



CITY ATTORNEY DENNIS HERRERA NEWS RELEASE

FOR IMMEDIATE RELEASE
TUESDAY, JUNE 26, 2012

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Herrera, Cohen hail tough five-year injunction to protect renters, secure \$800,000 civil penalty

Community engagement was key to identifying, addressing code violations that were more widespread than originally known

SAN FRANCISCO (June 26, 2012)—A San Francisco Superior Court judge today approved a sweeping injunction in the City’s litigation against Bayview Property Managers that will protect hundreds of tenants in 32 residential rental properties from substandard housing conditions while securing an \$800,000 civil penalty for the City. The negotiated agreement significantly expands on a prior court order in the case after City inspectors identified other nuisance conditions at additional properties operated by the defendants. Apart from expanding the number of properties covered in the order, the amended injunction will impose new responsibilities on building managers, extend the injunctive period, and enact tough protections for renters in terms of code enforcement, oversight, and conflict resolution. Retired Superior Court Judge James Warren will serve as special master to oversee and enforce terms of the new injunction, which will remain in effect for the next five years.

City Attorney Dennis Herrera originally brought the action against Bayview Property Managers in November 2006 after an investigation identified multiple violations of state and local laws. While a Sept. 18, 2007 stipulated injunction with the defendant company and property owner James Blanding addressed issues raised in the City’s original case, subsequent outreach efforts by City officials including Supervisor Malia Cohen and key community leaders uncovered more widespread violations of state law and San Francisco Housing and Building Codes. Rather than pursue the new causes of action in a separate lawsuit, Herrera worked closely with the Department of Building Inspection to expand and amend the existing injunction.

“This tough injunction expands protections for tenants at these properties, and also shows the enormous value of community engagement to identify and address code violations that threaten health and safety,” said City Attorney Herrera. “I applaud Supervisor Malia Cohen for her leadership in the community, and the Department of Building Inspection for their excellent work. I’m also very grateful to Judge Kahn for approving the injunction, and to retired Judge Warren for agreeing to serve as referee to enforce its provisions.”

“Protecting our neighborhoods means working closely with the community, and this injunction proves what a difference that kind of engagement can make,” said Supervisor Malia Cohen. “This is a strong, enforceable court order that will protect hundreds of renters in the Southeastern neighborhoods and elsewhere in San Francisco. The era of property owners getting away neglecting their responsibilities to their tenants and the surrounding community in District 10 is over. I’m thankful to City Attorney Herrera

[MORE]

and the Department of Building Inspection for working closely with my office and the community to achieve this important success and look forward to continuing this work.”

The case is: *City and County of San Francisco and People of the State of California v. Bayview Property Managers et al.*, San Francisco Superior Court Case No. CGC-06-458324, originally filed November 30, 2006.

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**ENDORSED
 FILED**
 San Francisco County Superior Court

JUN 26 2012

CLERK OF THE COURT
 BY: LESLEY FISCELLA Deputy Clerk 

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

12
 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 UNLIMITED JURISDICTION

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

Case No. CGC-06-458324

**AMENDED
 STIPULATED INJUNCTION**

20 Plaintiffs,

21 vs.

22 BAYVIEW PROPERTY MANAGERS, A
 23 California Corporation, RONALD
 FORTENBERRY, and DOE ONE through
 24 DOE FIFTY, inclusive,

Date Action Filed: November 30, 2006

Trial Date: N/A

25 Defendants.
 26
 27
 28

1 This Amended Stipulated Injunction ("Amended Injunction" or "Order") was presented before
2 the above-captioned Court, _____, presiding. Plaintiffs, the CITY AND COUNTY
3 OF SAN FRANCISCO, a municipal corporation, and the PEOPLE OF THE STATE OF
4 CALIFORNIA ("Plaintiffs" or the "City"), were represented by their attorney, DENNIS J. HERRERA,
5 City Attorney, appearing through MICHAEL S. WEISS and YVONNE R. MERÉ, Deputy City
6 Attorneys. Defendants BAYVIEW PROPERTY MANAGERS ("BPM") and JAMES BLANDING
7 ("Blanding"), collectively "Defendants," were represented by their attorney, DAVID ZALOB, Esq.

8 Plaintiffs and Defendants (the "Parties") consent to entry of this Amended Stipulated
9 Injunction as an Order by the Court without a noticed motion, hearing or trial.

