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CLERK SUPERIOR COURT
SAN DIEGO COUNTY, CA

7 Attorneys for Plaintiff

No Fee GC §6103

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

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

Case No. **37-2019-00057598-CU-MC-CTL**

UNLIMITED JURISDICTION

12 Plaintiffs,

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

13 v.

14 JAMES BRADLEY BARTON; and
DOES 1 through 50, inclusive,

(1) APPOINTMENT OF A RECEIVER
(CAL. HEALTH & SAFETY CODE
SECTION 17980.7(c));

16 Defendants.

(2) PUBLIC NUISANCE (CAL. CIVIL
CODE SECTIONS 3479 & 3480); AND

(3) VIOLATIONS OF THE SAN DIEGO
MUNICIPAL CODE

22 Plaintiffs the People of the State of California and the City of San Diego, a municipal
23 corporation (Plaintiffs), appearing by and through their attorneys, Mara W. Elliott, City Attorney,
24 and Paul F. Prather, Deputy City Attorney, allege the following based upon information and
25 belief:

26 **JURISDICTION AND VENUE**

27 1. Plaintiffs by this action and pursuant to California Health and Safety Code (Cal.
28 Health & Safety Code) section 17980.7(c), California Code of Civil Procedure sections 526 and

1 731, and San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, seek the
2 appointment of a receiver, a temporary restraining order, preliminary injunction, and permanent
3 injunction prohibiting Defendants from using or maintaining a substandard property in violation
4 of state and local ordinance provisions and as a public nuisance which is a threat to the health,
5 safety, and welfare of the public and its occupants, and also seeks to obtain civil penalties, costs,
6 and other equitable relief.

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

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

13 THE PARTIES

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

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

18 6. The owner of record of 2610 Arnott Street, San Diego, California (Property) where the
19 substandard conditions and nuisance are being maintained is JAMES BRADLEY BARTON
20 (Defendant), as named in the Grant Deed dated June 16, 2004.

21 7. Defendant is a resident of the City of San Diego in the State of California.

22 8. As the owner of the Property, Defendant is a "Responsible Person" within the
23 meaning of SDMC section 11.0210 for allowing and maintaining violations of the SDMC at the
24 Property. He is also strictly liable for all code violations occurring at the Property pursuant
25 SDMC section 121.0311 and applicable California law.

26 PROPERTY

27 9. The legal address of the property where the substandard building is located and the
28 nuisance is occurring is 2610 Arnott Street, San Diego, CA 92110, also identified as Assessor's

1 Parcel Number 424-101-08, according to the San Diego County Recorder's Grant Deed document
2 number 2004-0595719, recorded on June 25, 2004.

3 10. The legal description of the Property is:

4 Lot 356 of Clairemont, Unit No.3, According to map thereof No.
5 2776, filed in the Office of the County Recorder of San Diego
County, California, on April 23, 1951.

6 11. On June 16, 2004, the Property was granted to Defendant, an unmarried man, per a
7 Grant Deed recorded with the San Diego County Recorder's Office on June 25, 2004, document
8 number 2004-0595719.

9 12. The Property is in a Residential Single Family (RS-1-7) zone in the neighborhood of
10 Clairemont Mesa in the City of San Diego. The Property is 1613 square feet and was developed
11 in 1952 as a single-family dwelling consisting of three bedrooms, two bathrooms, a kitchen, and a
12 two-car garage. In 1953, a living room addition was added to the Property.

13 **FACTUAL ALLEGATIONS**

14 13. The City of San Diego's Development Services Department, Code Enforcement
15 Division (CED) became aware of the Property in April 17, 2018, when Sergeant Jared Wilson and
16 Officer Brandon Broaddus from San Diego Police Department (SDPD) reported the Property was
17 associated with a Drug Abatement Response Team (DART) investigation and requested a code
18 enforcement case be started on the Property due to the appearance of numerous code violations.

19 14. On or about April 25, 2018, SDPD's DART team member and SDPD Officer Jason
20 Taub went to the Property to conduct a Fourth Amendment waiver compliance search on one of
21 the residents of the Property, Dustin Schepici. The Fourth Amendment waiver compliance search
22 was done to confirm Schepici had been complying with the terms of his probation. During the
23 search, Officer Taub found evidence of a controlled substance and arrested a resident of the
24 Property for being under the influence of a controlled substance.

