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*Exempt from filing fees per
Government Code § 6103*

8 Attorneys for Plaintiff and Real Party in Interest,
PEOPLE OF THE STATE OF CALIFORNIA and CITY OF SANTA ANA

9 **Assigned for All Purposes**
SUPERIOR COURT OF CALIFORNIA Judge Melissa R. McCormick
10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
11

12 CITY OF SANTA ANA, a charter City and
municipal corporation, and THE PEOPLE OF
13 THE STATE OF CALIFORNIA, by the City
Attorney for the City of Santa Ana,
14

15 Plaintiffs,

16
17 v.

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19 RR SANTA ANA, LP, a California Limited
Partnership; MOUNTAIN HIGH/ HOLIDAY
20 HILL CORPORATION, a California Corporation;
TERRY TOGNAZZINI, an individual;
21 PATRICIA TOGNAZZINI, an individual;
22 DANIEL TOGNAZZINI, an individual; and
DOES 1 through 25 inclusive,
23

24 Defendants.
25

Case No: 30-2020-01164089-CU-MC-CJC

**COMPLAINT FOR INJUNCTION TO
ABATE A PUBLIC NUISANCE;
NARCOTICS ABATEMENT;
NUISANCE *PER SE***

**[Deemed Verified Pursuant to Code of
Civil Procedure Section 446]**

Causes of Action:

- 1. Public Nuisance (Civ. Code §§ 3479, 3480, 3491, 3494; Code Civ. Proc. §§ 526, 731)**
- 2. Narcotics Abatement (Health and Safety Code §§ 11570, *et seq.*)**
- 3. Public Nuisance *Per Se* (Civ. Code §§ 3479, 3480, 3491, 3494; Code Civ. Proc. §§ 526, 731; Santa Ana Municipal Code §§ 1-8, 1-12, 1-13, and 41-190)**

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27 This action is brought by the PEOPLE OF THE STATE OF CALIFORNIA, (“People”)
28 as Plaintiff, by and through SONIA R. CARVALHO, City Attorney for the City of Santa Ana,

1 and CITY OF SANTA ANA, a charter City and municipal corporation (“City”), duly organized
2 and existing under and by virtue of the Constitution and laws of the State of California, as
3 Plaintiff and Real Party In Interest, (collectively, “Plaintiffs”), against RR SANTA ANA, LP
4 (“RR Santa Ana”), MOUNTAIN HIGH/ HOLIDAY HILL CORPORATION (“MH/HH Corp.”),
5 TERRY TOGNAZZINI, PATRICIA TOGNAZZINI, DANIEL TOGNAZZINI, and DOES 1
6 through 25 (herein collectively referred to as “Defendants”) for the purpose of abating and
7 enjoining the operation of a public nuisance at the property located at 2600 N. Main Street in the
8 City commonly known as the “Red Roof Inn Santa Ana” and the parcel(s) on which it sits
9 (herein referred to as the “Property”). The above-captioned Defendants, as described below, are
10 the owners and/or operators of the Property. This action is brought pursuant to the *Public*
11 *Nuisance Law* (“PNL”), California *Civil Code* section 3479, *et seq.*; the Narcotics Abatement
12 Law, California *Health and Safety Code* section 11570, *et seq.*; and the Santa Ana Municipal
13 Code (“SAMC”).

14 **I. PARTIES, JURISDICTION, AND VENUE**

15 **A. Plaintiffs**

16 1. The City is at all times herein mentioned, a Charter City and municipal
17 corporation, duly organized and existing under and by virtue of the Constitution and laws of the
18 State of California and located in the County of Orange.

19 2. The City is authorized, pursuant to *Code of Civil Procedure* section 731, to
20 prosecute this action in the name of and on behalf of the People of the State of California.

21 **B. Defendants**

22 3. Plaintiffs are informed and believe, and thereon allege, that Defendant, RR Santa
23 Ana, is a California Limited Partnership. Plaintiffs are further informed and believe, and thereon
24 allege that, at all relevant times herein, Defendant RR Santa Ana is the record owner of the
25 property located at 2600 N. Main Street, Santa Ana, California (the “Property”), and is the
26 operator of the “Red Roof Inn” motel located at the Property.

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1 4. Plaintiffs are informed and believe, and thereon allege, that Defendant RR Santa
2 Ana has owned the Property and operated a “Red Roof Inn” motel at the location since at least
3 2001.

