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10 State of California and Plaintiff and  
11 Real Party in Interest, The City of Oakland

**ENDORSED  
FILED  
ALAMEDA COUNTY**

JUN - 4 2008

**CLERK OF THE SUPERIOR COURT**

By S. Haicrombe  
Reply

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**  
10 **(UNLIMITED JURISDICTION)**

11  
12 THE PEOPLE OF THE STATE OF  
13 CALIFORNIA,  
14 Plaintiff, and  
15 THE CITY OF OAKLAND, a municipal  
16 corporation,  
17 Plaintiff and Real  
18 Party in Interest,  
19 v.  
20 AVALON SUCCESS, LLC, a business  
21 organization; HONG GARDNER, an  
22 individual; and DOES 1 through 20,  
23 inclusive,  
24 Defendants.

Case No. *RS* 09455940

**COMPLAINT FOR INJUNCTIVE RELIEF,  
ABATEMENT OF NUISANCE, AND  
OTHER EQUITABLE RELIEF**

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1                   The People of the State of California as Plaintiff and the City of Oakland, as  
2 Plaintiff and Real Party, hereinafter "Plaintiff" allege against Defendants AVALON  
3 SUCCESS, LLC, HONG GARDNER, and DOES 1 through 20 inclusive, hereinafter  
4 "Defendants", and each of them, as follows:

5                   1.       Plaintiff, the City of Oakland, is a municipal corporation and a  
6 chartered city, organized and existing under the laws of the State of California.

7                   2.       Defendant AVALON SUCCESS, LLC is a real estate and financial  
8 services company with business offices in Oakland and Fremont. Defendant AVALON  
9 SUCCESS, LLC owns residential property in Oakland, California.

10                  3.       Defendant HONG GARDNER is a California licensed Real Estate  
11 Broker doing business in Oakland, California. Defendant HONG GARDNER provides  
12 brokerage services for Defendant AVALON SUCCESS, LLC, and manages residential  
13 properties owned by Defendant AVALON SUCCESS, LLC in Oakland, California.  
14 Defendant HONG GARDNER owns at least four residential properties in Oakland,  
15 California.

16                  4.       Venue is proper in Alameda County because the actions that give rise  
17 to the allegations occurred at properties in Oakland, California, a city in Alameda County.

18                  5.       Defendants DOES 1 through 20 inclusive are sued as fictitious  
19 names, their names and capacities being unknown to Plaintiff. When their true names  
20 and capacities are ascertained, Plaintiff will amend this complaint.

21                  6.       Whenever reference is made to an act performed by Defendants  
22 such allegations include the Defendants, their agents, managers, representatives,  
23 employees or DOES 1 through 20 who performed or authorized such acts while engaged  
24 in the operation, management, direction or control of the Defendants' affairs, and acting  
25 within the scope of their duties.  
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1 **PRELIMINARY ALLEGATIONS**

2 7. Defendants AVALON SUCCESS, LLC, HONG GARDNER, and  
3 DOES 1 through 20 own and are responsible for the maintenance, repair and general  
4 upkeep of the following properties in Oakland, California:

5 A. 2011 Rutherford Street, APN No. 026-0748-013

6 B. 1501 23<sup>rd</sup> Avenue, APN No. 020-0159-012-01

7 8. The 10-unit building at 2011 Rutherford Street is owned by Defendant  
8 AVALON SUCCESS, LLC, and managed by Defendant HONG GARDNER. The 6-unit  
9 building at 1501 23<sup>rd</sup> Avenue is owned and managed by Defendant HONG GARDNER.

10 9. The condition of the properties indicates that Defendants have  
11 postponed standard maintenance for years. City code enforcement records indicate  
12 receipt of multiple tenant and community complaints regarding code violations at the  
13 above-referenced properties, including but not limited to, insect infestations, walls covered  
14 with mold and mildew, inoperable stoves, defective electrical outlets, leaking bathroom  
15 fixtures, and dilapidated flooring and balconies. The City is forced to send multiple  
16 notices to Defendants before repairs are done.

17 10. Maintenance and repairs are not made in a timely manner, and  
18 tenants report repairman knocking on doors at all hours.

19 11. Through these practices, Defendants maintain their properties below  
20 State and City habitability standards.

