the substandard conditions cited at Appellants' Property. (Factual Findings 1 and 21.) The City is entitled to assess the reasonable administrative costs associated with the abatement of public nuisances. (SDMC § 12.0806.) The administrative costs to abate the substandard conditions at Appellants' Property totaled \$6,845.14. It is determined that these administrative costs were reasonable.

33. The City also assessed a \$10,000 civil penalty against Appellants when Appellants failed to pay the relocation benefit payments advanced by the City to the seven

tenants at the Property. Health and Safety Code section 17975, subdivision (a), provides that the City is entitled to recover one-half the amount paid as relocation benefit payments, but not more than \$10,000 as a penalty for Appellants' failure to make timely payment to the displaced tenants at the Property. After the July 17, 2017 Notice issued by the City, Appellants failed to timely pay the costs to relocate the tenants from the substandard and dangerous Property. The City advanced \$34,278 to relocate the displaced tenants of the Property. The City's assessment of the \$10,000 penalty was justified.

34. Accordingly, pursuant to Health and Safety Code section 17975.5 and SDMC section 12.0608, the City is entitled to recover the \$6,845.14 administrative costs incurred, and the \$10,000 civil penalty assessed, from Appellants as a result of the City's costs to abate the substandard and dangerous conditions at the Property as of the date of the July 17, 2017 Notice.

ORDER

1. Appellants' appeal of the City's July 17, 2017 Notice and relocation costs is denied.

2. Appellants are ordered to pay \$34,278 to the City for relocation benefit payments advanced by the City to the seven tenants to relocate said tenants from the Property. Appellants shall pay the relocation benefit payment amount within 90 days of the issuance of this Administrative Enforcement Order or as otherwise directed by the City.

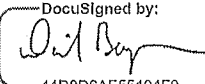
3. Appellants are ordered to pay \$10,000 to the City for the civil penalty assessed by the City as a result of Appellants' failure to timely pay the relocation benefits to the seven tenants at the Property. Appellants shall pay the civil penalty within 90 days of the issuance of this Administrative Enforcement Order or as otherwise directed by the City.

4. Appellants are ordered to pay \$6,845.14 to the City for the reasonable administrative costs incurred by the City in this matter. Appellants shall pay the

administrative costs within 90 days of the issuance of this Administrative Enforcement Order or as otherwise directed by the City.

DATED: December 8, 2017

DocuSigned by:



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for MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

NOTICE

Pursuant to SDMC section 12.0411, this is a final administrative order. Either party may appeal this decision. Time limits and procedures for judicial review of this decision are governed by California Code of Civil Procedure section 1094.6

DECLARATION OF SERVICE

Case Name: Casa De Las Palmas, LLC; Patel, David N

OAH No.: 2017080555

I, L. Cooper, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 1515 Clay Street, Suite 206, Oakland, CA 94612. On December 08, 2017, I served a copy of the following document(s) in the action entitled above:

ADMINISTRATIVE ENFORCEMENT DECISION

to each of the person(s) named below at the addresses listed after each name by the following method(s):

[see attached service list or]

James P Finigan
6435 Caminito Blythefield #C
La Jolla, CA 92037
Via Email: jpf@finiganlaw.com

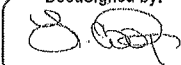
Patricia Miranda
Deputy City Attorney
1200 3rd Avenue, Suite 700
San Diego, CA 92101-4103
US Mail

Kim Wallace-Ross
1222 1st Avenue
San Diego, CA 92101
Via Email: wallacerossk@sandiego.gov

United States Mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package for collection and mailing, in accordance with the Office of Administrative Hearings' ordinary business practices, in Oakland, California. I am readily familiar with the Office of Administrative Hearings' practice for collecting and processing documents for mailing. Correspondences are deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid. [by certified mail].

Electronic Transmission. Based on a court order or the agreement of the parties to accept service by electronic transmission, the document(s) were distributed to the person(s) by secure electronic transmission (OAH Secure e-File) with a notification and document link sent to the email address(es) listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Oakland, California on December 08, 2017.

DocuSigned by:

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L. Cooper, Declarant