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ALAMEDA COUNTY

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and the City of Oakland

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

THE CITY OF OAKLAND, a Real Party In
Interest,

Plaintiffs,

v.

LIEM H. LE, an individual, LAN H. DO, an
individual, and DOES 1 through 20,
inclusive,

Defendants.

Case No. *RG* 07305619

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

(Unlimited Civil Case)

The City of Oakland, as plaintiff and Real Party in Interest, allege:

1. The City of Oakland is a municipal corporation and a chartered city organized, and existing under the laws of the State of California.
2. Defendants DOES 1 through 20 are sued as fictitious names, their names and capacities being unknown to plaintiffs. When their true names and capacities are ascertained, plaintiffs will amend this complaint.
3. Whenever reference is made to an act performed by defendants LIEM H. LE

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2 and LAN H. DO, such allegations indicate defendants, their agents, managers,
3 representatives, employees or DOES One through Twenty inclusive, who performed or
4 authorized such acts while engaged in the operation, management, direction or control of
5 the defendant's affairs, acting within the scope of their duties.

6 4. Defendants own or are responsible for the maintenance and repair of the
7 following two residential rental buildings, 2555 Foothill Blvd. and 2567 Foothill Blvd.,
8 Assessor's Parcel Number 025-0734-030, (hereinafter "the Property") located in Oakland,
9 California which contain at least fifty habitable units:

10 5. The owners of record of the real property listed above are LIEM H. LE, LAN
11 H. DO and DOES 1-20. (Exhibit A)

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13 **PRELIMINARY ALLEGATIONS**

14 6. Plaintiffs incorporate by reference Paragraphs 1 through 5 as though fully
15 set forth herein:

16 7. LIEM H. LE and LAN H. DO purchased the Property listed in paragraph 4 in
17 2005 and have owned these two buildings continuously since purchase.

18 8. The condition of the Property indicates that defendants have postponed or
19 failed to complete required maintenance since acquiring the buildings. City code
20 enforcement records document receipt of multiple tenant and community complaints
21 regarding code violations at defendants' property listed in paragraph 4, including but not
22 limited to: broken heating units, damage to bathroom walls, broken windows, and non-
23 operating smoke detectors. Tenants who notify defendants of these code violations find
24 that repairs are denied until the City requires repair. Tenants further report that the
25 repairs that are made are frequently only cosmetic or temporary, meant to pass inspection
26 and fail to address the cause of the problem. That is, although code violation repairs are

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2 expected to be completed upon notification by the City, code enforcement records show
3 that defendants only made repairs after multiple contacts from the City.

4 9. Alameda County Health Department inspection records document receipt of
5 multiple tenant and community complaints regarding an infestation of rodents and
6 cockroaches at the property. Despite an October 2006 settlement agreement with the
7 City, which includes a provision for monthly fumigation of all units, the vermin problem was
8 never abated and persists to the present due to total lack of adequate fumigation efforts.

9 9. Through this practice, defendants maintain their properties below State and
10 City habitability standards, utilize City inspectors as unpaid property managers, and
11 superficially repair only code violations to minimal standards.

12 10. In September 2006, the City of Oakland re-inspected the Property owned
13 and managed by defendants. Based upon violations of local and state housing codes, the
14 City determined that the required repairs were incomplete or done incorrectly. Several of
15 these rental units have been cited repeatedly for hazardous conditions that seriously
16 affect habitability.

17 11. The Property has previous complaints and inspection violations. City
18 inspectors have observed the same type of violations, such as broken heaters, obstructed
19 fire exit paths, building without permits, broken bathroom fixtures, and unsecured
20 premises repeatedly through defendants' period of ownership of these properties,
21 illustrating defendants' pattern and practice of negligent and improper maintenance and/or
22 repair and preservation of substandard housing for their tenants.

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FIRST CAUSE OF ACTION

**Against LIEM H. LE and LAN H. DO, and DOES 1 through 20
VIOLATIONS OF THE OAKLAND MUNICIPAL CODE AND
THE CALIFORNIA HEALTH AND SAFETY CODE**

12. Plaintiffs incorporate by reference Paragraphs 1 through 11 as though fully set forth herein.

13. City of Oakland brings this action pursuant to Section 401(6) of the Oakland City Charter, which authorizes the City Attorney to commence an action to abate or remove a violation and restrain and enjoin any person from violating any provisions of the Municipal Code, or other applicable laws, rules, and regulations.

14. Defendants LIEM H. LE and LAN H. DO and DOES 1 through 20 are legally responsible for the maintenance and repair of the Property.

15. Defendants LIEM H. LE and LAN H. DO and DOES 1 through 20 inclusive, have maintained their properties in substandard conditions as set forth in Health and Safety Code § 17920.3 by allowing the dangerous conditions to persist unabated, which include, but are not necessarily limited to, the following:

- A. Inadequate maintenance that has adversely affected the habitability of the buildings or portions thereof;
- B. Nuisance activity due to general dilapidation and illegal drug-related activity on the property;
- C. Fire and safety hazards due to obstructed fire exit paths and non-functioning fire hose casings;
- D. Inadequate sanitation due to infestation of insects and non-functioning heating units.