21 12. In 2009, the City has inspected both of the above-referenced  
22 properties owned and/or operated by Defendants. Based upon violations of local and  
23 state housing codes, the City has determined that several of the rental units are  
24 substandard to the point of being unfit for human habitation. Furthermore, the City has  
25 determined that the condition of these units is detrimental to the public health and safety.  
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1 properties.

2           20. Defendants have maintained the properties in substandard conditions  
3 as set forth in California Health and Safety Code Section 17920 by allowing dangerous  
4 conditions to persist unabated, which include, but are not necessarily limited to, the  
5 following.

- 6           A. Dampness of habitable rooms,
- 7           B. Infestation of insects and vermin,
- 8           C. General dilapidation and improper maintenance,
- 9           D. Structural hazards,
- 10          E. Fire hazards due to the lack of smoke detectors,
- 11          F. General nuisance,
- 12          G. Defective electrical outlets, and
- 13          H. Accumulation of weeds, garbage, and debris.

14           21. Defendants have been cited for violations of the Oakland Municipal  
15 Code Chapter 15.08 by engaging in acts or practices which include, but are not  
16 necessarily limited to, the following:

- 17           A. Mold and mildew on walls, ceilings, and carpets that may be  
18 hazardous to the health of the occupants,
- 19           B. Windows painted shut which does not allow them to open or  
20 provide adequate ventilation,
- 21           C. Infestation of insects,
- 22           D. Defective electrical outlets,
- 23           E. Inoperable smoke detectors,
- 24           F. Metal window bars that do not open to allow escape in the  
25 case of an emergency.

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1 intended to compensate tenants because they do not have their ordinary belongings or a  
2 method to cook for their families. To date, none of this money has been paid to the  
3 tenants of 2011 Rutherford Street in Oakland.

4 29. Because of Defendants' failure to expeditiously complete the repairs  
5 the tenants of two units were forced to reside at a hotel for weeks, the expense for these  
6 arrangements was a total of \$6,340.32 for each family. Plaintiff the City of Oakland was  
7 required to make these arrangements for the tenants.

8 30. Wherefore, Plaintiff seeks relief as hereinafter set forth.

9 **THIRD CAUSE OF ACTION**

10 **Against Defendants AVALON SUCCESS, LLC, HONG GARDNER,**  
11 **and DOES 1 THROUGH 20 – Maintenance of a Public Nuisance**

12 31. Plaintiff incorporates by reference Paragraphs 1 through 30 as though  
13 fully set forth herein.

14 32. Plaintiff bring this action pursuant to California Code of Civil  
15 Procedure section 731 in the name of the People of the State of California to abate a  
16 public nuisance. Plaintiff also bring this action under Oakland Municipal Code Chapter  
17 15.08.

18 33. Defendants' maintenance of the properties or lack thereof, constitutes  
19 a continuing public nuisance. Cal. Civ. Code §§ 3479, 3480. That is, Defendants'  
20 properties adversely affect not only the tenants who must live in the above described  
21 uninhabitable conditions but also the surrounding community. The condition of the  
22 properties is injurious to health, offensive to the senses, and unlawfully obstructs the free  
23 use of the properties as well as neighboring properties.

24 34. Defendants' maintenance of the properties in the condition described  
25 in the complaint is a continuing public nuisance as described in Oakland Municipal Code  
26 Sections 15.08.340B, C, E, F, G, K, L, M, and 15.08.170, and California Civil Code

1 Sections 3479 and 3480.

2 35. The City has repeatedly notified Defendants of the hazardous  
3 conditions of the properties, which are violations of the Oakland Municipal Code. However  
4 Defendants have failed to abate these hazardous conditions, correct the violations or  
5 demonstrate any intention to permanently correct them.

6 36. Plaintiff has no adequate remedy at law.

7 37. Plaintiff is informed and believe that Defendants will not correct these  
8 violations or abate the nuisance within a reasonable period of time. If it becomes  
9 necessary for Plaintiff to correct the violations or abate the nuisance, the City of Oakland  
10 will incur substantial costs.

11 38. Wherefore, Plaintiff seeks relief as hereinafter set forth.

