



Protecting Neighborhood Livability: Code Enforcement, Civil Penalties, Drug Abatements and Receiverships

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Administrative And Civil Approaches To Code Enforcement

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I. Introduction

Code enforcement is an indispensable function of local government. The quality of life and safety of all city residents depends on the enforcement of the city's municipal code. There are three main approaches code enforcement: criminal, administrative, and civil, with each approach providing unique remedies. The options available are flexible, allowing cities to tailor its efforts in each case to those approaches most effective for the circumstances.

While this presentation does not address criminal approaches to code enforcement, they must be kept in mind as an option available to cities. Violation of a local ordinance is automatically deemed a misdemeanor by State law.¹ Cities may reduce violations to infractions either by designating a particular violation an infraction by ordinance or through the discretion of the city prosecutor. Criminal enforcement may be particularly effective for businesses which have come to accept administrative citations as a cost of doing business or for non-property related violations, such as public drinking, unpermitted solicitation, and panhandling.²

Before choosing an approach for a particular case, the available options should be weighed so that the most effective approach for the specific set of circumstances is used. Factors, such as the type of violation at issue, the mental and physical capacity and financial resources of the violator, the seriousness of the violation, the prospects for voluntary compliance, the need to remediate the violation quickly, and cost recovery goals should be considered. Done correctly, code enforcement can be a very effective and potentially cost-neutral tool for cities to reduce crime and blight, and to maintain healthy communities and a strong tax base.

II. The Administrative Approach To Code Enforcement

There are several administrative processes available to cities. Most city municipal codes enable some form of administrative approach to code enforcement, either exclusively or in addition to other tools. Administrative enforcement may include citations and fines, administrative enforcement hearings, and permit revocation hearings. The intended outcome in an administrative hearing is to obtain an order from the hearing officer finding a violation of the code, whether that includes ordering a violator to abate a nuisance within a set timeframe, revoking or modifying a permit or entitlement, imposing fines or penalties, or confirming recovery for the city's cost of enforcement. At a minimum, administrative hearings provide the due process required for certain enforcement actions.

¹ Gov. Code § 36900(a).

² Criminal approaches to code enforcement are beyond the scope of this presentation. For additional information on criminal code enforcement, see Cal. Municipal Law Handbook (Cont.Ed.Bar 2013) Code Enforcement, § 12.29 et seq.

There are several advantages to administrative remedies over other options. First, the administrative process is much more informal than the criminal and civil processes. As discussed below, the hearing procedures are flexible and can be tailored to the needs of the city. Further, most rules of evidence do not apply, and the hearing often concludes in a few hours. Second, because they are informal, administrative processes are typically faster and less costly than civil and criminal remedies.

Administrative code enforcement generally is most effective as a first enforcement tool, or in non-severe, “run of the mill” code enforcement cases, such as excessive trash and debris and overgrown lawns, as well as in permit and entitlement revocation situations. For example, the issuance of an administrative citation with graduating fines of \$100, \$200, and \$500 can be a very efficient, cost-effective way to encourage compliance in these less-severe scenarios. Further, if the administrative citation process fails, the city still has the option of pursuing more aggressive enforcement, such as seeking daily administrative penalties, filing a criminal complaint or requesting other types of injunctive and/or abatement remedies from the courts.

However, administrative code enforcement does not come without limitations. While cost and time efficiency are certainly benefits to the administrative process, there are some disadvantages. First, an administrative order alone does not give legal authority for a city to enter property or abate nuisances, nor does it have legal weight to force a person to comply with the order. Enforcement of an administrative order to inspect or abate nuisances potentially exposes a city to liability. For example, after obtaining an administrative order to remove inoperable vehicles from a property, an example city entered private property and broke down a gate in order to gain access to the backyard where the vehicles were located. Even though they had an administrative order, the Court concluded that the entrance onto the property and removal of the vehicles was improper.³ Therefore, if a violator ignores the administrative order, a court order or warrant will almost always be required for enforcement.

Second, an administrative order does not insulate the city from liability for damage or injury caused during an inspection or abatement as does a warrant.⁴ Finally, the matter may end up in court regardless of the administrative order, as the person who loses in an administrative hearing has the statutory right to appeal to the Superior Court.⁵

For these reasons, the administrative process is generally best suited to non-serious, non-emergency violations. Furthermore, there are multiple enforcement tools within the administrative process itself, such as administrative citations, administrative civil penalties, and administrative hearings. As such, the administrative process is a valuable starting point for many abatement actions and can induce the violator to comply short of litigation.

³ *Connor v. City of Santa Ana* (1990) 897 F.2d 1487 (9th Cir.); see also *Leppo v. City of Petaluma* (1971) 20 Cal.App. 3d 711.

⁴ *Ogborn v. City of Lancaster* (2002) 101 Cal. App. 4th 448, cited above.

⁵ Gov. Code § 53069.4(b)(1).

A. Administrative Citations

Government Code section 53069.4(a)(1) authorizes a city to levy administrative fines for code violations:

The legislative body of a local agency . . . may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties.

Many cities have enacted ordinances providing for administrative citations, and authorizing administrative citations to be issued for any violation of the municipal code. An administrative citation may include a fine as well as a time period in which to abate the violations. Amounts of fines are generally limited by whether a violation would have otherwise been an infraction or a misdemeanor. Where the violation would have been an infraction, the violator may be fined up to \$100 for the first offense, \$200 for the second offense within the same year, and \$500 for each additional offense in the same year.⁶ Violations of local building and safety codes may be subject to fines up to \$200, \$500 and \$1,000, respectively.⁷ Fines for violations that would otherwise have been a misdemeanor cannot exceed \$1,000.⁸

The procedure for the issuance and enforcement of citations is developed by the city with some guidance from State law.⁹ For example, for certain types of building, structural, or zoning violations, the administrative process must provide for a reasonable period of time for violators to correct the violations prior to the imposition of administrative fines or penalties.¹⁰ Many city ordinances define a “reasonable period” to a period ranging between 10 to 30 days. If the violation is corrected before the reasonable period expires, the fine is avoided.

However, for purposes of pursuing enforcement of violations other than those relating to building, structures or zoning, the administrative process does not require the “reasonable period of time” before a fine becomes effective. Rather, under this process, the City’s code enforcement official may issue an administrative citation that becomes immediately due and payable. Because each day a violation continues constitutes a new and separate violation, administrative citations could be issued to the same person frequently, and for multiple violations. Ideally, this eventually provides enough incentive to cause the recipient of the citation to abate the nuisance voluntarily.

A process for administrative review of the citations must be established by ordinance, and is subject to due process requirements.¹¹ Typically, after receiving an administrative citation, local ordinances provide the violator the right to appeal it to a neutral hearing officer by filing an

⁶ Gov. Code § 53069.4(a)(1); Gov. Code § 36900(b).

⁷ Gov. Code § 36900(c).

⁸ Gov. Code § 36901.

⁹ Gov. Code § 53069.4(a).

¹⁰ Gov. Code § 53069.4(a)(2).

¹¹ Gov. Code § 53069.4(a)(1).

appeal within an enumerated number of days, such as 15 calendar days after the citation was properly served.

The procedure for the hearing is also flexible and developed by the city through ordinance. The Administrative Procedures Act does not apply to these types of hearings unless expressly adopted.¹² Minimum levels of constitutional due process must be met, such as notice and an opportunity to be heard; however, a full judicial-type hearing is not required.¹³ Nevertheless, cities must be careful to comply with due process requirements, including requirements of a truly neutral hearing officer and separation of the city attorney's roles, as required by a recent court decision, which is discussed later.

A typical hearing process might proceed as follows: after complying with the city's appeal process, an administrative hearing is set, in which the hearing officer hears both sides of the case and takes evidence. This is less formal than a court proceeding; however, the person cited has the right to representation at the hearing, the right to present witnesses and, generally, the right to question city witnesses. The hearing officer then issues an order that either amends, reverses or upholds the citation. The violator then has a reasonable time, or the amount of time indicated in the order to abate the nuisances. Many orders also include a provision authorizing the city to enter the property after a certain time and abate the nuisances itself. The decision of the hearing officer is usually specified as final by ordinance, and a further appeal may be made to the Superior Court or by writ, unless the local ordinance provides another layer of internal review.¹⁴ If so, administrative remedies generally must be exhausted prior to taking an appeal or writ to court.

Much of the time, after receiving one or more administrative citations, a property owner or business operator eventually will comply with the city's compliance requirements based on the increased fine amounts over time. Administration citations are issued by the city, and if not paid, can be sent to a collection agency, or the city can place a lien or special assessment on the subject property for the unpaid violations depending on the terms of the city's ordinance.¹⁵

In the event that the administrative citations fail to bring the offender into compliance, the existing processes (i.e., criminal prosecution and/or civil action) would still be available to the city.

B. Administrative Civil Penalties

In addition to the fines assessed pursuant to administrative citations, cities may also provide, by ordinance, that violations of local ordinances are subject to a civil penalty up to \$1,000.¹⁶ The local ordinance may provide that civil penalties may accrue automatically until compliance is confirmed. This process eliminates the need to issue multiple citations when a

¹² Gov. Code § 11410.30(b).

¹³ See, e.g., *Blinder, Robinson & Co. v. Tom* (1986) 181 Cal.App.3d 283, 295 [impartial hearing officer required]; *Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 286 [basic requirements of notice and opportunity to be heard must be met but "[a] formal hearing, with full rights of confrontation and cross-examination is not necessarily required."].

¹⁴ Gov. Code § 54069.4(b); Code Civ. Proc., § 1094.5; *Martin v. Riverside County Dept. of Code Enforcement* (2008) 166 Cal.App.4th 1406.

¹⁵ Gov. Code §§ 53069.4(d), 38773.1, 38773.5.

¹⁶ Gov. Code § 36901.

property owner fails to comply. Before civil penalties can be assessed, the same requirements of due process, discussed above, must be met. The property owner must be provided with notice and an opportunity to be heard at a hearing.¹⁷ Further, the notice should identify the violations subject to the civil penalties, the amount of the penalties, the accrual date, and the date or process for a hearing. The violator may contest the civil penalties at a hearing, at which the hearing officer may affirm or reduce the amount.

Additional State statutes authorize a city to assess civil penalties specifically for distressed properties.¹⁸ Due to the current housing market, many homes have become vacant after foreclosure sales or are in the process of a foreclosure sale. Vacant buildings attract blight and crime and can quickly deteriorate if not properly maintained. Pursuant to Civil Code sections 2929.3 and 2929.4, residential properties subject to or purchased in a foreclosure sale must be maintained. If not maintained, the city can impose daily civil penalties of up to \$1,000 per day per violation under this statute.

Civil penalties are subject to constitutional limitations prohibiting the imposition of excessive fines.¹⁹ While an ordinance is not required to specify the maximum amount to be assessed, where no maximum exists, the penalties assessed will be examined on an as-applied basis.²⁰ The court will consider factors such as the violator's sophistication; the proportion of the violator's total net worth to the amount of the penalties; and the severity of the violation.²¹ Thus, the daily civil penalties cannot accrue indefinitely; at some point, they must reach a cap to remain constitutional. To avoid making a separate determination in every case, a maximum amount to be assessed can be established in the ordinance itself.

Government Code section 53069.4 also allows the city to develop its own procedures by ordinance for collection of the assessed penalties.²² This may include imposing a lien on the property for the amount of the penalties, foreclosure of the lien, and even attorney's fees incurred in foreclosing the lien.²³

Once civil penalties are assessed, they can provide a strong motivation to correct violations as quickly as possible. This makes the civil penalties procedure particularly useful for more severe violations where the property owner has not complied following an administrative citation. The process is still faster and less formal than a civil lawsuit and the city avoids having to issue multiple citations for continuing violations.

C. Administrative Enforcement Hearings

The administrative enforcement hearing process can be a means of gaining compliance with violations of the municipal code while attempting to avoid judicial proceedings. This process can begin in one of three ways: 1) by appeal of an administrative citation, as discussed

¹⁷ See discussion at *supra* note 12.

¹⁸ See e.g., Civil Code § 2929.3.

¹⁹ *City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1321; Cal. Const., Art I, § 17.

²⁰ *Id.* at 1312 [potentially unlimited penalties does not render the ordinance unconstitutional, but rather a penalty imposed will be examined as applied.]

²¹ *Ibid.*

²² See *City of Santa Paula v. Narula* (2003) 114 Cal.App.4th 485, 492–493.

²³ *Ibid.*

above, 2) scheduled by the city upon discovery of a public nuisance, as defined in its municipal code, or 3) upon appeal of some initial enforcement action taken by the city, such as issuance of a notice of violation. The process will depend on the local ordinance.

In the second scenario, the city sets an administrative hearing in lieu of, or prior to issuance of an administrative citation. The city's ordinances provide the authority and manner in which the city is to notice and set an administrative hearing to confirm whether a public nuisance exists, and if so, to order some type of abatement action to be taken within a set timeframe.

In the third scenario, an administrative hearing is only set if the recipient of a notice from the city requests such a hearing in the manner required by the ordinance. In either situation, due process is provided by the city giving notice of the violation and action to be taken, and then providing the recipient with the opportunity to be heard on the issue.

An administrative hearing is a "quasi-judicial" hearing in which a neutral disinterested hearing officer or board - perhaps even the city council or planning commission - hears testimony, takes evidence and renders a ruling regarding violations of the municipal code. Such a hearing can be used to obtain an administrative order requiring a violator to take certain specified actions to bring the property into compliance and within a certain timeframe. The order can also set the basis for the city to obtain a court order to enter the property, abate the nuisances itself, and then recover the costs.²⁴ Alternatively, the hearing officer can find for the violator and determine no violations exist. Similar to a court hearing, the administrative hearing process must comply with due process: proper notice must be provided to the violator, and a fair hearing must be conducted.²⁵

As with appeals of administrative citations, the losing party ultimately has the right to appeal the decision to the Superior Court. While an administrative citation may be appealed either as a limited civil case or via a writ, an administrative hearing order is reviewed through the process of administrative mandamus.²⁶ The scope of review in administrative mandamus is limited to whether the local agency has jurisdiction, whether the hearing was fair, and whether the agency abused its discretion.²⁷ The court will then review the evidence, and will issue an order upholding, modifying or reversing the hearing officer's decision, or possibly remand the matter.

Where an administrative order authorizes a city to enter property and abate nuisances, a warrant is necessary. Administrative orders are not self-executing; that is, they do have legal weight. As such, a warrant must still be obtained prior to the city inspecting or seizing property, absent an emergency. Entry onto or abatement of property without a warrant could subject a city to legal claims and invalidate the evidence obtained.²⁸ To the contrary, a warrant properly prepared and executed provides substantial immunity for damage or injury caused by the

²⁴ Gov. Code § 38773.5(a).

²⁵ See *Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 286 [basic requirements of notice and opportunity to be heard must be met but "[a] formal hearing, with full rights of confrontation and cross-examination is not necessarily required."].

²⁶ Code Civ. Proc. § 1094.5.

²⁷ Code Civ. Proc. § 1094.5(b).

²⁸ See *Connor v. City of Santa Ana* (9th Cir. 1990) 897 F.2d 1487.

entrance onto the property.²⁹

D. Permit Revocations Or Modifications

Administrative hearings can also be utilized to satisfy due process requirements when a city seeks to modify or revoke a permit, such as a conditional use permit. Once a permittee has incurred substantial expense and acted in reliance on a permit, the permittee may acquire a fundamental vested right.³⁰ A fundamental vested right is a constitutionally protected property right, and accordingly, due process requirements must be met before a permit can be revoked or modified.³¹ A notice and hearing that provides the permittee an opportunity to be heard before a neutral generally will meet due process requirements.

A permit may be modified or revoked when a permittee fails to comply with reasonable terms or conditions expressed in the permit granted or if there is a compelling public necessity.³² For example, failure to comply with the stated conditions of approval for a conditional use permit, may give rise to grounds for revocation of the permit.

After notice and a hearing, the permit may be revoked, resulting in an illegal use. This will either motivate the permit holder to bring the property into compliance or will open the door for other code enforcement measures.

E. Special Considerations In Administrative Hearings For City Attorneys

Administrative hearings raise unique ethical considerations for city attorneys, as two potential roles for the city attorney arise in administrative hearings. A city may seek legal counsel to represent and defend the code enforcement staff in a prosecutorial role, or the neutral decision maker, such as the city council, may seek legal counsel in an advisory role. Due process, prohibits the same attorney from performing both functions in the same proceeding.³³ Because administrative hearings are quasi-judicial, due process requires an “appearance of fairness and the absence of even a probability of outside influence on the adjudication.”³⁴

Due process has different implications for contract and in-house city attorney offices. For in-house city attorney offices, the California Supreme Court has upheld the use of a “due process wall” between attorneys performing prosecutorial and advisory functions.³⁵ In *Morongo Band of Mission Indians v. State Water Resources Control Board*, the Court held that due process had not been violated when the same attorney provided advisory services to the Board and served as prosecutor in an unrelated matter.³⁶ Where a proper due process wall is used,

²⁹ *Ogborn v. City of Lancaster* (2002) 101 Cal. App.4th 448.

³⁰ See *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359.

³¹ *Community Development Com. v. City of Fort Bragg* (1988) 204 Cal.App.3d 1124, 1132.

³² *Bauer v. City of San Diego* (1999) 75 Cal.App.4th 1281, 1294.

³³ *Nightlight Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 91.

³⁴ *Id.* at 90.

³⁵ See *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731; See also, *Howitt v. Superior Court* (1992) 3 Cal.App.4th 1575.

³⁶ (2009) 45 Cal.4th 731.

evidence of actual bias is required to overcome the presumption of impartiality.³⁷ However, the burden is on the city to establish the sufficiency of the due process wall.³⁸

In *Howitt v. Superior Court*, the Court noted that functionally separate offices are not necessary to establish a proper due process wall.³⁹ A proper due process wall is established where the advisory attorney has no involvement or preparation in the prosecution, and vice versa.⁴⁰ Some of the due process wall procedures used in *Morongo*, included screening agency employees assigned to the enforcement team from contact with the decision-maker through strict application of the state Administrative Procedure Act's rules regarding ex parte communications.⁴¹ The office also had physical separation of offices, support staff, computers, printers, fax machines, and even restrooms between the hearing officer and the enforcement team.⁴² Absent evidence of actual bias, this was enough to satisfy due process requirements.