4 5. Plaintiffs are informed and believe, and thereon allege, that Defendant MH/HH
5 Corp. is a California Corporation. Plaintiffs are further informed and believe, and thereon allege,
6 that Defendant MH/HH Corp. is the sole controlling general partner of the RR Santa Ana LP
7 limited partnership. As of March 2020, the principal executive office of MH/HH Corp. is
8 located at 2677 N. Main Street, Suite 470, in the City. This location is directly across Main
9 Street from the Property.

10 6. Plaintiffs are informed and believe, and thereon allege, that Defendant, Terry
11 Tognazzini, is the manager of RR Santa Ana and has been since at least 2001, and also serves as
12 the Chief Executive Officer, Chief Financial Officer and principal director of MH/HH Corp.,
13 positions which he has held since at least 2010.

14 7. Plaintiffs are informed and believe, and thereon allege, that Defendant, Patricia
15 Tognazzini, is a principal director of MH/HH Corp., and has been in such position since at least
16 2010.

17 8. Plaintiffs are informed and believe, and thereon allege, that Defendant, Daniel
18 Tognazzini, is the Secretary and a principal director of MH/HH Corp., and has been in such
19 position since at least 2010.

20 9. Plaintiffs are informed and believe, and thereon allege, that Defendants Terry
21 Tognazzini, Patricia Tognazzini, and Daniel Tognazzini are the principal officers and directors
22 of MH/HH Corp. As officers and directors of MH/HH Corp., these three Defendants are
23 responsible for the continued existence of the nuisance conditions on the Property due to their
24 failure to implement and maintain best management and operational practices that would
25 suppress or eliminate the nuisance.

26 10. Defendants’ failure to implement appropriate security and other managerial “best
27 practices” allows the Property to persist as a dangerous public nuisance. The Defendants, as
28 owners and managers of the Property, have thus far “looked the other way” while allowing the

1 conditions upon the Property to deteriorate. Defendants must engage and commit to halt the
2 ongoing nuisance activity at the Property. If Defendants are unwilling or unable to permanently
3 end the nuisance conditions on the Property, Plaintiffs request the Court implement all necessary
4 measures, authorized pursuant to California state law, in order to abate the nuisances and ensure
5 they do not put the public in danger again. This nuisance abatement prosecution is intended to
6 protect the health and safety of both the Property's residents and members of the surrounding
7 community.

8 11. The true names and capacities of Defendants sued herein as DOES ONE (1)
9 Through TWENTY-FIVE (25) are unknown to Plaintiffs, who therefore sue such Defendants by
10 such fictitious names, and will amend this Complaint to show their true names and capacities at
11 such time as they are ascertained. Plaintiffs are informed and believe and thereon allege that
12 each of the Defendants designated herein as a DOE is legally responsible in some manner for the
13 events and happenings alleged in this Complaint.

14 12. References or allegations in this Complaint regarding any act(s) of Defendants,
15 shall be deemed to mean Defendants' officers, agents, managers, representatives, employees,
16 and/or DOES 1 through 25, who authorized such acts while actively engaged in the operation,
17 management, direction or control of the affairs of Defendants, at the Defendants' direction
18 and/or while acting within the course and scope of their duties. Reference to Defendants shall
19 also mean each of the Defendants individually, as well as all Defendants, collectively.

20 13. Defendants and each of them are directly responsible for the activities occurring
21 on the Property as set forth below, are responsible for continuing violations of the laws and
22 public policy of the State of California and/or local codes, regulations and/or requirements
23 applicable to Defendants' operation and activities at the Property, and/or have permitted,
24 allowed, caused, or indirectly furthered the activities at the Property alleged herein, and
25 Defendants' use of and activities at the Property, or allowance of such uses and activities, are
26 inimical to the rights and interest of the general public and constitute unlawful business
27 practices, nuisances and/or violation of law.

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1 **C. The Property**

2 14. The Property is a short- term stay motel, doing business as the “Red Roof Inn,”
3 located at the address commonly known as 2600 N. Main Street, Santa Ana, CA 92704. The
4 Property has approximately 125 units between 5 buildings (“A,” “B,” “C,” “D,” and “E”). The
5 Property’s Assessor’s Parcel Numbers are 002-203-23 & 002-203-24.

6 15. The Property has a reputation in the community, and among law enforcement
7 officers, as a location where narcotics sales take place, where individuals frequently loiter,
8 vandalize property, and use narcotics, and as a location frequented by convicted criminals,
9 probationers, and parolees.

10 16. The Property shares an undivided parking lot with Polly’s Pies restaurant and an
11 office building. Discovery Cube OC, a science museum serving children throughout the area, is
12 located less than 500 feet south of Red Roof Inn. Santiago Park, a Santa Ana City park, is
13 located across Main Street and contains playgrounds, bicycle and walking trails, sports fields,
14 and other amenities for the public.

