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FILED
Clerk of the Superior Court

NOV 12 2019

7 Attorneys for Plaintiffs

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. **37-2019-00060012-CU-MC-CTL**

UNLIMITED JURISDICTION

12 Plaintiffs,

COMPLAINT FOR INJUNCTION, CIVIL
PENALTIES, AND OTHER EQUITABLE
RELIEF

13 v.

14 YUK YUEN YU, an individual;
BEATRICE YU, an individual;
15 MING SHUW LIN also known as
MICHELLE LIN, an individual;
16 MARK ROGERS, an individual; and
DOES 1 through 50, inclusive,

(1) VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW
(CALIFORNIA BUSINESS AND
PROFESSIONS CODE SECTIONS
17200 THROUGH 17210);

17 Defendants.

(2) VIOLATIONS OF THE SAN DIEGO
MUNICIPAL CODE; AND

(3) MAINTENANCE OF A PUBLIC
NUISANCE (CALIFORNIA CIVIL
CODE SECTIONS 3479 AND 3480)

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

24 **JURISDICTION AND VENUE**

25 1. Plaintiffs the People of the State of California and City of San Diego, a municipal
26 corporation (Plaintiffs), by this action and pursuant to California Business and Professions Code
27 (Cal. Bus. & Prof. Code) sections 17203, 17204, and 17206, California Code of Civil Procedure
28 (Code Civ. Proc.) sections 526 and 731, and San Diego Municipal Code (SDMC) sections

1 12.0202 and 121.0311, seek a preliminary injunction and permanent injunction prohibiting
2 defendants from engaging in unfair competition and from using or maintaining a substandard
3 property in violation of state and local ordinance provisions, and as a public nuisance which is a
4 threat to the health, safety and welfare of the public and its occupants. Plaintiffs also seek to
5 obtain civil penalties, costs, and other equitable relief.

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

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

12 **THE PARTIES**

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

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

17 6. Defendants Yuk Yuen Yu and Beatrice Yu (collectively Yu), at all times relevant to
18 this action, were and are the owners of record and lessors of the real property located at 5128
19 Ewing Street, San Diego, California, 92115 (Property) where state and local law violations exist.

20 7. Defendant Ming Shuw Lin also known as Michelle Lin (Lin), is an individual and
21 resident of the County of San Diego, State of California, and at all times relevant to this action
22 was and is the manager of the Property.

23 8. Defendant Mark Rogers (Rogers) is an individual and resident of the County of San
24 Diego, State of California, and at all times relevant to this action was and is the lessee and sub-
25 lessor of the Property where he operates a business.

26 9. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the
27 provisions of Code Civ. Proc. section 474, their true names and capacities are unknown to
28 Plaintiffs. Plaintiffs are informed and believe that each Defendant DOES 1 through 50, is either

1 responsible, in whole or in part, for the violations and conduct alleged, or has, or claims to have,
2 an interest in the Property, the exact nature of which is unknown to the City. When the true names
3 and capacities are ascertained, Plaintiffs will seek leave of court to amend this Complaint and to
4 insert in lieu of such fictitious names the true names and capacities of the fictitiously named
5 Defendants.

6 **PROPERTY**

7 10. The legal address of the Property where the substandard building is located and the
8 unfair competition violations and public nuisance are occurring is 5128 Ewing Street, San Diego
9 California, 92115, also identified as Assessor's Parcel Number 467-082-11-00, according to the
10 San Diego County Recorder's Grant Deed document number 1992-0006598, recorded on
11 January 7, 1992.

12 11. The legal description of the Property is:

13 Lot 77, of COSGROVE MESA, in the City of San Diego, County
14 of San Diego, State of California, according to Map thereof No.
15 2708, filed in the Office of the County Recorder of San Diego
County, September 27, 1950.

16 12. On or about November 4, 1991, the Property was granted to Defendants Yuk Yuen Yu
17 and Beatrice Yu, husband and wife as joint tenants, per a Grant Deed recorded with the San
18 Diego County Recorder's Office on January 7, 1992. Since that time, Defendants Yu have
19 remained the sole owners of the Property.

