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7 Attorneys for Plaintiffs

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 THE PEOPLE OF THE STATE OF
CALIFORNIA and CITY OF SAN DIEGO, a
11 municipal corporation,

12 Plaintiffs,

13 v.

14 WILLIAM L. HOUSE, an individual;
LINDA K. HOUSE, an individual; and
15 DOES 1 through 50, inclusive,

16 Defendants.

Case No. **37-2018-00034064-CU-MC-CTL**

UNLIMITED JURISDICTION

COMPLAINT FOR APPOINTMENT OF
A RECEIVER, ABATEMENT OF A
PUBLIC NUISANCE, INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF

- (1) APPOINTMENT OF A RECEIVER
(CAL. HEALTH & SAFETY
CODE SECTION 17980.7(c));
- (2) PUBLIC NUISANCE
(CALIFORNIA CIVIL CODE
SECTIONS 3479 & 3480); AND
- (3) VIOLATIONS OF THE
SAN DIEGO MUNICIPAL CODE

21 Plaintiffs the People of the State of California and the City of San Diego, a municipal
22 corporation, appearing by and through their attorneys, Mara W. Elliott, City Attorney, and by
23 Onuoma Omordia, Deputy City Attorney, allege the following based upon information and belief:

24 **JURISDICTION AND VENUE**

25 1. Plaintiffs the People of the State of California and the City of San Diego, a municipal
26 corporation (Plaintiffs), by this action and pursuant to California Health and Safety Code (Cal.
27 Health & Safety Code) section 17980.7(c), California Code of Civil Procedure sections 526 and
28 731, and San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, seek the

1 appointment of a receiver, a temporary restraining order, preliminary injunction, and permanent
2 injunction prohibiting Defendants from using or maintaining a substandard property in violation
3 of state and local ordinance provisions and as a public nuisance which is a threat to the health,
4 safety, and welfare of the public and its occupants, and also seek to obtain civil penalties, costs,
5 and other equitable relief.

6 2. The omission or commission of acts and violations of law by Defendants as alleged in
7 this Complaint occurred within the City of San Diego, State of California. Defendants at all times
8 mentioned in this Complaint have transacted business within the City of San Diego or are
9 residents of San Diego County, within the State of California, or both.

10 3. The property where the acts and practices described in this Complaint were performed
11 is in the City of San Diego.

12 THE PARTIES

13 4. Plaintiff People of the State of California, brings this action by and through Mara W.
14 Elliott, City Attorney for the City of San Diego.

15 5. Plaintiff City of San Diego (City) was and is a municipal corporation and a chartered
16 city, organized and existing under the laws of the State of California.

17 6. Defendant WILLIAM L. HOUSE is an individual and resident of the County of San
18 Diego, State of California.

19 7. Defendant LINDA K. HOUSE is an individual and resident of the County of San
20 Diego, State of California.

21 8. Defendants WILLIAM L. HOUSE and LINDA K. HOUSE (Defendants) are the
22 owners of record of 4081 Forney Avenue, San Diego, California 92117 (Property), where the
23 substandard conditions and nuisance are being maintained.

24 9. As the owners of the Property, Defendants are each a "Responsible Person"¹ within
25 the meaning of SDMC section 11.0210 for allowing and maintaining violations of the SDMC at

26 _____
27 ¹ SDMC section 11.0210 defines "Responsible Person" as "a person who a Director
28 determines is responsible for causing or maintaining a public nuisance or a violation of the Municipal
Code or applicable state codes. The term 'Responsible Person' includes but is not limited to a property
owner, tenant, person with a Legal Interest in real property or person in possession of real property."

1 the Property. They are also strictly liable for all code violations occurring at the Property pursuant
2 to SDMC section 121.0311 and applicable California law.

3 10. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the
4 provisions of California Code of Civil Procedure section 474, their true names and capacities are
5 unknown to Plaintiffs. Plaintiffs are informed and believe that each Defendant DOES 1 through
6 50, are either responsible, in whole or in part, for the violations and conduct alleged, or have, or
7 claim to have, an interest in the Property, the exact nature of which is unknown to the City. When
8 the true names and capacities are ascertained, Plaintiffs will seek leave of court to amend this
9 Complaint and to insert in lieu of such fictitious names the true names and capacities of the
10 fictitiously named Defendants.