15 **D. Jurisdiction and Venue**

16 17. Plaintiffs bring this action under *Civil Code* sections 3479, 3480, and 3494;
17 *Health and Safety Code* section 11570, *et seq.*; *Code of Civil Procedure* section 731; and Section
18 370 of the *Penal Code*. Plaintiffs seek to enjoin Defendants from engaging in the conduct alleged
19 in this Complaint and to recover fees, costs and penalties as permitted by law relating to this
20 enforcement action.

21 18. Venue is proper in this judicial district because the Property and the nuisance
22 conduct at issue are located in this judicial district.

23 **III. THE PUBLIC NUISANCE LAW**

24 19. The abatement of a nuisance is a long-established and well-recognized exercise of
25 the state's police power. (*People ex rel. Bradford v. Barbieri* (1917) 33 Cal.App. 770, 775-76;
26 *People ex rel. Hicks v. Sarong Gals* (1974) 42 Cal.App.3d 556, 563.) *Civil Code* section 3479
27 defines a nuisance as “[a]nything which is injurious to health, including, but not limited to, the
28 illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to

1 the free use of property, so as to interfere with the comfortable enjoyment of life or property....”
2 (*See Bakersfield v. Miller* (1966) 64 Cal.2d 93, 99 [“The Legislature has defined in general
3 terms the word ‘nuisance’ in *Civil Code* section 3479....”].)

4 20. *Civil Code* section 3480 defines a public nuisance as “one which affects at the
5 same time an entire community or neighborhood, or any considerable number of persons,
6 although the extent of the annoyance or damage inflicted upon individuals may be unequal.”

7 21. *Civil Code* section 3491 provides for the methods by which public nuisances such
8 as those alleged herein may be abated. Section 3491 states that the “remedies against a public
9 nuisance are: 1. Indictment or information; 2. A civil action; or, 3. Abatement.” Abatement is
10 “accomplished by a court of equity by means of an injunction proper and suitable to the facts of
11 each case.” (*Sullivan v. Royer* (1887) 72 Cal. 248, 249.)

12 22. *Code of Civil Procedure* section 731 authorizes a city attorney to bring an action
13 to enjoin or abate a public nuisance. It provides, in relevant part, “A civil action may be brought
14 in the name of the people of the State of California to abate a public nuisance... by the city
15 attorney of any town or city in which the nuisance exists.”

16 23. “[S]trict liability for nuisance historically attends the possession and control of
17 land.” (*Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal.App.3d
18 605, 618, fn. 15.) “[I]t is immaterial whether the acts be considered willful or negligent; the
19 essential fact is that, whatever be the cause, the result is a nuisance.” (*Snow v. Marian Realty Co.*
20 (1931) 212 Cal. 622, 625-26; *see also Sturges v. Charles L. Harney, Inc.* (1958) 165 Cal.App.2d
21 306, 318 [“a nuisance and liability therefor may exist without negligence”]; *People v.*
22 *McCaddon* (1920) 48 Cal.App. 790, 792 [“A judgment supported on findings that such nuisance
23 was conducted and maintained on the premises in question, regardless of the knowledge of the
24 owner thereof, is sufficient. Such knowledge on the part of the owner... is unnecessary.”].)
25 Courts apply this strict standard because “the object of the act is not to punish; its purpose is to
26 effect a reformation in the property itself.” (*People v. Bayside Land Co.* (1920) 48 Cal.App. 257,
27 261.)

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1 **IV. THE NARCOTICS ABATEMENT LAW**

2 24. Since its enactment in 1972, the principal purpose of the Narcotics Abatement
3 Law (*Health & Safety Code* § 11570, et seq.) is the abatement of buildings and places “used for
4 the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any
5 controlled substance, precursor, or analog specified in this division...” (*Health & Safety Code* §
6 11570.)

7 25. The Narcotics Abatement Law provides that every building or place used for the
8 purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any
9 controlled substance, precursor, or analog, “is a nuisance which shall be enjoined, abated, and
10 prevented... whether it is a public or private nuisance.” (*Health & Safety Code* § 11570
11 (emphasis added); *People ex rel Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1389; *Lew v.*
12 *Superior Court* (1993) 20 Cal.App.4th 866, 870-871.)