10 Plaintiffs originally brought this action against Defendant BPM pursuant to various provisions
11 of state and local law including California Business and Professions Code Sections 17200-17210,
12 California Civil Code Sections 3479, 3480, 3491, and 3494, California Code of Civil Procedure
13 Section 731, California Health and Safety Code Sections 11570 et seq. and 17910 et seq., and the San
14 Francisco Housing and Building Codes.

15 On or about September 18, 2007, Plaintiffs and Defendant BPM and Blanding entered into a
16 Stipulated Injunction ("Original Injunction") to address certain nuisance conditions at certain residential
17 properties owned and/or managed by Defendants.

18 Since entering the Original Injunction, Plaintiffs have discovered additional nuisance
19 conditions at properties owned and/or managed by Defendants, but not covered by the Original
20 Injunction. Rather than file a new nuisance abatement lawsuit, and in order to ensure that all of
21 Defendants' residential rental properties in San Francisco are maintained in a safe and habitable
22 condition, the Parties have agreed to enter into this Amended Stipulated Injunction. The Amended
23 Injunction builds upon the Original Injunction by expanding the number of properties covered,
24 increasing the responsibilities of management, and extending the injunctive period. The Amended
25 Injunction also provides new and specific provisions for enforcement, oversight, and conflict
26 resolution.

27 The Parties having stipulated to the provisions set forth herein, the Court having reviewed the
28 provisions, the Parties having agreed to the issuance of this Order, and good cause appearing therefore,

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

2
3 **A. RETENTION OF JURISDICTION.**

4 This Court has jurisdiction over the subject matter the Parties and the subject matter and each
5 of the Parties in this action. Since 2007, the Court has expressly retained jurisdiction to interpret,
6 implement or enforce the Original Injunction, and now expressly retains jurisdiction to interpret,
7 implement, or enforce this Amended Injunction. The Court issues this Order pursuant to stipulation
8 by the Parties and pursuant to its authority under Business and Professions Code Section 17203,
9 Health and Safety Code Section 17980, Civil Code Section 3491, and Code of Civil Procedure Section
10 731.

11
12 **B. APPOINTMENT/DESIGNATION OF REFEREE.**

13 The Court, at the request of the Parties, hereby appoints/designates retired Superior Court
14 Judge James Warren to act as a Special Master or Referee ("Referee"), and authorizes the Referee to
15 exercise the power of the Court in overseeing, interpreting, implementing and/or enforcing this
16 Amended Injunction.

17 Any party to this Amended Injunction or entity bound by this Amended Injunction may apply
18 directly to the Referee, at any time, after making a reasonable effort to meet and confer with the other
19 Parties, for further orders and directions as may be necessary or appropriate for the construction,
20 application, carrying out or enforcement of the injunctive provisions. The Referee is authorized by
21 this Court to hold hearings, decide issues regarding the scope and the effect of the injunction's
22 provisions, issue orders, modify any of the injunctive provisions, and take such further action as may
23 be necessary or appropriate to enforce the injunctive provisions, and/or to punish any violations.

24 Unless otherwise ordered by the Referee, all fees and expenses charged by the Referee shall be
25 paid in advance by the Party initiating the hearing. The Prevailing Party shall be entitled to recover all
26 fees and costs incurred, as well as reasonable attorney's fees, at market rates, as determined by the
27 Referee.

1 If the Referee is unavailable to resolve a dispute, the Party seeking a hearing may file a noticed
2 motion in the Law and Motion Department in accordance with all applicable rules and statutes. Prior
3 to the Law and Motion Department holding a hearing on the grievance or request, the Party seeking a
4 hearing in Law and Motion must make a threshold showing that: 1) the Referee is unavailable, and 2)
5 the issue cannot reasonably wait until the Referee becomes available. The Prevailing Party shall be
6 entitled to recover reasonable costs and attorney's fees, at market rates, incurred, as determined by the
7 Law and Motion Judge.

8 The Parties agree that the all obligations arising out of this Amended Injunction shall rest with
9 Defendants BPM and James Blanding, as defined herein, jointly and severally. Failure of Defendants'
10 third party agents to perform the obligations detailed herein, shall not absolve Defendants of liability
11 for violations of this Injunction.