11 **PROPERTY**

12 11. The legal address of the Property where the substandard building is located and the
13 public nuisance is occurring is 4081 Forney Avenue, San Diego, CA 92117, also identified as
14 Assessor's Parcel Number 418-094-02-00, according to the San Diego County Recorder's Grant
15 Deed document number 120002, recorded on July 6, 1965.

16 12. The legal description of the Property is:

17 Lot 116 of CLAIREMONT VILLAGE, according to the Map
18 thereof No. 3004, filed in the office of the County Recorder of San
19 Diego County, June 16, 1953.

20 13. The Grant Deed recorded on July 6, 1965, with the San Diego County Recorder's
21 Office, lists the owners of the Property as "WILLIAM L. HOUSE and LINDA KAYE HOUSE,
22 husband and wife, as joint tenants."

23 14. The Property is in a Residential Single Unit (RS-1-7) zone in the Bay Ho
24 neighborhood in the City of San Diego. The Property was developed in 1955 as a single-family
25 dwelling consisting of three bedrooms, one bathroom, and an attached garage.

26 **HISTORY OF SUBSTANDARD AND NUISANCE CONDITIONS AND VIOLATIONS OF 27 THE SAN DIEGO MUNICIPAL CODE AT THE PROPERTY**

28 15. Beginning on or about July 29, 2016, the Code Enforcement Division (CED) of the
City's Development Services Department (DSD) received a citizen complaint regarding the

1 Property. The citizen complained that the Property was dilapidated, the dwelling was unstable
2 with a badly worn roof, and that the elderly owners were living in the back yard in unsanitary and
3 unlivable conditions. The citizen also complained that the Property had multiple piles of trash in
4 the backyard and feral cats and skunks living on the Property.

5 16. On or about September 13, 2016, the City opened an investigation and a CED
6 investigator sent Defendants an Inspection Official Notice to arrange an inspection of the
7 Property.

8 17. On or about September 22, 2016, Defendant WILLIAM L. HOUSE called the CED
9 investigator regarding the Inspection Official Notice issued to him on September 13, 2016 and the
10 City scheduled the inspection of the Property for September 29, 2016.

11 18. On or about September 29, 2016, CED investigators went to the Property to
12 investigate the reported complaints and code violations. The investigators observed an
13 accumulation of storage items, junk, debris, and trash at the backyard of the Property. The
14 investigators also observed the rear roof of the dwelling was dilapidated. There was a makeshift
15 kitchen in the backyard, feral cats throughout the Property, a covered patio screened in with
16 concrete blocks, and a recreational vehicle (RV) parked on the street in front of the Property. The
17 investigators also observed a camper in the backyard with indications that the Defendants were
18 living in the camper. The investigators found that the Property did not have gas service.

19 19. On or about January 4, 2018, a CED investigator telephoned the Defendants to
20 schedule a compliance inspection of the Property. The Defendants agreed to schedule a
21 compliance inspection on January 5, 2018.

22 20. On or about January 5, 2018, City investigators returned to the Property to conduct a
23 compliance inspection and observed large piles of trash, junk, rubbish, waste, and debris inside
24 the dwelling and on the rear exterior of the Property. The Defendants were unable to open the
25 front door of the dwelling beyond 8 inches due to the large piles of storage, trash, junk, debris,
26 rubbish, and waste inside. The Defendants admitted they lived in the camper shell in the backyard
27 and in the RV parked on the street in front of the Property. The Defendants also admitted using
28 portable toilets and taking sponge baths in the backyard, and cooking outside due to the excessive

1 accumulation of storage, junk, trash, rubbish, debris, and waste inside the dwelling. City
2 investigators confirmed that the violations observed on September 29, 2016 continued to exist at
3 the Property.

4 21. The specific violations observed by CED investigators during the January 5, 2018
5 inspection of the Property include:

6 a. Lack of or improper water closet, lavatory, or bathtub or shower in the dwelling
7 unit – the bathroom in the Property is not accessible due to the large amount of storage, junk,
8 trash, debris, rubbish, and waste inside the Property. (Cal. Health & Safety Code §
9 17920.3(a)(1));

10 b. Lack of improper kitchen sink – the kitchen is not accessible in the main dwelling
11 house due to large amount of storage, junk, trash, debris, rubbish, and waste inside the Property.
12 (Cal. Health & Safety Code § 17920.3(a)(3));

13 c. Lack of hot running water to the plumbing fixtures – the gas utilities have been
14 shut off. (Cal. Health & Safety Code § 17920.3(a)(5));