20 13. The Property is located in a Residential Single Family (RS-1-7) zone in the College
21 area neighborhood in the City of San Diego. The Property was developed in 1950, as a three-
22 bedroom, one-bathroom single family dwelling with an attached one car garage. In 1963, an
23 additional four bedrooms and a bathroom were legally added to the Property. In 1989, the garage
24 and dining room were legally converted into two additional bedrooms and another bathroom was
25 added. The current permitted legal configuration of the Property is that of a single-family
26 dwelling with nine bedrooms and three bathrooms.

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1 **FACTUAL ALLEGATIONS**

2 14. The Property has a history of building violations going back to 2010. On or about
3 March 15, 2010, the City issued a Notice of Violation to Defendants Yu, Lin, and Rogers
4 specifying the existence of building code violations at the Property and requiring correction of the
5 violations. Defendant Rogers at that time leased the Property from the Defendants Yu and sublet
6 rooms to several clients.

7 15. From January 2, 2012, through October 8, 2019, there have been approximately 297
8 calls for service to the San Diego Police Department requiring officers to expend over 625 hours
9 of out-of-service time at the Property. Most of the reported incidents have been requests to
10 investigate disturbing the peace situations, suicide threats, and for psychiatric evaluations.

11 16. On or about October 18, 2018, the Code Enforcement Division (CED) of the City's
12 Development Services Department (DSD), received a community complaint regarding
13 overcrowding and unsanitary conditions existing at the Property.

14 17. On or about November 16, 2018, CED Combination Building Inspector Michelle Ruiz
15 (Inspector Ruiz) along with other City staff conducted an inspection of the Property.

16 18. During the inspection, City inspectors found multiple building violations at the
17 Property, including but not limited to:

- 18 a. An infestation of bed bugs, cockroaches, and mice throughout the interior and
19 exterior.
- 20 b. An illegal water heater that was exhausting fumes into the interior of the dwelling.
- 21 c. Several bedrooms did not have adequate egress.
- 22 d. An illegal patio cover and a storage shed that were being used as habitable space.
- 23 e. Missing or inoperable smoke and carbon monoxide detectors.
- 24 f. Excessive outdoor storage.
- 25 g. Deteriorated fencing.

26 19. During this inspection, City staff determined that Rogers advertises operating an
27 independent living facility business from the Property. Rogers subleases the Property to ten
28 clients. Rogers does not live on the premises, but instead hired a house manager to oversee the

1 premises and its clients. The house manager assists the clients with their needs, takes care of the
2 Property, and prepares daily meals for the clients, some of which have mental challenges.
3 Inspector Ruiz informed Rogers of the existing building violations at the Property which he
4 agreed to correct.

5 20. Independent living facility businesses (ILFs) are privately-owned homes that facilitate
6 a group of adults living together as a family. These businesses serve clients that do not need
7 medication oversight, are able to function without supervision, and live independently. Some of
8 the clients in an ILF may have mental illness or other health conditions which do not affect their
9 ability to carry out major life functions and live independently.

10 21. SDMC section 31.0121 requires a person engaged in any business in the City of San
11 Diego to obtain a Business Tax Certificate (BTC). Rogers does not have a BTC to operate a
12 business from the Property.

13 22. In December of 2018, a male client that subleased a room at the Property from Rogers
14 was removed by family members due to the filthy conditions. When the male occupant moved
15 into the Property in September of 2018, one of his legs had been amputated, and he had a sore
16 that was healing on a toe of his remaining foot. The filthy conditions at the Property caused an
17 infection in the toe which ultimately led to the amputation of his remaining foot.

18 23. On or about December 18, 2018, Inspector Ruiz along with other City staff returned to
19 the Property to conduct a compliance inspection. This inspection revealed that none of the
20 substandard violations observed during the November 2018 Inspection had been remedied.
21 Inspector Ruiz again informed Rogers of the violations and demanded correction of the building
22 violations.

23 24. On or about April 11, 2019, Inspector Ruiz along with other City staff returned to the
24 Property again to conduct a compliance inspection. Except for the installation of smoke detectors,
25 the other building violations remained.

26 25. On or about April 15, 2019, the City issued Defendants Yu, Lin, and Rogers a Notice
27 and Order to Vacate and Repair Substandard Building and Abate Public Nuisance (Notice and
28 Order). The Notice and Order notified Defendants about the existence and nature of the building

1 violations at the Property as observed at the three inspections and demanded correction within
2 specified timeframes. The Notice and Order also required that the Property be vacated within ten
3 calendar days and required Defendants Yu to pay relocation benefits to the ten occupants. The
4 specific violations referenced in the Notice and Order include:

5 a. Lack of egress. Bedrooms without adequate egress. California Health and Safety
6 Code (Cal. Health & Safety Code) section 17920.3(l).

