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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the PEOPLE OF THE STATE OF CALIFORNIA, by and through DENNIS J. HERRERA, City Attorney for the CITY AND COUNTY OF SAN FRANCISCO,

Plaintiffs,

vs.

ANNE KIHAGI aka ANNA KIHAGI aka ANNA SWAIN aka ANNE KIHAGI SWAIN aka ANNA KIHAGI SWAIN, JULIA MWANGI aka JULIA MUNENE, CHRISTINE MWANGI aka CHRISTINA MWANGI aka CHRISTINE JOHNSON, XELAN PROP 1, LLC, RENKA PROP, LLC, NOZARI 2, LLC, ZORIALL, LLC, and DOE ONE THROUGH DOE FIFTY,

Defendants.

Case No. CGC-15-546152

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Hearing Date: December 23, 2015
Hearing Judge: Hon. Ronald E. Quidachay
Time: 9:30
Place: Dept. 501

Date Action Filed: June 4, 2015
Trial Date: Not Yet Set

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INTRODUCTION

Plaintiffs bring this Motion for Preliminary Injunction to end Defendants' unlawful tenant harassment and illegal evictions, compel them to abate code violations and obtain requisite permits and submit to inspections before performing renovations, and compel them to submit to inspections to determine whether code violations exist and all properties they now own or acquire during this lawsuit.

Defendants own at least ten tenant-occupied, rent-controlled buildings in the City and County of San Francisco ("San Francisco"), totaling more than 50 units. As described in detail in the 15 declarations of current and former tenants submitted in support of this Motion for Preliminary Injunction and incorporated herein by reference,[1] shortly after Defendants purchase a property, they initiate a pattern of conduct calculated to systematically displace long-term, rent-controlled tenants, and thereby recover possession of their rent-controlled units, in violation of state and local law. Defendants make buy-out offers coupled with threats to evict, implement a strategic campaign of unlawful harassment against tenants, and initiate illegal and baseless owner- or relative-move-in, nuisance, or "capital improvements" evictions. Faced with the destruction of their quality of life and, in many cases, prohibitively expensive litigation, tenants are forced to uproot their lives and leave their homes, neighborhoods, and communities—and are sometimes displaced from San Francisco altogether. By engaging in these acts, Defendants violate the law to achieve a financial gain at the expense of their tenants, and an unlawful and unfair advantage over property owners who follow the law.

Not satisfied to simply harass their tenants into vacating and re-renting the units at substantially higher market rates, as detailed in the Declaration of San Francisco Department of Building Inspection ("DBI") Deputy Director Daniel Lowrey ("Lowrey Decl."), Defendants also habitually flout City Building and Housing Codes by renovating the vacated units without first obtaining proper City permits and required inspections. Defendants operate their Properties as substandard, unsafe, and *per se* public nuisances through their persistent illegal and unpermitted construction work.

Plaintiffs are forced to bring this motion for a preliminary injunction because Defendants will not voluntarily cease their harassment of tenants, obtain building, electrical, or plumbing permits before performing construction, conform their renovations to the scope of issued City permits, submit to

[1] Plaintiffs have also filed a Request for Judicial Notice ("RJN") concurrently herewith.

inspections, or timely abate cited violations. Because Defendants continue to acquire tenant-occupied rental property in San Francisco, Plaintiffs request this Court enjoin Defendants and their agents from engaging in illegal tenant harassment at any property they now own or acquire during this lawsuit, and from maintaining and operating any such properties in violation of state and local law. Plaintiffs seek remedies under San Francisco Administrative Code section 37.10B, Health and Safety Code sections 17910 –17998.3 (the State Housing Law), Civil Code sections 3479 and 3480, Code of Civil Procedure sections 526 and 731, and Business and Professions Code sections 17200 *et seq.*

STATEMENT OF FACTS

I. THE PROPERTIES AT ISSUE

Since 2013, Defendants have acquired the following rent-controlled, tenant-occupied buildings in San Francisco:[2] **3947 18th Street ("18th Street")**, a six-unit apartment building located in the Castro neighborhood (Declaration of Kelly Kimball ("Kimball Decl.") ¶ 3)[3]; **1000-1022 Filbert Street ("Filbert")**, a five-unit apartment building plus a two-unit building adjacent thereto, for a total of seven residential units, located in the Russian Hill neighborhood (Declaration of Maria Maranghi ("Maranghi Decl.") ¶ 7)[4]; **195 Eureka Street ("Eureka")**, a five-unit apartment building plus one commercial unit, located in the Castro neighborhood (Declaration of Allison Leshefsky ("Leshefsky Decl." ¶¶ 2, 7)[5]; **1135-1139 Guerrero Street ("Guerrero")**, a multi-unit building located in the Mission/Castro neighborhood (Declaration of Sylvia Smith ("Smith Decl." ¶ 3)[6]; **69-75 Hill Street ("Hill")**, a five-unit apartment

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[2] Defendants also own a six-unit building at 4018-4022 19th Street (Defendant KIHAGI through Defendant XELAN), a three-unit building at 1378-1382 Alabama Street (Defendant KIHAGI via Jambax 2, LLC), a two-unit building at 3328-3330 26th Street (Defendants KIHAGI and C. MWANGI via Katoka 5, LLC), and a four-unit building at 1012 Page Street (Defendant KIHAGI via Camierda 1 LLC). (RJN ¶¶ 13, 19-21 & Exs. M, S-U.)