12
13 **C. APPLICATION AND SCOPE.**

14 Defendants own and manage more than 30 residential properties within the City and County of
15 San Francisco. The Parties agree that the provisions of this Amended Injunction are applicable to
16 Defendants as well as their agents, servants, employees, representatives, successors, and assigns,
17 lessees, and all persons acting in concert or participating with him or any of them, in connection with a
18 property or properties owned or managed by Defendants, and located within the City and County of
19 San Francisco. For purposes of this Injunction, the term Property or Properties shall be defined to
20 include any real property identified or described in Exhibits A-B. Plaintiffs agree to work with
21 Defendants and Defendants agents to assist Defendants in meeting their obligations arising out of this
22 Injunction.

23
24 **D. NOTICE TO SUBSEQUENT INTEREST HOLDERS.**

25 Should Defendants BPM or Blanding, or their agents, employees, successors or assigns, and
26 the agents, employees, successors and assigns of each of them, sell, transfer, assign, lease, or sublease
27 any of the Properties, or portions thereof, before the nuisance caused by the Building Code any
28 outstanding Municipal Code violations have been abated and the abatement confirmed by the San

1 Francisco Department of Building Inspection, then Defendants, or their agents, employees, successors,
2 or assigns, and the agents, employees, successors, or assigns of each of them shall:

3 1. Immediately provide written notice to the San Francisco City Attorney's Office Code
4 Enforcement Division of their intent to sell, transfer, assign, or otherwise alienate the Property or
5 Properties, or portions thereof, and provide the name and contact information of the prospective
6 successor or their agents, and disclose any personal relationship between Defendants and the potential
7 successor;

8 2. Prior to forming the sale, transfer, assignment, or lease agreement, give the potential
9 successor in interest notice and provide him/her with a copy of this Amended Injunction;

10 3. Prior to the transfer of title, and/or through escrow, pay all amounts owed to the City
11 related to the Property or Properties being alienated; and

12 4. Require the successor in interest, as a condition of sale, transfer, or assignment, to sign
13 an Addendum to this Amended Injunction (attached hereto as Exhibit C), agreeing to submit to this
14 Court's jurisdiction, and agreeing to be bound by this Amended Injunction's terms, without limitation
15 or restriction.

16
17 **E. CURRENT DBI CODE VIOLATIONS.**

18 Defendants BPM and Blanding each acknowledge that one or more Properties have current and
19 open citations, notices of violation, and orders of abatement (hereinafter, "Outstanding DBI
20 Enforcement Action/s") for Building, Housing, Plumbing, Electrical and/or Mechanical Code
21 violations issued by the Department of Building Inspection ("DBI"). Defendants must comply with all
22 of the following:

23 1. For all Outstanding DBI Enforcement Actions with open deadlines that have not yet
24 expired, Defendants must abate all violations (including obtaining permits, obtaining inspections,
25 paying all assessments to DBI and obtaining all necessary sign-offs from DBI) within the time period
26 determined by DBI in the Outstanding DBI Enforcement Action, or other deadlines or extensions
27 approved by DBI; and
28

1 2. For Outstanding DBI Enforcement Actions in which deadlines are now past due,
2 Defendants must abate the outstanding violations (including obtaining all proper permits, obtaining
3 final inspections, paying all assessments to DBI and completing all work to the satisfaction of DBI) by
4 September 15, 2012.

5
6 **F. FUTURE CODE VIOLATIONS**

7 Following entry of this Amended Injunction, if and when Defendants receive any new Notices
8 of Violation, Citations, Orders of Abatement or any other administrative notices or orders (hereinafter
9 "Administrative Action/s") from DBI, or any other City Department, including, but not limited to, the
10 San Francisco Fire, Health, and Planning Departments regarding the Properties, Defendants shall
11 comply with all of the following:

12 1. Provide written notice to the City Attorney's Office, Code Enforcement Division within
13 5 days of the issuance of the Administrative Action;

14 2. Abate the code violations within the time specified by the City Department (i.e DBI) in
15 their Administrative Action;

16 3. If permits are required to abate the violation, Defendants shall apply for and obtain
17 required and appropriate permits for the scope of the work to be undertaken.

18
19 **G. DBI ADMINISTRATIVE FEES**

20 For any Outstanding DBI Enforcement Actions or future Administrative Actions, Defendants
21 shall be liable for, and separately pay directly to DBI, or any other appropriate City Department, all
22 administrative fees incurred in the course of inspections, investigations, and assessments. The
23 payment of administrative fees shall be made directly to the appropriate City Department upon
24 demand, including all outstanding fees and all fees incurred during the pendency of this Injunction.
25 Any monies paid pursuant to this Amended Injunction are separate and apart from any administrative
26 fees.