7 b. Lack of working carbon monoxide detectors. California Residential Code (CRC)
8 section R315.1.

9 c. Illegal construction. The patio cover and shed were built without the required
10 permits. SDMC section 129.0202.

11 d. Nuisance. The unsanitary conditions existing at the Property create a public
12 nuisance, including the bed bugs, cockroaches, and mice feces found throughout the entire
13 premises including on the clients' beds. The lack of egress, smoke and carbon monoxide detectors
14 create a fire hazard. Cal. Health & Safety Code section 17920.3(c) and SDMC section
15 121.0302(b)(4).

16 e. Infestation of bedbugs and cockroaches throughout the premises. Cal. Health &
17 Safety Code section 17920.3(a)(12).

18 f. General dilapidation or improper maintenance. The entire premises lacked
19 maintenance, smelled like urine, there was mice feces, and bed bugs. Cal. Health & Safety Code
20 section 17920.3(a)(14).

21 g. Inadequate electrical wiring. The electrical wiring was not in good, safe, and
22 working condition. Electrical fixtures were missing covers. Cal. Health & Safety Code section
23 17920.3(d) and SDMC section 129.0302.

24 h. Occupancy violations. All buildings or portions thereof occupied for living,
25 sleeping, cooking, or dining purposes that were not designed or intended to be used for those
26 occupancies. Sheds being used as habitable space. Cal. Health & Safety Code section 17920.3(n).

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1 i. Accumulation of outdoor storage. Excessive amount of outdoor storage located
2 throughout the exterior yards. Storage items include furniture, appliances, mattresses, wood
3 boards, trash, and debris. SDMC section 142.1110(a) through (c).

4 j. Illegal fencing. Rear fence is over permitted height and dilapidated; side fence is
5 dilapidated. SDMC sections 142.0305(b), 142.0310, and 142.0380(a).

6 k. Unpermitted plumbing installation. Installation of a water heater without required
7 permits. The illegal water heater vented toxic gas and fumes into the interior of the dwelling. Cal.
8 Health & Safety Code section 17920.3(e) and SDMC section 129.0402.

9 26. On or about April 30, 2019, City Attorney Investigators went to the Property and
10 contacted a male client that was lying in a bed, who was naked and disheveled. The male was
11 determined to be older than 65 years old and was unresponsive. The bedroom was full of trash
12 and dirty clothing. SDPD's Psychiatric Evaluation Response Team (PERT) responded to the
13 Property and placed this male on an involuntary psychiatric hold as he was gravely disabled and
14 unable to care for himself. PERT observed the male to be fragile, fatigued, and unable to open
15 one eye. This client was removed from the Property by SDPD officers.

16 27. On or about May 2, 2019, City staff conducted a compliance inspection at the Property
17 and found that except for the installation of the smoke detectors and the water heater correction,
18 the other violations referenced in the Notice and Order remained. Inspectors also found that the
19 patio and the shed had been removed without the required building permits causing structural
20 integrity issues.

21 28. On or about May 14, 2019, an inspector with the County Department of
22 Environmental Health Vector Control Program went to the Property to investigate reports of
23 rodent infestation. The inspector found rodent droppings behind and under the couch, in the patio
24 area, in the fireplace, behind appliances, and on the bathroom floors. There was also evidence of
25 rodent chew marks under the stairwell leading to a bathroom and at the bottom of a bedroom
26 door.

27 29. On or about June 26, 2019, City staff returned to the Property to conduct a compliance
28 inspection. Defendants Lin and Rogers were both present. The conditions observed during the

1 May 2, 2019 inspection remained. Rogers claimed that it was not his responsibility to correct the
2 building code violations.

3 30. On or about August 15, 2019, City staff returned to the Property to conduct a
4 compliance inspection. Bedbugs, cockroaches, and mice were still observed to be present inside
5 the dwelling and several mattresses filled with bedbugs were observed to be stored on the side
6 yard.