[3] Defendant KIHAGI, through Defendant XELAN, purchased the 18th Street property for approximately $2,800,000.00 on or about June 19, 2013. (RJN ¶ 12 & Ex. L.)

[4] Defendant KIHAGI, through Defendant XELAN, purchased the Filbert property for approximately $3,025,000.00 on or about August 14, 2013. (RJN ¶ 14 & Ex. N.)

[5] Defendants KIHAGI and J. MWANGI, through Defendant RENKA, purchased the Eureka property for approximately $2,200,000.00 on or about December 27, 2013. (RJN ¶ 15 & Ex. O.)

[6] Defendants KIHAGI and J. MWANGI, through Defendant RENKA, purchased the Guerrero property for approximately $2,600,000.00 on or about June 13, 2014. (RJN ¶ 16 & Ex. P.)

building located in the Mission neighborhood (Declaration of Dale Duncan ("Duncan Decl.") ¶ 2)[7]; and **650 Church Street ("Church")**, a multi-unit apartment building located in the Dolores Park neighborhood (Declaration of Paul Vanotti ("Vanotti Decl." ¶ 3).[8]

Of the twenty-one units that were tenant-occupied when Defendants purchased 18th Street, Filbert, Eureka, Guerrero, and Hill, tenants at ***nineteen*** units have been affected by Defendants' unlawful, unfair, fraudulent, and deceptive practices. ***Thirteen*** units have been surrendered, an additional ***four*** units are pending evictions, and an additional ***two*** units defeated evictions after jury trials. Dozens of occupants have been displaced by Defendants' unlawful conduct, including roommates, partners, spouses, children, and families.

II. TENANT HARASSMENT

As detailed in the 15 declarations of current and former tenants, Defendants purchase a building, then immediately engage in a panoply of unlawful and unfair acts designed to harass, frighten, and intimidate tenants and make life for tenants so unbearable that they eventually surrender their homes.[9]

A. Defendants Begin with Fraud, Threats, and Reductions in Services

Either before purchasing a property or shortly thereafter, Defendant KIHAGI misrepresents to tenants her true relationship to the property, and falsely claims to be an agent for Paragon Real Estate, an agent for the buyer, or just the property manager. (Kimball Decl. ¶ 8; Smith Decl. ¶¶ 5-6; Leshefsky Decl. ¶ 10.) Defendants then serve tenants with new "House Rules" and other documents that are often back-dated and purport to unilaterally change the terms of tenants' tenancies and eliminate longstanding benefits, including the right to have pets, require tenants to pay for services previously included in their rent payments, and impose draconian restrictions on tenants' right to have guests. (Leshefsky Decl. ¶ 12, 20 & Exs. B, G; Smith Decl. ¶ 9; Duncan Decl. ¶¶ 8-9, 15-16, 32 & Exs. D-E; Declaration of Leonard Johnson, Jr. ("Johnson Decl.") ¶¶ 6-7 & Ex. A.) Defendants threaten tenants who reject the House Rules.

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[7] Defendants KIHAGI and C. MWANGI, through Defendant ZORIALL, purchased the Hill property for approximately $2,500,000.00 on or about July 22, 2014. (RJN ¶ 17 & Ex. Q.)

[8] Defendant KIHAGI, through Defendant NOZARI, purchased the Church property for approximately $6,600,000.00 on or about January 21, 2015. (RJN ¶ 18 & Ex. R.)

[9] The pincites to tenant declarations *infra* are a sample to illustrate the methods of harassment employed by Defendants, rather than a comprehensive list of each affected tenant.

(Leshefsky Decl. ¶ 13 & Ex. C; Vanotti Decl. ¶¶ 6-9 & Ex. B; Declaration of James Austin ("Austin Decl.") ¶ 19 & Ex. F.)