1 **H. OTHER INJUNCTIVE PROVISIONS**

2 The Parties further agree that in order to proactively address potential public nuisances at the
3 Properties, Defendants, their servants, agents, employees, lessees, successors and assigns, and the
4 servants, agents, employees, lessees, successors and assigns of each of them, and all other persons
5 acting on their behalf, must do all of the following throughout the effective period of this Injunction:

6 1. Inspection and Repair Timeframes

7 a. Within thirty days of execution of this Injunction, Defendants shall provide
8 Plaintiffs with electronic access to "Central Desktop", a property management database that will
9 enable Plaintiffs to track complaints, repairs and maintenance information related to Defendants'
10 Properties.

11 b. Within sixty days of execution of this Injunction, Defendants shall provide
12 Plaintiffs with an inspection protocol and associated plan to inspect all units within Defendants'
13 Properties.

14 c. Defendants shall abate all Outstanding DBI Enforcement Actions by September
15 15, 2012.

16 d. Defendants shall inspect all Properties, and the inspection shall include, but is
17 not limited to, an assessment from a moisture retention perspective, by December 31, 2012
18 (hereinafter, "Annual Inspection/s"). Defendants shall tender a written report (hereinafter, "Annual
19 Inspection Report/s") to Plaintiffs no later than January 30, 2013, containing all of the following: a
20 building by building description of the inspection methodology and findings, the recommended
21 repairs, and the proposed remediation plan. Defendants shall remediate all habitability and
22 substandard housing conditions observed during the Annual Inspection, even if the conditions are not
23 yet the subject of active DBI enforcement or other Administrative Actions, within thirty days of
24 discovery, subject to extension for good cause, unless otherwise ordered by DBI. Defendants shall
25 conduct Annual Inspections by December 31 of each year for the duration of this Injunction, and shall
26 submit to Plaintiffs an updated Annual Inspection Report within thirty days of those inspections, and
27 to abate those any discovered conditions within thirty days of discovery, subject to extension for good
28 cause, unless otherwise ordered by DBI.

1 e. One year after entry of this Injunction, in the absence of good cause, if
2 Defendants have, without good cause, failed to comply with any of the above deadlines enumerated
3 herein, Defendants shall, within thirty days of the one year anniversary, employ and retain an outside
4 third party management company to take over all management duties related to the Properties
5 throughout the remaining effective period of the Injunction.

6 2. Third Party Licensed Contractor to Oversee

7 Defendants shall employ and retain an independent, third party licensed contractor, who will
8 oversee the abatement of all Outstanding DBI Enforcement Actions, Administrative Actions, and other
9 outstanding violations. The third party licensed contractor shall conduct and/or oversee all repairs
10 within the effective period of this Amended Injunction to the satisfaction of DBI or other appropriate
11 City Department. For purposes of this Amended Injunction, the third party licensed contractor shall in
12 no circumstance be either 1) any of the Defendants in this action, or 2) any contractor who is or has
13 been employed by Defendants.

14 3. Quality of Repairs

15 Defendants shall ensure that all repairs are done in a professional, workmanlike manner,
16 consistent with industry standards.

17
18 **I. UNFAIR AND UNLAWFUL BUSINESS PRACTICES.**

19 Defendants their servants, agents, employees, successors and assigns, and the servants, agents,
20 employees, successors, and assigns of each of them, and all other persons are hereby restrained and
21 enjoined from engaging in the following unfair and unlawful business practices:

22 1. Maintaining, operating, occupying or using any of the Properties in such a manner and
23 condition as to constitute a public nuisance;

24 2. Maintaining, operating, occupying or using any of the Properties in such a manner as to
25 constitute an unfair and/or unlawful business act or practice as described by California Business and
26 Professions Code Sections 17200-17210; or

27 3. Maintaining, operating, occupying or using any of the Properties in such a manner as to
28 constitute violations of any provision of municipal or state law.

1 **J. INSPECTION.**

2 In order to monitor compliance with this Order, Defendants shall allow, and Plaintiffs may
3 conduct:

4 1. Periodic unannounced inspections of any of the Properties' exterior and interior
5 common areas, accessible without use of keys, to determine compliance with San Francisco Municipal
6 Codes (i.e., Housing, Building, Fire, Health and Planning Codes).

