1 2 3 4 5 6		FILED Clerk of the Bups."or Court JUN 05 2020 By: B. DELGADO
7		No Fee GC § 6103
8	SUPERIOR COURT OF CALIFORNIA	
9		F SAN DIEGO
10	THE PEOPLE OF THE STATE OF CALIFORNIA and CITY OF SAN DIEGO, a	Case No. 37-2019-00060012-CU-MC-CTL -
11 12	municipal corporation, Plaintiffs,	STIPULATION FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6]
12	V.	
14 15 16 17	YUK YUEN YU, an individual; BEATRICE YU, an individual; MING SHUW LIN also known as MICHELLE LIN, an individual; MARK ROGERS, an individual; and DOES 1 through 50, inclusive, Defendants.	IMAGED FILE
18 19	Plaintiffs, the People of the State of California and City of San Diego, a municipal	
20	corporation, appearing by and through their attorneys, Mara W. Elliott, City Attorney, and Paul F.	
21	Prather, Deputy City Attorney, and Defendant Mark Rogers (ROGERS), appearing by and	
22	through his attorney Douglas A. Oden, enter into the following Stipulation for Entry of Final	
23	Judgment in full and final settlement of the above-captioned case without trial or adjudication of	
24	any issue of fact or law, and agree that a final judgment may be so entered:	
25	1. This Stipulation for Entry of Final Judgment (Stipulation) is executed only between	
26	and among Plaintiffs The People of the State of California and City of San Diego, a municipal	
27	corporation, and Defendant ROGERS, an individual (Defendant), who are named parties in the	
28	above-entitled action.	
	l STIPULATION FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT INJUNCTION	

.....

\* ''

4

1 2. The parties to this Stipulation are parties to a civil suit pending in the Superior Court 2 of the State of California for the County of San Diego, entitled The People of the State of 3 California and City of San Diego, a municipal corporation v. YUK YUEN YU, an individual; 4 BEATRICE YU, an individual; MING SHUW LIN also known as MICHELLE LIN, an individual; 5 MARK ROGERS, an individual; and DOES 1 through 50, inclusive.

6 3. The parties wish to avoid the burden and expense of further litigation and accordingly 7 have determined to compromise and settle their differences in accordance with the provisions of 8 this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein 9 shall be deemed to constitute an admission or an adjudication of any of the allegations of the 10 Complaint, The parties to this Stipulation agree to resolve this action in its entirety as to them and 11 only them by mutually consenting to the entry of Final Judgment in its Entirety and Permanent 12 Injunction by the Superior Court.

13

4. The real property that is the subject of this Stipulation consists of one parcel of land 14 located at 5128 Ewing Street, San Diego, California 92115 (Property).

15 5. Defendant ROGERS at all times relevant to this action, was and is the lessee and sublessor of the real property located at 5128 Ewing Street, San Diego, California, 92115, where 16 17 he maintains and operates a business.

18 6. This action is brought under California law, and this Court has jurisdiction over the 19 subject matter, the Property, and each of the parties in this action.

 $\mathbf{20}$ 

## **INJUNCTION**

21 7. The provisions of this Stipulation are applicable to Defendant, his successors and 22 assigns, any of their agents, officers, employees, representatives, and tenants, and all persons, 23 corporations or other entities acting by, through, under or on behalf of Defendant, and all persons 24 acting in concert with or participating with Defendant with actual or constructive knowledge of 25 this Stipulation and Injunction. Effective immediately, Defendant and all persons mentioned above are hereby enjoined and restrained pursuant to California Business and Professions Code 26 27 (Cal. Bus. & Prof. Code) section 17203, San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent 28

STIPULATION FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT INJUNCTION

equity powers, from engaging in or performing, directly or indirectly, any of the following acts at
 the Property or anywhere else in the City and County of San Diego:

a. Keeping, maintaining, operating, or allowing the operation of an unlicensed
Community Care Facility as defined per California Health and Safety Code (Cal. Health & Safety
Code) section 1503.5(a) in violation of Cal. Health & Safety Code section 1508.

b. Keeping, maintaining, operating, or allowing the operation of an unlicensed
7 Residential Care Facility for the Elderly as defined by Cal. Health & Safety Code section
8 1569.44, in violation of Cal. Health & Safety Code sections 1569.10, and 1569.46.

9 c. Keeping, maintaining, operating or allowing the operation of a facility or business
10 with substandard housing conditions in violation of Cal. Health & Safety Code section 17920.3.

d. Keeping, maintaining, operating, or allowing the operation of any business at the
Property in violation of any of the provisions of the City's Land Development Code, without
required permits, contrary to permit conditions, or without a required variance in violation of
SDMC section 121.0302.

e. Engaging in any business, trade, calling, or occupation without obtaining a
Business Tax Certificate as required per SDMC section 31.0121.

17 f. Maintaining, causing, or permitting the existence of a public nuisance in violation
18 of California Civil Code sections 3479 and 3480, Cal. Health & Safety Code section 17920.3(c),
19 and SDMC section 121.0302(b)(4).

20 g. Maintaining premises without adequate egress in violation of Cal. Health & Safety
21 Code section 17920.3 (l).

h. Maintaining or performing any construction work without first obtaining all
required permits in violation of SDMC section 129.0202.

i. Maintaining an infestation of insects, vermin, or rodents in violation of Cal. Health
25 & Safety Code section 17920.3(a)(12).

j. Maintaining or performing electrical modifications without first obtaining all
required permits in violation of SDMC section 129.0302 and Cal. Health & Safety Code section
17920.3(d).