15 d. General dilapidation and improper maintenance – there is storage, junk, trash,
16 rubbish, and debris throughout the property. The ceiling inside the living room and its interior
17 drywall are falling due to water damage. (Cal. Health & Safety Code § 17920.3(a)(14));

18 e. Nuisance – the accumulation of storage, junk, trash, debris, rubbish, and waste
19 located throughout the exterior and interior of the Property create a public nuisance. (Cal. Health
20 & Safety Code § 17920.3(c) and SDMC §§ 11.0210, 54.0208(a), and 121.0302(b)(4));

21 f. Accumulation of junk, debris, rodent harborage, which constitutes a fire, health,
22 and safety hazard – there is excessive storage, junk, debris, rubbish, waste, and trash throughout
23 the interior and exterior of the Property. (Cal. Health & Safety Code § 17920.3(j); SDMC §
24 142.1110);

25 g. Inadequate exit facilities – large piles of storage, trash, junk, waste, rubbish, and
26 debris located on the exterior and interior block egress from the Property. (Cal. Health & Safety
27 Code § 17920.3(l));

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1 h. Non-permitted construction – there is a makeshift storage structure made from
2 stacked concrete block walls without the required permits. There is a roof attached to the rear of
3 the structure and a makeshift tent in the rear yard without the required permits. (SDMC §§
4 121.0302, 129.0202, and 129.0111);

5 i. Non-incident outdoor storage – there are large piles of storage, rubbish, trash,
6 junk, waste, including debris throughout the backyard of the Property. (SDMC §§ 121.0302 and
7 142.1110).

8 j. Failure to maintain required off street parking free of storage and obstructions –
9 the garage is full of storage items, junk, trash, debris, rubbish, and waste. (SDMC §§ 121.0302,
10 142.0510(a) & (b), and 142.1110).

11 k. Using or occupying a RV on private property as a permanent residence – the
12 Defendants are using or occupying the camper shell in the backyard and the RV parked in front of
13 the Property as a permanent residence. (SDMC §§ 121.0302, and 98.0202(a)).

14 22. On or about January 12, 2018, pursuant to Cal. Health & Safety Code section 17980.6,
15 the City issued Defendants a Notice and Order to Vacate and Repair Substandard Building; and
16 Abate Public Nuisance (Notice and Order). The Notice and Order advised Defendants of the
17 existence and nature of the code violations at the Property and ordered that they vacate the
18 Property immediately, repair the premises by correcting the violations, and abate the public
19 nuisance. The Notice and Order to Vacate and Repair also notified Defendants that failure to
20 comply may result in the city seeking appointment of a receiver.

21 23. On or about January 12, 2018, City investigators returned to the Property and
22 personally delivered a copy of the Notice and Order to the Defendants. The City also posted a
23 copy of the Notice and Order to Vacate and Repair near the front door of the Property and mailed
24 Defendants a copy via first class mail and certified return receipt. The investigators observed that
25 the nuisance and substandard conditions observed during prior compliance inspections continued
26 to exist at the Property.

27 24. On or about January 25, 2018, City investigators returned to the Property to conduct a
28 compliance inspection. The inspection revealed that the Defendants did not take any action to

1 remedy the substandard housing and public nuisance conditions at the Property. The Property
2 remained in the same condition as referenced in the Notice and Order issued on January 12, 2018.

3 25. On or about February 22, 2018, City investigators returned to the Property to conduct
4 a compliance inspection. They observed that the RV was still parked on the street in front of the
5 Property and that the attached garage was full of storage, junk, debris, trash, and waste. The
6 garage door and the roof of the dwelling were in disrepair and the investigators observed piles of
7 junk, litter, trash, rubbish, debris, and waste throughout the backyard of the Property. The
8 investigators also observed a new shed in the backyard that was 120 x 13 square feet with a few
9 items stored inside. Defendant WILLIAM HOUSE stated that "Tuff Shed" installed the structure
10 on February 17, 2018. The Notice and Order posted near the front door on January 12, 2018
11 remained posted near the front door of the Property and the substandard and nuisance conditions
12 and code violations noted in the Notice and Order still existed at the Property.

13 26. On or about April 13, 2017, City investigators returned to the Property to conduct a
14 compliance inspection. They observed that Defendants made minor corrections to the dwelling,
15 but the RV remained parked on the street in front of the Property and the backyard was still full of
16 storage, junk, debris, litter, and waste and a vehicle. The Notice and Order issued on January 12,
17 2018 remained posted next to the front door of the Property. The Defendants failed to correct the
18 substandard, nuisance, and code violations as required in the Notice and Order issued on January
19 12, 2018.