7 2. Upon 72 hours written notice from Plaintiffs, Plaintiffs shall conduct and Defendants
8 shall facilitate City inspections of the interior of the Properties, including individual units, to
9 determine whether the Properties' condition is compliant with the San Francisco Municipal Codes.
10 Defendants shall reimburse the City for any costs, including attorney's fees, incurred in its efforts to
11 gain entry to any unit. Defendants agree to notice and conduct those inspections in accordance with
12 the provisions of California Civil Code section 1954. Defendants shall abate any violations discovered
13 during such inspections within the time period given by the inspector, or be in violation of this
14 Amended Injunction.

15
16 **K. FEES, COSTS, AND PENALTIES.**

17 Defendants shall pay a civil penalty in the amount of \$800,000 ("Civil Penalty.") Concurrently
18 with the execution of this Amended Injunction, the Parties have executed a Stipulated Judgment.
19 Plaintiffs agree not to file the Stipulated Judgment, so long as the installment payments described
20 below are timely received in accordance with this Injunction. Defendants shall pay the Judgment
21 agree to pay the Civil Penalty in up to three installments as follows:

22 1. Defendant shall pay \$275,000 by April 15, 2012;
23 2. Defendant shall pay \$275,000 by September 15, 2012; and
24 3. Defendant shall pay \$250,000 by January 15, 2013.
25 4. Failure to pay in the amount or manner described herein shall also be deemed a
26 violation of this Amended Injunction.

1 5. Payments shall be delivered to the City Attorney's Office, 1390 Market Street, Sixth
2 Floor, San Francisco, CA 94102, Attention: Yvonne R. Meré, Deputy City Attorney. The payment
3 shall be by cashier's check or money order, and made payable to "City and County of San Francisco."

4 6. Any payment made pursuant to this Injunction shall be deemed untimely if there are
5 insufficient funds to satisfy the tendered payment. Should Defendants fail to make timely installment
6 payments consistent with this Amended Injunction, Plaintiffs shall have the right to file the Stipulated
7 Judgment previously executed by the Parties, and to record the same. Moreover, the failure to pay
8 any, or all, of this Civil Penalty according to the terms herein, shall be deemed a violation of this
9 Amended Injunction and subject Defendants to additional penalties described elsewhere in this
10 Amended Injunction.

11
12 **L. ENFORCEMENT.**

13 1. Violation of any provision of this Injunction may constitute contempt of court as
14 described in California Code of Civil Procedure section 1218, et seq. If the Referee, or, if he is
15 unavailable, the Court, determines after hearing that Defendants violated any of the terms of this
16 Injunction, Defendants shall be liable for civil penalties of no less than \$2,500 and no more than
17 \$6,000 for each violation of this Injunction pursuant to Business and Professions Code Sections 17206
18 and 17207.

19 2. In addition, in the event that it is determined, after hearing, that Defendants were cited
20 for new municipal code violations during the pendency of this Injunction, and the violations existed
21 but were not corrected within the time limit provided by the inspecting agency, Defendants shall pay
22 additional applicable civil penalties of up to \$1,000 per day for each day the violations were permitted
23 to remain after the period of time to correct had expired.

24 3. The prevailing party Plaintiffs shall be entitled to recover their attorneys' fees (at
25 market rate) and all costs incurred in monitoring compliance with and/or enforcing this Injunction,
26 including expert witness fees.

27 4. Any fines, penalties, or other monetary relief specified in this Injunction shall be in
28 addition to any other relief or sanctions that the Referee, or, if he is unavailable, the Court, may order

1 as a matter of law or equity, and shall not preclude Plaintiffs from obtaining other penalties or relief
2 prescribed by law.

3 5. The San Francisco Superior Court expressly reserves jurisdiction to take such further
4 action as may be necessary or appropriate to carry into effect the provisions of this Injunction.

5 6. Any Party seeking to enforce the provisions of this Injunction shall be responsible for
6 advancing any up-front costs required by the Referee, subject to reimbursement as determined by the
7 Referee.

8
9 **M. EFFECTIVE DATE AND TERM OF INJUNCTION.**

10 Unless otherwise stated, Defendants shall comply with the terms of this Injunction upon entry
11 by the Court. The terms of this Injunction shall be in effect for 5 years from the date of entry. For
12 good cause shown, or upon stipulation by the Parties, any Party may ask the Referee, or if he is
13 unavailable, the Court, to extend and/or modify the terms of this Injunction.