13 26. *Health and Safety Code* section 11571 authorizes a city attorney to bring an
14 action to abate, prevent, and perpetually enjoin such nuisances. It provides in relevant part:
15 “Whenever there is a reason to believe that a nuisance as described in Section 11570 is kept,
16 maintained, or exists in any county, the district attorney of the county, or the city attorney of any
17 incorporated city or of any city and county, in the name of the people, may ... maintain an action
18 to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining
19 it, and the owner, lessee, or agent of the building or place in or upon which the nuisance exists
20 from directly or indirectly maintaining or permitting the nuisance.”

21 27. *Health and Safety Code* section 11573(a) provides, “If the existence of the
22 nuisance is shown in the action to the satisfaction of the court or judge, either by verified
23 complaint or affidavit, the court or judge shall allow a temporary restraining order or injunction
24 to abate and prevent the continuance or recurrence of the nuisance.” (emphasis added.) In
25 addition, *Health and Safety Code* section 11681 provides, as an additional remedy, for the
26 removal and sale of all fixtures and moveable property on the premises used in aiding or abetting
27 the nuisance and for the closure of the building for up to one year.

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1 **V. THE SANTA ANA MUNICIPAL CODE**

2 28. Pursuant to Article XI, section 7 of the Constitution of the State of California,
3 “[a] county or city may make and enforce within its limits all local, police, sanitary, and other
4 ordinances and regulations not in conflict with general laws.”

5 29. California *Government Code* section 38771 authorizes the Santa Ana City
6 Council, by ordinance, to declare what constitutes a nuisance.

7 30. Section 200 of the Santa Ana City Charter states that the City shall have the
8 authority to “make and enforce all laws and regulations in respect to municipal affairs...”
9 Accordingly, the City has the authority to make and enforce laws regarding the regulation of
10 buildings and all associated construction and maintenance standards. Such regulations are
11 contained within Chapter 8 of the SAMC.

12 31. Section 1-13(a) of the SAMC provides that any violation of the City’s Municipal
13 Code is deemed a public nuisance, which may be abated by civil action.

14 **VI. FACTS**

15 **A. Crimes and Calls for Service to the Santa Ana Police Department.**

16 32. The Property has been the source of consistent and significant problems, crimes,
17 and calls for service for the Santa Ana Police Department (“SAPD”) for several years, as
18 specified herein, and based upon evidence to be shown at trial.

19 33. During the period beginning January 1, 2019 to the present, the SAPD has
20 received more than four hundred and forty (440) calls for service at the Property. These calls for
21 service are related to a wide variety of criminal conduct, including but not limited to:

22 Assault and battery, assault with a deadly weapon, attempted suicide, criminal
23 threats, domestic violence, disorderly conduct, disturbing the peace, indecent
24 exposure, malicious mischief, narcotics violations, rape, robbery, stolen vehicles,
25 theft, trespassing, vandalism, and vehicle burglaries.

26 34. The Property has considerably more calls for service than the other motels in the
27 area or other commercial businesses in the area. As such, SAPD spends a disproportionate
28 amount of time policing, patrolling, and responding to calls at the Property.

1 35. Below are several examples of calls, contacts, investigations and arrests SAPD
2 handled at the Property over the last eighteen (18) month period:

- 3 a. SAPD officers responded to a call regarding an assault with a firearm. The
4 victim was walking through the parking lot of the Red Roof Inn, returning
5 to his room with groceries, when he was approached by an individual who
6 brandished a firearm, then drew the firearm and pointed it at the victim's
7 head. Officers located the suspect in the Red Roof Inn parking lot and
8 apprehended him after a short foot pursuit. The suspect was in possession
9 of a pistol and a methamphetamine pipe at the time of his arrest.
- 10 b. SAPD officers responded to a vehicle burglary in progress. The victim told
11 officers that the suspect broke into the trunk of the vehicle and began
12 removing his property. Upon being confronted by the victim and a witness,
13 the suspect became confrontational, but fled only when the victim called
14 SAPD.
- 15 c. SAPD officers responded to a vehicle burglary call. The victim stated she
16 had locked and secured her vehicle, only to return the next morning to find
17 the entire driver's side door had been stolen while the vehicle remained
18 parked in the Red Roof Inn parking lot.
- 19 d. SAPD officers were dispatched for a domestic violence incident. The
20 victim had been choked and struck repeatedly by the suspect, who was high
21 on methamphetamine.
- 22 e. SAPD officers were dispatched for a domestic violence incident. The
23 victim advised officers the suspect, a resident of the Red Roof Inn, had not
24 slept in "a couple days" and when the victim told the suspect to sleep, he
25 became violent, striking the victim multiple times and causing a black eye.
- 26 f. SAPD officers were dispatched because a male victim was unconscious and
27 bleeding inside the Red Roof Inn. Officers determined the victim, who
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appeared to be under the influence, had been attacked by an unknown number of assailants and kicked in the face multiple times.