B. Defendants Make Buy-Out Offers Coupled with Threats

Defendant KIHAGI meets with tenants in their homes, informs them of her intent to empty the building of all existing tenants, and offers them money to relinquish their rent-controlled units. Defendant KIHAGI repeatedly harasses tenants with buy-out offers, and Defendants threaten to evict tenants who do not accept their offer by using the Ellis Act or other legal means. (Maranghi Decl. ¶¶ 14, 21-22, 24, 28, 30 & Ex. B; Kimball Decl. ¶ 9; Smith Decl. ¶ 6; Declaration of Mery Rose ("Rose Decl.") ¶¶ 18-19.) If tenants still reject Defendants' buy-out offers, Defendants engage in a protracted and deliberate pattern of tenant harassment.

C. Defendants Demand Information that Violates Tenant Privacy and Harasses

Defendants demand personal information from tenants, including information that reveals tenants' sexual orientation and/or marital status, and demand proof of the benefits of tenants' tenancies (such as the right to have pets) in a manner that is calculated to intimidate and harass tenants. (Leshefsky Decl. ¶¶ 10, 18, 20-21 & Exs. E, G, H; Austin Decl. ¶¶ 20-21 & Ex. G-H.)

D. Defendants Interrupt and Reduce Housing Services

Defendants reduce, interrupt, or eliminate multiple housing services enjoyed by tenants, thereby jeopardizing the health and safety of tenants, which to date include water and hot water, electricity and lighting in interior and exterior common areas, sufficient receptacles for garbage and recycling, internet, mail, and access to common areas, including laundry, storage, parking, and backyards. (Smith Decl. ¶¶ 9-14; Johnson Decl. ¶¶ 8-11 & Ex. B; Leshefsky Decl. ¶¶ 9, 12, 32, 34, 36, 37, 40, & Ex. B; Austin Decl. ¶¶ 9-10, 15, 19 & Exs. C-D, F; Duncan Decl. ¶¶ 10, 15-17, 20-21, 26-28, 30-31, 33 & Exs. D-I; Declaration of Brian Smyth ("Smyth Decl.") ¶¶ 8-16 & Ex. D; Rose Decl. ¶¶ 20-23 & Ex. A.)

E. Defendants Abuse the Landlord's Right of Access

Defendants back-date notices to enter tenants' units and fail to provide adequate notice required under law before entering tenants' units to perform repairs; Defendants unreasonably provide notice for multiple days at a time for minor repairs, forcing tenants to miss work or other appointments so they can be home when Defendants will enter their unit; and, on several occasions, when a tenant makes a point to

be home to grant access, Defendants fail to appear, or appear on days and at times where no notice was provided. (Leshefsky Decl. ¶¶ 35 & Ex. M; Smith Decl. ¶¶ 21-23; Duncan Decl. ¶ 32; Maranghi Decl. ¶¶ 23, 31, 51-53 & Exs. C, G, S; Johnson Decl. ¶¶ 19-20 & Ex. F; Declaration of Sheila Hembury ("Hembury Decl.") ¶ 7 & Ex. B.) Defendants ignore tenant requests that Defendants not enter their units (Smith Decl. ¶ 22; Hembury Decl. ¶¶ 7-8 & Exs. B-C), and threaten to drill out the locks to tenants' doors if tenants refuse entry. (Maranghi Decl. ¶ 53.) Fearful of Defendants' unlawful entries, multiple tenants have installed video surveillance cameras inside their homes. (Vanotti Decl. ¶ 16; Duncan Decl. ¶ 22; Smyth Decl. ¶ 19; Declaration of Ben Hutchinson ("Hutchinson Decl.") ¶ 31.)

F. Defendants Violate Tenants' Right to Privacy

In retaliation for cooperating with City inspectors, refusing to relinquish their units, and reporting maintenance issues and code violations to DBI, Defendants threaten to install and then install video surveillance at some of the Properties. (Duncan Decl. ¶¶ 25-26; Austin Decl. ¶ 26 & Ex. L; Leshefsky Decl. ¶ 22 & Ex. I.) These video cameras are often pointed directly at tenants' front doors, allowing Defendants to see inside tenants' units when they open their doors. (Smith Decl. ¶ 20, 22; Vanotti Decl. ¶ 13; Leshefsky Decl. ¶¶ 28, 31 & Ex. L (third camera at back door).) Defendants monitor the camera footage and send harassing text messages to tenants based on the video footage. (Leshefsky Decl. ¶ 29 & Ex. K.) Defendants invade tenants' privacy in other disturbing ways, such as by staring into tenants' units through windows (Kimball Decl. ¶¶ 12, 36), and tampering with tenants' mail. (Vanotti Decl. ¶¶ 25, 28, 30.)

G. Defendants Intimidate, Verbally Abuse, and Threaten Tenants

Defendant KIHAGI verbally abuses her tenants, and yells and curses at them for reporting maintenance issues to DBI or for organizing with other tenants for purposes of fighting her illegal harassment. (Smith Decl. ¶¶ 7, 23; Leshefsky Decl. ¶ 30.) Defendant KIHAGI also sends threatening and harassing text and voice messages to tenants and goes so far as to follow, yell at, and take invasive photographs of tenants and their guests. (Leshefsky Decl. ¶¶ 18-19, 25, 29, 43, & Ex. E-F, K; Hutchinson Decl. ¶ 31 & Ex. J; Austin Decl. ¶ 17; Rose Decl. ¶ 13.)