The implications for private law firms providing city attorney services are very different. In *Sabey v. City of Pomona*, the Court of Appeals created a blanket rule barring partners in the same firm from performing prosecutorial and advisory functions, even if a due process wall is used.⁴³ In that case, one partner of the law firm represented the city's Police Department in an employment arbitration hearing, and the other partner advised the city council when reviewing the arbitrator's decision.⁴⁴ As in *Morongo*, the partners implemented and maintained a due process wall between them and had no access to the other's files.⁴⁵

Nonetheless, the Court of Appeals found a due process violation, holding that the additional duties of loyalty and care between partners prohibit one partner from reviewing the work of another partner in the same law firm.⁴⁶ When one partner reviewed the work of another, he was in the position of reviewing the work of his fiduciary, which created an appearance of unfairness and bias.⁴⁷ The Court then held that the rule allowing attorneys from the same office to perform simultaneous prosecutorial and advisory roles where a due process wall is maintained is inapplicable to partners in the same law firm.⁴⁸

The holding in *Sabey* means that the cities employing private law firms as city attorney must choose whether its primary city attorney will perform the prosecutorial/advocate function in administrative hearings or whether it will perform the advisory function. Another law firm must be hired for the other function.

Where the city has an in-house city attorney's office, *Sabey* does not apply; however, further case law may expand its holding to government attorneys. Nonetheless, in-house city

³⁷ *Morongo*, 45 Cal.4th at 741–42.

³⁸ *Howitt v. Superior Court*, *supra*, 3 Cal.App.4th at 1586–87.

³⁹ *Id.* at 1587, fn. 4.

⁴⁰ *Ibid.*

⁴¹ See Gov. Code § 11430.10, *et seq.*

⁴² *Morongo*, 45 Cal.4th at 735.

⁴³ (2013) 215 Cal.App.4th 489.

⁴⁴ *Sabey v. City of Pomona* (2013) 215 Cal.App.4th 489, 494, review den. (July 10, 2013).

⁴⁵ *Ibid.*

⁴⁶ *Id.* at 497.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

attorney's offices must be careful to establish and maintain strict due process walls such as that created in *Morongo*.⁴⁹

III. The Civil Approach To Code Enforcement

In lieu of, or in addition to, a criminal or administrative action, a civil lawsuit may be filed to abate violations of a municipal code. There are many advantages to civil enforcement, such as a lower burden of proof than is required in criminal enforcement, the availability of civil penalties paid directly to the city, lack of a right to a jury trial in most nuisance abatement cases, interlocutory remedial orders, and strong legal authority to recover attorney's fees and costs.

Civil litigation is not without its disadvantages, however. It is typically a slower process than criminal and administrative code enforcement, as packed dockets can mean relief may take several months or more to obtain. In addition, civil litigation tends to be more costly than other methods; however, as discussed below costs may be recoverable in most cases based on the statute utilized or with a properly drafted ordinance.

Due to the additional costs and time involved, civil remedies are most appropriate for cases with more substantial violations, sympathetic or sensitive violators, and where other approaches are likely to be ineffective.

A. Injunctive Relief

Perhaps the most important benefit of a civil lawsuit is the availability of injunctive relief, which is not available in administrative or criminal actions. Injunctions are generally very effective for preventing or correcting continuing zoning violations and for abating nuisances where other code enforcement methods have proven ineffective.

Obtaining a preliminary injunction in most cases is not difficult for cities seeking to enforce its municipal code. Where a city seeks to enjoin the violation of an ordinance or statute that expressly provides for injunctive relief, if the city establishes that it will likely prevail on the merits, the Court must presume the harm to the public outweighs any harm the preliminary injunction may cause the defendant.⁵⁰ This eliminates an entire element of the traditional test for preliminary injunctive relief.⁵¹ Thus, cities may often obtain preliminary relief quickly and simply based on competent evidence of the existence of the violations. Further, a victory at the preliminary injunction stage will often translate into a similar permanent judgment, stipulated judgment, or settlement favorable to the city.

1. Enforcement Of An Injunction

After obtaining an injunction, cities have multiple options available to enforce it in the event the defendant fails to comply. Any person or entity bound by an injunction may be charged with contempt for disobeying the injunction⁵² Contempt proceedings are either civil or criminal. Civil contempt may be punished by a fine up to \$1,000 or imprisonment up to 5 days,

⁴⁹ See *Morongo*, 45 Cal.4th at 735.

⁵⁰ *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72.

⁵¹ *Id.* at 69–70.

⁵² Code Civ. Proc. § 1209(a)(5); Pen. Code § 166(a)(4).

for each day the injunction is violated.⁵³ Criminal contempt is a misdemeanor and punishable by a fine up to \$1,000 or imprisonment up to 6 months, or both.⁵⁴

Another available, and perhaps more effective, method to enforce an injunction is the appointment of a receiver. If the property owner disobeys a permanent injunction (court judgment), the city may petition the court to appoint a receiver to enforce the injunction.⁵⁵ The receiver will have the authority to take possession of the property and perform all necessary work to bring the property into compliance. This remedy is particularly effective because it virtually guarantees compliance, as the receiver, rather than the property owner, will be in charge of carrying out the terms of the injunction. Further, the receiver will use the property as collateral to fund these compliance costs, as well as the receiver's own fees.

2. Legal Theories For Injunctive Relief

There are several available legal theories to support injunctive relief. Among these theories are: nuisance *per se*; existence of a public nuisance in equity; and violation of State law, such as the State Housing law, STEP Act, the Drug Abatement Act and the Red Light Abatement Act.

i. Nuisance *Per Se*

One of the easiest theories to prove is nuisance *per se*. A nuisance *per se* exists whenever “a legislative body with appropriate jurisdiction, in the exercise of the police power, expressly declares a particular object or substance, activity, or circumstance, to be a nuisance.”⁵⁶ This leaves two elements to establish a nuisance *per se*: (1) a valid ordinance identifying a nuisance; and (2) a violation of that ordinance.

Showing that the ordinance is valid usually is not difficult. Cities are constitutionally authorized to make and enforce within their limits all local, police, and sanitary ordinances, and other such regulations, not in conflict with the general laws.⁵⁷ This police power includes enacting ordinances not only to promote safety, but also to prevent blight. In *Disney v. City of Concord*, the Court upheld an ordinance regulating recreational vehicles parked on private property in public view as a valid exercise of the city's police power, even though the primary concern behind the ordinance was aesthetics.⁵⁸

In addition, cities are statutorily authorized to declare what constitutes a nuisance.⁵⁹ For example, some cities have a general ordinance declaring any violation of its municipal code or other State laws, such as the California Building Standards Code, to be a nuisance. That means any violation of the city's municipal code or State law constitutes a nuisance *per se* and may be

⁵³ Code Civ. Proc. § 1218(a).

⁵⁴ Pen. Code § 19.

⁵⁵ Code Civ. Proc. § 564(b)(3).

⁵⁶ *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160; see also *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1163–64.

⁵⁷ Cal. Const., art. XI, § 7; *City of Costa Mesa v. Soffer* (1992) 11 Cal.App.4th 378, 382.

⁵⁸ *Disney v. City of Concord* (2011) 194 Cal.App.4th 1410, 1415–16.

⁵⁹ Gov. Code § 38771.

enjoined. All the city needs to show to obtain the injunction is the existence of the violation.⁶⁰

ii. Public Nuisance In Equity

In addition to constituting a nuisance *per se*, illegal conditions may also constitute a public nuisance in equity. A nuisance is anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.⁶¹ A public nuisance is “one which affects at the same time, an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage may be unequal.”⁶²

Establishing a public nuisance in equity requires a stronger evidentiary showing than a nuisance *per se*. Not only must a violation be established, but the city must also show that the violation is injurious to the broader community. This may require the opinions of additional city officials, such as a building inspector and may require more thorough inspections for which a warrant will be necessary. Nonetheless, if established, a public nuisance may be enjoined.⁶³

iii. Violations Of The State Housing Law

Several State laws also authorize cities to seek injunctive relief, such as the State Housing Law.⁶⁴ If the city declares a building to be substandard⁶⁵ and the property owner fails to obey an order to abate the conditions, the city may bring a civil action.⁶⁶ Available remedies include appointment of a receiver, issuance of preliminary injunctions, permanent injunctions, and restrictions on the property owner’s right to claim mortgage interest deductions, among others.

Much like a public nuisance, in order to determine a building is substandard, additional opinions and inspections are necessary to show that a building is substandard. In addition, more remedies are available where the violations substantially endanger the residents and the public, such as appointment of a receiver and recovery of the city’s attorney’s fees and staff costs.⁶⁷

iv. Drug Abatement Act

The California Drug Abatement Act,⁶⁸ allows cities to remove occupants from any building or place where any illegal drug activity occurs. Every building or place used for the purpose of drug activity is expressly declared a nuisance, subject to injunctive relief.⁶⁹

The Drug Abatement Act also provides for quick relief. The city can obtain a temporary restraining order or preliminary injunction ordering the building to be vacated and boarded

⁶⁰ *People ex rel. Dept. of Transportation v. Outdoor Media Group* (1993) 13 Cal.App.4th 1067, 1077.

⁶¹ Civil Code § 3479.

⁶² Civil Code § 3480.

⁶³ Code Civ. Proc. §§ 526, 731.

⁶⁴ Health & Saf. Code § 17910–17998.3.

⁶⁵ See Health & Saf. Code § 17920.3 for the definition of a “substandard building.”

⁶⁶ Health & Saf. Code §§ 17980–17982.

⁶⁷ Health & Saf. Code §§ 17980.6–17980.7.

⁶⁸ Health & Saf. Code §§ 11570–11587.

⁶⁹ Health & Saf. Code § 11570.

against entry for up to one year.⁷⁰ In addition to providing for injunctive relief, the city may also recover fines and costs, which include not only attorney's fees, but also investigation costs, through a lien on the property.⁷¹ The Act also provides for the lien to be enforced through the sale of the property.⁷²

The Drug Abatement Act is particularly useful for cities because an order to vacate the property can be obtained quickly. When a particular building is the source of situs of drug activity, it may be difficult, expensive and futile to attempt to criminally prosecute each individual, especially those with a long criminal history, who are undeterred by the criminal process. An injunction pursuant to the Drug Abatement Act provides the city with expansive relief without having to spend the time and money on numerous individual criminal prosecutions. The key to obtaining an injunction is careful documentation of the pattern of drug activity. The court may also want to see the city has attempted less drastic approaches to abate the drug nuisance, such as sending notification letters, holding meetings, and having discussions with the property owner or business owner, all to no avail.

v. Red Light Abatement Act

The Red Light Abatement Act allows any city, through its city attorney, to vacate and board up for 1 year any building or place used for prostitution, lewd behavior, or any other criminal sexual behavior that could lead to transmission of AIDS.⁷³ It also covers places used for illegal gambling. The same penalties, cost recovery and foreclosure rules apply as with the Drug Abatement Act. Further, cities may utilize both the Drug and Red Light Abatement Acts without passing an ordinance. The law is already in effect and ready for use.

vi. STEP Act/Gang Injunctions

The California Street Terrorism Enforcement and Prevention ("STEP") Act⁷⁴ authorizes a city to file a lawsuit against gang members. Every building or place in which gang members commit certain offenses, including robbery, murder, unlawful drug sales, rape, intimidation, theft or burglary, as well as offenses involving dangerous or deadly weapons, can be declared a public nuisance under this law.⁷⁵ Penal Code section 186.22a expressly provides for injunctive relief as well as damages.

The STEP Act adopts the procedures of the California Drug Abatement Act.⁷⁶ Thus, in addition to an injunction, a city can obtain any of the remedies provided for in the Drug Abatement Act, with a few exceptions.⁷⁷ In addition, the documentation necessary will be similar and the Court will likely want to see that the city has attempted other less severe approaches first.

⁷⁰ Health & Saf. Code § 11573.5(b).

⁷¹ Health & Saf. Code § 11581; *City of Oakland v McCullough* (1996) 46 Cal.App.4th 1, 5.

⁷² Health & Saf. Code § 11585.

⁷³ Pen. Code §§ 11225-11235.

⁷⁴ Pen. Code §§ 186.20–186.33.

⁷⁵ Pen. Code § 186.22a.

⁷⁶ Pen. Code § 186.22a(b).

⁷⁷ Pen. Code § 186.22a(b)(2).

Obtaining relief under the STEP Act may not be as quick as under the Drug Abatement Act. Prior to filing an action for injunctive relief under the STEP Act, the city must first serve a 30 day notice of the unlawful use or criminal conduct on the property owner and the STEP act does not allow the Court to issue an eviction or closure order.⁷⁸ The city will have to obtain an injunction and then enforce the injunction through either contempt proceedings or the appointment of a receiver. However, either of these remedies is faster and more cost effective than attempting individual criminal prosecutions.

In addition to the STEP Act injunction, injunctions against gangs under the general public nuisance theory have been successfully used to curb gang activity.⁷⁹

B. Receiverships

In addition to seeking an injunction, a city can petition the court to appoint a receiver. As discussed above, a receiver may be appointed when an injunction is disobeyed. However, in circumstances involving substandard buildings, the city may seek appointment of a receiver without having to obtain prior court orders or intervention. Where conditions are so extensive and of such a nature that the health and safety of the residents and the public are substantially endangered and the property owner has not complied with an order to abate the conditions, the city may petition the Court for the appointment of a receiver.⁸⁰ A receiver will act in the capacity of the property owner to bring the property into compliance with applicable codes, and can be authorized to use first-priority funding to cover all costs involved.

While the details of receiverships are addressed elsewhere in this presentation, it is worth noting that a receivership is a particularly effective and cost-efficient tool. Since the receiver takes possession of the property and is charged by the court to bring the property into compliance, compliance is virtually guaranteed and quickly obtained. Where other methods have shown that the property owner is not likely to voluntarily comply, this may be the only way the violations will be abated. The receiver is an agent of the court and, as such, the expense and efforts required to abate the violations are borne by the receiver rather than the city. In addition, the receiver's fees and the city's costs, including attorney's fees and staff costs are recoverable in receivership actions, even from the receivership estate itself.⁸¹

C. Graffiti Abatement

Graffiti is punishable criminally, but civil remedies are also available and can be much more effective at deterring future graffiti; thereby, also reducing the costs to cities to abate graffiti. Government code section 38772 authorizes a city to declare, by ordinance, graffiti as a public nuisance and provide for its summary abatement. Summary abatement allows the graffiti to be removed quickly, often within a few days. The city may initially use public funds to abate

⁷⁸ Pen. Code §§ (b)(2), (b)(4).

⁷⁹ See *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090 [the STEP Act is not an exclusive remedy when seeking to enjoin gang activity].

⁸⁰ Health & Saf. Code §§ 17980.6–17980.7.

⁸¹ Health & Saf. Code §§ 17980.7(c)(11), (d)(1); See generally, *City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670 [a recent example of a successful receivership where other code enforcement methods were ineffective and the property owner refused to voluntarily rehabilitate the property].

graffiti;⁸² however, the costs can be recovered through a civil action, and punitive measures can be utilized to deter future violations.

The costs for abating the graffiti can be collected from the tagger, or if a minor, from the tagger's parent or guardian and can be recovered through a lien against the property of either the tagger or the tagger's parent or guardian.⁸³ The city can initiate a civil action to recover these costs and may also recover the attorney's fees associated with the civil action.⁸⁴ The city may also seek civil penalties for the graffiti, when authorized by ordinance.⁸⁵ Civil actions to recover these costs may send a stronger message to taggers and taggers' parents than a simple misdemeanor prosecution, where the fines are more limited, and which are paid to the court instead of the city. With a properly worded and efficiently utilized ordinance, local graffiti abatement can make graffiti removal cost neutral and substantially reduce incidents of graffiti.⁸⁶

IV. Cost Recovery

Code enforcement can be largely cost neutral, as State law provides a bevy of authority for cities to create ordinances allowing for recovery of attorney's fees, staff costs and abatement costs in all types of nuisance abatement actions – whether administrative, civil or otherwise. As such, limited budgets should not be an obstacle for a city to effectively enforce its municipal code and abate dangerous violations.

A. What Is Recoverable?

State law authorizes cities to recover much of the costs of enforcement as long as the city has adopted a proper ordinance. If done correctly, in many types of code enforcement cases, the city will have the right to recover all costs involved, from abatement costs to staff costs, attorney's fees and incidental expenses.⁸⁷ This can include those costs incurred in the administrative, civil, warrant and even appellate processes, among others.

In addition, State law contains numerous provisions, some cited above, for recovery of enforcement costs when abatement action is taken pursuant to those statutes.⁸⁸ In addition, cities are authorized to enact ordinances for the recovery of attorney's fees in "any action" to abate a nuisance, as well as abatement and administrative costs.⁸⁹ In these cases, a local ordinance is not required, as State law already provides the authority. However, cost recovery based on enforcement of the municipal code requires specific ordinances that define "costs", "abatement", "nuisances" and set forth recovery mechanisms that comply with due process and State law

⁸² Gov. Code § 53069.3.

⁸³ Gov. Code § 38772.

⁸⁴ Civil Code § 1714.1(b) [parents are jointly and severally liable for damage caused by taggers].

⁸⁵ Gov. Code § 36901; Pen. Code, § 594.5

⁸⁶ See, "How Cities Can Remove and Deter Graffiti And Maximize Cost Recovery", by Matthew R. Silver, *Western City*, August 2013, p. 11.

⁸⁷ See, e.g., Gov. Code §§ 38772–38773.7.

⁸⁸ See, e.g., Health & Saf. Code, § 17980.7(d)(1) [State Housing law provision providing for recovery of all costs, including investigation and enforcement costs]; Civ. Code § 3496 [providing for cost recovery in certain public nuisance cases].

⁸⁹ Gov. Code § 38773.5.

requirements.

Whenever cost recovery is sought, due process must be followed. This includes notice and the opportunity to be heard. A court order granting costs, or an administrative cost confirmation hearing will usually suffice. Pursuant to statute, the “prevailing party” may recover its attorney’s fees; consequently, in a worst case scenario in which a defendant is successful, a defendant could be entitled to recover its attorney’s fees.⁹⁰ However, an ordinance can provide that such fees cannot exceed the fees incurred by the city, and the ordinance can limit recovery to those cases in which the city elects at the beginning of the action to recover its own fees.⁹¹ With these measures in place, good evidence and a well-executed strategy, a city should expect to prevail in virtually all code enforcement cases and be well-positioned to recover its costs and fees.

B. Recovery By Liens And Special Assessments

Government code section 53069.4(d) authorizes a city to collect fines and penalties “pursuant to the procedures set forth in its ordinance.” As such, cities are authorized to develop procedures to place a lien or special assessment on the property, when the recipient of the citation fails to pay enforcement costs or imposed fines and penalties.⁹² Cities may generally recover the lien by foreclosure, and the process of placing, recording and notification for the lien are recoverable.⁹³ The costs to foreclose the lien are also recoverable where authorized by ordinance, including attorneys’ fees incurred in the foreclosure litigation.⁹⁴

A nuisance abatement lien has the same effect as a judgment lien,⁹⁵ which is subject to all prior interests, including prior mortgages and prior judgment liens, but senior to subsequent liens except purchase money mortgages.⁹⁶ This means earlier-recorded liens are paid first, including prior recorded mortgages.