- g. SAPD officers were dispatched because a thirty year-old individual was found deceased in a room of the Red Roof Inn. Officers found an empty bottle of pentobarbital pills and an indication of additional drug use next to the decedent.
- h. SAPD officers were dispatched because of a possible overdose. The officers arrived and found an individual on the bathroom floor, deceased. The decedent’s girlfriend told officers the decedent was a regular methamphetamine user.
- i. SAPD officers responded to a domestic violence incident. The suspect, a regular methamphetamine user who lived at the motel, had repeatedly struck his girlfriend in the face, broken her phone to prevent her from calling police, and hit her with a door.
- j. SAPD officers responded to a domestic violence incident. The suspect, a career criminal who had recently been paroled, had thrown several objects at his girlfriend, narrowly missing her head. When police were called, the suspect fled the motel on his bicycle.
- k. While conducting a patrol check, SAPD officers contacted two individuals parked in a vehicle without license plates. During the contact, officers observed a glass pipe with white residue. After removing the suspects from the car, officers located two bindles containing white crystalline substance consistent with methamphetamine.
- l. SAPD officers were patrolling the parking lot of the Red Roof Inn property as the “location is a high traffic area for narcotics.” Officers observed an occupied parked vehicle filled with a large amount of smoke. A records check revealed the vehicle had expired registration out of Louisiana. After contacting the occupants of the vehicle, the driver admitted to possessing a

1 handgun and a high capacity magazine in the glove compartment. The
2 driver indicated he was staying at the Red Roof Inn.

- 3 m. SAPD officers were dispatched for a robbery investigation. The victim
4 stated he was sleeping in the motel's parking lot when he was approached
5 by three individuals who demanded money. Before the victim could
6 respond, he was struck several times with a metal baton. The suspects took
7 everything in the victim's pockets, and took the victim's backpack and
8 duffle bag containing personal property.
- 9 n. SAPD officers were conducting a patrol check of the Red Roof Inn when
10 they observed a vehicle with illegal tint traveling at a high rate of speed
11 through the parking lot. After conducting a traffic stop of the vehicle,
12 officers observed an open beer bottle and a strong odor of alcohol. The
13 driver, who was on probation, admitted to possessing cocaine on his person.
- 14 o. SAPD officers were patrolling the Red Roof Inn parking lot due to
15 "multiple complaints of narcotic activity in the area," when they observed
16 several individuals engaged in what appeared to be a "hand-to-hand"
17 exchange for narcotics. During the investigation, one of the suspects, who
18 claimed to be visiting a friend at Red Roof Inn, was found to be in
19 possession of methamphetamine.

20 36. The calls for service to SAPD are not limited to the Property. SAPD has also
21 received calls for service from neighboring businesses. Between January 1, 2019 to present,
22 SAPD has received more than 78 calls for service at Polly's Pies restaurant and more than 75
23 calls for service at the adjacent office building (2670 N. Main Street). Many of these calls are
24 directly related to the Property and the nuisance conditions thereon.

25 37. The City has limited police and emergency resources. Those limited resources
26 have been inordinately taxed by the nuisance conditions at the Property. In less than two years,
27 the SAPD has received nearly six hundred (600) calls for service at the Property and adjacent
28 businesses. By failing to adhere to basic "best practices" regarding the operation of a motel,

1 Defendants have allowed and permitted the Property to become a dangerous nuisance,
2 frequented and inhabited by dangerous criminals, who prey upon unsuspecting businesses and
3 City residents. To protect the residents and businesses in the City, SAPD and the City's Code
4 Enforcement Department have been forced to "step up." The City continues to shoulder the
5 burden while Defendants continue to cash their checks.

6 **B. Community Complaints**

7 38. In addition to SAPD calls for service, the nuisance operations of the Property
8 have extended to nearby businesses and neighborhoods.

9 39. The City receives complaints on a daily basis from residents and business owners
10 regarding the nuisance conditions resulting from Property.

11 40. Due to the unmaintained and uncontrolled nuisance conditions on the Property,
12 dangerous individuals have begun to spread from the Property to neighboring businesses. These
13 businesses have suffered major damages as a result of narcotics use and sales, vandalism, theft,
14 trespassing, and loitering. Many businesses have seen a tremendous drop in patronage as regular
15 customers have stated they no longer feel safe coming to the location due to the nuisance
16 conditions spreading from Property.