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2 16. LIEM H. LE and LAN H. DO and DOES 1 through 20 inclusive have been
3 cited for violations of the Oakland Municipal Code by engaging in acts or practices which
4 include, but are not necessarily limited to, the following:

- 5 A. Defendants have failed to provide occupants with functioning heaters,
6 resulting in hazardous conditions seriously affecting habitability;
- 7 B. Defendants have failed to obtain valid permits, inspection approvals,
8 or other conditions of permits;
- 9 C. Defendants have failed to repair unsafe fire conditions, resulting in
10 existing and continuing hazard to life, limb, property, and public
11 welfare;
- 12 D. Defendants maintain their properties in unsanitary conditions which
13 result in the accumulation of debris, filth, rubbish, garbage, rodents,
14 vermin and other offensive matter;
- 15 E. Defendants lack of maintenance and repairs decrease the housing
16 services to tenants, effectively serving as an unauthorized increase in
17 rent.

18 **SECOND CAUSE OF ACTION**

19
20 **Against LIEM H. LE and LAN H. DO and DOES 1 through 20**
21 **MAINTENANCE OF A PUBLIC NUISANCE**

22 17. Plaintiffs incorporate by reference Paragraphs 7 through 16 as though fully
23 set forth herein.

24 18. Plaintiffs bring this action pursuant to Code of Civil Procedure § 731 in the
25 name of the People of the State of California to abate a public nuisance. This action is
26 also brought under Oakland Municipal Code Chapter 15.08.

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2 19. Defendants' maintenance of the Property, or lack thereof, constitutes a
3 continuing public nuisance. (CA. Civ. Code §§ 3479, 3480.) That is, Defendants'
4 properties adversely affect not only the tenants who must live in the above described
5 uninhabitable conditions but also the surrounding community. The condition of the
6 Property is injurious to health, offensive to the senses, and unlawfully obstructs the free
7 use of the Property as well as neighboring properties.

8 20. Defendants' maintenance of the Property in the condition described in this
9 complaint is a continuing public nuisance as described in Oakland Municipal Code
10 §§ 15.08.340B, C, and D and 15.08.170 and California Civil Code §§ 3479 and 3480 and
11 is a nuisance per se.

12 21. The City has notified defendants repeatedly of the hazardous conditions of
13 the Property, which are violations of the Oakland Municipal Code. However, defendants
14 have failed to abate these hazardous conditions, correct the violations, or demonstrated
15 any intention to permanently correct them.

16 22. Defendants' properties are frequently the target of police surveillance and
17 undercover narcotics operations due to neighbor complaints and drug hotline calls. The
18 drug activity at several of defendants' properties has led to several arrests for narcotics
19 related activity on defendants' properties.

20 23. The City entered into a settlement agreement with the defendants previously
21 in an attempt to abate the nuisance activity associated with this property without resort to
22 litigation. However, defendants have not followed the terms of the settlement agreement.

23 24. Unless stopped by this Court, defendants will continue to maintain the
24 Property in the above-described substandard and dangerous condition and continue to
25 cause irreparable injury to the public's health, safety and welfare.

26 25. Plaintiffs have no adequate remedy at law.

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2 26. Plaintiffs are informed and believe that defendants will not correct these
3 violations or abate the nuisance within a reasonable period of time. If it becomes
4 necessary for plaintiffs to correct the violations or abate the nuisance, the City of Oakland
5 will incur substantial costs.

6 **THIRD CAUSE OF ACTION**

7 **Against LIEM H. LE and LAN H. DO and DOES 1 through 20**
8 **VIOLATIONS OF OAKLAND'S RENT CONTROL ORDINANCE**

9 27. Plaintiffs incorporate by reference the allegations of paragraphs 7 through
10 26 as though fully set forth herein.

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

13 29. Defendants have breached the implied warranty of habitability established
14 by the act of renting residential property. Cal. Civ. Code §§ 1929, 1941. They have
15 failed to provide the housing services they have agreed to provide and are required by law
16 to provide their tenants. A decrease in housing services constitutes an increase in rent.
17 (Oakland Municipal Code § 8.22.070F.) By breaching the implied warranty of habitability
18 defendants illegally increased their tenants' rent in violation of OMC § 8.22.070F and Cal.
19 Civ. Code § 1942.5.

20 **PRAYER**

21 WHEREFORE plaintiffs pray for judgment as follows:
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24 1. That defendants be ordered to abate all conditions which cause the
25 nuisance, or alternatively, that plaintiff City of Oakland or its contractors be authorized to
26 perform the work and recover the costs from defendants, their successors, heirs and

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assigns.


2. For an order that defendants not be allowed to take deductions for interest, taxes, expenses, depreciation or amortization paid or incurred with respect to the Property in the relevant taxable year(s), pursuant to *Revenue and Taxation Code* § 17274 and § 24436.5, and *Health and Safety Code* § 17980.7(b)(1).

3. That the abstract of the judgment in this case constitutes a prior lien over any that may be held on the Property.

4. That plaintiffs recover costs of this suit from defendants, their successors, heirs and assigns, including attorneys' fees, and expenses for inspection, investigation, enforcement, and prosecution.

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

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JAMES F. HODGKINS, Supervising Trial Attorney
ETHAN NASR, Attorney for the City of Oakland

By: 

Attorneys for Plaintiff and Real Party in Interest
CITY OF OAKLAND