20 27. On or about April 16, 2018, a City investigator telephoned Defendant WILLIAM
21 HOUSE to schedule a compliance inspection on April 20, 2018. Defendant WILLIAM HOUSE
22 claimed that he lost the keys to his dwelling at the dump and was not going to spend money to get
23 a locksmith. He admitted that he had not removed the hoarded items or excessive storage, junk,
24 rubbish, trash, and waste from inside the Property. The investigator informed him that the City
25 would seek appointment of a receiver to help him and his wife remove all nuisance and
26 substandard conditions and bring the Property back to code standards. The investigator reminded
27 him again to move his RV within two weeks or it would be towed.

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1 28. On or about April 20, 2018, Defendant WILLIAM HOUSE called the City
2 investigator to say that he would not have the interior of the dwelling unlocked for inspection.
3 Defendant WILLIAM HOUSE refused to reschedule a compliance inspection of the Property and
4 admitted that he had not cleared the interior of the dwelling of the piles of junk, debris, rubbish,
5 waste, and debris blocking access into the dwelling.

6 29. On or about April 23, 2018, City investigators returned to the Property to conduct a
7 compliance inspection and observed that the backyard still had large piles of storage, junk, debris,
8 trash, and waste, and the RV remained parked on the street in front of the Property. The
9 investigators observed that Defendants failed to correct the nuisance, substandard conditions, and
10 code violations as requested in the Notice and Order issued on January 12, 2018.

11 30. On or about June 25, 2018, the City mailed a written notice to Defendants regarding
12 the City's intent to seek a receivership pursuant to Cal. Health & Safety Code section 17980.7(c)
13 via first class regular mail and certified mail return receipt.

14 31. The substandard housing and public nuisance conditions existing at the Property are so
15 extensive and of such a nature that the health and safety of occupants or the public is substantially
16 endangered. The extreme hoarding in the interior and exterior of the Property and the public
17 nuisance conditions existing at the Property endanger the health and welfare of the occupants and
18 the community and create a fire hazard. Defendants are blatantly and willfully in violation of the
19 Health and Safety Code and SDMC and will continue to maintain the unlawful code violations at
20 the Property in the future, unless the Court intervenes. Absent injunctive relief, the City will be
21 irreparably harmed and the ongoing violations will continue to harm the public health, safety, and
22 welfare of the citizens of San Diego.

23 32. Plaintiffs have no adequate remedy at law and seek the immediate appointment of a
24 Health and Safety Receiver pursuant to Cal. Health & Safety Code section 17980.7(c) and a
25 temporary restraining order to prohibit Defendants from continuing to violate the law.

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I

FIRST CAUSE OF ACTION

APPOINTMENT OF A RECEIVER PURSUANT TO CAL. HEALTH & SAFETY CODE SECTION 17980.7(C) ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST ALL DEFENDANTS

33. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1 through 32 of this Complaint as though fully set forth here in their entirety.

34. Plaintiff City of San Diego, by and through Mara W. Elliott, City Attorney for the City of San Diego, brings this cause of action for appointment of a receiver pursuant to Cal. Health & Safety Code section 17980.7(c).

35. Cal. Health & Safety Code section 17980.6 authorizes an enforcement agency, such as the City’s Code Enforcement Division, to issue an order or notice to property owners to repair or abate a building if 1) the building is maintained in a manner that violates any provisions of Cal. Health & Safety Code section 17980 or similar local ordinance provisions; and 2) the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered.

36. Cal. Health & Safety Code section 17980 authorizes an enforcement agency to “institute appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance” if the property owner fails to repair or demolish the property in a reasonable time as required by a notice and order issued by the enforcement agency.

37. Cal. Health & Safety Code section 17980.7(c) states:

If the owner fails to comply within a reasonable time with the terms of the order or notice issued pursuant to Section 17980.6 . . . the enforcement agency . . . may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision.

38. The City issued Defendants a Notice and Order pursuant to Cal. Health & Safety Code section 17980.6 on January 12, 2018. The Notice and Order required Defendants to vacate, repair, and abate the substandard building and public nuisance at the Property. The Notice and Order advised Defendants of the unlawful and dangerous conditions existing at the Property and

1 declared that the conditions at the Property violate Cal. Health & Safety Code section 17920.3.
2 The Notice and Order also declared that the conditions at the Property are substandard and create
3 a public nuisance.