25 15. On that same day, Combination Building Inspector Jeff Barnes and Zoning
26 Investigator Rowdy Sperry inspected the Property, and observed the following conditions:
27 electrical violations, improperly installed and unpermitted water heater, lack of smoke and carbon
28

1 monoxide detectors, faulty weather protection, several empty and loaded needles within the
2 residence, lack of property maintenance, and dead mice inside the residence.

3 16. The specific SDMC violations observed by Inspector Barnes and Investigator Sperry
4 during the April 25, 2018, inspection of the Property, include:

5 a. Inadequate Sanitation. General dilapidation or improper maintenance. Lack of
6 maintenance for the patio cover and eaves on the dwelling.

7 b. Nuisance by excessive accumulation of junk and trash throughout the exterior of
8 the Property and inside the garage.

9 c. Inadequate wiring. Unguarded electrical wiring connections and outlet boxes and
10 use of extension cords as a substitute for permanent wiring.

11 d. Faulty weather protection. Broken, rotted, split, or buckled exterior wall coverings
12 or roof coverings.

13 e. Accumulation of weeds, vegetation, junk, dead organic matter, garbage, offal,
14 rodent, harborages, stagnant, and combustibles.

15 f. Failure to maintain required off-street parking free of storage and obstructions by
16 keeping the garage full of storage.

17 g. Non-incident storage.

18 h. Unpermitted vehicle storage by keeping two inoperable vehicles stored in the
19 driveway blocking required aisles to off-street parking.

20 i. Failing to install required smoke alarms in all bedrooms and other locations as
21 required.

22 j. Failing to install required carbon monoxide alarms in all locations as required.

23 k. Failure to obtain the required plumbing/mechanical permit(s) to install unpermitted
24 water heater installation and complete all required inspections.

25 17. On October 11, 2018, the City issued Defendant a Notice and Order to Repair
26 Substandard Building (Notice and Order). The Notice and Order advised Defendant of the
27 existence and nature of the code violations observed at the Property during the April 25, 2018,
28 inspection. The Notice and Order required correction of the code violations and advised

1 Defendant that failure to comply could result in the assessment of civil penalties and appointment
2 of a Receiver. Development Service's Code Enforcement Division (CED) mailed the Notice and
3 Order to Defendant via first class mail and certified mail return receipt.

4 18. On December 11, 2018, Zoning Investigator Christopher Penman conducted a non-
5 scheduled inspection at the Property. He found the garage full of storage, trash, and debris. There
6 was a general dilapidation and lack of maintenance of the attached patio cover and eaves. Non-
7 incidental storage, trash and debris were found in the interior and exterior of the Property creating
8 egress issues. Scales, water pipes, drug paraphernalia and substances which appeared to be
9 marijuana wrapped in saran wrap and seen in open medicine containers were clearly visible inside
10 the Property. There were accumulated weeds, junk, and dead organic matter. A 1975 Volvo
11 registered to the Defendant with expired tags was found in the driveway. Plumbing and electrical
12 violations as well as an infestation of mice, rats and roaches was observed.

13 19. On March 06, 2019, SDPD Officer Nathan Parga spoke with Defendant over the
14 phone. Defendant told Officer Parga he had been at the hospital for two weeks and did not know
15 who was living at the Property. Defendant admitted he did not have the means to correct any of
16 the health and safety violations addressed in the Notice and Order. Defendant informed Officer
17 Parga that he felt the health and safety issues with the garage were minor and Defendant stated he
18 was not going to repair them despite the Notice and Order.

19 20. That same day, Officer Parga also spoke with Defendant about the several different
20 individuals who use narcotics and live and frequent the Property. Defendant stated he wanted to
21 evict them but was unable to because his current medical condition did not allow him to go to the
22 courthouse to start the process. Officer Parga noted that Defendant has been making that same
23 statement since May 2018 and has taken no action. Finally, when Officer Parga requested an
24 inspection of the Property, Defendant refused inspection and did not provide a timeframe for his
25 hospital discharge or when an inspection could occur.