STIPULATION FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT INJUNCTION

1 k. Maintaining or allowing the occupancy of a building for purposes not designated 2 or intended for those occupancies in violation of Cal. Health & Safety Code section 17920.3(n). 3 1. Maintaining junk, trash, debris, and excessive storage in violation of Cal. Health & 4 Safety Code section 17920.3(j). 5 m. Maintaining illegal and dilapidated fencing in violation of SDMC sections 6 142.0305(b), 142.0310, and 142.0380(a). 7 n. Performing or maintaining plumbing modifications in violation of Cal. Health & 8 Safety Code section 17920.3(e) and SDMC section 129.0402. 9 o. Keeping or maintaining a building without the required carbon monoxide detectors and smoke detectors in violation of California Residential Code sections R315.1 and R314.1. 10 11 COMPLIANCE MEASURES 12 8. Within seven calendar days from the date Defendant signs this Stipulation, vacate the Property and cease operating or maintaining any type of facility or business at the Property. 13 14 MONETARY RELIEF 9. Defendant shall pay Plaintiff City of San Diego, civil penalties in the amount of 15 \$110,000 pursuant to SDMC section 12.0202(b), in full satisfaction of all claims against 16 17 Defendant arising from any of the past violations alleged by Plaintiffs in this action. \$100,000 of 18 these penalties is immediately suspended. 19 a. The City of San Diego will separately mail two invoices to Defendant Mark 20 Rogers, in c/o Douglas A. Oden, 701 B Street, Suite 540, San Diego, CA 92101, requiring the 21 payment of \$10,000 in civil penalties owed as follows: i. Payment of \$5,000 in civil penalties to be paid within 45 calendar days from 22 23 the date of the first invoice; and, ii. Payment of \$5,000 in civil penalties to be paid within 90 calendar days from 24 the date of the second invoice. 25 b. Payment of civil penalties can be made by personal check, cashier's check, or 26 money order payable to the City Treasurer and can be paid by mail or in person at the Office of 27 the City Treasurer, 1200 Third Avenue, Suite 100, San Diego, CA 92101. Payment must be 28 STIPULATION FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT INJUNCTION

accompanied by the corresponding invoice, and the invoice number must be written on the
check or money order.

c. These suspended penalties shall only be imposed if Defendant fails to comply with
the terms of this Stipulation. Before seeking imposition of the civil penalties stayed for
Defendant's failure to comply with paragraph 7 c. through o. above, Plaintiff City of San Diego
agrees to provide Defendant written notice of the alleged violation and provide Defendant with 30
calendar days to cure the violation.

8

## ENFORCEMENT OF JUDGMENT

9 10. In the event of default by Defendant as to any of the terms under this Stipulation, the
entire amount stayed in civil penalties shall be immediately due and payable as penalties to the
City of San Diego, and Plaintiffs shall be entitled to pursue any and all remedies provided by law
for the enforcement of this Final Judgment. Further, any amount in default shall bear interest at
the prevailing legal rate from the date of default until paid in full.

14 11. Nothing in this Final Judgment shall prevent any party from pursuing any remedies as
15 provided by law to subsequently enforce this Final Judgment or the provisions of the SDMC,
16 including criminal prosecution and civil penalties that may be authorized by the court according
17 to the SDMC at a cumulative rate of up to \$2,500 per day per violation.

18 12. Defendant agrees that any act, intentional or negligent, or any omission or failure by 19 his contractors, successors, assigns, partners, members, agents, employees or representatives to 20 comply with the requirements set forth above will be deemed to be the act, omission, or failure of 21 Defendant and shall not constitute a defense to a failure to comply with any part of this Final 22 Judgment. Further, should any dispute arise between any contractor, successor, assign, partner, 23 member, agent, employee or representative of Defendant for any reason, Defendant agrees that such dispute shall not constitute a defense to any failure to comply with any part of this Final 24 25 Judgment, nor justify a delay in executing its requirements.

26

## **RETENTION OF JURISDICTION**

27 13. The Court will retain jurisdiction for the purpose of enabling any of the parties to this
28 Final Judgment to apply to this Court at any time for such order or directions that may be

5

STIPULATION FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT INJUNCTION

necessary or appropriate for the construction, operation or modification of the Final Judgment, or 1 2 for the enforcement or compliance therewith. KNOWLEDGE AND ENTRY OF JUDGMENT 3 4 14. By signing this Final Judgment, Defendant admits personal knowledge of the terms set 5 forth herein. Service by mail shall constitute sufficient notice for all purposes. 15. The clerk is ordered to immediately enter this Final Judgment. 6 IT IS SO STIPULATED. 7 Dated: <u>3-2</u>, 2020 MARA W. ELLIOTT, City Attorney 8 9 10 By Paul F. Prather 11 Deputy City Attorney 12 Attorneys for Plaintiffs 13 14 Dated: 2/12, 2020 15 Mark Rogers an individual 16 17 Dated: A , 2020 18 Douglas A. Oden Attorney for Defendant Mark Rogers 19 2021 22 Upon the stipulation of the parties hereto and upon their agreement to entry of this Final 23 Judgment without trial or adjudication of any issue of fact or law herein, and good cause 24 appearing therefore, IT IS SO ORDERED, ADJUDGED AND DECRIFED. 2526 Dated: 0-5-20 MICHARD E.L. STRAUS\$ 27 JUDGE OF THE SUPERIOR COURT 28 6 STIPULATION FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT INJUNCTION