Special assessments may be used instead of abatement liens.⁹⁷ A special assessment is added to the property in the same manner as property taxes.⁹⁸ Most importantly, it has priority over all private liens, regardless of the time of their creation, including the prior recorded mortgages.⁹⁹ This advantage can be crucial to a city’s ability to recover costs. If not paid within three years, a city or the county may foreclose on non-residential and vacant residential property.¹⁰⁰

⁹⁰ Gov. Code § 38773.5(b); See also *Raisch v. Meyers* (1946) 27 Cal.2d 773, 778–79 [recognizing lien created by ordinance for street improvements]; *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830 [upholding ordinance creating lien for unpaid regulatory inspection fee for apartment units].

⁹¹ Gov. Code § 38773.5(b).

⁹² Gov. Code §§ 38773, 38773.1, 38773.5(a).

⁹³ Gov. Code § 38773.1(c)(3), (4).

⁹⁴ See *City of Santa Paula v. Narula* (2003) 114 Cal.App.4th 485, 492–93 [city was authorized to collect attorneys’ fees in litigation to foreclose a lien to collect its administrative costs and penalties].

⁹⁵ Gov. Code § 38773.1(c).

⁹⁶ *Isaac v. City of Los Angeles* (1998) 66 Cal.App.4th 586, 601; Miller & Starr, Cal. Real Estate (3d 2009) § 11:127.

⁹⁷ Gov. Code § 38773.5.

⁹⁸ Gov. Code § 38773.5(c).

⁹⁹ Rev. & Tax. Code §§ 2192.1, 3712; Gov. Code § 53935.

¹⁰⁰ Gov. Code § 38773.5(d).

Prior to recording a lien or special assessment against a property, due process must be afforded. That means providing notice and the opportunity to be heard. Notice of the lien must be served upon the property owner, as identified in the latest county assessment roll, prior to recordation. The notice must indicate the city's plans to record a lien or special assessment. For a special assessment, the notice must also state, "that property subject to a special assessment may be sold after three (3) years by the tax collector for unpaid delinquent assessments."¹⁰¹ The notice might also specify the right to an appeal, referring to the applicable municipal code section. In the case of an assessment or lien on property subject to a foreclosure or a notice of default, the city council must adopt the amount of the costs at a public hearing prior to imposition of the lien or assessment.¹⁰²

After notice is properly provided, and in the event an appeal is not properly made or is made, but is denied after a hearing, the city records a notice of lien with the county recorder. The lien form must contain the amount of the lien, name of the city, date of the abatement order, street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.¹⁰³ A special assessment is placed on the property by the County Tax Collector and a form with the same information as a lien should be sent to that agency, as well as recorded against the property.

V. Conclusion

There are numerous code enforcement options available to cities, each providing unique benefits and remedies that can be tailored to effectively address individual circumstances. Understanding the available approaches can enable cities to develop comprehensive code enforcement methods to quickly and efficiently handle cases. While the subject of this paper did not include criminal enforcement, this is yet another tool in an effective code enforcement toolbox. Moreover, even cities with the most limited financial and personnel resources can effectively protect and beautify their communities by ensuring their ordinances and legal strategies maximize cost recovery options. State law affords cities the right to recover all costs involved in virtually any type of code enforcement action. However, it is up to each city to adopt proper cost recovery ordinances and utilize them effectively. If this is done, code enforcement can be an extremely useful and virtually cost neutral program.

¹⁰¹ Gov. Code § 28773.5(c).

¹⁰² Civil Code § 2929.45(b).

¹⁰³ Gov. Code § 38773.1(c)(1).

HEALTH & SAFETY CODE § 17980.7 – A HOW-TO MANUAL FOR DEALING WITH DISTRESSED PROPERTIES

By: Kevin Randolph and Nicholas Firetag

Approximately twenty-five years ago, the California Legislature recognized that cities and counties lacked the tools to properly deal with substandard properties. Homes, apartment complexes, and commercial buildings would sit vacant for months and even years. The owners and lenders refused to take any steps to repair the damage, despite receiving multiple notices. Cities and counties were left to use public resources to address the negative outcomes of leaving properties in a vacant and substandard condition, such as removing trespassers, painting over graffiti, and cleaning up abandoned trash and debris.

The Legislature also recognized that general law receivers lacked the authority to effectively deal with these substandard properties. As one lawmaker noted, “Substandard properties which are heavily encumbered, or which do not generate income because they are vacant, are not good candidates for receiverships as there are typically little resources from which the receiver can get paid for services and costs incurred.”¹ Under the traditional first-in-time rule, a receiver could only rehabilitate properties in cases where there was sufficient equity to cover all outstanding recorded liens, the rehabilitation costs, and the receiver’s fees. Few, if any, substandard properties had any equity, much less enough to cover the rehabilitation work.

Finally, the Legislature recognized that cities and counties were left without a legitimate remedy to recover their attorney fees, administrative fees and costs. In some cases, these fees were substantial.

In 1990, the Legislature passed Health & Safety Code section 17980.7 in order “to allow for viable receiverships to exist and to rehabilitate substandard and vacant buildings.”² The receiver’s primary goal is “to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building.”³ In 2014, the court of appeal affirmed the right of a receiver to sell the properties free and clear of any and all liens, which resolved the issue of

¹ California Bill Analysis, Assembly Floor, May 3, 2001, Hubart Bower.

² *Id.*

³ *Health & Safety Code* § 17980.7(c)(2).

dealing with heavily encumbered properties.⁴ This has resulted in a powerful new tool to clean up substandard properties, eliminate blight, and restore property values.

The purpose of this article is to provide local enforcement agencies with a how-to guide for creating a viable receivership program in order to address the problems associated with substandard properties. First, we describe the basic steps involved in identifying properties that are viable receivership candidates. Second, we outline the steps that must be taken before filing a petition to appoint a receiver. Third, we discuss the steps that a receiver takes once appointed. Fourth, we discuss how the local enforcement agency and receiver recover their fees and costs.

I. Identifying Properties That Are Viable Candidates For A Receivership Case.

The first step for a city (hereinafter, the “Local Enforcement Agency”) is to identify those properties where “the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered.”⁵ This statute falls within a larger statutory scheme known as the State Housing Law, which can be found at Health & Safety Code section 17910 et seq. The State Housing Law provides a specific enforcement procedure that applies to any buildings where people congregate.

Under Health & Safety Code section 17920.3, a building is deemed substandard if any of the following conditions are such “that endangers the life, limb, health, property, safety, or welfare of the public or occupants”:

- (a) Inadequate sanitation, including the “lack of or improper” toilets, bathtub/shower, kitchen sink, hot and cold running water to plumbing fixtures, inadequate heating, ventilation, natural light, proper room and space dimensions, electrical lighting, dampness of habitable rooms, rodent/insect infestation, general dilapidation or improper maintenance, sewage disposal system, or garbage storage.

⁴ *City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 682.

⁵ *Health & Safety Code* § 17980.6.

- (b) Structural hazards, including deteriorated foundation, defective or deteriorated flooring, vertical supports that are split or insufficient to carry imposed loads, deteriorated ceilings or roofs, or deteriorated fireplaces.
- (c) Any nuisance.
- (d) Improper wiring.
- (e) Improper plumbing.
- (f) Improper mechanical equipment.
- (g) Faulty weather protection, including loose plaster, holes in exterior walls, lack of paint on exterior walls, and broken/rotted roofs.
- (h) Any building or portion of a building that the Chief of the Fire Department or his/her deputy determine is likely to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of a fire or explosion.
- (i) The accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, stagnant water, combustible materials, or similar material or conditions that constitute fire, health, or safety hazards.
- (j) All buildings that are occupied for living, sleeping, cooking, or dining purposes that were not designed or intended to be used for those occupancies.

There is no magic formula for determining what degree, tenure, or combination of violations are sufficient to support the appointment of a receiver. A good rule of thumb, however, is that more serious violations support the quick appointment of a receiver, while less serious violations require a longer period to support a receiver's appointment.

a. Different Types of Receivership Cases.

The standard type of receivership case under Section 17980.7 involves single-family homes, multi-family residential, and commercial properties that have major structural or life safety

issues, such as deteriorated roofs, missing plumbing, mold, etc. These are not, however, the only type of cases that fall under Section 17980.7. Below are three examples of cases involving issues that create a danger to the public and that fall under the general nuisance statutes, Civil Code sections 3479 and 3480, and are therefore “substandard” under Health & Safety Code section 17920.3(c).

In the first case, the Local Enforcement Agency was informed that the owner’s son was building pipe bombs in a residential neighborhood. After the occupants were removed, the Local Enforcement Agency immediately sought, and the court approved, the appointment of a receiver.

In two related cases, the Local Enforcement Agency secured judgments against two medical marijuana facilities that were operating in violation of the Local Enforcement Agency’s land use ordinances. In both cases, the defendants continued to operate despite the judgments. The city filed contempt proceedings and sought the appointment of a receiver as a remedy (along with statutory fees and jail time). The court granted the Local Enforcement Agency’s request in both cases and the receiver took over and shut down the businesses.⁶

In another example of a non-traditional receivership, the Local Enforcement Agency obtained a judgment against a homeowner for allowing her home and a neighboring property she owned to be used for drug sales and use. When the homeowner violated the terms of the judgment, the court appointed a receiver, who boarded the property and ended the illegal use.⁷

II. Steps That A Local Enforcement Agency Must Take Before Filing A Petition To Appoint A Receiver.

Once a Local Enforcement Agency identifies an appropriate candidate for a receivership case, it must then take steps to put the owner and all other parties with a recorded interest in the property on notice of the substandard conditions.⁸ To this end, the Local Enforcement Agency should obtain a litigation guarantee in order to make sure that everyone with an interest in the property

⁶ The Receiver was appointed under *Health & Safety Code* §§ 11575, 17980.7 and *Code of Civil Procedure* §§ 128(a), 1209(a)(5), 1211(a), and 1218(a).

⁷ The Receiver was appointed under *Health & Safety Code* §§ 11364, 11378, 11550, 11571, 11573, 11573.5(f)(2), 17980.7, *Code of Civil Procedure* §§ 128(a), 1209(a)(5), 1211(a), and 1218(a), and Riverside Municipal Code § 1.01.110(f).

⁸ *Health & Safety Code* § 17980.6.

receives notice of violation. We strongly recommend using the same title insurance provider for the litigation guarantee that the receiver intends on using to obtain the lender's policy for the rehabilitation loan (see *supra*, Section III) and the owner's title policy if and when the property is sold (see *supra*, Section III). Since title companies are often hesitant to underwrite receivership-related title policies, it is important that the receiver have an established relationship with a preferred provider. It is for this reason that many experienced receivers will work with only one title insurance carrier on their receivership cases. This allows for continuity of analysis and responsibility for the litigation guarantee, lender's policy, and owner's title insurance policy.

There are two prerequisites that a Local Enforcement Agency must satisfy before filing a petition to appoint a receiver. First, it must post notice of the substandard conditions on the property and mail copies (via first-class mail) to the owner and any lienholders.⁹ The owner and lienholders must be given a "reasonable amount of time" to comply.¹⁰ Sufficient forms of notice include abatement notices and administrative hearing notices. The notices do not have to state that a receiver may be appointed if no action is taken.¹¹

Next, if the owner and lienholders refuse to correct the substandard conditions, the Local Enforcement Agency must serve a separate three-day notice advising that a receiver may be appointed.¹² A proof of service of the three-day notice must be included in the petition to appoint a receiver, although there is no specific form or statutory language that must be used; a simple statement that the Local Enforcement Agency intends to file a petition to appoint a receiver under Health & Safety Code section 17980.7 is sufficient. We recommend that the Local Enforcement Agency send the notice via regular mail and certified mail so as to document receipt.

Once the three-day period has expired, the Local Enforcement Agency may file the petition to appoint a receiver. Section 17980.7 specifically refers to a "petition" to appoint a receiver as

⁹ *Health & Safety Code* § 17980.6; see also *City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 919-21. Alternatively, the notice may be personally served on the owner and lienholders. In discussing Section 17980.6, the California Supreme Court held, "Where, as here, an enforcement agency personally serves a property owner with a notice to repair, the agency's failure to conspicuously post the same notice provides the owner no basis for relief." *City of Santa Monica v. Gonzalez*, 43 Cal.4th at 925.

¹⁰ *Health & Safety Code* § 17980.7.

¹¹ *City of Santa Monica v. Gonzalez*, 43 Cal.4th at 921.

¹² *Health & Safety Code* § 17980.7(c).

opposed to a complaint that merely seeks the remedy of appointing a receiver at the conclusion of the case. That said, we recommend that the Local Enforcement Agency file both a complaint for nuisance abatement and a petition to appoint a receiver simultaneously. By doing so, the Local Enforcement Agency has the right to proceed with a nuisance abatement complaint even if the court does not find that the facts justify the immediate appointment of a receiver. If the Local Enforcement Agency prevails at trial, it can then seek the appointment of a receiver to oversee enforcement of the judgment. Also, this gives the Local Enforcement Agency additional leverage to compel voluntary compliance by the owner and lienholders.

A typical petition to appoint a receiver will include the following: (1) the petition itself asking for the appointment of a receiver; (2) a memorandum of points and authorities regarding the court's authority to appoint a receiver; (3) a declaration (or several) from the code enforcement officers and/or police officers with first-hand knowledge of the substandard conditions; (4) a declaration from the Local Enforcement Agency's attorney who sent out the three-day notice and who can state under oath that all parties with a recorded interest in the property were named in the petition; (5) a declaration from the receiver regarding his or her experience dealing with substandard properties;¹³ and (6) a proposed order appointing a receiver. The proposed receiver should ensure that the receivership order includes all powers that will be required throughout the receivership, as the receiver is precluded from performing any tasks outside of the receivership order. See Exhibit 1 for a sample order.

The primary duties of the receiver are to take possession of the substandard property, manage the substandard property (i.e., pay taxes, insurance, etc.), secure a cost estimate and rehabilitation plan to correct the violations, enter into a contract with a general contractor to rehabilitate the property, collect all rents and income from the property (if any), borrow funds to complete the rehabilitation work if there are insufficient funds obtained from renting the property, and then sell the property in order to pay for the costs associated with the receivership case.¹⁴ This process will be described in more detail below.

¹³ The statute specifically requires that the receiver nominee be someone who "has demonstrated to the court his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building." *Health & Safety Code* § 17980.7(c)(2).

¹⁴ *Health & Safety Code* § 17980.7(c)(4).

It is difficult for an owner or lienholder to obtain an order discharging a receiver once he or she is appointed. As the California Supreme Court noted: “The rule is well established that the appointment of a receiver rests largely in the discretion of the trial court, and that its action in appointing a receiver will not be disturbed by an appellate court in the absence of a showing of abuse of discretion.”¹⁵ In addition, should the owner or lienholder decide to appeal the court’s appointment, they must post a bond in order to stay the receivership case.¹⁶ Therefore, the Local Enforcement Agency can feel fairly secure that the property will be rehabilitated once the receiver is appointed.

III. Steps That A Receiver Takes Once Appointed.

Once the receiver is appointed, the Local Enforcement Agency’s work is primarily completed. The receiver is obligated to develop a rehabilitation plan, secure a financing plan to pay for the rehabilitation work, and sell the property if the owner or lienholders refuse to pay for the costs associated with the receivership case. The Local Enforcement Agency, as a party to the case, will continue to receive notice of the various hearings and motions the receiver may bring during the course of the receivership and will have the opportunity to support or object to those matters. But the majority of the legal work will be handled by the receiver and his or her legal team during the course of the receivership.

In the following section we provide an overview of the steps typically taken by the receiver to rehabilitate a substandard property. First, we discuss the receiver’s role in relation to the other parties in the case. Second, we discuss the various options that a receiver has to rehabilitate a substandard property.

a. Background Regarding Receivers.

A receiver is a ministerial officer of the court who is required to act for the benefit of all who may have an interest in the receivership property.¹⁷ A receiver may be an individual or a for-profit corporation, such as a law firm.¹⁸

¹⁵ *Goes v. Perry* (1941) 18 Cal.2d 373, 381.

¹⁶ *Code of Civil Procedure* § 917.5; see also *City of Riverside v. Horspool*, 223 Cal.App.4th at 682.

¹⁷ *Pacific Independent v. Workman’s Compensation Appeals Board* (1968) 258 Cal.App.2d 35.

A receiver is prohibited from entering into contracts, agreements, arrangements, or understandings concerning the conduct of the receivership prior to his or her appointment.¹⁹

A receiver does have the right, and likely an obligation, to inspect the property prior to being appointed in order to make sure that the project is financially viable.²⁰ For instance, a property that will require \$100,000 in repairs and will sell for only \$90,000 is not a viable candidate for a receivership. In those cases, the Local Enforcement Agency may consider other options, such as seeking a demolition permit and then recovering those fees by adding the costs into the tax roll.

b. The Receiver's Rehabilitation Plan.

Once appointed, the receiver completes an inventory of the personal property left in the building and begins the process of developing a rehabilitation plan to correct the substandard conditions identified by the Local Enforcement Agency. In addition, a receivership order should also authorize the receiver to remediate any substandard conditions that are not initially noted by the Local Enforcement Agency but are discovered after the receiver has completed a thorough review of the property. Section 17980.7 obligates the receiver to complete a “satisfactory rehabilitation of the building.”²¹ From our perspective, this obligation goes beyond doing the bare minimum. Moreover, if the property is to be sold to pay for receivership and rehabilitation expenses, it must compare favorably with other properties on the market. We prefer to include a phrase in our receivership orders that requires the receiver to render the property as “decent, safe, sanitary, and marketable”. But, we are aware of cases where the owner or lienholder have asserted the receiver is limited to remediating only those matters specified in the Local Enforcement Agency’s notices. For the most part, the courts have not supported this argument. Nonetheless, it remains a possible point of contention and is an additional compelling reason for

¹⁸ Financial Code § 106 previously defined “trust business” as the “business of acting as an executor, administrator... receiver... under the appointment of any court or by authority of any law of this or any other state or the United States, or as a trustee for any purpose permitted by law.” Under Financial Code § 1500, the only people who could serve as a receiver for trust business were individuals or banks. The only exception was for non-profit corporations. See Financial Code § 1501.2. In 2013, the Legislature amended the Financial Code by repealing Sections 106 and 1500 and replacing them with Sections 115 and 1550, which were nearly identical. The Legislature also repealed § 1501.2 and replaced it with § 1553, which now specifically allows for-profit corporations to serve as receivers.

¹⁹ California Rules of Court, Rule 3.1179.

²⁰ A Local Enforcement Agency will typically perform a site inspection through either voluntary compliance by the owner or through an inspection warrant. See *Code of Civil Procedure* § 1822.50 et seq.