7 31. During this inspection, three clients were confirmed to still be occupying the Property
8 despite the Defendants being ordered to vacate the Property pursuant to the Notice and Order
9 issued on April 15, 2019. The clients appeared thin, dirty, and had bad body odor. The clients
10 complained that the washer was broken so they could not wash their clothes; however, upon
11 further inspection, the washer was only unplugged. Rogers was present during the inspection and
12 admitted unplugging the clothes washer claiming his clients were wasting too much water.

13 32. On or about September 6, 2019, City Attorney Investigator Constance Johnson
14 (Investigator Johnson) returned to the Property along with a City Attorney Victim Advocate to
15 provide the three remaining clients with housing resources. The male client who was removed
16 from the Property on April 30, 2019, was found to be naked and delusional. SDPD's PERT
17 responded to the Property and placed him on an involuntary psychiatric hold as he was gravely
18 disabled. This client was removed again from the Property by SDPD officers.

19 33. The independent living facility business advertised by Rogers to be operating from the
20 Property accepts and retains clients who demonstrate the need for care and supervision.

21 34. Defendant Rogers operates other businesses similar to the business operating from the
22 Property in the County of San Diego, outside of the City of San Diego. In 2018, four instances of
23 elder abuse were reported by clients and investigated by the El Cajon Police Department at these
24 other businesses.

25 35. At all times that the Property was substandard as indicated above, Defendants profited
26 by collecting rents and receiving income from leasing the Property.

27 36. Plaintiffs have no adequate remedy at law. Defendants are blatantly and willfully in
28 violation of state and local laws and will continue to maintain the unlawful use of the Property in

1 the future unless the Court enjoins and prohibits such conduct. Absent injunctive relief, the City
2 will be irreparably harmed, and the ongoing violations will continue to harm the public, safety,
3 and welfare of the citizens of San Diego.

4 I

5 FIRST CAUSE OF ACTION

6 VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS
7 CODE SECTION 17200 (UNFAIR COMPETITION) ALLEGED
8 BY PLAINTIFF THE PEOPLE OF THE STATE OF
9 CALIFORNIA AGAINST ALL DEFENDANTS

9 37. Plaintiff the People of the State of California incorporates by reference all allegations
10 in paragraphs 1 through 36 of this Complaint as though fully set forth here in their entirety.

11 38. Cal. Bus. & Prof. Code section 17200 defines unfair competition to include “any
12 unlawful, unfair or fraudulent business act or practice.”

13 39. As the Unfair Competition Law (UCL) contains no express intent, knowledge, or
14 negligence requirement, the UCL “imposes strict liability.” Liability may be established without
15 showing that Defendants intended to injure anyone. *See Rothschild v. Tyco Int’l, Inc.*, 83 Cal.
16 App. 4th 488, 494 (2000) (citing to *State Farm Fire & Casualty Co. v. Superior Court*, 45 Cal.
17 App. 4th 1093, 1102 (1996), disapproved of on another point in *Cel-Tech Communications, Inc.*
18 *v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 184-87 (1999)).

19 40. Cal. Bus. & Prof. Code section 17204 authorizes a city attorney of a city having a
20 population in excess of 750,000 to bring a civil enforcement action on behalf of the people of the
21 State of California.

22 41. Plaintiff, the People by and through Mara W. Elliott, City Attorney for the City of San
23 Diego, a city with a population in excess of 750,000, pursuant to the authority granted by Cal.
24 Bus. & Prof. Code section 17204, brings this suit both on behalf of, and for the benefit of, the
25 People, to redress unfair and deceptive acts or practices and unfair methods of competition to
26 ensure that individuals and entities doing business in the State, and more particularly in the City
27 of San Diego, comply with all governing laws.

28

1 42. A civil enforcement action can be brought against “[a]ny person who engages, has
2 engaged, or proposes to engage in unfair competition....” Cal. Bus. & Prof. Code section 17203.