26 21. On or about June 25, 2019, a CED Zoning Investigator and a City Attorney
27 Investigator returned to the Property to conduct an unannounced compliance inspection. The
28 investigators contacted the Defendant and requested to inspect the premises to verify compliance

1 with the City's Notice and Order issued on October 11, 2018. Defendant refused an interior
2 inspection. From the exterior of the Property, the investigators found the Property in worse
3 condition that before and observed that the violations referenced in the Notice and Order dated
4 October 11, 2018, had yet to be corrected. They found a disabled vehicle (Nissan) directly in front
5 of the Property and a Dodge Durango in the driveway – neither registered to the address. The
6 property owner also stated that he currently had two roommates. However, there were three males
7 and a female in the house on that day, aside from the property owner himself. The yard was in the
8 same condition as before; there was trash and debris in the courtyard area, in the detached garage
9 and rear yard.

10 22. On October 21, 2019, nine days prior to the filing of this Complaint, SDPD Northern
11 Crime Suppression Team, consisting of SDPD Officers Taub, Lawrence Durbin, Curtis Bryant
12 and Jordan Delatorre, conducted a Fourth Amendment waiver probation check at the Property.
13 Six individuals were arrested during the check. Six individuals, four males, age 26, 31, 33, and
14 39, as well as two females, age 26 and 28, were arrested on a variety of crimes including an
15 outstanding warrant, resisting arrest, providing false identification to a police officer and use or
16 being under the influence of controlled substances. Members of the Crime Suppression Team
17 also found long stem pipes, white crystalline substances, scales, and a black tar substance
18 believed to be controlled substances and paraphernalia for the use of or sale of controlled
19 substances.

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

23 24. The public nuisance conditions existing at the Property endanger the health and
24 welfare of the occupants, the community, and create a safety hazard. Defendant is blatantly and
25 willfully in violation of the SDMC and the Cal. Health & Safety Code and will continue to
26 maintain the unlawful code violations at the Property in the future unless the Court intervenes.
27 Absent injunctive relief, the City will be irreparably harmed and the ongoing violations will
28 continue to harm the public health, safety, and welfare of the citizens of San Diego.

1 . . . the enforcement agency . . . may seek and the court may order, the appointment of a receiver
2 for the substandard building pursuant to this subdivision.”

3 31. The City issued Defendant a Notice and Order to Repair on October 11, 2018,
4 pursuant to Cal. Health & Safety Code section 17980.6. The Notice and Order to Repair required
5 Defendant to abate the substandard conditions at the Property. The Notice and Order to Repair
6 advised Defendant of the unlawful and dangerous conditions existing at the Property and declared
7 that the conditions at the Property violate Cal. Health & Safety Code section 17920.3. The Notice
8 and Order to Repair also declared that the conditions at the Property are substandard and create a
9 public nuisance.

10 32. The City posted the Notice and Order in a conspicuous place at the Property and
11 mailed the Notice and Order to Repair to Defendant via first class mail and certified mail return
12 receipt. The Notice and Order to Vacate and Repair issued on October 11, 2018, also advised
13 Defendants that if they failed to comply as directed that the City could seek the appointment of a
14 receiver pursuant to Cal. Health & Safety Code section 17980.7(c).

15 33. The substandard violations existing at the Property and referenced in the Notice and
16 Order to Vacate and Repair include:

17 a. Inadequate Sanitation. General dilapidation or improper maintenance. Lack of
18 maintenance for the patio cover and eaves on the dwelling. Cal. Health & Safety Code section
19 17920.3(a) (14).

20 b. Nuisance by excessive accumulation of junk and trash throughout the exterior of
21 the Property and inside the garage. On the exterior of the Property, there is an accumulation of
22 waste, trash, and debris. Due to the condition of the dwelling, the Property creates a fire hazard
23 for the occupants of the Property and to the neighborhood. Cal. Health & Safety Code section
24 17920.3(c); SDMC section 12.0204.