12 **FOURTH CAUSE OF ACTION**

13 **Against Defendants AVALON SUCCESS, LLC, HONG GARDNER,**  
14 **and DOES 1 THROUGH 20 – Violations of Oakland’s Rent Control Ordinance**

15 39. Plaintiff incorporates by reference the allegations of paragraphs 1  
16 through 38 as though fully set forth herein.

17 40. The City Attorney has standing under Oakland Municipal Code §  
18 8.22.150C to bring an action for injunctive relief and/or damages for violations of the Rent  
19 Ordinance.

20 41. Defendants have breached the implied warranty of habitability  
21 established by the act of renting residential property. Defendants are required to maintain  
22 their property in a condition fit for human occupation, and repair all dilapidations which  
23 might render it untenable. Cal. Civ. Code §§ 1929, 1941. They have failed to provide  
24 the housing services they have agreed to provide and are required by law to provide their  
25 tenants. A decrease in housing services constitutes an increase in rent. Oakland  
26 Municipal Code § 8.22.070F. By breaching the implied warranty of habitability,

1 defendants illegally increased their tenants' rent. Oakland Municipal Code § 8.22.070F.

2 42. Wherefore, Plaintiff seeks relief as hereinafter set forth.

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4 **FIFTH CAUSE OF ACTION**

5 **Against Defendants AVALON SUCCESS, LLC, HONG GARDNER,**  
6 **and DOES 1 THROUGH 20 – Injunctive Relief**  
7 **[Temporary Restraining Order, Preliminary and Permanent Injunctions]**

8 43. Plaintiff incorporates by reference Paragraphs 1 through 42 as though  
9 fully set forth herein.

10 44. Defendants' wrongful conduct, unless and until enjoined and  
11 restrained by order of this court, will cause great and irreparable injury to Plaintiff. During  
12 the pendency of the instant lawsuit, Defendants' on-going violations of Oakland and State  
13 law will continue to harm the City of Oakland as well as tenants within the City of Oakland.

14 45. Plaintiff has no adequate remedy at law for the injuries currently being  
15 suffered, and that are threatened. Pecuniary compensation will not afford adequate relief  
16 from the unceasing violations of Oakland's municipal code and the resulting displacement  
17 of tenants and their families from their lawful dwellings (Civ. Code § 3422(1)).

18 46. Plaintiff requests that pursuant to the court's inherent equity powers,  
19 Defendants be permanently enjoined from violating Oakland Municipal Code Chapters  
20 15.08 and 15.60, and California Health and Safety Code Section 17920, and be ordered  
21 to reimburse tenants as required by Oakland Municipal Code Sections 15.60.070(D), and  
22 15.60.110(B),(C).

23 47. Wherefore, Plaintiff seeks relief as hereinafter set forth.

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PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That pursuant to Oakland Municipal Code Sections 15.08.130(A) Defendants be ordered to pay Plaintiff's actual damages in the amount of \$6,340.32, plus costs, and attorney's fees.

2. That pursuant to Oakland Municipal Code Sections 8.22.150(C) Defendants be ordered to pay Plaintiff's actual damages, costs and attorney's fees.

3. That pursuant to Oakland Municipal Code § 8.22.150(C), and the court's inherent equity powers, Defendants, and each of them, and their employees, agents, salesmen, representatives, successors, assigns and all other persons, corporations or other entities acting under, by, through or on behalf of said Defendants, or acting in concert or participation with or for them with actual or constructive notice of this injunction, be permanently enjoined from violating Oakland Municipal Code Chapters 8.22, 15.08 and 15.60, and California Health and Safety Code Sections 17290, et seq., including, but not limited to, the violations alleged in this complaint, and pay the immediate vacation relocation expense of \$500.00 to the tenant on the lease for Units D, E, I, and J at 2011 Rutherford Street.

4. That pursuant to the court's inherent equity powers, Defendants, and each of them, be ordered to reimburse tenants for any other expenses incurred as a result of Defendants' lack of proper maintenance and repair of the properties.

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5. That Plaintiff has such other and further relief as the nature of the case may require and the court deems appropriate and just.

DATED: June 4, 2009

JOHN A. RUSSO, City Attorney  
RANDOLPH W. HALL, Chief Assistant City Attorney  
JAMES F. HODGKINS, Supervising Trial Attorney  
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The City of Oakland