3 43. Beginning on an exact date unknown to Plaintiff, but within four years prior to the
4 filing of this Complaint, and continuing to the present, Defendants, each of them, have engaged in
5 unfair competition in violation of Cal. Bus. & Prof. Code section 17200, including but not limited
6 to one or more of the following unlawful, unfair, or fraudulent business acts or practices:

7 a. Defendants’ acts of leasing the Property in a substandard condition in violation of
8 Cal. Health & Safety Code section 17920.3, and California Civil Code (Cal. Civ. Code) sections
9 1927 (Covenant of Quiet Enjoyment) and 1941 (Warranty of Habitability). The Property is
10 maintained with substandard conditions that endanger the life, limb, health, property, safety or
11 welfare of the public or the occupants. Defendants are illegally profiting from the rental of the
12 substandard Property. Each violation of the Cal. Health & Safety Code constitutes an unfair and
13 unlawful business practice, including but not limited to, each violation alleged in paragraph 25
14 above.

15 b. Defendants’ acts of leasing the Property in violation of the City of San Diego’s
16 Land Development Code, including but not limited to, the violations alleged in the Second Cause
17 of Action. Each violation of the Land Development Code constitutes an unfair and unlawful
18 business practice.

19 c. Defendants’ acts of leasing the Property and operating or allowing the operation of
20 a business which creates a public nuisance in violation of local and state laws, including but not
21 limited to, the violations alleged in the Second and Third Causes of Action.

22 d. Defendants’ acts of leasing the Property without the required smoke and carbon
23 monoxide detectors, in violation of CRC sections R314.1 and R315.1.

24 e. Defendant Rogers’ act of failing to obtain the required Business Tax Certificate for
25 the operation of a business from the Property, in violation of SDMC section 31.0121.

26 f. Defendant Rogers’ acts of operating an unlicensed care facility for the elderly, in
27 violation of Cal. Health & Safety Code sections 1569.40 and 1569.10. Rogers operates a business
28 at the Property that provides care and supervision to his clients as defined by Cal. Health &

1 Safety Code section 1569.2(c). Per Cal. Health & Safety Code section 1569.46, the operation of
2 an unlicensed care facility is deemed to be unfair competition and an unfair business practice.

3 g. Defendant Rogers' acts of operating a community care facility in violation of Cal.
4 Health & Safety Code section 1508. Rogers operates and maintains a business at the Property
5 that provides non-medical care and accepts and/or retains clients who demonstrate the need for
6 care or supervision, which meets the definition of an unlicensed community care facility pursuant
7 to Cal. Health & Safety Code section 1503.5(a).

8 h. Defendant Rogers' act of causing elder abuse to his clients in violation of
9 California Penal Code section 368(c). Defendant Rogers knew or reasonably should have known
10 that several of his clients were elderly or dependent adults, and that the existing conditions would
11 cause harm.

12 44. Defendants wrongly obtained monies and benefits by their unfair, fraudulent and
13 unlawful business acts and practices to the detriment of the City and the community.

14 45. Unless Defendants cease such unlawful action, their clients and the community will
15 continue to suffer from the egregious conduct of Defendants.

16 **II**

17 **SECOND CAUSE OF ACTION**

18 **VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE**
19 **ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST**
20 **ALL DEFENDANTS**

21 46. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1
22 through 45 of this Complaint as though fully set forth here in their entirety.

23 47. Defendants are each a "Responsible Person"¹ within the meaning of SDMC section
24 11.0210 for allowing and maintaining violations of the SDMC at the Property.

25 48. Defendants are also strictly liable for all code violations existing at the Property
26 pursuant to SDMC section 121.0311 and applicable California law.

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

1 49. SDMC section 121.0302(a) states that “[i]t is unlawful for any person to maintain or
2 use any premises in violation of any of the provisions of the Land Development Code², without a
3 required permit, contrary to permit conditions, or without a required variance.”

4 50. SDMC section 121.0302(b)(4) states that it is unlawful “[t]o maintain or allow the
5 existence of any condition that creates a public nuisance.” Beginning on an exact date unknown
6 to Plaintiff, but since at least October 16, 2018, and continuing to the present, Defendants have
7 maintained a public nuisance at the Property, in violation of SDMC section 121.0302(b)(4).

8 51. SDMC section 142.1110(a) provides that only outdoor storage incidental to a
9 residential use is permitted. Beginning on an exact date unknown to Plaintiff, but since at least
10 October 16, 2018, and continuing to the present, Defendants have maintained an excessive
11 accumulation of outdoor storage including but not limited to furniture, appliances, mattresses,
12 wood boards, trash, and debris, in violation of SDMC sections 121.0302(a) and 142.1110(a).