25 c. Inadequate wiring. Unguarded electrical wiring connections and outlet boxes and
26 use of extension cords as a substitute for permanent wiring. Cal. Health & Safety Code section
27 17920.3(d); Cal. Electric Code (CEC) section 400.8.

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1 d. Faulty weather protection. Broken, rotted, split, or buckled exterior wall coverings
2 or roof coverings of the patio cover and eaves. Cal. Health & Safety Code section 17920.3(g)(4).

3 e. Accumulation of weeds, vegetation, junk, dead organic matter, garbage, offal,
4 rodent, harborages, stagnant, and combustibles. Cal. Health & Safety Code section 17920.3(j).

5 f. Failure to maintain required off-street parking free of storage and obstructions by
6 keeping the garage full of storage and obstructions. Two non-operational vehicles that are being
7 stored in the driveway lack current registration. There are stored vehicles, trash, and debris inside
8 the detached garage which block access to required off-street parking spaces. SDMC sections
9 121.0302, 142.0510(a)(b), and 142.1110.

10 g. Non-incident storage throughout the exterior of the property. SDMC section
11 142.1110.

12 h. Lack of required operational smoke alarms inside the property. SDMC section
13 121.0302 and 145.0103; California Residential Code (CRC) sections 314.1 et. seq.

14 i. Lack of required operational carbon monoxide alarms inside the property. SDMC
15 section 121.0302 and 145.0103; CRC section 315.1 et. seq.

16 j. Failure to obtain the required plumbing/mechanical permits. The water heater was
17 installed without the required permits, inspections and approvals. The garage has unpermitted
18 hookups for laundry sink, washing machine, and dryer. SDMC sections 121.0302 and 129.0402.

19 34. Defendant has had ample time to comply with the City's Notice and Order to Repair
20 and yet have failed to do so within a reasonable time.

21 35. Beginning on an exact date unknown to Plaintiff, but since at least April 17, 2018,
22 Defendant has used or maintained the Property in violation of Cal. Health & Safety Code section
23 17920.3. Due to the long-term cumulative effect of substandard conditions at the Property, these
24 violations are so extensive and of such a nature that they substantially endanger the health and
25 safety of the occupants and the public.

26 36. Defendant has failed to comply within a reasonable time with the Notice and Order to
27 Repair and continue to maintain the Property in violation of the Cal. Health & Safety Code as
28 described above.

1 37. The City served each person with a record interest in the Property written notice of the
2 City's intent to seek the appointment of a receiver at least three days before filing this Complaint
3 as required per Cal. Health & Safety Code section 17980.7(c).

4 38. Unless this Court appoints a receiver pursuant to Cal. Health & Safety Code section
5 17980.7(c), Defendant will continue to maintain the Property in a manner that constitutes a
6 violation of the Cal. Health & Safety Code and local ordinance provisions.

7 **II**

8 **SECOND CAUSE OF ACTION**

9 **MAINTENANCE OF A PUBLIC NUISANCE IN VIOLATION**
10 **OF CAL. CIVIL CODE SECTIONS 3479 AND 3480**
11 **ALLEGED BY PLAINTIFF THE PEOPLE OF THE STATE**
12 **OF CALIFORNIA AGAINST ALL DEFENDANTS**

13 39. Plaintiff the People of the State of California incorporates by reference all allegations
14 in paragraphs 1 through 38 of this Complaint as though fully set forth herein their entirety.

15 40. California Civil Code (Cal. Civ. Code) sections 3479 and 3480 provide that:

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

22 41. Cal. Civ. Code section 3491 provides for the methods by which public nuisances such
23 as those alleged in this case may be abated. Cal. Civ. Code section 3491 indicates that the
24 remedies against a public nuisance are indictment or information, a civil action, or abatement.
25 Cal. Civ. Code section 3494 states that a public nuisance may be abated by any public body or
26 officer authorized thereto by law.

27 42. California Code of Civil Procedure section 731 authorizes a city attorney to bring an
28 action to enjoin or abate a public nuisance. It provides in relevant part "[a] civil action may be
brought in the name of people of the State of California to abate a public nuisance . . . by the city
attorney of any town or city in which such nuisance exists."

