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22 **UNITED STATES BANKRUPTCY COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**
24 **RIVERSIDE DIVISION**

25 In re

26 CITY OF SAN BERNARDINO,
27 CALIFORNIA,

28 Debtor.

Case No. 6:12-bk-28006-MJ

Chapter 9

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF CITY OF SAN
BERNARDINO'S OPPOSITION TO
NEWBERRY MOTION FOR
ATTORNEY'S FEES AND COSTS**

[Opposition filed Concurrently]

Date: November 12, 2015
Time: 10:00 a.m.
Place: Courtroom 301
3420 Twelfth Street
Riverside, CA 92501-3819

1 **TO THE HONORABLE MEREDITH A. JURY, U.S. BANKRUPTCY JUDGE, AND ALL**
2 **PARTIES IN INTEREST:**

3 Defendant City of San Bernardino (the “City”) respectfully requests that the Court take
4 judicial notice of the following pursuant to Federal Rule of Evidence 201 in support of City of
5 San Bernardino’s Opposition to Newberry Motion for Attorney’s Fees and Costs:

- 6 1. The content of the District Court’s “ORDER DENYING Plaintiffs’ Ex Parte
7 Application for a Temporary Restraining Order and Order to Show Cause re:
8 Preliminary Injunction (Doc. No. 20),” which is Docket No. 30 in District Court
9 Case No. 5:14-cv-02298-JGB-SP, a true and correct copy of which document is
10 attached hereto as Exhibit 1.
- 11 2. The content of the City’s opposition to the Plaintiffs’ Ex Parte Application for a
12 Temporary Restraining Order (“TRO motion”), which is Docket No. 25 in
13 District Court Case No. 5:14-cv-02298-JGB-SP, a true and correct copy of which
14 document is attached hereto as Exhibit 2.
- 15 3. The content of the Declaration of Lt. Richard Lawhead in support of the City’s
16 opposition to the TRO motion, which is Docket No. 26 in District Court Case No.
17 5:14-cv-02298-JGB-SP, a true and correct copy of which document is attached
18 hereto as Exhibit 3.
- 19 4. The content of the Affidavit of Kristie Rohleder in support of Inspection/
20 Abatement/Administrative Warrant that was submitted to the Superior Court of
21 the State of California and subscribed and sworn to Judge Steve Malone of the
22 Superior Court, a true and correct copy of which document is attached hereto as
23 Exhibit 4.
- 24 5. The content of the transcript of the hearing held on December 3, 2014, in the
25 District Court on the TRO motion in District Court Case No. 5:14-cv-02298-JGB-
26 SP, a true and correct copy of which document was filed in this case in Docket
27 No. 1518-4 (pages 57-69) and is attached hereto as Exhibit 5.

1 6. The content of the Inspection/Abatement/Administrative Warrant issued by the
2 Honorable Steve Malone, Judge of the Superior Court of the State of California, a
3 true and correct copy of which document was filed in this case in Docket No.
4 1518-4 (pages 53-55) and is attached hereto as Exhibit 6.

5 **I. THE COURT MAY TAKE JUDICIAL NOTICE OF THE CONTENT OF ITS**
6 **OWN RECORDS, THE DISTRICT COURT’S RECORDS, AND PUBLIC**
7 **RECORDS.**

8 Federal Rule of Evidence 201 governs judicial notice of adjudicative facts, not legislative
9 facts. Fed. Rule Evid. 201(a). A court may take judicial notice “at any stage of the proceeding”
10 and on its own without a request. Fed. Rule Evid. 201(c)(1) and (d). If a party requests that the
11 court take judicial notice of an adjudicative fact and supplies the court with the necessary
12 information, then the court must take judicial notice of such fact. Fed. Rule Evid. 201(c)(2).
13 The court may take judicial notice of facts that are not subject to reasonable dispute because it:
14 (1) is generally known within the trial courts territorial jurisdiction, or (2) can be accurately and
15 readily determined from sources whose accuracy cannot be reasonably disputed. Fed. Rule Evid.
16 201(b).

17 A court may take judicial notice of undisputed matters of public record, including
18 “documents on file in federal or state courts.” *Harris v. Cnty. of Orange*, 682 F.3d 1126, 1132
19 (9th Cir. 2012); *accord, Bennett v. Medtronic, Inc.*, 285 F.3d 801 (9th Cir. 2002) (California
20 federal appeals court would take judicial notice of the pleadings filed in a related action between
21 the same parties in a Tennessee state court). Courts regularly take judicial notice of facts from
22 court documents. One court noted that “the most frequent use of judicial notice of ascertainable
23 facts is in noticing the content of court records.” *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236,
24 1239 (4th Cir. 1989). The Ninth Circuit has held that it “may take notice of proceedings in other
25 courts, both within and without the federal judicial system, if those proceedings have a direct
26 relation to matters at issue.” *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*,
27 971 F.2d 244, 248 (9th Cir. 1992). In fact, in cases where the documents are part of the Court’s
28

1 own docket in the matter, a formal request for judicial notice is unnecessary. *Negrete v.*
2 *Petsmart, Inc.*, 2013 U.S. Dist. LEXIS 129237 (E.D. Cal. 2013).