17 41. Under State and local law, Defendants have a legal responsibility to remedy the
18 nuisance conditions on the Property. Because Defendants have utterly failed to uphold these
19 responsibilities, the City brings this Action to protect the health, safety, and welfare of its
20 citizens.

21 **C. Building Code Violations**

22 42. On July 14, 2020, the Planning and Building Department completed a
23 comprehensive inspection of all units and common areas of the Property. The inspection
24 revealed more than 140 violations throughout the Property, including unpermitted and unsafe
25 modifications to many of the guest units, rodent and vermin infestations, lack of working smoke
26 detectors, and other violations caused by a lack of proper maintenance.

27 43. As a result, a Notice and Order to Abate was issued to Defendants on July 16,
28 2020, which catalogued the violations throughout the Property and set a mandatory compliance

1 date of August 16, 2020. To date, all of the violations noted in the July 16 Notice remain and
2 the Property remains out of compliance with the applicable building standards and regulations
3 cited in the Notice

4 **FIRST CAUSE OF ACTION**

5 **PUBLIC NUISANCE**

6 **(Preliminary and Permanent Injunction)**

7 **[Cal. Civ. Code §§ 3479, 3480 and 3494, Cal. Code Civ. Proc. §731**
8 **and Cal. Pen. Code § 370]**

9 **(ALL DEFENDANTS AND DOES 1-25)**

10 44. Plaintiffs re-allege and incorporate herein by reference as if alleged herein the
11 allegations in paragraphs 1 through 43.

12 45. This action is brought pursuant to Section 731 of the California *Code of Civil*
13 *Procedure*, by and through the City, in the name of the People of the State of California, to abate
14 a public nuisance, as well as by the authority granted in California *Civil Code* sections 3494,
15 3479, 3480 and 3496, and/or California *Penal Code* section 370.

16 46. Defendants and DOES 1 through 25 and each of them, have permitted and
17 maintained a continuing public nuisance on the Property for the last several years and continuing
18 presently. Plaintiffs are informed and believe that the circumstances constituting a public
19 nuisance, as alleged herein, have been ongoing since at least January 2019. However, Plaintiffs
20 reserve the right to extend this period pursuant to evidence to be presented at trial in this matter.

21 47. SAPD has received more than four hundred and forty (440) calls for service from
22 January 1, 2019 and to the present. Within that same time period, SAPD has received more than
23 one hundred and fifty (150) calls for service from neighboring businesses. The number of calls
24 for service at the Property greatly surpasses the number of calls for service for similar
25 commercial properties in the City. Further, the level of required police presence at the Property
26 is grossly out of line with the community standards and expectations. This nuisance affects the
27 entire community. These conditions spill over into the surrounding businesses and
28 neighborhoods, greatly affecting the quality of life of all affected.

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1 48. The operation and maintenance of the Property by Defendants and DOES 1
2 through 25, in the condition described and summarized above, and as shown by evidence, is a
3 continuing public nuisance, pursuant to California *Civil Code* sections 3479 and 3480. The
4 maintenance and operation of the Property in such continuous manner is injurious to the public's
5 health, safety and welfare; offensive to the senses, and obstructs the free use of the properties in
6 the neighborhood.

7 49. At the time of trial, Plaintiffs will move the Court to amend this Complaint to
8 include any conditions discovered or occurring after filing this Complaint.

9 50. Unless restrained by this Court's issuance of injunctive relief as requested herein,
10 Defendants and DOES 1 through 25 will continue to maintain said public nuisance in violation
11 of law.

12 51. The wrongful conduct of Defendants and DOES 1 through 25 as alleged herein,
13 and/or shown by evidence, constitutes a serious threat to the general health, safety, and welfare
14 of the City and its residents and, in particular, the residents and business surrounding the
15 Property, and their peaceable and safe enjoyment of their respective properties.

16 52. Plaintiffs have no plain, adequate, or speedy remedy at law in that the level and
17 frequency of illegal activities is of such a magnitude as to create an immediate, permanent, and
18 perpetual risk of the health and welfare of the public and of residents of the neighborhood
19 surrounding the Property and the whole of the community of the City; and Defendants, and
20 DOES 1 through 25, have demonstrated a clear unwillingness and/or inability to manage and/or
21 operate the Property in a manner that is compliant with the law and/or which is not injurious to
22 the public health, welfare and safety. Instead, Defendants and DOES 1 through 25, have
23 engaged in, furthered, contributed to, fostered, encouraged, conspired to do the same, or have
24 otherwise allowed, permitted or participated in such harmful, dangerous and unlawful activities
25 and operations to continue at the Property.