4 39. The City personally delivered the Notice and Order to Defendants, posted the Notice
5 and Order in a conspicuous place at the Property, and mailed the Notice and Order to Defendants
6 via first class mail and certified mail return receipt. The Notice and Order advised Defendants
7 that if they failed to comply as directed, then the City could seek the appointment of a receiver
8 pursuant to Cal. Health & Safety Code section 17980.7(c).

9 40. The substandard violations existing at the Property and referenced in the Notice and
10 Order include:

11 a. Lack of or improper water closet, lavatory, or bathtub or shower in the dwelling
12 unit – the bathroom in the Property is not accessible due to the large amount of storage, junk,
13 trash, rubbish, debris, and waste inside the Property. (Cal. Health & Safety Code §
14 17920.3(a)(1));

15 b. Lack of improper kitchen sink – the kitchen is not accessible in the main dwelling
16 house due to large amount of storage, junk, rubbish, trash, debris, and waste inside the Property.
17 (Cal. Health & Safety Code § 17920.3(a)(3));

18 c. Lack of hot running water to the plumbing fixtures – the gas utilities have been
19 shut off. (Cal. Health & Safety Code § 17920.3(a)(5));

20 d. General dilapidation and improper maintenance – there is storage, junk, trash,
21 rubbish, and debris throughout the property. The ceiling inside the dwelling and the interior
22 drywall are falling due to water damage. (Cal. Health & Safety Code § 17920.3(a)(14));

23 e. Nuisance – the accumulation of storage, junk, trash, debris, rubbish, and waste
24 throughout the exterior and interior of the Property create a public nuisance. (Cal. Health &
25 Safety Code § 17920.3(c) and SDMC §§ 11.0210, 54.0208(a), and 121.0302(b)(4));

26 f. Accumulation of junk, debris, rodent harborage, which constitutes a fire, health,
27 and safety hazard – there is excessive storage, junk, rubbish, debris, waste, and trash throughout
28 the exterior of the Property. (Cal. Health & Safety Code § 17920.3(j); SDMC § 142.1110);

1 g. Inadequate exit facilities – large piles of storage, trash, junk, rubbish, waste, and
2 debris located on the interior of the Property block egress or access into the Property. (Cal. Health
3 & Safety Code § 17920.3(1));

4 h. Non-permitted construction – there is a makeshift storage structure made from
5 stacked concrete block walls without the required permits. There is a roof attached to the rear of
6 the structure and a makeshift tent in the rear yard without the required permits. (SDMC §§
7 121.0302, 129.0202, and 129.0111);

8 i. Non-incident outdoor storage – there are large piles of storage, rubbish, debris
9 trash, junk, waste, including debris throughout the backyard. (SDMC §§ 121.0302 and 142.1110).

10 j. Failure to maintain required off street parking free of storage and obstructions –
11 the garage is full of storage items, junk, trash, debris, rubbish, and waste. (SDMC §§ 121.0302,
12 142.0510(a) & (b), and 142.1110); and

13 k. Using or occupying an RV on private property as a permanent residence – the
14 Defendants are using or occupying the camper shell in the backyard and the RV parked in front of
15 the Property as a permanent residence. (SDMC §§ 121.0302, and 98.0202(a)).

16 41. Defendants have had ample time to comply with the City’s Notice and Order and yet
17 they have failed to do so within a reasonable time.

18 42. Beginning on an exact date unknown to Plaintiff, but since at least September 29,
19 2016, Defendants have used or maintained the Property in violation of Cal. Health & Safety Code
20 section 17920.3. Due to the long-term cumulative effect of substandard conditions at the
21 Property, these violations are so extensive and of such a nature that they substantially endanger
22 the health and safety of occupants and the public.

23 43. Defendants have failed to comply within a reasonable time with the Notice and Order
24 and they continue to maintain the Property in violation of the Cal. Health & Safety Code as
25 described above.

26 44. The City timely served each person with a recorded interest in the Property, written
27 notice of the City’s intent to seek the appointment of a receiver at least three days before filing
28 this Complaint as required per Cal. Health & Safety Code section 17980.7(c).

1 45. Unless this Court appoints a receiver pursuant to Cal. Health & Safety Code section
2 17980.7(c), Defendants will continue to maintain the Property in a manner which constitutes a
3 violation of the Cal. Health & Safety Code and local ordinance provisions.