H. Defendants Refuse To Acknowledge Receipt of Tenants' Rent Payments

Defendants repeatedly fail to deposit tenants' lawful rent payments, and falsely claim that tenants have failed to pay rent. (Maranghi Decl. ¶¶ 12-13, 20, 25, 30 & Ex. D; Kimball Decl. ¶ 35; Austin Decl. ¶¶ 14, 17-18 & Exs. B, E; Smith Decl. ¶ 16; Johnson Decl. ¶ 12.)

I. Defendants Attempt To Unlawfully Evict Tenants

Defendants invoke or threaten to invoke a host of unwarranted eviction tactics to force tenants out of their homes. At 18th Street, Defendants initiated ***three*** unlawful owner move-in ("OMI") evictions against one tenant who rejected a buy-out offer, and also pursued an illegal relative move-in ("RMI") eviction against a second tenant in that building. (Kimball Decl. ¶¶ 10-11, 14-34, 39-58, 60-63, Exs. A-N.) Despite defeating the OMIs and RMI, the tenants at 18th Street ultimately relinquished their units due to the relentless harassment and the stress and prohibitive expense of fighting Defendants' continued pursuit of unlawful evictions. (*Id.* ¶¶ 34, 36, 49, 59.)

At Filbert, Defendants twice attempted to evict an elderly and disabled family: first, Defendants issued a 60-day Notice to Vacate, falsely claiming the unit was illegally built and subject to demolition. (Maranghi Decl. ¶¶ 35-37 & Exs. I, J.) After the tenants challenged Defendants, and DBI suspended the demolition permit, Defendants changed tactics and initiated a baseless eviction for nuisance based on, among other things, claims of domestic violence. (*Id.* ¶¶ 38, 47-48, 50 & Exs. K, R). Maranghi won her unlawful detainer action after a jury trial. (*Id.* ¶ 55; RJN ¶¶ 4-5 & Exs. D-E.) Her 92-year-old mother, also a long-term tenant, passed away shortly before trial, after spending the last year of her life fighting to save her home. (Maranghi Decl. ¶¶ 54, 56.)

At Guerrero, after the elderly and disabled tenant in Unit 1139 refused Defendants' buy-out offer, and in retaliation for reporting maintenance issues to DBI, Defendants initiated a baseless eviction for nuisance, claiming among other things that the great-grandmother dealt drugs at the property. The subsequent unlawful detainer action is pending. (Smith Decl. ¶¶ 15, 18 & Ex. A; RJN ¶ 6 & Ex. F.) Defendants also initiated a baseless eviction for nuisance against the elderly and disabled couple in Unit 1139A—claiming one elderly tenant threatened her with a knife on multiple occasions—which the tenants defeated after a jury trial. (Johnson Decl. ¶¶ 20-21 & Ex. G; RJN ¶¶ 7-8 & Exs. G-H.)

At Church, Defendants initiated a baseless eviction for nuisance against an elderly tenant who is battling Stage 4 colon cancer—claiming among other things that he defamed Defendant KIHAGI to the media—then filed an unlawful detainer action. (Vanotti Decl. ¶¶ 20-23 & Exs. C-E; RJN ¶ 9 & Ex. I.)

At Eureka, Defendants initiated an illegal OMI eviction against the tenants in Unit 4. (Austin Decl. ¶¶ 22-25, 27-29 & Exs. I-K, M-N.) Knowing that Defendants' harassment of them would not cease until they vacated, the tenants unwillingly surrendered their home. (Austin Decl. ¶¶ 27, 30-31; see also Declaration of Raymond Schreiber ("Schreiber Decl.") & Exs. A-N.) Defendants also performed an unlawful eviction of the tenant in Unit 2 for unspecified "capital improvements" (Leshefsky Decl. ¶¶ 42, 44 & Ex. P). The tenant was forced to vacate her home at the end of November 2015. (*Id.*)

At Hill, Defendants initiated another unlawful OMI eviction of the family in Unit 71, then served the family with a baseless eviction for nuisance. (Duncan Decl. ¶¶ 34-36, 38 & Exs. J-L; RJN ¶¶ 10-11 & Exs. J-K.) As a result of Defendants' harassing conduct and owner move-in evictions (threatened and actual), the family in Unit 71, as well as tenants in two other units at Hill Street, all ultimately vacated their units. (*Id.* ¶ 39; Declaration of Nicholas Reggars ("Reggars Decl.") ¶ 39; Declaration of Tim Scoppetta ("Scoppetta Decl.") ¶ 20.) Defendants subsequently served the two remaining tenants at Hill with 60-day notices to vacate for unspecified "capital improvements" in October 2015. (Hutchinson Decl. ¶ 32-33 & Ex. K; Smyth Decl. ¶ 24 & Ex. G.) They will be forced to vacate their units in December 2015, at which point no original tenants will remain at Hill.