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SECOND CAUSE OF ACTION
NARCOTICS ABATEMENT
(Health & Safety Code section 11570, et seq.)
(ALL DEFENDANTS AND DOES 1-25)

53. Plaintiffs re-allege and incorporate herein by reference as if alleged herein the allegations in paragraphs 1 through 52, above.

54. Since at least 2019, and through the present time, the Property has been used for the purposes of unlawfully selling, serving, storing, keeping, manufacturing, or giving away controlled substances in violation of *Health and Safety Code* section 11570, et seq., as evidenced by the narcotics-related arrests at the Property. SAPD has made narcotics arrests within the Property, as well as the parking lot area, for both possession and sales of narcotics. Further, it is well known to SAPD officers that the Property is an area used for the purchase and sale of narcotics.

55. As a proximate result of the nuisance conditions alleged herein or to be shown by evidence, which have been maintained and/or permitted by Defendants and DOES 1 through 25, at the Property, the public’s health, welfare and safety have been, and continue to be, severely jeopardized.

56. Defendants and DOES 1 through 25, are responsible for conducting, maintaining, and/or directly or indirectly permitting the nuisance as alleged herein. Plaintiffs have no plain, speedy, and adequate remedy at law, and unless Defendants and DOES 1 through 25 are restrained and enjoined by order of this Court, they will continue to use, occupy, and maintain, and/or to aid, abet, or permit, directly or indirectly, the use, occupation, and maintenance of the Property, together with the fixtures and appurtenances located therein, for the nuisance complained of herein, to the great and irreparable damage of the public and in violation of California law.

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1 **THIRD CAUSE OF ACTION**

2 **PUBLIC NUISANCE *PER SE***

3 **(Civ. Code §§ 3479, 3480, 3491, 3494; Code Civ. Proc. §§ 526, 731)**

4 **(SAMC §§ 1-8, 1-12, 1-13, and 41-190)**

5 **(ALL DEFENDANTS AND DOES 1-25)**

6 57. Plaintiffs re-allege and incorporate herein by reference as if alleged herein the
7 allegations in paragraphs 1 through 56, above.

8 58. The City has enacted and codified a Building Code in Chapter 8 of the SAMC,
9 which includes nearly all sub-areas of regulations affecting buildings or structures.

10 59. The City adopted the Building Code to enforce state building standards. (SAMC
11 § 8-1.)

12 60. In Chapter 8 of the SAMC, the City has adopted and incorporated a number of
13 state codes into the Municipal Code – Building, Plumbing, Mechanical, Electrical, Housing,
14 Dangerous Buildings, Property Maintenance and more. The duty for enforcing the regulations
15 contained in Chapter 8 of the SAMC is delegated to the Planning and Building Department.
(SAMC §1-18.1.)

16 61. On July 14, 2020, the Planning and Building Department completed a
17 comprehensive inspection of all units and common areas of the Property. The inspection
18 revealed more than 140 violations throughout the Property, including unpermitted and unsafe
19 modifications to many of the guest units, rodent and vermin infestations, lack of working smoke
20 detectors, and other violations caused by a lack of proper maintenance.

21 62. As a result, a Notice and Order to Abate was issued to Defendants on July 16,
22 2020, which catalogued the violations throughout the Property and set a mandatory compliance
23 date of August 16, 2020. To date, all of the violations noted in the July 16 Notice remain and
24 the Property remains out of compliance with the applicable building standards and regulations
25 cited in the Notice.

26 63. SAMC section 1-13(a) provides that any violation of the City’s Municipal Code
27 is deemed a public nuisance, which may be abated by civil action.

28

1 3. That Plaintiffs be awarded such costs as may occur in abating said nuisance at the
2 Property and such other costs as the Court shall deem just and proper.

3 4. That Plaintiffs be granted such other and further relief as the Court deems just
4 and proper, including the appointment of a receiver.

5 **As to the Second Cause of Action:**

6 1. That Defendants and the Property, be declared in violation of California *Health*
7 *and Safety Code* section 11570, *et seq.*

8 2. That the Court order Defendants, Terry Tognazzini, Patricia Tognazzini, and
9 Daniel Tognazzini, to reside in the Property until the nuisance is abated, in accordance with
10 *Health and Safety Code* section 11573.5.

11 3. That the Property, together with the fixtures and moveable property therein and
12 thereon, be found to constitute a public nuisance and be permanently abated as such in
13 accordance with section 11581 of the California *Health and Safety Code*.