1 43. The City issued Defendant a Notice and Order requiring that he correct the code
2 violations existing at the Property. The City issued Defendant a Notice and Order to Repair the
3 Substandard Building and Abate the Public Nuisance pursuant to Cal. Health & Safety Code
4 section 17980.6 on October 11, 2018. The notice advised Defendant of the bad and dangerous
5 conditions found to exist at the Property and declared that the conditions violate the Cal. Health &
6 Safety Code and the SDMC.

7 44. Defendant has had ample time to comply with the City's Notice and Order and yet he
8 has failed to do so within a reasonable time.

9 45. On July 25, 2019, The City filed a Notice of Pending Enforcement Action and mailed
10 a copy to Defendant on July 26, 2019, along with a copy of the Notice and Order.

11 46. Beginning on an exact date unknown to Plaintiff, but since at least April 17, 2018, and
12 continuing to the present, Defendant has used or maintained the Property in a manner that violates
13 the Cal. Health & Safety Code and the SDMC. Due to the long-term cumulative effect of the
14 substandard conditions at the Property, these violations are so extensive and of such a nature that
15 the health and safety of the Defendant and the public have been substantially endangered.

16 47. The arrests and calls for service to the police department related to the Property
17 constitute a continuing public nuisance. Despite Defendant's knowledge of the nuisance and
18 criminal activity at the Property he has refused to address the issues, thus the public nuisance
19 continues.

20 48. Defendant's maintenance of the Property in the condition described above constitutes
21 a continuing public nuisance as defined by Cal. Civ. Code sections 3479 and 3480. Defendant's
22 Property adversely affects the entire community and neighborhood. The Property as it currently
23 exists is injurious to the health, safety, and welfare of the residents and families who live in the
24 community and interferes with the comfortable use and enjoyment of life and property. Such
25 conditions are objectionable to the neighborhood and community as a whole.

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

1 III

2 THIRD CAUSE OF ACTION

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

6 50. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1
7 through 49 of this Complaint as though fully set forth herein their entirety.

8 51. SDMC section 121.0302(a) states that it is unlawful for any person to maintain or use
9 any premises in violation of any of the provisions of the Land Development Code¹, without a
10 required permit, contrary to permit conditions, or without a required variance.

11 52. SDMC section 121.0302(b)(4) states that it is unlawful to maintain or allow the
12 existence of any condition that creates a public nuisance. Beginning on an exact date unknown to
13 Plaintiff, but since at least April 17, 2018, and continuing to the present, Defendant has
14 maintained a public nuisance at the Property in violation of SDMC section 121.0302(b)(4).

15 53. SDMC section 129.0302 provides that no electrical wiring, device, appliance, or
16 equipment shall be installed within or on any structure on-premises nor shall any alteration,
17 addition, or replacement be made in any existing wiring device, appliance, or equipment unless an
18 electrical permit has been obtained for the work. Beginning on an exact date unknown to Plaintiff,
19 but since at least April 17, 2018, and continuing to the present, Defendant maintained electrical
20 modifications at the Property without the required electrical permits in violation of SDMC section
21 121.0302(a).

22 54. SDMC section 129.0402(a) states that no plumbing system, or portion of a plumbing
23 system, shall be installed within or on any structure or premises, nor shall any alteration, addition,
24 or replacement be made in any existing plumbing system unless a plumbing/mechanical permit
25 has been obtained for the work. Beginning on an exact date unknown to Plaintiff, but since at
26 least April 17, 2018, and continuing to the present, Defendant maintained a plumbing/mechanical

27 _____
28 ¹ SDMC § 111.0101(a) states that Chapters 11 through 15 of the San Diego Municipal
Code shall be known collectively, and may be referred to, as the Land Development Code.

1 system at the Property without obtaining a plumbing/mechanical permit in violation of SDMC
2 sections 121.0302(a) and 129.0402(a).

3 55. SDMC section 142.0510(a) states that required off-street parking spaces, parking
4 areas, and transportation facilities shall be used only for parking operable vehicles of residents,
5 employers, employees, customers, and visitors as appropriate to the allowed uses of the
6 applicable zone. Beginning on an exact date unknown to Plaintiff, but since at least April 17,
7 2018, and continuing to the present, Defendant illegally converted the garage at the Property into
8 storage and dumpster eliminating the required parking spaces in violation of SDMC sections
9 121.0302(a) and 142.0510(a).