III. CODE VIOLATIONS

A. Defendants Fail To Perform Maintenance and Timely Complete Repairs

Defendants habitually fail to perform needed maintenance and timely complete repairs, jeopardizing the safety and security of tenants (Leshefsky Decl. ¶¶ 11, 14, 26, 36 & Exh N; Austin Decl. ¶ 11; Smith Decl. ¶¶ 7-8, 11, 23; Duncan Decl. ¶¶ 12-14, 16-17, 25, & Ex. C). When tenants report maintenance issues, Defendants refuse to take the tenants' calls and fail to take remedial action. (Smith Decl. ¶ 7; Maranghi Decl. ¶¶ 15, 22, 28, 30, 41-44 & Exs. L-O.) When DBI issues Notices of Violation for needed maintenance and code violations, Defendants fail to timely abate the violations. (Lowrey Decl. ¶¶ 12-49 & Exs. A-E2.)

B. Defendants Perform Construction Without Proper City Permits

Once Defendants successfully force a tenant to vacate, they perform a "down to the studs" remodel in the now-vacant unit, destroying tenants' quiet enjoyment in the process with the constant noise, dust, debris, foot traffic, and after-hours construction. (Kimball Decl. ¶ 38; Maranghi Decl. ¶¶ 16, 18-19; Leshefsky Decl. ¶¶ 11, 16, 26; Austin Decl. ¶ 13; Hutchinson Decl. ¶ 30.) Defendants repeatedly perform construction at their properties, including electrical and plumbing work, without first obtaining proper City permits (Lowrey Decl. ¶¶ 12-49 & Exs. A-E12), and perform construction drastically exceeding the scope of the few permits they do obtain. (*Id.* ¶ 33 & Ex. C3.) When DBI issues a "stop work" order, Defendants brazenly ignore it and continue their illegal construction. (*Id.* ¶ 19 & Ex. B4.)

C. Defendants Deny City Inspectors Access to the Properties

Defendants refuse and attempt to refuse City inspectors access to the Properties to determine whether code violations exist and whether Defendants are performing work within the scope of City permits, going so far as hiring imposing security guards to intimidate City inspectors and tenants. (Lowrey Decl. ¶¶ 14, 24, 30, 42, 49 & Ex. C5; Smith Decl. ¶ 19; Duncan Decl. ¶¶ 24-25.) As a result of Defendants' failure to grant access, DBI has suspended permits at Filbert. (*Id.* ¶¶ 15-24 & Exs. B1-B9.)

LEGAL ARGUMENT

Code of Civil Procedure section 527 authorizes a Court to issue an injunction prior to trial "if sufficient grounds exist therefor." These grounds include circumstances where a party may suffer great or irreparable injury, to prevent a multiplicity of suits, or where pecuniary compensation would fail to provide adequate relief. (Code Civ. Proc. §§526(a)(1) -(2), (a)(4), (a)(6).) Here, Defendants' outrageous unlawful and unfair tenant harassment and construction demands preliminary injunctive relief.

I. PLAINTIFFS HAVE STATUTORY AUTHORITY TO OBTAIN IMMEDIATE INJUNCTIVE RELIEF

The decision to grant a preliminary injunction rests in the discretion of this Court. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69.) The California Supreme Court has adopted a specific test when, as here, a governmental entity seeks a preliminary injunction and the legislature has specifically authorized injunctive relief against the violation of law the governmental entity is seeking to enforce. In such cases, where the governmental entity "establishes that it is reasonably probable it will prevail on the

merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant." (*Id.* at 72.) This is because the legislative body that enacted the statutory provision proscribing a certain activity and authorizing injunctive relief has already determined that: 1) such activity is contrary to the public interest; 2) significant harm will result from the proscribed activity; and 3) injunctive relief is the most appropriate way to protect against the harm. (*Id.* at 70-71.) Once the rebuttable presumption is established, a Court should only evaluate the relative harm to the parties "[i]f the defendant shows that it would suffer grave or irreparable harm from the issuance of the preliminary injunction . . ." (*Id.* at 72.)

Code of Civil Procedure section 731 authorizes the San Francisco City Attorney to bring an action to abate a public nuisance. (See *People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater* (1981) 114 Cal.App.3d 923, 930, rev'd on other grounds by *California ex rel. Cooper v. Mitchell Bros.' Santa Ana Theater* (1981) 454 U.S. 90.) In addition, the primary statutes at issue in this case, the San Francisco Administrative Code,[10] State Housing Law,[11] and Unfair Competition Law,[12] specifically authorize injunctive relief.