14 4. That the Court grant a preliminary and/or permanent injunction and order of
15 abatement in accordance with Section 11570, *et seq.*, of the California *Health and Safety Code*,
16 enjoining and restraining each Defendant and their agents, officers, employees, and anyone
17 acting on their behalf, from unlawfully selling, serving, storing, keeping, manufacturing, or
18 giving away uncontrolled substances on the Property.

19 5. That the Court order physical and managerial improvements to the Property in
20 accordance with California *Health and Safety Code* section 11573.5, and such orders as are
21 otherwise appropriate, to remedy the nuisance on the Property and enhance the abatement
22 process, including but not limited to, the following: repair and enhancement of existing fences
23 and walls on the Property; the installation of additional fences, walls, gates and access control
24 mechanisms; the installation of an internet-connected video monitoring system accessible by
25 SAPD; improved lighting; mandatory registration of all guest vehicles on Property; improved
26 screening of tenants; armed, licensed security guards; and a prohibition of known criminals and
27 those convicted of offenses on the Property from accessing or renting rooms on the Property.

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1 6. That as part of the Judgment, an Order of Abatement be issued, and that the
2 Property be closed for a period of one year, not to be used for any purpose, and be under the
3 control and custody of this Court for said period of time; or, in the alternative, if the Court
4 deems such closure to be unduly harmful to the community, that Defendants pay an amount of
5 damages equal to the fair market rental value of the Property for one year to the City or County
6 in whose jurisdiction the nuisance is located in accordance with *Health and Safety Code* section
7 11581 subdivision (c)(1).

8 7. That Defendants be assessed a civil penalty in an amount not to exceed \$25,000
9 each.

10 8. That Defendants and any agents, trustees, officers, employees, and anyone acting
11 on their behalf, and their heirs and assignees, be perpetually enjoined from transferring,
12 conveying, or encumbering any portion of the Property, for consideration or otherwise, without
13 first obtaining the Court's prior approval.

14 9. That Defendants be ordered to immediately notify any transferees, purchasers,
15 commercial lessees, or other successors-in-interest to the subject Property of the existence and
16 application of any temporary restraining order, and any preliminary or permanent injunction,
17 before entering into any agreement to sell, lease, or transfer, for consideration or otherwise, all
18 or any portion of the Property that is the subject of this Action.

19 10. That Defendants be ordered to immediately give a complete, legible copy of any
20 temporary restraining order, and any preliminary or permanent injunctions, to all prospective
21 transferees, purchasers, lessees, or other successors-in-interest to the Property.

22 11. That Defendants be ordered to immediately request and procure signatures from
23 all prospective transferees, purchasers, lessees, or other successors in interest to the subject
24 Property, which acknowledges his/her respective receipt of a complete, legible copy of any
25 temporary restraining order, and any preliminary or permanent injunction, and deliver a copy of
26 such acknowledgment to the Santa Ana City Attorney's Office and any other counsel retained by
27 Plaintiffs in this action.

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1 12. That Plaintiffs recover the costs of this Action, including investigative and
2 enforcement costs of SAPD, and any fees, including attorneys' fees, authorized by law, not to
3 exceed \$1,000,000, from Defendants.

4 **As to the Third Cause of Action:**

5 1. That the Property and the conditions existing thereon be declared a violation of
6 the Santa Ana Municipal Code.

7 2. That Defendants, and each of them, their agents, officers, employees, and anyone
8 acting on their behalf, and their heirs and assignees, be temporarily, preliminarily, and/or
9 permanently enjoined from operating, conducting, using, occupying, or in any way permitting
10 the use of the Property as a public nuisance pursuant to the Santa Ana Municipal Code.

11 3. That Defendants be restrained and enjoined from transferring ownership of the
12 Property and structures unless there is compliance with all applicable orders of this Court and
13 requests by the City, and the Court and City have approved of such.

14 4. An order, indicating that Defendants, and each of them, shall be held personally
15 liable and shall compensate the City for its investigative and enforcement costs incurred by the
16 City Planning and Building Department and costs of suit incurred herein, including reasonable
17 attorneys' fees.

18 **As to All Causes of Action:**

19 1. That Plaintiffs recover the amount of the filing fees and the amount of the fee for
20 the service of process or notices which would have been paid but for *Government Code* section
21 6103.5, designating it as such. The fees may, at the Court's discretion, include the amount of the
22 fees for certifying and preparing transcripts.


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2. That Plaintiffs are entitled to such other relief as the Court deems proper,
necessary or just.

SONIA R. CARVALHO
City Attorney
City of Santa Ana

Dated: October 7, 2020

By: 

KYLE C. NELLESEN
Assistant City Attorney
Attorneys for PLAINTIFFS