4 II

5 SECOND CAUSE OF ACTION

6 MAINTENANCE OF A PUBLIC NUISANCE IN VIOLATION
7 OF CALIFORNIA CIVIL CODE SECTIONS 3479 AND 3480
8 ALLEGED BY PLAINTIFF THE PEOPLE OF THE STATE
9 OF CALIFORNIA AGAINST ALL DEFENDANTS

9 46. Plaintiff the People of the State of California incorporates by reference all allegations
10 in paragraphs 1 through 45 of this Complaint as though fully set forth here in their entirety.

11 47. California Civil Code sections 3479 and 3480 provide that:

12 Anything which is injurious to health, including, but not limited to,
13 the illegal sale of controlled substances, or is indecent or offensive
14 to the senses, or an obstruction to the free use of Property, so as to
15 interfere with the comfortable enjoyment of life or Property . . . is a
16 nuisance. A public nuisance is one which affects an entire
17 community or neighborhood.

16 48. California Civil Code section 3491 provides for the methods by which public
17 nuisances such as those alleged in this case may be abated. California Civil Code section 3491
18 indicates that the remedies against a public nuisance are indictment or information, a civil action,
19 or abatement. California Civil Code section 3494 states that a public nuisance may be abated by
20 any public body or officer authorized thereto by law.

21 49. California Code of Civil Procedure section 731 authorizes a city attorney to bring an
22 action to enjoin or abate a public nuisance. It provides in relevant part “[a] civil action may be
23 brought in the name of people of the State of California to abate a public nuisance . . . by the city
24 attorney of any town or city in which such nuisance exists.”

25 50. On January 12, 2018, the City issued Defendants a Notice and Order pursuant to Cal.
26 Health & Safety Code section 17980.6, requiring that they correct the code violations existing at
27 the Property. The Notice and Order advised Defendants of the unlawful and dangerous conditions
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1 existing at the Property and declared that the conditions violate the Cal. Health & Safety Code
2 and the SDMC.

3 51. Defendants have had ample time to comply with the City's Notice and Order and yet
4 they have failed to do so within a reasonable time.

5 52. Beginning on an exact date unknown to Plaintiff, but since at least September 29,
6 2016, and continuing to the present, Defendants have used or maintained the Property in a manner
7 that violates the Cal. Health & Safety Code and the SDMC. Due to the long-term cumulative
8 effect of the substandard conditions at the Property, these violations are so extensive and of such
9 a nature that the health and safety of the Defendants and the public have been substantially
10 endangered.

11 53. The extreme hoarding conditions in the interior and exterior of the Property constitute
12 a continuing public nuisance and fire hazard. Also, the use of the camper in the backyard and the
13 RV parked on the street in front of the Property as permanent residences constitute a public
14 nuisance.

15 54. Defendants' maintenance of the Property in the condition described above constitutes
16 a continuing public nuisance as defined by California Civil Code sections 3479 and 3480.
17 Defendants' Property adversely affects the entire community and neighborhood. The Property as
18 it currently exists, is injurious to the health, safety, and welfare of the residents and families who
19 live in the community and interferes with the comfortable use and enjoyment of life and property.
20 Such conditions are objectionable to the neighborhood and community as a whole.

21 55. Plaintiff has no plain, speedy, or adequate remedy at law. Therefore, unless restrained
22 by this Court, Plaintiffs are informed and believe that Defendants will continue to maintain this
23 nuisance and thereby cause irreparable injury and harm to the public's health, safety, and welfare.

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1 III

2 THIRD CAUSE OF ACTION

3 VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE
4 ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST
5 DEFENDANTS

6 56. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1
7 through 55 of this Complaint as though fully set forth here in their entirety.

8 57. SDMC section 121.0302(a) states: "It is unlawful for any person to maintain or use
9 any premises in violation of any of the provisions of the Land Development Code², without a
10 required permit, contrary to permit conditions, or without a required variance."

11 58. SDMC section 121.0302(b)(4) states that it is unlawful to maintain or allow the
12 existence of any condition that creates a public nuisance. Beginning on an exact date unknown to
13 Plaintiff, but since at least September 29, 2016, and continuing to the present, Defendants have
14 maintained a public nuisance at the Property in violation of SDMC section 121.0302(b)(4).