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[10] San Francisco Administrative Code Section 37.10B authorizes the San Francisco City Attorney to bring a civil action and seek an injunction against any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates the Section's prohibitions on tenant harassment. (S.F. Admin. Code §37.10B(c)(3)-(5).)

[11] The State Housing Law authorizes injunctive relief as follows: "if a nuisance exists in any building or upon the lot on which it is situated, the enforcement agency shall… institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance." (Health & Safety Code §17980(a).) Pursuant to San Francisco Building and Housing Codes, unpermitted construction work, plumbing work, and electrical work renders a building in substandard condition, unsafe, and a *per se* public nuisance. (See S.F. Bldg. Code §102A; S.F. Hous. Code §§401, 1001.)

[12] Business and Professions Code Sections 17203 and 17204 authorize Plaintiff People of the State of California to file and action and seek injunction relief to prevent "any practice which constitutes unfair competition." (Bus. & Prof. Code §17203.) This authority permits a court to tailor an injunction to address the specific conduct of the defendants. (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 540.) The injunctive relief available under the Unfair Competition Law is cumulative to those that are available pursuant to other statutes. (Bus. & Prof. Code §17205; see also *Hewlett*, 54 Cal.App.4th at 535.)

II. PLAINTIFFS ARE MORE THAN REASONABLY LIKELY TO PREVAIL ON THE MERITS

A. Defendants Engage in Unlawful Tenant Harassment at Their Properties

"[T]he City has a legitimate interest in preventing conduct that subverts the Rent Ordinance, which includes conduct that threatens or browbeats tenants to vacate so units can be re-rented at market rates." *Larson v. City and County of San Francisco* (2011) 192 Cal.App.4th 1263, 1287. Under Section 37.10B of the San Francisco Administrative Code, landlords and their agents may not do any of the following, in bad faith:

> (1) Interrupt, terminate or fail to provide housing services required by contract or by State, County or local housing, health or safety laws;
>
> (2) Fail to perform repairs and maintenance required by contract or by State, County or local housing, health or safety laws;
>
> (3) Fail to exercise due diligence in completing repairs and maintenance once undertaken or fail to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead, paint, mold, asbestos, or other building materials with potentially harmful health impacts;
>
> (4) Abuse the landlord's right of access into a rental housing unit as that right is provided by law;
>
> (5) Influence or attempt to influence a tenant to vacate a rental housing unit through fraud, intimidation or coercion;
>
> (6) Attempt to coerce the tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation;
>
> . . .
>
> (10) Interfere with a tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;
>
> (11) Refuse to accept or acknowledge receipt of a tenant's lawful rent payment;
>
> (12) Refuse to cash a rent check for over 30 days;
>
> (13) Interfere with a tenant's right to privacy;
>
> (14) Request information that violates a tenant's right to privacy, including but not limited to residence or citizenship status or social security number;
>
> (15) Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy.

(S.F. Admin. Code §37.10B(a)(1)-(15).) The facts as set forth above, and contained in the 15 declarations of current and former tenants filed concurrently herewith, amply demonstrate that Defendants callously and repeatedly violate each of these provisions as part of a calculated campaign to harass their rent-controlled tenants into vacating their units. Thus far, Defendants' illegal OMI, RMI, nuisance, and

"capital improvement" evictions against tenants in at least thirteen rent-controlled units have resulted in at least six original tenants relinquishing their units, five original tenants currently facing the decision to fight or surrender, and two unlawful detainer jury verdicts in favor of tenants and against Defendants. Taken together, the harassment, retaliation, displacement, and jury verdicts in tenants' favor demonstrate Defendants have violated the Administrative Code in bad faith.

Defendants' misconduct poses an immediate threat to the health, safety, and welfare of their tenants, and all San Francisco residents, by blatantly violating the laws enacted to protect tenants, by making false representations and baseless accusations in their attempts to displace tenants, and by systematically depriving the tenants of their legal right to quiet enjoyment.

1. Defendants Have Created and Maintained a Public Nuisance Due to Substandard Hazardous Conditions at the Properties

Under Civil Code Section 3479, a nuisance is defined as "[a]nything which is injurious to health...so as to interfere with the comfortable enjoyment of life or property." (Civ. Code §3479; *Harding v. State of CA ex rel Dept. of Trans.* (1984) 159 Cal.App.3d 359.) A public nuisance is "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." (Civ. Code §3480; see also *People v. Acuna* (1997) 14 Cal.4th 1090, 1120.)