10 56. SDMC section 142.0510(b) states that all off-street parking spaces and aisles shall be
11 kept clear of any temporary or permanent obstructions. Beginning on an exact date unknown to
12 Plaintiff, but since at least April 17, 2018, and continuing to the present, Defendant has obstructed
13 off-street parking spaces and aisles by illegally storing vehicles, trash, and debris inside the
14 detached garage at the Property and blocking access to required off-street parking access, in
15 violation of SDMC sections 121.0302(a) and 142.0510(a)(b) and 142.1110.

16 57. SDMC section 142.1110 (a) provides that only outdoor storage that is incidental to
17 residential use is permitted. Beginning on an exact date unknown to Plaintiff, but since at least
18 April 17, 2018, and continuing to the present, Defendant has maintained and used the Property in
19 violation of the SDMC by maintaining junk, trash, and debris that is not incidental to a residential
20 use throughout the rear yard at the Property, in violation of SDMC sections 121.0302(a) and
21 142.1110(a).

22 58. Plaintiff City of San Diego has no adequate remedy at law, and unless Defendant is
23 enjoined and restrained by an order of this Court, Defendant will continue to violate the SDMC,
24 thereby causing irreparable injury and harm to the public's health, safety, and general welfare.

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1 PRAYER

2 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

3 AS TO THE FIRST CAUSE OF ACTION

4 Appointment of a Receiver

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

9 2. Before entering upon the duties of a receiver, the receiver must be sworn to perform
10 the duties faithfully and must file a bond with a surety approved by this Court to secure the
11 89faithful performance of his duties pursuant to California Code of Civil Procedure section 567.

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

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

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

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

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

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

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

26 g. To borrow funds to pay for repairs necessary to correct the conditions cited in the
27 City's Notice, and secure that debt, with Court approval, with a recorded priority lien on the
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1 Property. The lien shall take priority over all existing encumbrances on the Property except tax
2 liens; and

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

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

7 a. Collecting any rents from the Property;

8 b. Interfering with the receiver in the operation of the Property; and

9 c. Encumbering or transferring the Property, or any portion of the Property, during
10 the receivership period.

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

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

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

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

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

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

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AS TO THE SECOND CAUSE OF ACTION:

Public Nuisance

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

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

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

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

AS TO THE THIRD CAUSE OF ACTION

Violations of the San Diego Municipal Code

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

<u>San Diego Municipal Code sections</u>	
121.0302(a)	142.0510(a)
129.0402(b)	142.1110(a)
129.0402(a)	145.0103

16. That, pursuant to SDMC sections 12.0202 and 121.0311, the Court grants a preliminary injunction and permanent injunction, enjoining and restraining Defendant, his agents, officers, employees and anyone acting on his behalf, from keeping, allowing, or maintaining violations of the SDMC at the Property.

1 17. That upon discharge of the receiver, Defendant, his agents, heirs, successors, officers,
2 employees and anyone acting on his behalf, are required to maintain the Property in full
3 compliance with the SDMC.

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

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

12 20. That, pursuant to SDMC section 12.0202(b), Defendant is assessed a civil penalty of
13 \$2,500 per day for each and every SDMC violation maintained at the Property.

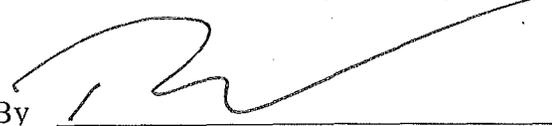
14 AS TO ALL CAUSES OF ACTION

15 21. That Plaintiffs recover all costs incurred by Plaintiffs, including the costs of
16 investigation and any fees authorized by law from Defendant.