14
15 **N. RECEIVERSHIP.**

16 In the event that Defendants fail to take the actions required by this Amended Injunction, or
17 fail to act within the time limits prescribed herein, Plaintiffs may request the appointment of a receiver
18 to manage the Properties and abate the violations and the nuisance. If a receiver is appointed to
19 manage the Properties and/or to abate the violations, Defendants must, upon demand, reimburse the
20 receiver and the City for all costs and expenses related to the receivership, including attorneys' fees
21 and costs. If Defendants fail to reimburse the receiver and/or the City, a lien for the amounts
22 expended shall be placed upon the title to any of the Properties, and/or the receiver or the City may
23 seek permission to sell one or more Properties to reimburse the receiver and/or the City.

24
25 **O. RECORDATION.**

26 This Injunction shall be filed with the San Francisco Superior Court and recorded at the San
27 Francisco Recorder's Office against the title to the Properties. The Stipulated Judgment shall not be
28 recorded unless Defendants breach this Amended Injunction.

1 **P. NO WAIVER OF RIGHT TO ENFORCE.**

2 The failure of Plaintiffs to enforce any provision of this Amended Injunction, shall in no way
3 be deemed a waiver of such provision or in any way affect the validity of the Amended Injunction.

4 The failure of Plaintiffs to enforce any such provision shall not preclude Plaintiffs from later enforcing
5 the same or any other provision of the Amended Injunction. No oral advice, guidance, suggestion or
6 comments by Plaintiffs' employees or officials regarding matters covered in the Amended Injunction
7 shall be construed to relieve Defendants of their obligations.

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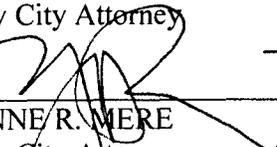
1 Q. DISMISSAL.

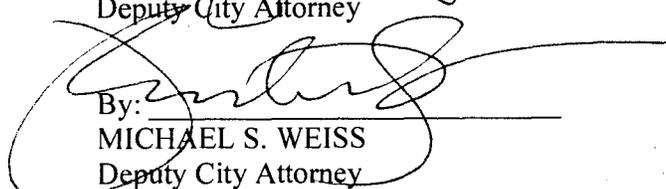
2 Once Defendants have complied fully with all terms of this Injunction and paid any amount
3 imposed by the Court pursuant to its terms, Plaintiffs will dismiss this action.

4 SO STIPULATED:

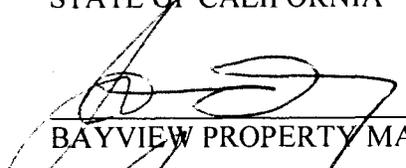
5 Dated: 6-22-12

6 DENNIS J. HERRERA
7 City Attorney
8 ALEX G. TSE
9 Chief Attorney, Neighborhood and
10 Resident Safety Division
11 MICHAEL S. WEISS
12 Deputy City Attorney

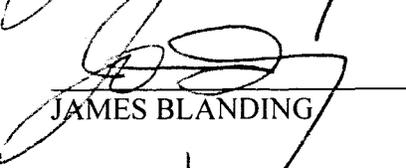
13 By: 
14 YVONNE R. MERE
15 Deputy City Attorney

16 By: 
17 MICHAEL S. WEISS
18 Deputy City Attorney
19 Attorneys for Plaintiffs
20 CITY AND COUNTY OF SAN
21 FRANCISCO and PEOPLE OF THE
22 STATE OF CALIFORNIA

23 DATED: 5/29/12

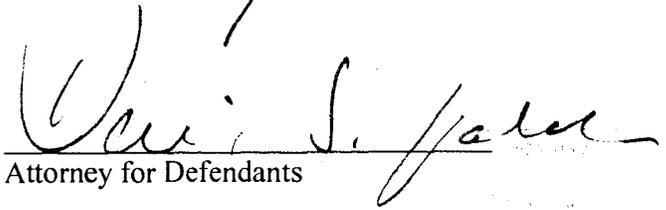
24 
25 BAYVIEW PROPERTY MANAGERS

26 DATED: 5/29/12

27 
28 JAMES BLANDING

29 APPROVED AS TO FORM:

30 DATED: MAY 25, 2012

31 
32 Attorney for Defendants

33 SO ORDERED:

34 DATED: 6/26/12

35 HAROLD KAHN

36 JUDGE OF THE SUPERIOR COURT