Plaintiffs will prevail on the merits on their cause of action for public nuisance. As part of their unlawful and unfair business model, Defendants habitually operate their Properties in violation of municipal codes and therefore as *per se* public nuisances—and Filbert and Eureka remain such to this day. It is a settled point of law that a City is empowered to declare what constitutes a nuisance and to take action to abate it. (*City and County of San Francisco v. Padilla* (1972) 23 Cal.App.3d 388, 401.) The California Government Code provides that, "[b]y ordinance the city legislative body may declare what constitutes a nuisance." (Gov't. Code §38771; see also *id.* §25845 (discussing abatement proceedings in counties).) The Supreme Court in *City of Bakersfield v. Miller* (1966) 64 Cal.2d at 93, explains a court's function relative to a statutory nuisance:

> Where the Legislature has determined that a defined condition or activity is a nuisance, it would be a usurpation of the legislative power for a court to arbitrarily deny enforcement merely because in its independent judgment the danger caused by a violation was not significant. The function of the courts in such circumstances is limited to determining whether a statutory violation in fact exists... (*Id.* at 100.)

Pursuant to the City Charter, the San Francisco Board of Supervisors enacted local ordinances that specify what violations constitute a public nuisance. By enacting the San Francisco Building and Housing Codes, the Board of Supervisors acted within its police power goals of "ensuring the health and safety of its residents and preserving its housing stock." (*City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1315.) Specifically, the Board of Supervisors recognized the public's undeniable right to be free from properties which pose a health or safety risk.[13]

San Francisco's Municipal Codes deem any building that has been altered without permits to be "unsafe," "substandard," and a *per se* public nuisance. (S.F. Bldg. Code §102A; S.F. Hous. Code §§401, 1001(a), (b), (d), (e), (f), (l).) Here, DBI has issued multiple citations to Defendants for unpermitted building, plumbing, and electrical work and for work in excess of permits at most of the Properties. (Lowrey Decl. ¶¶ 12-49 & Exs. A-E2.) Though Defendants later cured most violations, several violations were not timely cured and others still remain outstanding. (*Id.*) Defendants also refuse and impede lawful city inspections in an effort to conceal the illegal work, and to avoid the ramifications of their unsafe and illegal conduct. (*Id.* ¶¶ 14-24, 30, 42, 49 & Exs. B1-B9, C5.) Defendants' money-saving business practices of performing construction work without the requisite plumbing, electrical or building permits and/or performing work in excess of obtained permits, violates the State Housing Law[14] and the San

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[13] California courts have consistently approved injunctive relief as a proper remedy for nuisance abatement on real property when the nuisance is caused by failure to maintain a property in compliance with local and state health and safety laws. (*See, e.g., City and County of San Francisco v. Jen* (2005) 135 Cal.App.4th 305, 308, 313 [affirming injunction for violations of Cal. Health & Safety code]; *City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1305-06, 1323 [affirming injunction for violations of San Francisco Housing and Building Codes].

[14] Plaintiff San Francisco will also prevail on its State Housing Law cause of action. The State Housing Law deems "substandard buildings" subject to abatement to include a host of conditions—perpetuated by Defendants at the Properties—that "endanger[] the life, limb, health, property, safety, or welfare of the public or the occupants thereof," including "any nuisance." (Health & Safety Code §17920.3 and subd. (c); see also subd. (a)(5) (lack of hot and cold water), (a)(10) (lack of electricity), (a)(13) (general dilapidation or improper maintenance), (a)(15) (lack of adequate garbage storage and removal), (d) (improper wiring) (e) (improper plumbing), (f) improper mechanical equipment, (g) faulty weather protection, (i) (construction materials), (j) combustible materials).

Francisco Municipal Codes, constitutes a statutory public nuisance under the Civil Code by interfering with their tenants' comfortable enjoyment of life and property and a *per se* public nuisance, creates unsafe buildings, and poses an immediate threat to the safety and well-being of tenants, neighbors, and the community.

2. Defendants Engage in Unlawful Business Practices

"Unlawful competition" is "any unlawful, unfair, or fraudulent business act or practice." (Bus. & Prof. Code §17200.) "The 'unlawful' practices prohibited by section 17200 are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made." (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839 (citations omitted).) The unlawful prong "borrows violations of other laws" and treats them as "practices independently actionable under section 17200." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 179-82.) California courts have consistently interpreted Section 17200 broadly. (See, e.g., *Barquis v. Merchants Collections Assn.* (1972) 7 Cal.3d 94, 111 (holding a court may "enjoin on-going wrongful business conduct in whatever context it might occur"), 113 (an "unlawful business activity" is "anything that can properly be called a business practice and that at the same time is forbidden by law").)