13 52. SDMC section 142.1110(b) provides that “[o]utdoor storage is subject to all applicable
14 fire, health, safety, and building regulations.” Beginning on an exact date unknown to Plaintiff,
15 but since at least October 16, 2018, and continuing to the present, Defendants have maintained an
16 excessive accumulation of outdoor storage including furniture, appliances, mattresses, wood
17 boards, trash, and debris, in violation of SDMC sections 121.0302(a) and 142.1110(b).

18 53. SDMC section 142.1110(c) provides that “[o]utdoor storage is not permitted in
19 required yard areas [except in certain specified situations].” Beginning on an exact date unknown
20 to Plaintiff, but since at least October 16, 2018, and continuing to the present, Defendants have
21 maintained an excessive accumulation of outdoor storage including furniture, appliances,
22 mattresses, wood boards, trash, and debris, in violation of SDMC sections 121.0302(a) and
23 142.1110(c).

24 54. SDMC section 129.0402 provides that “[n]o plumbing system or portion of a
25 plumbing system, shall be installed within or on any structure or premises . . . unless a
26

27 ² SDMC section 111.0101(a) states that Chapters 11 through 14 of the San Diego
28 Municipal Code “shall be known collectively, and may be referred to, as the Land Development
Code” and that Chapter 15 of the San Diego Municipal Code “shall [also] constitute a part of the
Land Development Code.”

1 Plumbing/Mechanical Permit has been obtained for the work. . . .” Beginning on an exact date
2 unknown to Plaintiff, but since at least October 16, 2018, and continuing to the present,
3 Defendants have maintained and used the Property with unpermitted plumbing modifications
4 including a non-permitted water heater which vented toxic gasses into living spaces, in violation
5 of SDMC sections 121.0302(a) and 129.0402.

6 55. SDMC section 142.0380(a) states that “[p]roperty owners shall maintain fences and
7 retaining walls free from dilapidated or dangerous conditions.” Beginning on an exact date
8 unknown to Plaintiff, but since at least October 16, 2018, and continuing to the present,
9 Defendants have maintained and used the Property without repairing the dilapidated fencing at
10 the side yard, in violation of SDMC sections 121.0302(a) and 142.0380(a).

11 56. SDMC section 142.0310 states that property owners shall maintain fences at specified
12 heights. Beginning on an exact date unknown to Plaintiff, but since at least October 16, 2018, and
13 continuing to the present, Defendants have maintained and used the Property with a fence more
14 than six feet in height at the rear of the Property, in violation of SDMC sections 121.0302(a) and
15 142.0310.

16 57. SDMC section 129.0202(a) states that “[n]o structure regulated by the Land
17 Development Code shall be erected, constructed, enlarged, altered, repaired, improved, converted,
18 permanently relocated or partially demolished unless a Building Permit has first been obtained. . .
19 .” Beginning on an exact date unknown to Plaintiff, but since at least October 16, 2018, and
20 continuing to the present, Defendants maintained and used the Property with an unpermitted patio
21 cover and shed, in violation of SDMC sections 121.0302(a) and 129.0202(a).

22 58. SDMC section 31.0121 states that “[n]o person shall engage in any business, trade,
23 calling or occupation required to be taxed under the provisions of this Article until a certificate of
24 payment is obtained.” Beginning on an exact date unknown to Plaintiff, but since at least October
25 16, 2018, and continuing to the present, Defendant Rogers has operated a business from the
26 Property without obtaining the required BTC, in violation of SDMC section 31.0121.

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

4 **III**

5 **THIRD CAUSE OF ACTION**

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

10 60. Plaintiff the People of the State of California incorporates by reference all allegations
11 in paragraphs 1 through 59 of this Complaint as though fully set forth here in their entirety.

12 61. Cal. Civ. Code sections 3479 and 3480 provide that:

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

19 62. Cal. Civ. Code section 3491 specifies the remedies against a public nuisance,
20 including indictment or information, a civil action, or abatement. Cal. Civ. Code section 3494
21 states that “[a] public nuisance may be abated by any public body or officer authorized thereto by
22 law.”

23 63. Code Civ. Proc. section 731 authorizes a city attorney to bring an action to enjoin or
24 abate a public nuisance. It provides in relevant part, “A civil action may be brought in the name
25 of the people of the State of California to abate a public nuisance . . . by the city attorney of any
26 town or city in which such nuisance exists.”