²¹ *Health & Safety Code* § 17980.7(c)(2).

the Local Enforcement Agency to include as comprehensive a list of substandard conditions as possible in its notices.

In cases where the substandard property is occupied, the receiver will have to determine how to deal with the occupants. If the owner of the property is the sole occupant, then the receiver will often simply evict the owner. When the occupants are tenants, however, the statute has a specific procedure for addressing the situation. Under Health & Safety Code section 17980.7(c)(6), the receiver has authority to relocate the tenants and charge the costs to the receivership estate. Relocation benefits cannot be given to a tenant if the “tenant has been substantially responsible for causing or substantially contributing to the substandard conditions.”²²

There are three typical ways for a receiver to rehabilitate a substandard property: (1) secure private financing to fund the rehabilitation work; (2) secure private financing to demolish the building and sell the vacant land; or (3) sell the property to an investment buyer who is willing to purchase the property in its as-is condition and to self-fund and complete the rehabilitation work under the receiver’s supervision.

The first option allows the receiver to have direct control over the rehabilitation work and is the preferred approach for a number of reasons, including that it preserves the Community’s housing stock and avoids creating a “hole” in a neighborhood where the homes are closely situated. There are times, however, when that option is not available due to financial constraints and either demolition or an investor-sale must be considered.

There is statutory support for all three options. The right to secure private financing is authorized by Section 17980.7(c)(4)(G). The right to demolish the building and sell the vacant land was upheld by the California Supreme Court in 2008.²³ Finally, the receiver’s ability to sell the property to an investment buyer was recently settled in *City of Riverside v. Horspool*.²⁴

In all three options, the ability of a receiver to sell the property free and clear of all liens and encumbrances is critical. This right was also recently upheld in the *Horspool* case, where the

²² *Health & Safety Code* § 17980.7(d)(3)(v)(B)(ii).

²³ *City of Santa Monica v. Gonzalez*, 43 Cal.4th at 925.

²⁴ 223 Cal.App.4th 670.

court ruled: “A court of equity has the power to order the sale of property free and clear of liens and encumbrances.”²⁵

IV. How The Local Enforcement Agency And The Receiver Recover Their Fees and Costs.

Once the property is rehabilitated, the owner and lienholders are given the opportunity to pay off the receiver’s fees and expenses and redeem the property. However, that rarely occurs and usually the property must be sold to pay for receivership expenses. The receiver then becomes responsible for distributing the sales proceeds. No court has directly addressed the issue of the order of priority for distributing sales proceeds and other funds held by the receiver. But since Section 17980.7(c)(5) makes reference to receiver’s fees in relation to foreclosure sales, we apply Code of Civil Procedure Section 701.810 when preparing distribution recommendations to the court. Under Civil Code of Procedure Section 701.810, the basic distribution is as follows: (1) property taxes or IRS liens; (2) the receiver and its lender who funded the rehabilitation work; (3) the Local Enforcement Agency (see below regarding issues with priority); (4) liens in order of priority, such as mortgages and/or judgment liens; and (5) the property owner. The term “property owner” includes the record owner as well as “any successor in interest who had actual or constructive knowledge of the notice, order, and prosecution.”²⁶ This would include lenders who foreclose during the receivership case.

It is settled that the receiver and the receiver’s lender who funded the rehabilitation work are entitled to payment and that these payments have priority over all pre-existing lienholders.²⁷ The receiver also has the right to seek reimbursement from the owner [and the lienholders directly] if there are insufficient assets in the receivership estate to pay for the receiver’s fees and costs in full.²⁸

The Local Enforcement Agency likewise has clear statutory authority to receive an award for all reasonable fees and costs (including administrative fines and penalties) incurred against the

²⁵ *Id.* at 684 (citing to *Spreckels v. Spreckels Sugar Corp.* (2d Cir.1935) 79 F.2d 332, 334; *Miners’ Bank of Wilkes-Barre v. Acker* (3d Cir.1933) 66 F.2d 850, 853).

²⁶ *Health & Safety Code* § 17980.7(f).

²⁷ *Ephraim v. Pacific Bank* (1900) 129 Cal. 589, 592; *Venza v. Venza* (1951) 101 Cal.App.2d 678, 680; *People v. Riverside University* (1973) 35 Cal.App.3d 572, 587.

²⁸ *Baldwin v. Baldwin* (1947) 82 Cal.App.2d 851, 856; *City of Riverside v. Horspool*, 223 Cal.App.4th at 684.

“property owner” (as defined above).²⁹ Health & Safety Code section 17980.7(c) states in pertinent part: “The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision.” Section (c)(11) states: “The prevailing party in an action *pursuant to this section* shall be entitled to reasonable attorney’s fees and court costs as may be fixed by the court.” (Emphasis added.) We read this to mean that if the Local Enforcement Agency prevails on its petition to appoint a receiver, then it is entitled to recover its attorney’s fees and costs (regardless of what happens in the underlying complaint).

There is a question, however, as to whether the Local Enforcement Agency has priority rights over the other pre-existing lienholders. In other words, who gets paid first out of the proceedings if the property is sold? One argument in favor of the Local Enforcement Agency having priority over the pre-existing lienholders is that there is no distinction in the statute between the receiver’s right to recover fees and costs and the Local Enforcement Agency’s right to recover its fees and costs. Therefore, since the receiver has priority status, the Local Enforcement Agency should likewise have priority status. Additionally, the Local Enforcement Agency could argue that it has an equitable right to priority status since it was forced to incur fees and costs based on the owner and the lienholder’s failure to correct the substandard conditions. At this point, no one has directly challenged the Local Enforcement Agency’s priority right. Regardless, the Local Enforcement Agency is still entitled to a judgment against the “property owner”, which can be enforced the same way as any other judgment.

If the Local Enforcement Agency fails to prevail on its petition to appoint a receiver (i.e., the court finds that the conditions are not sufficient to declare the property as substandard), the owner and/or lienholders could seek to recover the fees and costs expended defending against the petition only.³⁰ It is unclear how this comports with Health & Safety Code section 17984, which specifically precludes the Local Enforcement Agency from being held “liable for costs in any action or proceeding that the enforcement agency may commence pursuant to this article.” No court has directly addressed this issue.

²⁹ *Health & Safety Code* §§ 17980.7(c)(11), (d)(1).

³⁰ *Health & Safety Code* §§ 17980.7(c)(11).

In 2006, the court of appeal addressed the question of whether a property owner could recover its fees and costs after prevailing in an underlying complaint for nuisance abatement even though the city never filed a separate petition to appoint a receiver.³¹ In that case, the city filed a complaint for nuisance abatement only and sought to recover its fees and costs under Section 17980.7(d)(1), which does not have a reciprocal attorney's fee provision. The city requested that a receiver be appointed in its prayer but did not seek the appointment by a separate petition. The defendant prevailed at trial on the basis that the property was not deemed to be substandard and the trial court awarded the defendant \$128,200 in attorney's fees and costs under Section 17980.7(c)(11). The city appealed.

The court of appeal reversed the attorneys' fees award, holding that the trial court lacked the authority to award the fees on the basis that there was no separate petition by the city to have a receiver appointed.³² The court reasoned as follows: "In the present case, there were no receivership proceedings, because the court determined the building was not substandard. Since there were no receivership proceedings, no party prevailed in such proceedings."³³ The court noted that the city was also protected by Section 17984 discussed, supra.

V. Conclusion.

Health & Safety Code section 17980.7 is a powerful tool for Local Enforcement Agencies. It provides a direct, court-supervised process for removing blight, abating dangerous conditions, and holding the parties primarily responsible for the problem financially accountable.

³¹ *City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381.

³² *Id.* at 399-403.

³³ *Id.* at 402.



Kevin Randolph is a shareholder at Gresham Savage. Mr. Randolph is a member of the California Receivers Forum and has served as a court-appointed receiver or in a similar capacity in over fifty cases.



Nicholas Firetag is a shareholder at Gresham Savage. Mr. Firetag has served as the Receiver's attorney. Mr. Firetag was the lead attorney in the published opinion entitled, *City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 167 Cal.Rptr.3d 440.

EXHIBIT 1

Draft Receivership Order

CITY OF *****,	)	CASE NO.
)	
Petitioner,	)	[PROPOSED] ORDER APPOINTING
	)	A RECEIVER PURSUANT TO
v.	)	HEALTH AND SAFETY CODE
	)	SECTION 17980.7
*****;)	
)	
and DOES 1 through 50, Inclusive,	)	[Filed Concurrently with:
	)	1. Complaint for Nuisance Abatement
	)	and Appointment of a Receiver;
Respondents.	)	2. Notice of Motion and Motion;
	)	3. Memorandum of Points and
	)	Authorities and Petition;
	)	4. Declaration of [Code Officer];
	)	6. Declaration of [City Attorney];
	)	7. Declaration of [Receiver]; and
_____	)	8. Request for Judicial Notice.]

[PROPOSED] ORDER

Petitioner City of ***** (the “City”) filed a motion with the Court for the appointment of a receiver (the “Motion”) over real property described in the City’s moving papers and commonly known as ***** (“Subject Property”). The Subject Property is currently owned by ***** and is subject to various claims and other interests held or administered by the other named respondents (***** and the other named respondents, collectively “Respondents”). The Motion was made pursuant to *California Code of Civil Procedure* section 568 and *Health and Safety Code* section 17980.7(c). The Court, having jurisdiction over the subject matter of the Motion and having considered the evidence and the memorandum of points and authorities submitted in support of the Motion, finds and orders as follows:

A. FINDINGS OF FACT

1. The Subject Property is substandard as defined under *Health & Safety Code* § 17920.3 and is a public nuisance. The Subject Property has been and is now maintained in a manner that violates various provisions of the ***** Municipal Code.

2. The Subject Property's violations are so extensive and of such a nature that the health and safety of the general public is substantially endangered.

3. The City, as a local enforcement agency, properly issued a notice and order to repair and an abatement order to Respondents.

4. Respondents failed to comply with the City's notice and order to repair and abatement order within a reasonable time after its issuance. Respondents have been afforded a reasonable opportunity to correct the conditions cited in the City's notice and order.

5. Respondents have been afforded all of the procedural due process rights guaranteed by the California Constitution and the United States Constitution, including receipt of the notice of violation and an adequate and reasonable period of time to comply with the City's notice and order.

6. The Subject Property's substandard conditions will likely persist unless the Court appoints a receiver to take possession of the Subject Property and undertake its rehabilitation.

7. *Health and Safety Code* section 17980.7(c) and the Court's inherent equitable power authorize the Court to appoint a receiver to take possession of the Subject Property and undertake its rehabilitation.

8. Respondents were properly noticed and served with the Motion and were provided a reasonable opportunity to be heard in connection with the Motion.

9. *****, as the City's receiver-nominee, has demonstrated the capacity and expertise to undertake and supervise the Subject Property's rehabilitation.

B. APPOINTMENT OF RECEIVER

***** (the "Receiver") is appointed receiver of the Subject Property and given those powers granted under *Code of Civil Procedure* section 568, *Health and Safety Code* section 17980.7(c)(4), this Order, and further orders of the Court. Before performing any duties, the Receiver will: (1) execute and file with the Court a receiver's oath; and (2) file with the Court the bond required by *Code of Civil Procedure* section 567(b), in the amount of \$_____.

C. RECEIVER'S COMPENSATION

The Receiver's representative will be compensated for his services in the amount of \$*** per hour, which will be payable to the Receiver.

The Receiver may employ a management company to assist with the Subject Property's management and rehabilitation and pay this company an amount not to exceed \$*** per hour for property management services and eight percent (8%) of the Court-approved rehabilitation cost for rehabilitation management services.

With the Court's approval, the Receiver will be entitled to interim payments as the receivership progresses. The Receiver's compensation will be subject to the Court's review and approval. The Receiver must reasonably document the time spent by the Receiver's representative and his attorneys and paralegals on receivership activities and the Receiver's costs and expenses.

The Receiver may record a lien ("Receiver's Lien") against the Subject Property to secure the repayment of the Receiver's compensation, costs, and expenses, in accord with *California Health and Safety Code* section 17980.7(c)(4)(G). The Receiver's Lien will be a lien on the Subject Property prior and superior to all pre-existing private liens and encumbrances.

D. RECEIVER'S IMMUNITIES

The Receiver and the Receiver's representative will be immune from any personal liability to the furthest extent allowed under *California Code of Civil Procedure* section 568 et seq., *California Health and Safety Code* section 17980.7(c), and other applicable law, including from liability for any of the following:

- a. Obligations incurred in connection with receivership activities or on behalf of the receivership estate.
- b. Obligations relating to the Subject Property that were incurred prior to the Receiver's appointment.
- c. Claims, actions, damages, fines, liabilities, costs, and/or expenses arising out of or resulting from the presence or release of any Hazardous Substances (defined below) at the Subject Property. Hazardous Substances include any substance, material, or waste that is

included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” or words of similar import in any federal, state, or local law, whether common law, statute, ordinance, rule, regulation, or judicial or administrative decision.

d. Obligations arising under or related to any Receiver’s Certificate of Indebtedness (defined below) and/or deed of trust issued in connection with the Subject Property.

E. RECEIVER’S SPECIFIC POWERS

In addition to the plenary powers described in Section B of this Order, the Receiver is given the following specific powers and duties:

1. To take full and complete possession and control of the Subject Property, including the tangible and intangible personal property located in or about the Subject Property or used in connection with the Subject Property.

2. To manage the Subject Property and pay operating expenses, taxes, insurance, utilities, and general maintenance.

3. To collect all rents and income from the Subject Property, to collect any debts associated with the Subject Property, to invest all funds on hand, and to use these funds to pay for the costs of operating, managing, maintaining, or rehabilitating the Subject Property.

4. To investigate the Subject Property’s condition and expected post-rehabilitation market value and determine whether it is economically and practically feasible to rehabilitate the Subject Property or whether demolition or some other method of abating the Subject Property’s deficiencies and violations is more appropriate.

5. To prepare a plan (the “Receivership Plan”) to either: (a) rehabilitate the Subject Property to correct all of the Subject Property’s currently identified deficiencies and violations and all deficiencies and violations which may be subsequently discovered during the course of the Receiver’s inspections and render the Subject Property as decent, safe, sanitary, and marketable housing; or (b) address and remediate the Subject Property’s deficiencies and violations through demolition or by some other means which is economically and practicably feasible.

6. To obtain a proposal (the “Receivership Bid”) from an appropriately licensed California contractor or other qualified person or entity to perform the work specified in the Receivership Plan.

7. To develop a plan (the “Financing Plan”) for financing the activities set forth in the Receivership Plan and the Receivership Bid and for financing receivership costs and expenses, including the Receiver’s compensation, fees, and expenses.

8. To submit the Receivership Plan, the Receivership Bid, and the Financing Plan to the Court for approval.

9. Subject to the Court’s approval of the Financing Plan, to borrow funds from public or private entities and to issue and record Receiver’s Certificates of Indebtedness and deeds of trust to evidence and secure repayment of the funds borrowed by the Receiver. Each Receiver’s Certificate and/or deed of trust will be a lien on the Subject Property prior and superior to all pre-existing private liens and encumbrances, including the debt evidenced by the Receiver’s Lien(s), and will be due and payable as provided in the Receiver’s Certificate(s).

10. To enter into contracts for labor and services required in connection with the Receiver’s activities, including but not limited to the following: (a) any maintenance and repair companies or personnel; (b) any licensed engineer or other building professional to inspect and evaluate the Subject Property’s condition and rehabilitation potential; (c) any bank, lending institution, public entity, or private lender; (d) any licensed architect or other design professional to furnish plans and specifications for the Subject Property’s rehabilitation; (e) any licensed general contractor, subcontractor, supplier or manufacturer to provide labor, services, goods, materials or equipment needed to manage, maintain, or rehabilitate the Subject Property; (f) any property or construction manager; (g) any escrow or title company; (h) any real estate appraiser; (i) any accountant; (j) any real estate agent and/or broker; and, (k) any locksmith or security company to obtain access to or to secure the Subject Property.

11. To apply for permits and other governmental approvals as necessary to undertake and complete the Receivership Plan.

12. To place long-term owner-occupancy and income restrictions on the Subject Property if the restrictions are required by a private lender or public financing source.

13. To temporarily or permanently relocate the Subject Property's occupants (if any) if necessary to implement the Receivership Plan, as determined by the Receiver in its sole and absolute discretion. All relocation costs will be receivership expenses.

14. To prepare and distribute periodic reports directly to all parties and their legal counsel (if any). The Receiver may, but is not obligated to, provide periodic reports to non-parties or to persons or entities whose default has been entered in this action. The reports must include the total amount of any rent received, the nature and amount of any operating or repair contracts, the total amount of payments made to repair and operate the Subject Property, any other payments made, and the progress of the repairs to the Subject Property.

15. Within thirty (30) calendar days of the effective date of this Order, to file with the Court an inventory containing a general list of all personal property of which the Receiver has taken possession and to promptly file a supplementary inventory of any subsequently-obtained property.

16. To render interim accountings and reports on a quarterly basis to the Court if requested by the Court and to render a final accounting to the Court at the conclusion of the receivership.

17. To declare as abandoned any personal property remaining at the Subject Property upon the Receiver's taking possession of the Subject Property and to sell that property, without liability and without warranty, and apply the sale proceeds to receivership expenses.

18. To apply on an *ex parte* basis to the Court for any of the following: (a) approval of the Receiver's requests for interim payments; (b) approval of the Receivership Plan, the Receivership Bid, and the Financing Plan; (c) approval of the Receiver's borrowings and issuance of Certificates of Indebtedness; (d) approval of the Subject Property's sale; (e) approval of the distribution of net proceeds from the Subject Property's sale; (f) orders to enable the Receiver to properly perform his duties or to address unforeseen circumstances that arise; and (g) for further instructions.

F. RECEIVER'S RIGHT TO SELL THE SUBJECT PROPERTY

The Receiver may apply to the Court for approval (the "Sale Motion") to sell the Subject Property in the condition (vacant land, AS-IS, or fully rehabilitated) described in the Receivership Plan (the "Proposed Condition at Sale"), free and clear of all pre-existing liens and encumbrances, except for the lien of unpaid real property, state and federal taxes. The Receiver may sell the Subject Property pursuant to *Code of Civil Procedure* section 568.5 or, alternately, by open market sale or such other method as the Receiver determines to be in the receivership estate's best interests, subject to the Court's confirmation. If the Subject Property is sold on the open market, the Receiver may enter into a listing agreement with a qualified real estate brokerage firm to market the Subject Property on the Receiver's behalf. The Receiver may pay a sales commission not to exceed six percent (6%) of the Subject Property's gross sales price. The Receiver may enter into a purchase and sale agreement with any buyer who makes an offer to purchase the Subject Property in its Proposed Condition at Sale for no less than ninety percent (90%) of its appraised fair market value in the Proposed Condition at Sale, on terms and conditions satisfactory to the Receiver. However, any purchase and sale agreement which is entered into before the Court's approval of the Sale Motion must be made contingent on the Court's subsequent approval of the Sale Motion. If there is more than one offer to purchase the Subject Property, the Receiver may select the offeror whom the Receiver deems to be most qualified to complete the purchase and fulfill the buyer's obligations (if any) with respect to the Subject Property's rehabilitation and who offers no less than ninety (90%) of the Subject Property's appraised value. The Receiver may pay, as receivership expenses, reasonable and customary escrow and title charges.