When a property is maintained in violation of the applicable regulations pertaining to health and safety, it is maintained in an unlawful manner and constitutes an unlawful business practice by the property owner. (See e.g., *Hernandez v. Stabach* (1983) 145 Cal.App.3d 309, 314.) Here, Defendants persistently maintain their properties in violation of the San Francisco municipal codes and in violation of the State Housing Law as part of their unlawful and unfair business model to maximize profits above all else, including legal compliance and public safety. In addition, by engaging in tenant harassment in violation of the San Francisco Administrative Code, by performing construction work without required permits in violation of the San Francisco Building Code and the State Housing Law, and creating a public nuisance in violation of the Civil Code, Defendants have also acted, and continue to act, in violation of the Business and Professions Code.

B. PLAINTIFFS ARE ENTITLED TO PRELIMINARY INJUNCTIVE RELIEF

Based on the overwhelming evidence, Plaintiffs are more than reasonably likely to prevail on the merits of their claims. A rebuttable presumption then arises that the potential harm to the public from

Defendants' illegal conduct outweighs the potential harm to Defendants. (*IT Corp.*, *supra*, 35 Cal.3d at 72.) Plaintiffs' request for injunctive relief that will put a stop to Defendants' unlawful tenant harassment and illegal evictions must therefore be issued unless Defendants can rebut the presumption by showing they would suffer "grave or irreparable immediate harm." (*Id.*) Defendants cannot meet their burden.

1. Defendants Cannot Show They Will Suffer Grave and Irreparable Harm if the Injunction is Granted

An injunction requiring Defendants to follow the law and to cease their unlawful harassment, intimidation, and evictions of tenants does not harm or interfere with any legitimate interest held by Defendants. Plaintiffs' proposed injunctive provision that would compel Defendants to present any proposed Notices to Vacate to this Court for review and approval at a properly noticed *ex parte* hearing, is to Defendants' benefit, as it reduces Defendants' potential liability to their tenants and is, at most, a minor inconvenience that cannot overcome the rebuttable presumption in favor of Plaintiffs. Similarly, being ordered to provide notice to Plaintiffs of any change to or acquisition of any property interest, or creation or acquisition of any interest in corporate entity, cannot realistically constitute "grave or irreparable immediate harm." Finally, being ordered to obtain required permits and submit to inspections *before* performing construction, to timely abate any cited health and safety code violations at their properties, to submit to noticed City inspections to investigate complaints of code violations, and to maintain their properties in a code-compliant manner is to Defendants' benefit. Being ordered by this Court to comply with the law, in order to safeguard the health and safety of the public, cannot constitute "grave or irreparable" harm.

2. Plaintiffs Will Suffer Serious Irreparable Harm if the Injunction is Not Granted

Absent an order from this Court issuing a preliminary injunction, Defendants will continue to harass tenants out of possession of their homes—a consequence that has immediate, irreparable injury to the tenants in possession, to their neighborhoods and communities, and to Plaintiffs. San Francisco's neighborhoods and communities are irreparably harmed when long-term tenants are illegally displaced by unscrupulous landlords, forcing tenants to uproot their lives and relocate to substantially pricier apartments, or leave the City entirely. As of the date of this filing, Defendants' conduct has displaced

numerous tenants from at least thirteen units, with tenants in at least five more units currently facing eviction. Furthermore, Defendants' pattern and practice of performing work without permits and/or exceeding the scope of issued permits in violation of the State Housing Law and the San Francisco Housing and Building Codes constitutes a public nuisance, and poses an immediate threat to the safety and well-being of the tenants of the subject Properties as well as the neighboring residents, merchants, and general community. Unless enjoined, Defendants will continue to maintain the Properties in violation of state and local law.

CONCLUSION

Defendants have conducted themselves, and continue to conduct themselves, as though they are exempt from the basic rules of rental property ownership and management. A preliminary injunction is necessary to stop Defendants from repeatedly violating the very local and state laws that were enacted to protect tenants from Defendants' unique brand of tyrannical abuse, is necessary to compel Defendants to take immediate action to abate all unlawful and dangerous nuisance conditions and unlawful or unfair business practices, and is the only means by which Plaintiffs can fulfill their obligation to protect the health, safety and welfare of their citizens.

Dated: December 1, 2015

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PROOF OF SERVICE

I, MORRIS ALLEN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On December 1, 2015, I served the following document(s):

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

on the following persons at the locations specified:

Aleksandr A. Volkov, Esq.
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VIA PERSONAL DELIVERY AND ELECTRONIC SERVICE

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NT Law
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VIA ELECTRONIC SERVICE

in the manner indicated below:

☒ **BY PERSONAL SERVICE**: I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. **A declaration from the messenger who made the delivery ☐ is attached or ☒ will be filed separately with the court.**

☐ **BY OVERNIGHT DELIVERY**: I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be served electronically through File & ServeXpress in portable document format ("PDF") Adobe Acrobat.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed December 1, 2015, at San Francisco, California.

MORRIS ALLEN