27 64. On or about April 15, 2019, the City issued Defendants a Notice and Order to Vacate,
28 Repair Substandard Building, and Abate Public Nuisance at the Property pursuant to Cal. Health
& Safety Code section 17980.6. The Notice and Order advised Defendants of the unlawful and
dangerous conditions found to exist at the Property and declared that the conditions violate the
Cal. Health & Safety Code and the SDMC.

1 corporations, subsequent purchasers, or other entities, acting by, through, under, in concert, on
2 behalf of, or in participation with or for them be permanently enjoined from engaging in unfair
3 competition as defined in Cal. Bus. & Prof. Code section 17200, including acts and practices
4 alleged in this Complaint, including but not limited to:

5 a. Maintaining, operating, or allowing the operation of an unlicensed care facility for
6 the elderly at the Property or any other property in the City of San Diego in violation of Cal.
7 Health & Safety Code sections 1569.40 and 1569.10.

8 b. Maintaining, operating, or allowing the operation of an unlicensed community care
9 facility at the Property or any other property in the City of San Diego in violation of Cal. Health
10 & Safety Code section 1508.

11 c. Conducting any type of business in the City of San Diego without first obtaining a
12 Business Tax Certificate.

13 d. Advertising in any manner, including on the Internet, the existence of any
14 business, including an unlicensed care facility for the elderly or an unlicensed community care
15 facility at the Property or anywhere else in the City of San Diego.

16 e. Leasing a property in the City of San Diego with substandard conditions in
17 violation of Cal. Health & Safety Code section 17920.3.

18 f. Leasing a property in the City of San Diego with violations of the City's Land
19 Development Code.

20 2. That pursuant to Cal. Bus. & Prof. Code section 17206, Defendants, and each of them,
21 be assessed a maximum civil penalty in the amount of \$2,500 for each UCL violation as proven at
22 trial.

23 3. That pursuant to Cal. Bus. & Prof. Code section 17206.1, Defendants be assessed an
24 additional civil penalty of \$2,500 for each UCL violation which was perpetrated against a senior
25 or disabled person.

26 4. That pursuant to Cal. Bus. & Prof. Code sections 17200 through 17210, Defendants,
27 individually, be assessed a civil penalty of no less than \$1,000,000 for their violations of the
28 UCL.

1 5. That pursuant to Cal. Bus. & Prof. Code section 17203, and the Court's inherent
2 equity powers, this Court order Defendants to restore to any person any money or property which
3 has been acquired by means of Defendants' UCL violations, or any other law or statute.

4 **AS TO THE SECOND CAUSE OF ACTION**

5 **Violations of the San Diego Municipal Code**

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

7 **San Diego Municipal Code sections**

8	121.0302(a)	129.0202(a)	142.0310
9	142.1110(a)	142.1110(b)	142.1110(c)
	142.0380(a)	129.0402	121.0302(b)(4)

10
11 7. That, pursuant to SDMC sections 12.0202 and 121.0311, the Court grant a preliminary
12 injunction and permanent injunction, enjoining and restraining Defendants, their agents, officers,
13 employees and anyone acting on their behalf, from keeping, allowing, or maintaining violations
14 of the SDMC at the Property.

15 8. That Defendants, their agents, heirs, successors, officers, employees and anyone acting
16 on their behalf, are required to maintain the Property in full compliance with the SDMC.

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

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

25 11. That, pursuant to SDMC section 12.0202(b), Defendants, and each of them, be
26 assessed a civil penalty of \$2,500 per day for each SDMC violation maintained at the Property.

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AS TO THE THIRD CAUSE OF ACTION

Public Nuisance

12. 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.

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

14. If Defendants fail to comply with paragraph 13 of the Prayer above, then within 48 hours after posting written notice of its intention, the City or its contractor is 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.

AS TO ALL CAUSES OF ACTION

15. That Plaintiffs recover their costs, including costs of investigation and prosecution, and those of other law enforcement or regulatory agencies as appropriate.

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

Dated: November 12, 2019

MARA W. ELLIOTT, City Attorney

By 

Paul F. Prather
Deputy City Attorney

Attorneys for Plaintiffs