The Receiver will distribute the proceeds generated from the Subject Property's sale in accordance with *California Code of Civil Procedure* section 701.810, subject to the Court's confirmation.

The Receiver's fees, costs, and expenses will be paid from the proceeds of the Subject Property's sale, subject only to any claims which enjoy a statutory priority senior to the Receiver's. The Receiver's claim for fees, costs, and expenses will be senior and prior to any

claim by the Respondents. If the net proceeds of the Subject Property's sale are insufficient to pay the entirety of the Receiver's fees, costs and expenses, including those incurred during any appeal as provided in Section C of this Order, the Respondents will be liable for the payment of any shortfall. The foregoing is in addition to any relief available under *Health and Safety Code* section 17980.7(c)(15). If the Respondents consist of more than one person or entity, then each person and entity constituting the Respondents will be jointly and severally liable to the Receiver for the full amount of the shortfall. The Receiver may collect the shortfall in any manner authorized by law.

G. AFFIRMATIVE INJUNCTIVE RELIEF

Respondents, their partners, assignees, successors, representatives, managers, agents, attorneys, employees, and all other persons acting under or in concert with Respondents, are ordered to:

1. Immediately relinquish and turn over possession of the Subject Property to the Receiver. Any current, lawful occupants of the Subject Property may remain occupants of the Subject Property unless the Receiver, in its sole and absolute discretion, determines the occupants must be relocated to effectuate the Subject Property's rehabilitation.
2. Upon request by the Receiver, immediately turn over to the Receiver all keys to the Subject Property and any books or records pertaining to the Subject Property.
3. Immediately inform the Receiver as to the nature and extent of insurance coverage on the Subject Property and, until the Receiver is discharged by the Court, name the Receiver as an additional insured on any insurance policies in effect with respect to the Subject Property.
4. Forward to the Receiver all bills which it may receive in connection with the Subject Property.
5. Execute (in recordable form, if necessary) and deliver to the Receiver or its designee any and all documents required to implement the actions authorized by this Order, including rescission of any notice of default or notice of trustee's sale.

H. PROHIBITORY INJUNCTIVE RELIEF

Respondents, their partners, assignees, successors, representatives, managers, agents, attorneys, employees and all persons acting under or with concert with Respondents, are hereby enjoined at all times until the Receiver is discharged from:

1. Demanding, collecting, receiving, or diverting any rents, profits, or income from the Subject Property.
2. Interfering with the Receiver, directly or indirectly, in the conduct of the receivership.
3. Encumbering, mortgaging, lienning, leasing, renting, selling or transferring the Subject Property or any interest in it.
4. Canceling, reducing, or modifying any existing insurance coverage with respect to the Subject Property.
5. Entering upon the Subject Property or into any structure located on the Subject Property without first having received the Receiver's written consent.
6. Commencing or continuing any foreclosure or similar process, including non-judicial foreclosure and trustee sale proceedings, and further including the filing of any notice of default or notice of trustee's sale.
7. Commencing or continuing any action which impairs or precludes the Receiver's ability to obtain policies of title insurance needed to implement the actions authorized by this Order.
8. Removing any furniture, fixture or item of personal property from the Subject Property without first having received the Receiver's written consent.
9. Claiming any deduction with respect to state income taxes for interest, taxes, expenses, depreciation, or amortization paid or incurred with respect to the Subject Property for 2014 and all future years during the pendency of the receivership.

Date: _____

JUDGE OF THE SUPERIOR COURT

CALIFORNIA'S DRUG ABATEMENT ACT:
A POWERFUL CIVIL TOOL TO ADDRESS DRUG CRIMES

by

Yvonne R. Meré¹

INTRODUCTION

Many cities have code enforcement or nuisance abatement teams that strive to ensure that properties are maintained in a healthy and safe manner. Many of these teams include municipal building, housing, health and fire inspectors as well as city attorneys. These collective and interdepartmental efforts protect and secure neighborhoods and communities. But frequently our cities are plagued with nuisances that stems from conduct, rather than conditions of property. And often, that conduct not only constitutes a nuisance but is also criminal: an internet cafe being used as a front for illegal gambling, a liquor store that is selling alcohol to minors, a prolific graffiti vandal who mars public spaces with tags, a dumper who leaves trash and debris on private and public property rather than at the town dump.

California makes it possible to address these local problems at the municipal level, enacting powerful state laws that can be enforced by cities. Laws such as the State Housing Law (Health and Safety Code §17910 *et seq.*), the Red Light Abatement Law (Penal Code §11225 *et seq.*), the Unlawful Liquor Sale Abatement Law (Penal Code §11200 *et seq.*), and the Unfair Competition Law (Business and Professions Code §17200 *et seq.*), give California cities unique and powerful state law tools to address nuisances and crimes.

¹ Yvonne R. Meré is a Deputy City Attorney with the San Francisco City Attorney's Office. She is the Chief Attorney for the Neighborhood and Resident Protection Team, an affirmative litigation team that brings public nuisance and unlawful competition matters on behalf of the City and County of San Francisco and the People of the State of California.

One type of crime and nuisance that affects many cities across California is the sale of illegal drugs. There are tens of thousands of arrests in California each year for narcotics crimes. Whether the drug sales are being conducted from a home in a residential neighborhood or in the aisles of a local market, they not only wreak havoc on a community but have a criminal echo effect, bringing other more serious and violent crime into our cities and communities. The California Drug Abatement Act, Health and Safety Code §11570 *et seq.*, is an underutilized yet effective state law tool that authorizes cities to file civil actions to not only abate the drug nuisance and crime, but to hold property owners and others responsible through the award of injunctive relief, civil penalties and attorney's fees.

As discussed above, drug crimes differ significantly from other types of code enforcement or nuisance abatement actions. Unlike many cities' municipal code violations, there are no inspections or administrative processes which adjudicate or establish the existence of the nuisance or drug activity. In contrast, most drug activity is transient and not easily documented by a single site visit or inspection and does not present as a concrete or tangible condition such as a lack of heat, overgrown vegetation, or lack of smoke detectors. Moreover, the underlying drug activity is often the product of third party criminal conduct and may be occurring with the participation or independent and without the actual knowledge of the property owner and/or operator of the business.

The focus of this paper is to introduce and explain the Drug Abatement Act, a type of public nuisance case, and to provide cities with some useful tips and suggestions on building a successful case.²

² This memo does not focus on other theories and causes of action that could be plead in a Drug Abatement Act complaint such as violations of Civil Code §§3479 and 3480 (public nuisance) which provides for injunctive relief or violations of the Unfair Competition Law, Business and

DRUG ABATEMENT ACT

I. WHAT CONDUCT VIOLATES THE DRUG ABATEMENT ACT?

In order to understand how to build a case under the Drug Abatement Law, it is useful to examine its specific provisions and prohibitions.

The Drug Abatement Act §11570 reads in relevant part:

Every building or place used for the purpose of **unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance**, precursor, or analog specified in this division, **and every building or place wherein or upon which those acts take place, is a nuisance** which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

Emphasis added.

First, on its face, the Drug Abatement Act declares properties used for the sale, serving, storing, keeping, manufacturing or giving away of controlled substances to be nuisances.

Notably, the focus of the conduct in §11570 is on sales and trafficking making it questionable whether the mere *use* of controlled substances could be the basis of a Drug Abatement action.³

Second, “controlled substances” as the term is used above, is defined in Health and Safety Code §11007 to mean “a drug, substance, or immediate precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058.” The lists of controlled substances contained in Sections 11054-11058 are exhaustive and include the following:

Professions Code §17200 *et seq.*, which provides for injunctive relief and additional civil penalties.

³ Although there is no published case on point, one could argue that mere use or possession of drugs at a property falls under §11570 because its plain language uses the term “keeping” and “storing.” However, if your local police department provides you with evidence of concentrated drug use only, you should work with the police to see if there is any evidence of drug sales. It is common to find drug sales in areas of concentrated drug use for at least two reasons: (1) users often sell drugs to support their habit; (2) drug dealers are attracted to the locations where users live or hang out. Also keep in mind that even if the evidence of sales is limited or insufficient to support a Drug Abatement cause of action, it may be sufficient to plead a violation of Civil Code §§3479-3480.

- Opiates, opium derivatives, heroin, hallucinogenic substances, marijuana, mescaline, peyote, depressants, Gamma hydroxybutyric acid (also known as GHB), and cocaine base (Health and Safety Code §11054);
- Coca leaves cocaine, stimulants including amphetamine and methamphetamine, and depressants including amobarbital and pentobarbital (Health and Safety Code §11055); and
- Stimulants, depressants, any substance which contains any quantity of a derivative of barbituric acid or any salt thereof, and hallucinogenic substances (Health and Safety Code §11056).

Third, the drug activity that serves as the foundation of a Drug Abatement action must be unlawful. This raises interesting issues in a state like California that defines “controlled substances” to include marijuana yet recognizes the lawful use of medicinal cannabis and the presence of medical cannabis dispensaries. The Medical Marijuana Program Act (“MMPA”) codified in Health and Safety Code §11362.7 *et seq.* exempts certain individuals from “criminal liability” for violating §11570. Those individuals include qualified patients and caregivers, designated primary caregivers, and individuals who provide assistance to primary caregivers. *See* Health and Safety Code §11362.765. Yet, this exemption from criminal prosecution has little practical application to the Drug Abatement Act. As noted in the recent case *Conejo Wellness Ctr., Inc. v. City of Agoura Hills*, (2013) 214 Cal. App. 4th 1534:

Section 11362.765, subdivision (a), also extends immunity to “criminal liability” for nuisance actions litigated pursuant to section 11570. Section 11570, the so-called “drug house” abatement law, deems any structure used for the unlawful manufacture, storing, or distribution of controlled substances a nuisance per se. (*Lew v. Superior Court* (1993) 20 Cal.App.4th 866, 871–872, 25 Cal.Rptr.2d 42.) Only civil remedies, however, including abatement, are available to enforce section 11570. (See *Lew*, at pp. 871–872, 25 Cal.Rptr.2d 42.) We need not address this apparent inconsistency between the MMPA and section 11570: Agoura's allegation that Conejo is a public nuisance per se is based not on section 11570, but on Agoura's local ordinances declaring conditions caused by or permitted to exist in violation of the AHMC to be a public nuisance.

Conejo Wellness Ctr., Inc. v. City of Agoura Hills, 214 Cal. App. 4th 1534, 1555.

II. WHO ARE THE PARTIES TO A DRUG ABATEMENT ACT CASE?

Health and Safety Code §11571 reads as follows:

If there is reason to believe that a nuisance, as described in Section 11570, is kept, maintained, or exists in any county, **the district attorney or county counsel of the county, or the city attorney of any incorporated city or of any city and county, in the name of the people**, may, or any citizen of the state resident in the county, in his or her own name, may, **maintain an action to abate and prevent the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place** in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance.

Emphasis added.

In addition, Health and Safety Code §11571.5 gives “the city attorney or city prosecutor of the city within which the nuisance exists, is kept, or is maintained” the ability to file Drug Abatement actions. Therefore as provided in §11571 and §11571.5, Drug Abatement actions may be brought in the name of the People of the State of California by district attorneys, county counsels or city attorneys.

These actions may be brought against any person “conducting or maintaining” the drug nuisance. These individuals can include tenants, desk clerks, hotel operators, drug dealers, etc. as long as the persons can be shown to be “conducting or maintaining” the nuisance.

Yet §11571 also permits the maintenance of an action against the “owner, lessee or agent of the building or place in or upon which the nuisance exists.” There is no requirement under §11571 that the owner, lessee or agent participate, or contribute to the nuisance. It creates an almost strict liability for owners, lessees, and agents for the drug nuisances at properties they own, lease, or are responsible for.

Several cases have examined the liabilities of persons for violations of the Drug Abatement Act. One case was *Lew v. Superior Court* (1993) 20 Cal. App.4th 866. In *Lew v. Superior Court* a group of neighbors sued a property owner under the Drug Abatement Act

asserting that the criminal activity that was being conducted on the property was a nuisance.

There was no allegation in that case that the owners or managers of the property were the ones engaging in the illegal narcotics activity. Yet the court in *Lew* held that there is no requirement "that the unlawful activity, which makes the building a nuisance, be conducted by the owner of the building, a tenant of the building or a person entering with permission." *Id.* at 871.

III. WHAT REMEDIES ARE AVAILABLE IN A DRUG ABATEMENT ACT CASE?

The Drug Abatement Act provides injunctive relief, civil penalties, attorney's fees and costs of investigation.

A. Injunctive Relief

Health and Safety Code §11573 provides that "the court or judge shall allow a temporary restraining order or injunction to abate and prevent the continuance or recurrence of the nuisance." ⁴

Specifically, the Drug Abatement Act provides for the following injunctive relief:

- "...if proof of the existence of the nuisance depends, in whole or part, upon the affidavits of witnesses who are not peace officers, upon a showing of prior threats of violence or acts of violence by any defendant or other person, **the court may issue orders to protect those witnesses, including, but not limited to, nondisclosure of the name, address, or any other information which may identify those witnesses.**" *See* Health and Safety Code §11573.5(a). *Emphasis added.*

⁴ Health and Safety Code §11573(b) which reads in relevant part, provides for the injunctive relief to theoretically run *in rem*: "[a] temporary restraining order or injunction may enjoin subsequent owners, commercial lessees, or agents who acquire the building or place where the nuisance exists with notice of the temporary restraining order or injunction, specifying that the owner of the property subject to the temporary restraining order or injunction shall notify any prospective purchaser, commercial lessee, or other successor in interest of the existence of the order or injunction, and of its application to successors in interest, prior to entering into any agreement to sell or lease the property. The temporary restraining order or injunction shall not constitute a title defect, lien, or encumbrance on the real property."

- “A temporary restraining order or injunction issued pursuant to Section 11573 **may include closure of the premises pending trial when a prior order or injunction does not result in the abatement of the nuisance.**” *See* Health and Safety Code §11573.5(b). *Emphasis added.*⁵ The court may also issue a permanent injunction for closure of the premises. *See* Health and Safety Code §11581(b)(1).
- Permits the court to order “some or all of the rent payments owing to the defendant be placed in an escrow account for a period of up to 90 days or until the nuisance is abated.” *See* Health and Safety Code §11573.5(b).
- If the court orders closure of the premises, any monies in escrow “shall be used to pay for relocation assistance” to any “tenant ordered to vacate the premises, provided the court determines that the tenant was not actively involved in the nuisance activity.” *See* Health and Safety Code §11573.5(b) and (d).⁶
- Make additional orders applicable to “any displaced tenant not actively involved in the nuisance” which include the priority for senior citizens and disabled persons for relocation assistance, ordering the local agency seeking closure to make attempts to find relocation assistance to displaced tenants, or appointment of a receiver to disburse relocation monies. *See* Health and Safety Code §11573(e)(1)-(4).⁷
- Orders related to physical and capital improvements to the property including improved interior or exterior lighting, security guards, posting of signs, owner membership in neighborhood or local merchants' associations, attendance at property management training programs, other cosmetic repairs to the property. *See* Health and Safety Code §11573(f)(1)(A)-(G).
- Order the owner or person in control of the property to reside in the property until the nuisance is abated. *See* Health and Safety Code

⁵ Health and Safety Code §11573.5(b) caps the total period of closure to one year, requires that persons affected by the closure be given “reasonable notice and an opportunity to be heard at all hearings regarding the closure request prior to the issuance of any order,” and directs the court to consider a series of factors when determining whether closure of the premises is appropriate. Those factors include the extent and duration of the nuisance, defendants’ efforts to comply with previous court orders, the effect of the nuisance on other persons, and the effect closure will have on tenants and residents. *See* Health and Safety Code §11573.5(b)(1)-(5).

⁶ “The relocation assistance ordered to be paid by the defendant shall be in the amount necessary to cover moving costs, security deposits for utilities and comparable housing, adjustment in any lost rent, and any other reasonable expenses the court may deem fair and reasonable as a result of the court's order.” *See* Health and Safety Code §11573.5(d).

⁷ Parties can also stipulate for the appointment of a receiver for broader purposes. Although the Drug Abatement Act itself only provides for the appointment of a receiver in very specific circumstances, Code of Civil Procedure § 564(b)(3) allows the appointment of a receiver “in which an action or proceeding is pending, or by a judge thereof, in the following cases...(3) After judgment, to carry the judgment into effect.”

§11573(f)(1)(H).

- Enter an “order of abatement...as a part of the judgment, which order shall direct the removal from the building or place of all fixtures, musical instruments, and other movable property used in conducting, maintaining, aiding, or abetting the nuisance and shall direct their sale in the manner provided for the sale of chattels under execution.” *See* Health and Safety Code §11581(a).
- “If the court finds that any vacancy resulting from closure of the building or place may create a nuisance or that closure is otherwise harmful to the community...the court may order the person who is responsible for the existence of the nuisance, or the person who knowingly permits controlled substances to be unlawfully sold, served, stored, kept, or given away in or from a building or place he or she owns, to pay damages in an amount equal to the fair market rental value of the building or place for one year to the city or county in whose jurisdiction the nuisance is located for the purpose of carrying out drug abuse treatment, prevention, and education programs.” *See* Health and Safety Code §11581(c)(1).

B. Civil Penalties

In addition to preliminary and permanent injunctive relief, the Drug Abatement Act provides for the payment of a civil penalty “not to exceed twenty-five thousand dollars (\$25,000) against any or all of the defendants, based upon the severity of the nuisance and its duration.”

See Health and Safety Code §11581(b)(2).⁸

C. Attorney’s Fees and Costs of Investigation

In addition to civil penalties, Civil Code §3496 authorizes the award of “costs, including the costs of investigation and discovery, and reasonable attorney's fees” for Drug Abatement Act

⁸ “One-half of the civil penalties collected pursuant to this section shall be deposited in the Restitution Fund in the State Treasury, the proceeds of which shall be available only upon appropriation by the Legislature to indemnify persons filing claims pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, and one-half of the civil penalties collected shall be paid to the city in which the judgment was entered, if the action was brought by the city attorney or city prosecutor. If the action was brought by a district attorney, one-half of the civil penalties collected shall be paid to the treasurer of the county in which the judgment was entered.” *See* Health and Safety Code §11581(b)(2).

cases. *See* Civil Code §3496(c). This cost recovery provision allows cities the ability to recover the costs of local police departments who assist in the building and gathering of drug nuisance evidence. For this reason, make sure to talk to your local police department and ask officers to keep written track of the time he/she spends on the case, as well as the time spent by officers making arrests, conducting surveillance, and investigating the drug activity at the property. These costs may be reimbursed during settlement or at trial.