15 59. SDMC section 129.0202(a) states that no structure regulated by the Land
16 Development Code shall be erected, constructed, enlarged, altered, repaired, improved, converted,
17 permanently relocated or partially demolished unless a Building Permit has first been obtained
18 from the Building official. Beginning on an exact date unknown to Plaintiff, but since at least
19 September 29, 2016, and continuing to the present, Defendants have maintained or used the
20 Property in violation of the SDMC by failing to obtain a building permit for structural work in
21 violation of SDMC sections 121.0302(a) and 129.0202(a).

22 60. SDMC section 142.0510(a) provides that required off-street parking spaces, parking
23 areas, and transportation facilities shall be used only for parking operable vehicles of residents,
24 employers, employees, customers, and visitors as appropriate to the allowed uses of the
25 applicable zone. Beginning on an exact date unknown to Plaintiff, but since at least September
26 29, 2016, and continuing to the present, Defendants have maintained or used the garage for

27 _____
28 ² 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 storage, including rubbish, junk, waste, trash, and debris, in violation of SDMC sections
2 121.0302(a) and 142.0510(a).

3 61. SDMC section 142.0151(b) provides that all off-street parking spaces and aisles shall
4 be kept clear of any temporary or permanent obstructions. Beginning on an exact date unknown
5 to Plaintiff, but since at least September 29, 2016, and continuing to the present, Defendants have
6 maintained a garage full of storage, including rubbish, junk, waste, trash, and debris, in violation
7 of SDMC sections 121.0302(a) and 142.0510(b).

8 62. SDMC section 142.1110 (a) provides that only outdoor storage that is incidental to a
9 residential use is permitted. Beginning on an exact date unknown to Plaintiff, but since at least
10 September 29, 2016, and continuing to the present, Defendants have maintained and used the
11 Property in violation of the SDMC by maintaining excessive storage, rubbish, junk, waste, trash,
12 and debris that is not incidental to a residential use throughout the interior and exterior of the
13 Property, in violation of SDMC sections 121.0302(a) and 142.1110(a).

14 63. SDMC section 98.0202(a) provides that no person shall use or occupy any
15 mobilehome, commercial coach or RV on private property not licensed as a mobilehome park or
16 special occupancy park. Beginning on an exact date unknown to Plaintiff, but since at least
17 September 29, 2016, and continuing to the present, Defendants have maintained and used the
18 Property in violation of the SDMC by maintaining or using the RV on private property not
19 licensed as a mobilehome park or special occupancy park, in violation of SDMC section
20 98.0202(a).

21 64. SDMC section 54.0208(a) provides that it is unlawful to fail to maintain real property
22 and appurtenances free from waste. Beginning on an exact date unknown to Plaintiff, but since at
23 least September 29, 2016, and continuing to the present, Defendants have maintained or used the
24 Property in violation of the SDMC by maintaining the premises full of waste, in violation of
25 SDMC section 54.0208(a).

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

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PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

AS TO THE FIRST CAUSE OF ACTION

Appointment of a Receiver

1. That pursuant to Cal. Health & Safety Code section 17980(c)(4) and the Court’s inherent equitable powers, the Court authorize the appointment of a receiver with instructions to take full and complete possession and control of the Property and to take such actions as necessary to abate the public nuisance and to remedy all State and local housing code violations.

2. Before entering upon the duties of a receiver, the receiver must be sworn to perform the duties faithfully and must file a bond with a surety approved by this Court to secure the faithful performance of his duties pursuant to California Code of Civil Procedure section 567.

3. Plaintiff City of San Diego requests that the Court, pursuant to Cal. Health & Safety Code section 17980.7(c)(4), authorize the receiver:

a. To take full and complete control of the Property;

b. To manage the Property and pay expenses of the operation of the Property, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the Property;

c. To secure a cost estimate and construction plan from a licensed contractor or the repairs necessary to correct the conditions cited in the City’s Notice;

d. To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the City’s Notice;

e. To collect all rents and income, if any, from the Property;

f. To use all rents and income from the Property to pay for the costs of rehabilitation and repairs determined by the Court as necessary to correct the conditions cited in the City’s Notice;

g. To borrow funds to pay for repairs necessary to correct the conditions cited in the City’s Notice, and secure that debt, with Court approval, with a recorded priority lien on the

.

1 Property. The lien shall take priority over all existing encumbrances on the Property except tax
2 liens; and

3 h. To exercise the powers granted to receivers under section 568 of the California
4 Code of Civil Procedure, including the power to sell the Property, if necessary.