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

19 Dated: October 30, 2019

20 MARA W. ELLIOTT, City Attorney

21 
22 By _____

23 Paul F. Prather
24 Deputy City Attorney

25 Attorneys for Plaintiff

26
27
28

1 MARA W. ELLIOTT, City Attorney
JOHN C. HEMMERLING, Assistant City Attorney
2 PAUL F. PRATHER, Deputy City Attorney
California State Bar No. 252985
3 Office of the City Attorney
Community Justice Division/Nuisance Abatement Unit
4 1200 Third Avenue, Suite 700
San Diego, California 92101-4103
5 Telephone: (619) 533-5500
6 Fax: (619) 533-5696
pprather@sandiego.gov

FILED
CIVIL BUSINESS OFFICE-8
CENTRAL DIVISION

2019 OCT 30 A 11: 29

CLERK SUPERIOR COURT
SAN DIEGO COUNTY, CA

7 Attorneys for Plaintiff

No Fee GC §6103

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

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

12 Plaintiffs,

13 v.

14 JAMES BRADLEY BARTON; and
15 DOES 1 through 50, inclusive,

16 Defendants.

Case No.

DECLARATION OF BRUCE
PENDLETON IN SUPPORT OF
PLAINTIFFS' *EX PARTE*
APPLICATION FOR ORDER
APPOINTING RECEIVER,
TEMPORARY RESTRAINING ORDER,
AND FOR AN ORDER TO SHOW
CAUSE RE: CONFIRMATION OF
RECEIVER, ABATEMENT OF A
PUBLIC NUISANCE, AND
INJUNCTIVE RELIEF

IMAGED FILE

Date:
Time:
Dept.:
Judge:
Complaint filed:
Trial Date: none set

22
23 I, Bruce Pendleton, declare:

24 I have personal knowledge of the following facts and am competent to testify as to these
25 facts if called as a witness.

26 1. I have been employed with the San Diego City Attorney's Office since October 2018.
27 I am currently assigned as an Investigator in the Nuisance Abatement Unit (NAU). Some of my
28 duties include, assisting with inspections of Sub-Standard Properties and Independent Living

1 Facilities, I also conduct or assist in the investigation of Red Light Abatement Properties
2 (Massage Parlors). I also serve or assist with the service of Inspection Warrants.

3 2. Prior to becoming an Investigator with the City Attorney's Office, I was a Police
4 Officer with the San Diego Police Department for 28 years. I retired in January 2018. Some of
5 my assignments were, Patrol Officer, Area Station Detective, Narcotics Street Teams Detective,
6 Gang Detective, Homicide Detective, Area Station Detective Sergeant, Vice Unit Detective
7 Sergeant, Cold Case Homicide Team and Adult Missing Persons Detective Sergeant.

8 3. On October 23, 2019, I went to 2610 Arnott St, San Diego, California and posted
9 notice of the City's intention to petition the Court for a Receiver on the property. A true and
10 correct copy of the notice posted is attached to the Complaint as Exhibit C.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct and that this declaration was executed in San Diego, California, on
13 October 29, 2019.

14 
15 _____
16 Bruce Pendleton, Investigator
17
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28

JOHN C. HEMMERLING
ASSISTANT CITY ATTORNEY

PAUL F. PRATHER
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Mara W. Elliott
CITY ATTORNEY

COMMUNITY JUSTICE DIVISION
NUISANCE ABATEMENT UNIT
1200 THIRD AVENUE, SUITE 700
SAN DIEGO, CALIFORNIA 92101-4103
TELEPHONE (619) 533-5655
FAX (619) 533-5696

October 23, 2019

James Bradley Barton
2610 Arnott Street
San Diego, CA 92110

2610 Arnott Street, San Diego, CA 92110

To Whom It May Concern:

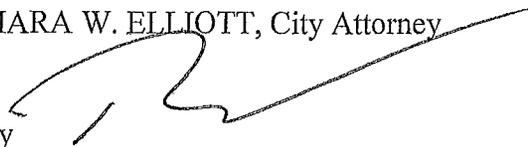
This letter serves to notify you pursuant to California Health and Safety Code section 17980.7(c) of the City of San Diego's intent to petition the court to appoint a receiver for the substandard residential building referenced above.

Please contact me at (619) 533-5690 if you have any questions.

Sincerely yours,

MARA W. ELLIOTT, City Attorney

By


Paul F. Prather
Deputy City Attorney

PPF:mc

EXHIBIT C