Civil Code §3496 also permits the award of “reasonable” attorney’s fees as opposed to actual fees. This permits public law offices who bring Drug Abatement cases to seek fees that are reasonable given the experience and expertise of the lawyers. There is no ‘prevailing market rate’ or ‘reasonable market value’ for cases that are normally prosecuted by a government entity (i.e., the office of a district attorney or a city attorney), for they are not provided in a free market. *See City of Oakland v. McCullough* (1996) 46 Cal.App.4th 1, 6. That said, courts have applied and awarded the prevailing market rate in the community for government attorneys. *See, e.g., Raney v. Federal Bureau of Prisons*, 222 F.3d 927, 934 (Fed. Cir. 2000) (“Because of the difficulty of calculating ‘costs’ in this setting, the preferable method of valuing attorney fees for particular legal services is the market value of those services.”); *United States v. Big D Enterprises, Inc.*, 184 F.3d 924, 936 (1999) (“We see no reason why the government should not be able to recover a reasonable fee for its attorney’s work calculated at the same rate that the attorney would be compensated by the prevailing local economy.”); *Napier v. Thirty or More Unidentified Federal Agents*, 855 F.2d 1080, 1092-93 (3rd Cir. 1988) (concluding that the district court did not abuse its discretion by awarding the government’s attorney the prevailing market rate).

IV. BUILDING A CASE

Generally, a prima facie Drug Abatement Act case is not made based upon a single or isolated instance of documented drug activity. Although the statute itself does not require a pattern of conduct, many courts will employ equitable principals and will be looking for a pattern of conduct or history of drug nuisances to justify the imposition of injunctive relief. Detailed documentation and or testimony from local police departments, neighbors, and local businesses can establish a pattern of drug activity over time that is essential to a successful Drug Abatement action.

Establishing a pattern of drug activity requires thorough investigation. Reputation evidence is admissible and generally not difficult to find.⁹ Neighbors and police officers are good sources of reputation evidence. However, reputation evidence alone is not sufficient to prove a Drug Abatement Act case.

To bring a successful Drug Abatement case, you should gather evidence for the previous 1-2 year period and focus on establishing a connection or nexus between the property and the drug activity. Below are some suggested investigative steps to take to build and gather relevant evidence:

1. Contact your local Police Department
 - a. Gather all available documents from your local police department including the following:

⁹ “In any action for abatement instituted pursuant to this article, all evidence otherwise authorized by law, including evidence of reputation in a community, as provided in the Evidence Code, shall be admissible to prove the existence of a nuisance.” *See* Health and Safety Code §11575.5. Further, in *Lew supra* the proof presented to show the existence of the nuisance consisted of neighbor affidavits. The Court found that complaints of neighbors were sufficient to make a prima facie case that a violation of Health and Safety Code §11570 had occurred.

- i. all police incident reports associated with the property or the immediate vicinity including reports documenting any arrests for drug or narcotics-related crime (theft, assault, etc.);
 - ii. calls for service to the police (i.e. 911 or non-emergency calls) associated with the property or the immediate vicinity;
 - iii. investigative or chron files, photos, internal memoranda, correspondence, and any evidence in their files pertaining to the property or premises, for the past 2-3 year period;
 - iv. lab results illustrating that the drugs found at or near the property are indeed “controlled substances” as defined by Health and Safety Code §§11054-11058;¹⁰
 - v. any applicable police permits or state licenses (i.e. license from the Bureau of Alcoholic Beverage Control (“ABC”)); and
 - vi. gather criminal histories on property owners and other potential defendants as authorized by Penal Code §11105(b).¹¹
 - b. Interview police officers
 - i. talk to officers that are assigned the area of the city where the property is located and any who have made arrests, written search warrants or otherwise responded to the property;
 - ii. contact other officers in investigative or detective bureaus that are responsible for narcotics crimes;
 - iii. ask officers if they have had any contact with the property owner, manager, or other party responsible for the property or premises
2. Contact other municipal or county departments
- a. Emergency Services or 911 Records
 - i. Gather drug-related medical calls to the property. Medical calls for service may contain evidence of drug activity occurring at the property (particularly entertainment establishments). Often the victim not only will tell the paramedic what they took but where they took it and where they bought it. You may not be able to get the patient care reports themselves (paramedic records from an

¹⁰ Depending on your jurisdiction’s evidence destruction policies, consider putting an evidentiary hold on the substance to prevent its destruction.

¹¹ Penal Code §11105(b) reads in relevant part: (b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply....(3) District attorneys of the state...(4) Prosecuting city attorneys of any city within the state...(5) **City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.** *Emphasis added.*

emergency response) because of patient confidentiality/privacy issues, but you might be able to get redacted records that maintain the address of the property and the purpose of the emergency response.

- b. Planning Department approvals for permits/liquor license/entertainment venues, if applicable (may have restrictions/conditions)
 - c. District Attorney's Office
- 3. Contact other government agencies
 - a. ABC
 - i. If the property has an establishment with a liquor license, contact ABC to find out if they have received any complaints or conducted any investigation. Make sure to ascertain and talk to the investigators involved.
 - b. Federal Agencies
 - i. On occasion, a federal agency, such as the Drug Enforcement Agency or the Department of Justice might have information useful to your case.
- 4. Gather information regarding the property
 - a. Gather information regarding the property or premises, i.e. who is the owner? is there another responsible party such as a manager, desk clerk, etc.?
 - b. Conduct an asset and property search.
- 5. Identify and interview non-police witnesses including neighbors and business owners.
 - a. Community organizations can be an excellent source of reputation evidence, witnesses information, and historic evidence of drug complaints;
 - b. Legal assistance and tenant rights organizations can also be a source of witnesses, history of complaints, history of criminal activity around the property;
 - c. Organizations that operate in the community that teach personal safety awareness, recommend security improvements to property, and assist in the organization of neighborhood watch groups and safety organizations; and
 - a. Neighborhood homeowner and merchant associations.

V. EVIDENTIARY AND FACTUAL CHALLENGES

Though thoroughly and diligently gathering evidence is essential to building a strong factual and legal case, there are certain strategic, evidentiary and factual challenges you should consider when deciding whether to bring a Drug Abatement Act case.

A. NOTIFYING POTENTIAL DEFENDANTS

Even though public nuisance jurisprudence has traditionally held owners and operators responsible for certain conduct, many property owner defendants in Drug Abatement cases will argue that it is unjust to hold them responsible for the conduct of others not under their control. Although there is no requirement in the Drug Abatement Act to notify the property owner or other potential defendant that litigation is on the horizon, most judges will want to see evidence of actual or constructive notice of the drug nuisance to order significant injunctive relief and/or civil penalties. Therefore, consider whether it might be prudent to send a demand letter or other notice to a property owner/manager/agent. Giving a property owner/manager/agent notice of the drug nuisance at the property gives him/her the opportunity to take action to abate the nuisance, which will be more expedient and economical than bringing a civil action. Conversely, a property owner/manager/agent who ignores the problem and fails to cooperate is excellent evidence to support the equitable remedies you will seek.

B. LACK OF CRIMINAL NARCOTICS CONVICTIONS

In many cities, you may find many more drug arrests than drug convictions. And although the lack of criminal prosecution, unsuccessful criminal prosecutions, or criminal defendants pleading on charges unrelated to drug crimes should not be facts admissible at trial, they can nonetheless create additional sympathy for property owner/manager defendants and can

weaken the action. Building evidence over a period of time and gathering evidence of nuisance in a thorough and creative way should blunt the effect of the paucity of prosecutions.

C. PLEADING COMPLAINTS WITH GREATER SPECIFICITY

Although California is a noticed pleading state which permits relatively scant complaints and initial filings, consider pleading your Drug Abatement Act cases with greater specificity. Since you will likely be seeking some kind of interim relief in the action, either by Temporary Restraining Order or Preliminary Injunction, additional detail and facts in a complaint gives the court more information about the activity occurring at the property and provides a basis for the injunctive relief sought.¹²

D. USE OF LAY TESTIMONY AND EVIDENCE

As discussed above, the Drug Abatement Act permits the introduction of reputation evidence. Reputation evidence is often garnered from neighbors, residents, community members who see the drug nuisances on a daily or frequent basis. Be sure to discuss and clear the use of lay testimony or evidence with the witness. Given the nature of the nuisance, neighbors, residents, and community members are often apprehensive to come forward for fear of retribution or retaliation. Make sure to be sensitive to those concerns and careful not to develop or rely upon information or evidence that may not be available.¹³

¹² Attached to this memo are two examples of Drug Abatement complaints filed by the San Francisco City Attorney's Office, labeled Exhibits A-B.

¹³ You might also explore submitting declarations anonymously. Some courts will permit such declarations if the declarant is concerned for his/her safety.

E. FINDING A NEXUS BETWEEN THE DRUG CRIME AND THE PROPERTY

Sometimes properties that are used for the sale of drugs are found in areas of a city impacted by drug crime. In these instances, where drug crime in an area is already dense, arrests made in the vicinity of a property may be difficult to link to the property itself. In those instances, work with your local law enforcement and make sure that police officers document the exact locations of arrests and detentions, ask those possessing drugs where they were purchased, etc. The goal is to make sure that you can link the drug crime to the particular property or place.

CONCLUSION

Drug Abatement cases offer a powerful tool to address nuisance drug crime. Most jurisdictions leave criminal matters to the criminal courts, failing to acknowledge or utilize the additional civil tools available. At a time where many jurisdictions are focusing on prosecuting more serious crime and leaving drug crimes at the mercy of the revolving doors of criminal court, civil laws like the Drug Abatement Act can bring broader, longer lasting, and meaningful relief to communities held hostage by crime.

Cities bear the obligation to ensure that its neighborhoods and communities are safe and free of nuisance. Bringing Drug Abatement cases is one way cities meet that charge and protect its citizens.

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ENDORSED
FILED
San Francisco County Superior Court

JAN 30 2012

CLERK OF THE COURT
BY: DEBORAH STEPPE
Deputy Clerk

8 Attorneys for Plaintiffs
9 CITY AND COUNTY OF SAN FRANCISCO
and PEOPLE OF THE STATE OF
10 CALIFORNIA

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED JURISDICTION

CGC-12-517726

14 CITY AND COUNTY OF SAN
15 FRANCISCO, a Municipal Corporation, and
the PEOPLE OF THE STATE OF
16 CALIFORNIA, by and through Dennis J.
Herrera, City Attorney for the City and County
17 of San Francisco,

Case No.

COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF

Type of Case: (42) Other Complaint

18 Plaintiffs,

19 vs.

20 JABER A. ALGAHIM, an individual and
DBA AZAAL MARKET, DOE 1 through
21 DOE 50,

22 Defendants.

23
24 The CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, and the PEOPLE
25 OF THE STATE OF CALIFORNIA, by and through San Francisco City Attorney DENNIS J.
26 HERRERA (collectively "Plaintiffs"), file their Complaint against Defendants JABER A. ALGAHIM,
27 an individual and d/b/a AZAAL MARKET, and DOE ONE through DOE FIFTY (collectively
28 "Defendants"). Plaintiffs hereby allege as set forth below:

INTRODUCTION

1
2 1. This action arises out of Defendants' ownership, lease, use, maintenance, operation and
3 management of Azaal Market¹, a commercial business located on the ground floor of 200
4 Leavenworth Street, Assessor's Block 0338, Lot 013, San Francisco, California ("Azaal"), on the
5 northeast corner of Turk and Leavenworth Streets. The northeast corner of Turk and Leavenworth
6 Streets is notorious for high incidents of crime, including the sale and use of illegal narcotics

7 2. Defendants contribute to the problems on this corner by maintaining a safe haven at
8 Azaal for drug dealers and users. Defendants permit the sale, service, storage, and possession of
9 controlled substances at Azaal. Drug dealers routinely loiter inside, and in front of, Azaal, attracting
10 large groups of drug users to the area.

11 3. Defendants' ongoing violations of law contribute to an increased neighborhood
12 presence of illicit drug users and dealers and a panoply of general public nuisance conditions related to
13 the ingestion and sale of illegal drugs, such as assaults, the accumulation of drug paraphernalia refuse
14 on sidewalks, and loitering. Defendants' maintenance of Azaal as a public nuisance threatens the
15 health and safety of the surrounding neighborhood which includes a primary school and a daycare
16 center, a school bus stop, two parks, housing for senior citizens, and a host of families with small
17 children who live nearby.

18 4. Defendants also operate Azaal in an illegal manner by knowingly purchasing stolen
19 products for resale at Azaal.

20 5. By allowing controlled substances to be sold, served, stored, kept, manufactured, or
21 given away at Azaal, Defendants have maintained the Property as a *per se* public nuisance, in violation
22 of the state Drug Abatement Law, California Health and Safety Code Sections 11570-11587, and
23 California Civil Code Sections 3479, 3480, 3491, and 3494.

24 6. By maintaining Azaal in repeated violation of applicable state and local laws and as a
25 public nuisance, Defendants have demonstrated a conspiracy to, and a pattern and practice of,
26 engaging in unfair and unlawful business practices in violation of the Unfair Competition Law

27 ¹ While Azaal at 200 Leavenworth Street is legally registered as Azaal Market, "Barah Market"
28 is still posted on the outside of Azaal. Consequently, Azaal Market is also commonly known in the
community as "Barah Market".

1 ("UCL"), California Business and Professions Code Sections 17200-17210.

2 **PARTIES AND SUBJECT PROPERTY**

3 7. Plaintiff City and County of San Francisco (the "City") is a municipal corporation
4 organized and existing under and by virtue of the laws of the State of California, and is a city and
5 county.

6 8. The CITY brings this action under California Civil Code Sections 3479, 3480, 3491,
7 3494; and California Code of Civil Procedure Section 731.

8 9. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J.
9 Herrera, City Attorney of the City and County of San Francisco, brings this action pursuant to
10 California Health and Safety Code Sections 11570 – 11587 (the "Drug Abatement Act"), California
11 Business and Professions Code Sections 17200-17210 (the "Unfair Competition Law"), California
12 Civil Code Sections 3479, 3480, 3491, 3494, and California Code of Civil Procedure Section 731.

13 10. From at least March 2009 to the present, Defendants JABER A. ALGAHIM, an
14 individual and d/b/a AZAAL MARKET have been the owners and managers of Azaal, a commercial
15 business located in the City and County of San Francisco.

16 11. Azaal is a market, engaging in the retail sale of food and tobacco items, and is subject
17 to the permit requirements under San Francisco Health Code sections 1009.52-1009.53.

18 12. Defendants DOE ONE through DOE FIFTY are sued herein under fictitious names.
19 Plaintiffs do not at this time know the true names or capacities of said defendants, but pray that the
20 same may be alleged herein when ascertained.

21 13. At all times herein mentioned, each Defendant was an agent, servant, employee,
22 partner, franchisee and joint venturer of each other defendant and at all times was acting within the
23 course and scope of said agency, service, employment, partnership, franchise and joint venture.
24 Actions taken, or omissions made, by Defendants' employees or agents in the course of their
25 employment or agency at Azaal are considered to be actions or omissions of Defendants for the
26 purposes of this Complaint.

27 **GENERAL ALLEGATIONS**

28 14. Azaal serves as a safe haven for drug dealers to conduct their illegal business.

1 Numerous known drug dealers loiter directly in front of and inside Azaal on a daily basis with no
2 effort by Defendants to dissuade them. Hand-to-hand drug sales routinely occur in the front doorway
3 of Azaal with no effort by Defendants to dissuade them.

4 15. Drug dealers routinely walk into Azaal when police cars drive by. When the police
5 drive away, the dealers return outside to continue their trade. In order to walk into Azaal, it is often
6 necessary to maneuver around numerous drug dealers who stand right at the entrance to Azaal, with no
7 effort by Defendants to dissuade them.

8 16. Defendants are not only aware of the numerous drug sales that occur in and around
9 Azaal, but also allow and facilitate such sales to the extent that dealers feel safe conducting their
10 business in and around Azaal.

11 17. Defendants' ongoing violations of law at Azaal contribute to an increased neighborhood
12 presence of illicit drug users and dealers and a panoply of general public nuisance conditions related to
13 the ingestion and sale of illegal drugs, such as assaults, the accumulation of drug paraphernalia refuse
14 on sidewalks, and loitering. Individuals walking by Azaal, including children on their way to nearby
15 schools, have to step over human feces and used drug paraphernalia and maneuver around dealers who
16 approach passerby offering drugs for sale.

17 18. Defendants' maintenance of Azaal as a public nuisance threatens the health and safety
18 of the surrounding neighborhood which includes a primary school and a daycare center, a school bus
19 stop, two parks, housing for senior citizens, and a host of families with small children who live nearby.
20 The situation in this area has so deteriorated that, on weekdays, officers from the Tenderloin Police
21 Station routinely conduct fixed post positions during the hours that children board and exit at the bus
22 stop.

23 19. The problems caused by Defendants' illegal activities require constant police attention,
24 thereby draining valuable police resources that cannot be devoted to other areas.

25 20. Since at least September 2009 to the present, Defendants have permitted Azaal to be
26 used for the sale of narcotics and narcotics paraphernalia and have engaged in the purchase and sale of
27 stolen property as follows:

28 a. On September 10, 2009, an undercover officer from the San Francisco Police

1 Department ("SFPD") purchased oxycodone from a drug dealer in front of Azaal.

2 b. On October 28, 2009, an undercover officer from the SFPD purchased cocaine and
3 heroin from two different drug dealers inside Azaal in full view of Defendants.

4 c. On March 10, 2011, an undercover officer from the SFPD went to Azaal with a bag of
5 what he represented to Defendants as merchandise stolen from Walgreens. Defendants
6 purchased the merchandise. Defendants told the officer to return with additional merchandise,
7 and he would purchase those items as well.

8 d. On April 9, 2011, officers of the SFPD witnessed two men standing in front of Azaal,
9 inspecting heroin in their hands. Officers arrested both men for possession of heroin.

10 e. On April 11, 2011, an undercover officer of the SFPD purchased heroin from a man
11 right in front of Azaal. The officer arrested the man for selling heroin.

12 f. On May 24, 2011, an undercover officer of the SFPD went to Azaal with a bag of what
13 he represented to Defendants as merchandise stolen from Walgreens. Defendants purchased
14 the merchandise. Defendants asked the officer to bring more items in the future, but to take the
15 Walgreens sticker off of each item.