5 4. The City further requests, pursuant to Cal. Health & Safety Code section
6 17980.7(c)(3) that Defendants and their agents be enjoined from:

- 7 a. Collecting any rents from the Property;
- 8 b. Interfering with the receiver in the operation of the Property; and
- 9 c. Encumbering or transferring the Property, or any portion of the Property, during
10 the receivership period.

11 5. The City has incurred, and will continue to incur attorney fees, expenses, and costs.
12 The City is entitled to recover those fees and costs from Defendants pursuant to Cal. Health &
13 Safety Code sections 17980.7(c)(11) and 17980.7(d)(1).

14 6. The receiver shall be entitled to receive compensation for his services with respect to
15 repairing the Property as necessary as well as reimbursement for expenses as receivers in actions
16 to foreclose mortgages per Cal. Health & Safety Code section 17980.7(c)(5).

17 7. An order requiring the receiver to prepare monthly reports to the City in accordance
18 with Cal. Health & Safety Code section 17980.7(c)(8).

19 8. An order that the receiver shall not be discharged until the conditions cited in the
20 City's Notice have been remedied in accordance with the court order or judgment and a complete
21 accounting of all costs and repairs has been delivered to the Court as required per Cal. Health &
22 Safety Code section 17980.7(c)(9).

23 9. An order that the receivership shall be in full force and effect until the court terminates
24 the receivership.

25 10. An order that, after discharging the receiver, the court shall retain jurisdiction for up to
26 18 months and require Defendants and the City to report to the court in accordance with a
27 schedule determined by the court.

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AS TO THE SECOND CAUSE OF ACTION:

Public Nuisance

11. That the Property, together with the fixtures and moveable Property, be declared a continuing public nuisance as defined by California Civil Code sections 3479 and 3480.

12. That pursuant to California Code of Civil Procedure sections 526 and 731, the Court grant a preliminary injunction and permanent injunction, enjoining and restraining Defendants, their agents, heirs, successors, officers, employees and anyone acting on their behalf from maintaining the Property as a public nuisance as defined per California Civil Code sections 3479 and 3480.

13. If after the receiver is discharged, Defendants fail to comply with paragraph 12 of the Prayer above, then within 48 hours after posting written notice of its intention, the City or its contractor are authorized pursuant to California Civil Code sections 3491 and 3494 to accomplish the work and recover all costs of abating the nuisance at the Property. The expense of the abatement is recoverable by the City according to the provisions of California Government Code sections 38773.1 and 38773.5.

14. That Defendants, their agents, heirs, successors, officers, employees and anyone acting on their behalf be required to stay 100 feet away from the Property while the receiver is in control of the Property.

AS TO THE THIRD CAUSE OF ACTION

Violations of the San Diego Municipal Code

15. That the Court declare the Property to be in violation of:

San Diego Municipal Code sections

121.0302(a)	121.0302(b)(4)
142.1110(a)	142.0510(a)
129.0202	98.0202
142.0510(b)	54.0208(a)

16. That, pursuant to SDMC sections 12.0202 and 121.0311, the Court grants a preliminary injunction and permanent injunction, enjoining and restraining Defendants, their

.....

1 agents, officers, employees and anyone acting on their behalf, from keeping, allowing, or
2 maintaining violations of the SDMC at the Property.

3 17. That upon discharge of the receiver, Defendants, their agents, heirs, successors,
4 officers, employees and anyone acting on their behalf, are required to maintain the Property in
5 full compliance with the SDMC.

6 18. If after the receiver is discharged, Defendants fail to comply with paragraph 17 of the
7 Prayer above, then within 48 hours after posting written notice of its intention, the City or its
8 contractor is authorized to accomplish the work and recover all costs of bringing the Property into
9 compliance. The expense of the abatement is recoverable by the City according to the provisions
10 of California Government Code sections 38773.1 and 38773.5 and SDMC section 12.0204(a).

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

14 20. That, pursuant to SDMC section 12.0202(b), Defendants are assessed a civil penalty of
15 \$2,500 per day for each and every SDMC violation maintained at the Property.

16 AS TO ALL CAUSES OF ACTION

17 21. That Plaintiffs recover all costs incurred by Plaintiffs, including the costs of
18 investigation and any fees authorized by law from Defendants.

19 22. That Plaintiffs be granted such other and further relief as the nature of the case may
20 require and the Court deems appropriate.

21 Dated: July 9, 2018

MARA W. ELLIOTT, City Attorney

22
23 By Onu Omordia
24 Onuoma Omordia
25 Deputy City Attorney

26 Attorneys for Plaintiffs
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