16 g. On May 24, 2011, a woman standaing on the corner of Leavenworth and Turk offered
17 to sell oxycodone to an undercover officer of the SFPD. The officer declined. Another officer
18 later saw the same woman standing right in front of Azaal. It appeared that the woman had
19 something stuffed into her bra and the officer asked her to shake it out. When she did so,
20 plastic stuck out of the side of her bra. She was taken into custody and searched, and officers
21 discovered oxycodone, heroin, hydromorphone and \$316.00 in cash in her left bra cup. The
22 woman was arrested.

23 h. On May 25, 2011, an undercover officer of the SFPD went to Azaal with another bag of
24 merchandise allegedly stolen from Walgreens. Defendants purchased the merchandise.
25 Defendants then walked the officer around Azaal to show additional merchandise that the
26 officer should bring the next time. As Defendants showed the officer the needed items, the
27 officer saw multiple drug deals occurring right in front of Azaal, in full view of Defendants.
28 The officer then approached one of the dealers outside Azaal and asked to buy drugs. The

1 dealer walked into Azaal and asked Defendants whether the officer was "good". Defendants
2 told the dealer that the officer was "good." The dealer then sold two tablets of OP 40s (an
3 opiate-based painkiller) to the officer. Another dealer then approached the officer and offered
4 to sell him OC 80s (Oxycontin). The officer agreed to the buy, but insisted that the sale
5 happen inside Azaal. The officer and the dealer then went inside Azaal. As the sale was being
6 conducted, Defendants told them to move the sale outside. They then moved directly outside
7 the front door of Azaal and completed the transaction.

8 i. On May 29, 2011, an undercover officer of the SFPD was approached by a drug dealer
9 on Leavenworth Street who offered to sell him percocet. When the officer handed the man a
10 \$20.00 bill, he gave the officer 3 pills and told him he would get more and walked toward the
11 corner of Turk and Leavenworth Street, in front of Azaal. Another man then approached the
12 first man and said, "five O," the street term for police. The two men then walked away and the
13 other officers in the area placed the two men under arrest.

14 j. On October 1, 2011, an undercover officer was approached by a drug dealer on the 100
15 block of Jones Street. The officer asked to buy Oxycodone. The dealer told the officer that he
16 did not have any, but he could take the officer to someone who did have what the officer
17 wanted. The dealer then took the officer to Azaal. Inside Azaal, the dealer approached another
18 dealer, and obtained Oxycodone. The first dealer then came out of Azaal and sold the
19 Oxycodone to the officer.

20 k. On October 19, 2011, officers saw a man and a woman conduct a drug sale right in
21 front of Azaal. When officers arrested the man and woman, they found them both in possession
22 of heroin.

23 l. On November 17, 2011, Officers saw a known parolee standing in front of Azaal.
24 When officers conducted a parole search of the parolee, they found cocaine and drug
25 paraphernalia on him.

26 m. On November 29, 2011, an undercover officer of the SFPD went to Azaal with another
27 bag of merchandise allegedly stolen from Walgreens. Defendants asked the officer how much
28 he wanted for the items. When the officer offered \$1.00 for each item, Defendants consulted

1 with another man in a foreign language, and then agreed to purchase the bag of merchandise.
2 Defendants pointed to other items for sale at Azaal and instructed the officer to bring those
3 items the next time. Defendants also instructed the officer to remove the Walgreens stickers
4 from the items the next time. Following the purchase, the officer walked to the front of Azaal.
5 Once there, in full view of Defendants, the officer purchased heroin from a man and a woman.
6 n. On December 20, 2011, an undercover officer of the SFPD went to Azaal with another
7 bag of merchandise allegedly stolen from Walgreens. Defendants purchased the merchandise.
8 The officer walked just outside the front door of Azaal and purchased heroin from a dealer.
9 The officer then returned to the inside of Azaal and negotiated with another dealer to buy
10 Vicodin pills for \$15.00. The officer purchased an Oreo brownie from Defendants to break up
11 a \$20 bill. While still inside Azaal, the officer gave the dealer \$15.00, and the dealer gave him
12 the Vicodin pills. During the transaction, Defendants cautioned that there was a camera inside
13 the store. The officer exited Azaal and purchased more heroin from another dealer, just outside
14 the front entrance to Azaal.

15 **FIRST CAUSE OF ACTION**
16 **FOR PUBLIC NUISANCE BROUGHT BY PLAINTIFFS PEOPLE OF THE STATE OF**
17 **CALIFORNIA AND THE CITY AND COUNTY OF SAN FRANCISCO AGAINST ALL**
18 **DEFENDANTS BASED ON THE SALE OF NARCOTICS AND NARCOTICS**
19 **PARAPHERNALIA AT AZAAL**

20 **(Health And Safety Code Sections 11570 -11587)**

21 21. Plaintiffs People of the State of California and the City and County of San Francisco
22 hereby incorporates by reference paragraphs 1 through 20 above, as though fully set forth herein.

23 22. Since at least October 2009, Defendants and their employees and agents have sold,
24 stored, or possessed controlled substances at Azaal and/or permitted the sale, storage, possession,
25 manufacture, consumption or distribution of controlled substances at Azaal. Such conduct constitutes
26 a nuisance as a matter of law pursuant to California Health and Safety Code Section 11570.

27 23. Pursuant to California Health and Safety Code Section 11581, Plaintiffs request that the
28 Court close Azaal for one year and impose civil penalties of \$25,000.00 against each Defendant to
prevent Defendants from continuing to maintain a nuisance at Azaal.

24. Unless said nuisance is abated, the residents and citizens of the City and County of San

1 Francisco and the People of California will suffer irreparable injury and damage, in that said
2 conditions will continue to be dangerous to the life, safety or health of those who live and work near
3 Azaal and the general public.

4 25. Plaintiffs have no adequate remedy at law in that damages alone are insufficient to
5 protect the public from the present injury and harm caused by the conduct described above.

6 **SECOND CAUSE OF ACTION**
7 **FOR PUBLIC NUISANCE BROUGHT BY PLAINTIFFS PEOPLE OF THE STATE OF**
8 **CALIFORNIA AND CITY AND COUNTY OF SAN FRANCISCO AGAINST ALL**
9 **DEFENDANTS**

10 (Civil Code Section 3479 et seq.)

11 26. Plaintiffs hereby incorporate by reference paragraphs 1 through 25 as though fully set
12 forth herein.

13 27. Plaintiffs bring this action pursuant to Code of Civil Procedure Section 731 and Civil
14 Code Section 3494.

15 28. By permitting the above described injurious, illegal, annoying and disruptive activities
16 to occur and exist at Azaal, Defendants have caused and maintained a continuing public nuisance
17 within the meaning of California Civil Code Section 3479 and 3480. These activities are injurious to
18 health and offensive to the senses so as to interfere with the comfortable enjoyment of life or property
19 in an entire community or neighborhood.

20 29. At all times herein mentioned, Defendants had notice and knowledge that Azaal
21 constituted a public nuisance.

22 30. Plaintiffs have no adequate remedy at law in that damages are insufficient to protect the
23 public from the present danger and harm caused by the conditions described above.

24 31. Plaintiffs are informed and believe that Defendants will continue to maintain Azaal in
25 the above-described condition as a public nuisance.

26 32. Unless said nuisance is abated, the surrounding community and neighborhood, and the
27 residents and citizens of the City and County of San Francisco, will suffer irreparable injury and
28 damage, in that said conditions will continue to be injurious to the enjoyment and the free use of the
life and property of said citizens and residents of the City and County of San Francisco.

THIRD CAUSE OF ACTION
FOR UNFAIR AND UNLAWFUL BUSINESS PRACTICES BROUGHT BY PLAINTIFF
PEOPLE OF THE STATE OF CALIFORNIA AGAINST ALL DEFENDANTS
(California Business and Professions Code Sections 17200-17210)

33. Plaintiff hereby incorporates by reference paragraphs 1 through 33 as though fully set forth herein.

34. Plaintiff brings this cause of action in the public interest in the name of the People of the State of California, pursuant to Business and Professions Code Section 17200, *et seq.*, in order to protect the residents and owners of properties adjoining Azaal, as consumers and competitors of the services provided by Defendants, from the unlawful and unfair business practices committed by Defendants in the operation of Azaal within the City and County of San Francisco, State of California.

35. The violations of law described herein have been and are being carried out wholly or in part within the City and County of San Francisco. The actions of Defendants are in violation of the laws and public policies of the City and County of San Francisco and the State of California, and are inimical to the rights and interest of the general public.

36. Defendants are now engaging in and, for a considerable period of time and at all times pertinent to the allegations of this Complaint, have engaged in, unfair and unlawful business practices prohibited by California's Unfair Competition Law by managing and operating Azaal in violation of the following laws:

- California Health and Safety Code Sections 11570 -11587 by permitting the sale, storage, possession, manufacture, consumption or distribution of controlled substances at Azaal;
- California Civil Code Sections 3479 and 3480 by maintaining a public nuisance at Azaal; and
- California Penal Code section 496 by knowingly purchasing and selling stolen property.

37. As a direct and proximate result of the foregoing acts and practices, Defendants have received income, profits, and other benefits, which they would not have received if Defendants had not engaged in the violations of the Unfair Competition Law described in this Complaint.

38. As a direct and proximate result of the foregoing acts and practices, Defendants have obtained a competitive unfair advantage over similar businesses that have not engaged in such practices.

39. Plaintiff has no adequate remedy at law in that damages are insufficient to protect the public from the harm caused by the conditions described in this Complaint.

40. Unless injunctive relief is granted to enjoin the unfair and unlawful business practices of Defendants, Plaintiff will suffer irreparable injury and damage.

41. By engaging in unfair and unlawful business practices described herein, Defendants are each subject to civil penalties in the amount of \$2,500.00 per violation, pursuant to California Business and Professions Code Section 17206.

PRAYER

WHEREFORE, Plaintiffs pray that:

Declaratory Relief

1. Azaal be declared a public nuisance in violation of Civil Code Sections 3479 and 3480 and California Health and Safety Code Sections 11570 -11587;

2. Defendants be declared to have engaged in unfair and unlawful business acts and practices in violation of California Business and Professions Code Sections 17200-17210;

Injunctive Relief

3. the public nuisance be preliminarily and permanently abated in accordance with California Civil Code Section 3480 et seq., California Code of Civil Procedure Section 731, and California Health and Safety Code Sections 11570-11587;

4. Azaal be closed for one year pursuant to California Health and Safety Code Section 11581;

5. in the event that the Court does not order Azaal closed, all Defendants, their agents, officers, managers, representatives, employees, and anyone acting on their behalf, and their heirs and assignees be preliminarily and permanently enjoined from operating, conducting, using, occupying, or in any way permitting the use of Azaal as a public nuisance pursuant to Civil Code Section 3480 and California Health and Safety Code Sections 11570-11587;

1 6. in the event that the Court does not order Azaal closed, all Defendants, their agents,
2 officers, managers, representatives, employees, and anyone acting on their behalf, and their heirs and
3 assignees be preliminarily and permanently enjoined from operating, conducting, using, occupying, or
4 in any way permitting the use of Azaal as a public nuisance pursuant to Civil Code Section 3480 and
5 California Health and Safety Code Sections 11570-11587;

6 7. Defendants be enjoined and restrained from occupying or operating Azaal while the
7 conditions described in this Complaint exist and until all of the violations at Azaal have been abated;

8 8. Defendants be ordered to cause Azaal to conform to law, and maintain such structures
9 and all parts thereof in accordance with law;

10 9. pursuant to California Business and Professions Code Section 17203-17204,
11 Defendants, their agents, officers, managers, representatives, employees, and anyone acting on their
12 behalf, and their heirs, successors, and assignees be enjoined from operating, conducting, using,
13 occupying, or in any way permitting the use of Azaal in the unfair and unlawful business practices
14 described in this Complaint;

15 10. Defendants, and each of them, inclusive, be enjoined from spending, transferring,
16 encumbering, or removing from California any money received from Azaal or in payment for the
17 unfair and unlawful acts alleged in the Complaint;

18 **Penalties**

19 11. the Court impose civil penalties of \$25,000.00 against each Defendant to prevent them
20 from continuing to maintain a nuisance at Azaal, pursuant to California Health and Safety Code
21 Section 11581;

22 12. pursuant to Business and Professions Code Section 17206, Defendants be ordered to
23 each pay a civil penalty of \$2,500.00 for each act of unfair and unlawful competition in violation of
24 Business and Professions Code Sections 17200-17210;

25 13. Defendants be ordered to each pay an additional civil penalty of \$2,500.00 for every act
26 of unfair competition that harmed an elderly or disabled person pursuant to Business and Professions
27 Code Section 17206.1;

1 14. pursuant to Business and Professions Code Section 17203, Defendants be ordered to
2 disgorge all profits obtained through their unfair and unlawful business practices in violation of
3 Business and Professions Code Sections 17200-17210;

4 15. Defendants be ordered to pay restitution for money obtained through an unfair business
5 practice to those persons in interest from whom the property was taken, pursuant to California
6 Business and Professions Code Section 17203 and *People v. Beaumont Investment, Ltd., et al.* (2003)
7 111 Cal.App.4th 102, 134-136;

8 **Fees and Costs**

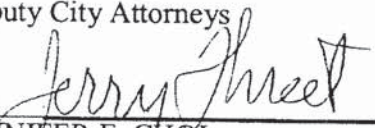
9 16. Defendants be ordered to pay reasonable attorney's fees and costs, including the cost of
10 investigation and discovery, pursuant to California Civil Code section 3496(c) and *City of Oakland v.*
11 *McCullough* (1996) 46 Cal.App.4th 1, 4.

12 17. Plaintiffs be awarded their costs incurred herein pursuant to Code of Civil Procedure
13 Section 1032; and

14 18. the Court grant such other and further relief as this Court should find just and proper.

15 Dated: 1/26/12

16 DENNIS J. HERRERA
17 City Attorney
18 ALEX G. TSE
19 Chief Attorney
20 JENNIFER E. CHOI
21 JERRY THREEET
22 Deputy City Attorneys

23 By: 
24 JENNIFER E. CHOI
25 JERRY THREEET

26 Attorneys for Plaintiffs
27 PEOPLE OF THE STATE OF CALIFORNIA and
28 CITY AND COUNTY OF SAN FRANCISCO

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ENDORSED
FILED
San Francisco County Superior Court

JAN 30 2012

CLERK OF THE COURT
BY: DEBORAH STEPPE
Deputy Clerk

8 Attorneys for Plaintiffs
9 CITY AND COUNTY OF SAN FRANCISCO
and PEOPLE OF THE STATE OF
10 CALIFORNIA

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED JURISDICTION

14 CITY AND COUNTY OF SAN
15 FRANCISCO, a Municipal Corporation, and
the PEOPLE OF THE STATE OF
16 CALIFORNIA, by and through Dennis J.
Herrera, City Attorney for the City and County
17 of San Francisco,

18 Plaintiffs,

19 vs.

20 WALID ABDELRAHMAN, an individual and
21 DBA RAZAN DELI AND GROCERY, DOE
1 through DOE 50,

22 Defendants.

Case No. CGC-12-517725

COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF

Type of Case: (42) Other Complaint

23
24 The CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, and the PEOPLE
25 OF THE STATE OF CALIFORNIA, by and through San Francisco City Attorney DENNIS J.
26 HERRERA (collectively "Plaintiffs"), file their Complaint against Defendants WALID
27 ABDELRAHMAN, an individual and d/b/a RAZAN DELI AND GROCERY, and DOE ONE through
28 DOE FIFTY (collectively "Defendants"). Plaintiffs hereby allege as set forth below:

INTRODUCTION

1
2 1. This action arises out of Defendants' ownership, lease, use, maintenance, operation and
3 management of Razan Deli and Grocery, a commercial business located on the ground floor of 391
4 Ellis Street, Assessor's Block 0332, Lot 012, San Francisco, California ("Razan"). Razan is open 24
5 hours a day. Razan is located within the 300 block of Ellis Street and close to the corner of Ellis and
6 Jones Streets. Both areas are notorious for high incidents of crime and nuisance activity, including the
7 sale and use of illegal narcotics.

8 2. Defendants contribute to the problems in the 300 block of Ellis Street and the
9 surrounding neighborhood by maintaining a safe haven at Razan for drug dealers and users.
10 Defendants permit the sale, service, storage, and possession of controlled substances and drug
11 paraphernalia at Razan. Drug dealers routinely loiter inside, and in front of, Razan, attracting large
12 groups of drug users to this area.

13 3. Defendants' ongoing violations of law contribute to an increased neighborhood
14 presence of illicit drug users and dealers and a panoply of general public nuisance conditions related to
15 the ingestion and sale of illegal drugs, such as assaults, the accumulation of drug paraphernalia refuse
16 on sidewalks, and loitering. Defendants' maintenance of Razan as a public nuisance threatens the
17 health and safety of the surrounding neighborhood which includes a local children's playground, two
18 primary schools, housing for senior citizens, and a host of families with small children who live
19 nearby.

20 4. Defendants also operate Razan in an illegal manner by knowingly purchasing stolen
21 products for resale at Razan, and by selling illegal drug paraphernalia.

22 5. By allowing controlled substances to be sold, served, stored, kept, manufactured, or
23 given away at Razan, Defendants also have maintained the Property as a *per se* public nuisance, in
24 violation of the state Drug Abatement Law, California Health and Safety Code Sections 11570-11587,
25 and California Civil Code Sections 3479, 3480, 3491, and 3494.

26 6. By maintaining Razan in repeated violation of applicable state and local laws and as a
27 public nuisance, Defendants have demonstrated a conspiracy to, and a pattern and practice of,
28 engaging in unfair and unlawful business practices in violation of the Unfair Competition Law

1 ("UCL"), California Business and Professions Code Sections 17200-17210.

2 **PARTIES AND SUBJECT PROPERTY**

3 7. Plaintiff City and County of San Francisco (the "City") is a municipal corporation
4 organized and existing under and by virtue of the laws of the State of California, and is a city and
5 county.

6 8. The CITY brings this action under California Civil Code Sections 3479, 3480, 3491,
7 3494; and California Code of Civil Procedure Section 731.

8 9. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA (the "PEOPLE"), by and
9 through Dennis J. Herrera, City Attorney of the City and County of San Francisco, brings this action
10 pursuant to California Health and Safety Code Sections 11570 – 11587 (the "Drug Abatement Act"),
11 Business and Professions Code Sections 17200-17210 (the "Unfair Competition Law"), Civil Code
12 Sections 3479, 3480, 3491, 3494, and Code of Civil Procedure Section 731.

13 10. From at least May 29, 2007 to the present, Defendants WALID ABDELRAHMAN, an
14 individual, and DBA RAZAN DELI AND GROCERY, have been the owners and managers of Razan,
15 a commercial business located in the City and County of San Francisco.

16 11. Razan is ostensibly a deli and convenience store, engaging in the sale of items such as
17 snack foods and tobacco. Because of its retail sale of tobacco, Razan is subject to the permit
18 requirements under San Francisco Health Code sections 1009.52-1009.53.

19 12. Defendants DOE ONE through DOE FIFTY are sued herein under fictitious names.
20 Plaintiffs do not at this time know the true names or capacities of said defendants, but pray that the
21 same may be alleged herein when ascertained.

22 13. At all times herein mentioned, each Defendant was an agent, servant, employee,
23 partner, franchisee and joint venturer of each other Defendant and at all times was acting within the
24 course and scope of said agency, service, employment, partnership, franchise and joint venture.
25 Actions taken, or omissions made, by Defendants' employees or agents in the course of their
26 employment or agency at Razan are considered to be actions or omissions of Defendants for the
27 purposes of this Complaint.

GENERAL ALLEGATIONS

14. Razan is open and operates 24 hours a day, seven days a week, but has relatively little inventory or merchandise for sale. It essentially serves as a safe haven for drug dealers to conduct their illegal business.

15. Drug dealers and users loiter persistently in front of Razan, and also loiter inside Razan for extended periods of time, talking in a familiar manner to the employees who work in Razan. Drug dealers also enter the store to avoid detection by police officers.

16. On numerous occasions, when police officers have visibly approached Razan, users loitering in front of Razan leave the general vicinity, while the dealers either leave the area or duck inside Razan. On numerous occasions, Defendants have even closed and locked the security gate of Razan with the dealers still inside. When police officers leave the area, Defendants re-open the gate and the drug dealers resume their position in front of Razan.

17. Between the hours of 2:00 a.m. and 6:00 a.m., Razan is the only establishment open in the 300 block of Ellis Street. During these hours, Razan still continues to attract large groups of drug dealers and buyers who congregate and loiter in and around Razan.

18. Defendants' ongoing violations of law at Razan contribute to an increased neighborhood presence of illicit drug users and dealers and a panoply of general public nuisance conditions related to the ingestion and sale of illegal drugs, such as assaults, the accumulation of drug paraphernalia refuse on sidewalks, and loitering. Individuals walking by Razan, including children on their way to nearby schools, have to step over human feces and used drug paraphernalia and maneuver around dealers who approach passerby offering drugs for sale.

19. Defendants' maintenance of Razan as a public nuisance threatens the health and safety of the surrounding neighborhood which includes a local children's playground, two primary schools, housing for senior citizens, and a host of families with small children who live nearby.

20. The problems caused by Defendants' illegal activities require constant police attention, thereby draining valuable police resources that cannot be devoted to other areas. In 2011 alone, Razan generated 118 calls for service to the SFPD. The calls ranged from a shooting and assaults to suspicious persons loitering in the area.

1 21. Since at least September 2010 to the present, Defendants have permitted Razan to be
2 used for the sale of narcotics and narcotics paraphernalia and have engaged in the purchase and sale of
3 stolen property as follows:

4 a. On September 27, 2010, officers from the San Francisco Police Department ("SFPD")
5 saw a man holding a bag of crack cocaine standing directly in front of Razan. Officers saw the
6 man take out a rock and hand it to a woman. The woman gave the man money. Officers
7 arrested both individuals for the drug sale.

8 b. On December 6, 2010, an undercover officer of the SFPD went to Razan with a bag of
9 Walgreens merchandise that the officer represented was stolen. The officer told Defendants
10 that his cousin worked at a Walgreens warehouse and could steal as much merchandise as
11 desired. Defendants purchased the merchandise and requested that the officer bring him
12 specific types of merchandise the next time.

13 c. On December 7, 2010, the same undercover officer went to Razan with a bag
14 containing the specific items of Walgreens merchandise requested by Defendants. Defendants
15 purchased the merchandise. Defendants told the officer that the reason Razan could purchase
16 stolen merchandise was because they did not have cameras at Razan. The officer gave his cell
17 phone number to Defendants and told Defendants to call him if he needed additional
18 merchandise.

19 d. A short time later, Defendants called the same undercover officer on the officer's cell
20 phone and left a message. On January 3, 2011, the officer called Defendants back. During the
21 conversation, Defendants requested that the officer bring additional merchandise to Razan.

22 e. On January 14, 2011, the same undercover officer went to Razan with a bag containing
23 Walgreens merchandise that Defendants had requested over the phone. Defendants purchased
24 the merchandise. When the undercover officer represented that he had access to a whole pallet
25 of stolen merchandise, Defendant stated that he would be interested in purchasing the items.
26 As soon as the officer left Razan, Defendant closed and locked the security gate to Razan.

27 f. On May 24, 2011, the same undercover officer went to Razan and sold another bag of
28 merchandise allegedly stolen from Walgreens to Defendants. The officer asked Defendants for

1 cigarettes and a crack pipe. Defendants sold him both items. Defendants, unsolicited, asked
2 the officer if he needed drugs. When the officer answered affirmatively, Defendants walked to
3 the front door and talked to several drug dealers loitering right outside the front door of Razan.
4 Defendants then vouched for the officer and told the drug dealers to take care of the officer.
5 One of the dealers then walked into Razan and sold the officer a rock of crack cocaine in front
6 of Defendants. Defendants asked the officer if he was taken care of. The officer replied,
7 "Yes."

8 g. On May 25, 2011, the same undercover officer went to Razan and sold a bag of
9 merchandise allegedly stolen from Walgreens to Defendants. During the transaction,
10 Defendants asked the officer if he needed a pipe. When the officer replied that he did,
11 Defendants provided him with a crack pipe.

12 h. On June 20, 2011, a different officer working undercover saw a woman sell drugs to a
13 man directly in front of Razan. After the sale, the woman stood right in the doorway to Razan.
14 The officer approached the woman and purchased crack cocaine from the woman, directly in
15 front of Razan.

16 i. On July 1, 2011, officers conducting surveillance of the area saw a woman sitting on a
17 milk crate directly in front of Razan. She acted as the lookout while another man sold cocaine
18 in front of Razan.

19 j. On September 30, 2011, officers conducting surveillance of the area saw a woman walk
20 to Razan and buy cocaine base from a dealer standing in front of Razan. The officers arrested
21 the first woman. When they looked for the dealer to arrest her, the officers found her inside
22 Razan.

23 k. On November 15, 2011, officers received information that a man inside Razan was in
24 possession of a gun. Officers went to Razan to wait for the man to exit, but the man did not
25 exit. Officers then went inside Razan, pat-searched the man, and found him in possession of a
26 loaded firearm.

27 l. On November 29, 2011, the same undercover officer from the May 25, 2011 incident
28 went to Razan with two bags of merchandise allegedly stolen from Walgreens. Defendants

1 purchased the merchandise and told the officer to bring aspirin, neosporin and Visine the next
2 time. Defendants then asked the officer if he wanted a pipe and brillo. When the officer stated
3 that he did, Defendants gave the officer a crack pipe and brillo for free. The officer then went
4 out to the front of Razan and attempted to buy drugs from two men in front of Razan. When
5 the men refused, Defendants walked out to where the officer was and told the men, "He's
6 (referring to the undercover officer) like family." The officer and one of the two men then
7 entered Razan. The man brought in another man, and the officer purchased crack cocaine from
8 the two men inside Razan, in full view of Defendant. Defendants then asked the officer, "Are
9 you good?" The officer stated he was and left Razan

10 m. On December 20, 2011, an undercover officer of the SFPD went to Razan with a bag of
11 merchandise allegedly stolen from Walgreens. Defendants purchased the merchandise. The
12 officer asked Defendants for a crack pipe. Defendants provided one to the officer. The officer
13 walked outside Razan to buy drugs, but could not locate any dealers. The officer asked
14 Defendants for assistance. Defendants walked outside and called out to a man across the street.
15 Defendants told the officer this man was reliable because he worked for a known local drug
16 dealer. Defendants, the man, and the officer walked back inside Razan. Once inside, the
17 officer asked to buy \$20 worth of cocaine. The man told the officer that "Carla" would not be
18 back for another hour, but he could look elsewhere to get the officer drugs. The officer handed
19 the man \$20. The man and the officer went outside Razan together. The officer then returned
20 to Razan to wait while the man looked for drugs for the officer. While the officer waited, he
21 asked Defendant whether he believed the man would return. Defendants told the officer that
22 the man was reliable and would return. Shortly thereafter, the man came back inside Razan
23 and handed the officer cocaine, in full view of Defendants. The officer thanked Defendants for
24 his help and left Razan.

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**
2 **FOR PUBLIC NUISANCE BROUGHT BY PLAINTIFFS PEOPLE OF THE STATE OF**
3 **CALIFORNIA AND THE CITY AND COUNTY OF SAN FRANCISCO AGAINST ALL**
4 **DEFENDANTS BASED ON THE SALE OF NARCOTICS AND NARCOTICS**
5 **PARAPHERNALIA AT RAZAN**

6 **(Health And Safety Code Sections 11570 -11587)**

7 22. Plaintiffs People of the State of California and the City and County of San Francisco
8 hereby incorporates by reference paragraphs 1 through 21 above, as though fully set forth herein.

9 23. Since at least September 2010, Defendants and their employees and agents have sold,
10 stored, or possessed controlled substances or paraphernalia used to ingest or inhale controlled
11 substances at Razan and/or permitted the sale, storage, possession, manufacture, consumption or
12 distribution of controlled substances at Razan. Such conduct constitutes a nuisance as a matter of law
13 pursuant to California Health and Safety Code Section 11570.

14 24. Pursuant to California Health and Safety Code Section 11581, Plaintiffs request that the
15 Court close Razan for one year and impose civil penalties of \$25,000.00 against each Defendant to
16 prevent Defendants from continuing to maintain a nuisance at Razan.

17 25. Unless said nuisance is abated, the residents and citizens of the City and County of San
18 Francisco and the People of California will suffer irreparable injury and damage, in that said
19 conditions will continue to be dangerous to the life, safety or health of those who live and work near
20 Razan and the general public.

21 26. Plaintiffs have no adequate remedy at law in that damages alone are insufficient to
22 protect the public from the present injury and harm caused by the conduct described above.

23 **SECOND CAUSE OF ACTION**
24 **FOR PUBLIC NUISANCE BROUGHT BY PLAINTIFFS PEOPLE OF THE STATE OF**
25 **CALIFORNIA AND CITY AND COUNTY OF SAN FRANCISCO AGAINST ALL**
26 **DEFENDANTS**

27 **(Civil Code Section 3479 et seq.)**

28 27. Plaintiffs hereby incorporate by reference paragraphs 1 through 26 as though fully set
forth herein.

28 28. Plaintiffs bring this action pursuant to Code of Civil Procedure Section 731 and Civil
Code Section 3494.

1 29. By permitting the above described injurious, illegal, annoying and disruptive activities
2 to occur and exist at Razan, Defendants have caused and maintained a continuing public nuisance
3 within the meaning of California Civil Code Section 3479 and 3480. These activities are injurious to
4 health and offensive to the senses so as to interfere with the comfortable enjoyment of life or property
5 in an entire community or neighborhood.

6 30. At all times herein mentioned, Defendants had notice and knowledge that Razan
7 constituted a public nuisance.

8 31. Plaintiffs have no adequate remedy at law in that damages are insufficient to protect the
9 public from the present danger and harm caused by the conditions described above.

10 32. Plaintiffs are informed and believe that Defendants will continue to maintain Razan in
11 the above-described condition as a public nuisance.

12 33. Unless said nuisance is abated, the surrounding community and neighborhood, and the
13 residents and citizens of the City and County of San Francisco, will suffer irreparable injury and
14 damage, in that said conditions will continue to be injurious to the enjoyment and the free use of the
15 life and property of said citizens and residents of the City and County of San Francisco.

16 **THIRD CAUSE OF ACTION**
17 **FOR UNFAIR AND UNLAWFUL BUSINESS PRACTICES BROUGHT BY PLAINTIFF**
18 **PEOPLE OF THE STATE OF CALIFORNIA AGAINST ALL DEFENDANTS**
19 **(California Business and Professions Code Sections 17200-17210)**

20 34. Plaintiff hereby incorporates by reference paragraphs 1 through 33 as though fully set
21 forth herein.

22 35. Plaintiff brings this cause of action in the public interest in the name of the People of
23 the State of California, pursuant to Business and Professions Code Section 17200, *et seq.*, in order to
24 protect the residents and owners of properties adjoining Razan, as consumers and competitors of the
25 services provided by Defendants, from the unlawful and unfair business practices committed by
26 Defendants in the operation of Razan within the City and County of San Francisco, State of California.

27 36. The violations of law described herein have been and are being carried out wholly or in
28 part within the City and County of San Francisco. The actions of Defendants are in violation of the
laws and public policies of the City and County of San Francisco and the State of California, and are

1 inimical to the rights and interest of the general public.

2 37. Defendants are now engaging in and, for a considerable period of time and at all times
3 pertinent to the allegations of this Complaint, have engaged in, unfair and unlawful business practices
4 prohibited by California's Unfair Competition Law by managing and operating Razan in violation of
5 the following laws:

- 6 • California Health and Safety Code Sections 11570 -11587 by permitting the sale,
7 storage, possession, manufacture, consumption or distribution of controlled substances
8 at Razan;
- 9 • California Health and Safety Code Section 11364.7 by delivering, furnishing,
10 transferring, and possessing with intent to deliver, furnish or transfer drug
11 paraphernalia, knowing or under circumstances where one reasonably should know that
12 it will be used to ingest, inhale or otherwise introduce into the human body a controlled
13 substance;
- 14 • California Civil Code Sections 3479 and 3480 by maintaining a public nuisance at
15 Razan; and
- 16 • California Penal Code Section 496 by knowingly purchasing and selling stolen
17 property.

18 38. As a direct and proximate result of the foregoing acts and practices, Defendants have
19 received income, profits, and other benefits, which they would not have received if Defendants had not
20 engaged in the violations of the Unfair Competition Law described in this Complaint.

21 39. As a direct and proximate result of the foregoing acts and practices, Defendants have
22 obtained a competitive unfair advantage over similar businesses that have not engaged in such
23 practices.

24 40. Plaintiff has no adequate remedy at law in that damages are insufficient to protect the
25 public from the harm caused by the conditions described in this Complaint.

26 41. Unless injunctive relief is granted to enjoin the unfair and unlawful business practices
27 of Defendants, Plaintiff will suffer irreparable injury and damage.

28 42. By engaging in unfair and unlawful business practices described herein, Defendants are

1 each subject to civil penalties in the amount of \$2,500.00 per violation, pursuant to California
2 Business and Professions Code Section 17206.

3 **PRAYER**

4 WHEREFORE, Plaintiffs pray that:

5 **Declaratory Relief**

6 1. Razan be declared a public nuisance in violation of Civil Code Sections 3479 and 3480
7 and California Health and Safety Code Sections 11570 -11587;

8 2. Defendants be declared to have engaged in unfair and unlawful business acts and
9 practices in violation of California Business and Professions Code Sections 17200-17210;

10 **Injunctive Relief**

11 3. the public nuisance be preliminarily and permanently abated in accordance with
12 California Civil Code Section 3480 *et seq.*, California Code of Civil Procedure Section 731, and
13 California Health and Safety Code Sections 11570-11587;

14 4. Razan be closed for one year pursuant to California Health and Safety Code Section
15 11581;

16 5. in the event the Court decides that any vacancy resulting from closure will be harmful
17 to the community, in lieu of closing Razan, each Defendant be ordered to pay damages in an amount
18 equal to the fair market rental value of Razan for one year to the CITY for the purpose of carrying out
19 drug abuse treatment, prevention, and education programs pursuant to California Health and Safety
20 Code Section 11581(c)(1);

21 6. in the event that the Court does not order Razan closed, all Defendants, their agents,
22 officers, managers, representatives, employees, and anyone acting on their behalf, and their heirs and
23 assignees be preliminarily and permanently enjoined from operating, conducting, using, occupying, or
24 in any way permitting the use of Razan as a public nuisance pursuant to Civil Code Section 3480 and
25 California Health and Safety Code Sections 11570-11587;

26 7. Defendants be enjoined and restrained from occupying or operating Razan while the
27 conditions described in this Complaint exist and until all of the violations at Razan have been abated;
28

1 8. Defendants be ordered to cause Razan to conform to law, and maintain such structures
2 and all parts thereof in accordance with law;

3 9. pursuant to California Business and Professions Code Section 17203-17204,
4 Defendants, their agents, officers, managers, representatives, employees, and anyone acting on their
5 behalf, and their heirs, successors, and assignees be enjoined from operating, conducting, using,
6 occupying, or in any way permitting the use of Razan in the unfair and unlawful business practices
7 described in this Complaint;

8 10. Defendants, and each of them, inclusive, be enjoined from spending, transferring,
9 encumbering, or removing from California any money received from Razan or in payment for the
10 unfair and unlawful acts alleged in the Complaint;

11 **Penalties**

12 11. the Court impose civil penalties of \$25,000.00 against each Defendant to prevent them
13 from continuing to maintain a nuisance at Razan, pursuant to California Health and Safety Code
14 Section 11581;

15 12. pursuant to Business and Professions Code Section 17206, Defendants be ordered to
16 each pay a civil penalty of \$2,500.00 for each act of unfair and unlawful competition in violation of
17 Business and Professions Code Sections 17200-17210;

18 13. Defendants be ordered to each pay an additional civil penalty of \$2,500.00 for every act
19 of unfair competition that harmed an elderly or disabled person pursuant to Business and Professions
20 Code Section 17206.1;

21 14. pursuant to Business and Professions Code Section 17203, Defendants be ordered to
22 disgorge all profits obtained through their unfair and unlawful business practices in violation of
23 Business and Professions Code Sections 17200-17210;

24 15. Defendants be ordered to pay restitution for money obtained through an unfair business
25 practice to those persons in interest from whom the property was taken, pursuant to California
26 Business and Professions Code Section 17203 and *People v. Beaumont Investment, Ltd., et al.* (2003)
27 111 Cal.App.4th 102, 134-136;

28 ///

1 **Fees and Costs**

2 16. Defendants be ordered to pay Plaintiffs' reasonable attorney's fees and costs, including
3 the cost of investigation and discovery, pursuant to California Civil Code section 3496(c).

4 17. Plaintiffs be awarded their costs incurred herein pursuant to Code of Civil Procedure
5 Section 1032; and

6 18. the Court grant such other and further relief as this Court should find just and proper.

7 Dated: 1/26/12

8
9 DENNIS J. HERRERA
 City Attorney
 ALEX G. TSE
 Chief Attorney
 JENNIFER E. CHOI
 JERRY THREET
 Deputy City Attorneys

13 By: 

14 JENNIFER E. CHOI
 JERRY THREET

15 Attorneys for Plaintiffs
16 PEOPLE OF THE STATE OF CALIFORNIA and
17 CITY AND COUNTY OF SAN FRANCISCO

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