3 In *Wetherbee v. Willow Lane, Inc. (In re Bestway Prods., Inc.)*, 151 B.R. 530 (Bankr.
4 E.D. Cal. 1993), *aff'd mem.*, 165 B.R. 339 (9th Cir. BAP 1994), Judge Klein explained that:
5 [i]t has become a commonly-accepted practice to take “judicial notice” of a court’s
6 records. 3 J. Weinstein & M. Berger, *Weinstein’s Evidence* P 201[03] at 201-35 to -40
7 (1992). The practice is particularly useful in bankruptcy litigation in which individual
8 adversary proceedings and contested matters, each of which is procedurally distinct and
9 has its own record, all occur within, and are affected by, the context of the parent
10 bankruptcy case. *Id.* at 540 (citations to numerous case examples omitted).

11 Here, the Newberry Motion For Attorney’s Fees And Costs is directly related to and affected by
12 the proceeding to the District Court in Case No. 5:14-cv-02298-JGB-SP (“District Court Case”),
13 in which Newberry filed a complaint that was void ab initio because it violated the automatic
14 stay, and by the Inspection/Abatement/Administrative Warrant issued by the Honorable Steve
15 Malone, Judge of the Superior Court of the State of California. Exhibits 1 through 6, which are
16 attached hereto, are documents that were filed in this case or District Court Case or were
17 submitted to or issued by the Superior Court of the State of California for the County of San
18 Bernardino in conjunction with the Inspection/Abatement/Administrative Warrant issued by the
19 Honorable Steve Malone, Judge of the Superior Court of the State of California.

20 **II. CONCLUSION**

21 For the foregoing reasons, the City respectfully requests that the Court take judicial
22 notice of the content of the documents attached as Exhibits 1 through 6 to this Request for
23 Judicial Notice.

24 Dated: October 29, 2015

STRADLING YOCCA CARLSON & RAUTH
A Professional Corporation

26 By: /s/ Paul R. Glassman
27 Paul R. Glassman
Fred Neufeld
28 Attorneys for City of San Bernardino, Debtor

EXHIBIT 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **EDCV 14-2298 JGB (SPx)** Date December 3, 2014

Title ***Raymond Newberry, et al. v. County of San Bernardino, et al.***

Present: The Honorable **JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE**

MAYNOR GALVEZ

Deputy Clerk

ADELE FRAZIER

Court Reporter

Attorney(s) Present for Plaintiff(s):

Marjorie Barrios

Attorney(s) Present for Defendant(s):

Lauren Daniels

Proceedings: HEARING AND ORDER DENYING Plaintiffs' Ex Parte Application for a Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction (Doc. No. 20)

Before the Court is Plaintiffs' Ex Parte Application for a Temporary Restraining Order and an Order to Show Cause Why a Permanent Injunction Should Not Issue. (Doc. No. 20). After considering the papers filed in support of and in opposition to the Application, as well as the arguments made at the December 3, 2014, hearing, the Court DENIES the Application.

I. BACKGROUND

A. Procedural History

On November 14, 2014, Plaintiff Raymond Newberry and eleven other named plaintiffs (collectively "Plaintiffs") filed a Complaint, on behalf of themselves and others similarly situated, against Defendants the County of San Bernardino, the City of San Bernardino, Chief of Police Jarrod Burguan, Mayor Carey Davis, Lt. Richard Lawhead, Rebecca Daugherty, Curtis Stone, Patricia Johns, Jim Sowers, and Does 1-20 (collectively "Defendants"), in their individual and official capacities. (Doc. No. 14).

On November 21, 2014, Plaintiffs filed an ex parte application for a temporary restraining order ("TRO") and an order to show cause why a permanent injunction should not issue. ("Application," Doc. No. 20). Therein, Plaintiffs ask the Court for injunctive relief (i) ordering Defendants "to remove photographs taken during a search of Plaintiffs' homes from the Internet" and (ii) "prohibit[ing] future publication or dissemination of those photographs by the Defendants." (Application at 2).

On November 26, 2014, Defendants filed an Opposition to Plaintiffs' Application, ("Opp'n," Doc. No. 25), as well as the supporting Declaration of Richard Lawhead, ("Lawhead Decl.," Doc. No. 26). Among other things, Lawhead declared that the photographs were posted on Facebook on August 21, 2014. (Id. ¶ 12). However, Lawhead also declared that, "[o]n November 26, 2014, after receipt of Plaintiffs' [Application], the [San Bernardino Police Department] removed the photographs from public view on the Facebook page." (Id. ¶ 13). Along with its Opposition, Defendants also filed notice of the City of San Bernardino's pending bankruptcy petition and the resulting automatic stay. ("Notice," Doc. No. 24).

Plaintiffs replied in support of their Application on November 30, 2014. ("Reply," Doc. No. 29). The Court held a hearing on Plaintiffs' Application on December 3, 2014.

B. The Complaint

The Complaint alleges that Defendants improperly obtained and executed an administrative search warrant for inspections of the Edgehill Apartments in the City of San Bernardino. (Compl. ¶¶ 13-23). Among other alleged improprieties during the inspections, which occurred on August 19, 2014, Plaintiffs aver that members of the media were allowed into the apartments and photographed the interiors of them. (Id. ¶¶ 21, 23.F). Thereafter, some of the photographs were posted on the Facebook page of the City of San Bernardino Police Department along with a description of the inspections. (Id. ¶ 25). The photographs and description were reposted on San Bernardino Mayor Carey Davis's official Facebook page. (Id.). Thereafter, members of the public commented on those postings, and one San Bernardino code enforcement officer allegedly posted comments. (Id. ¶¶ 27-28). Based upon these events, the Complaint states the following thirteen claims:

1. Declaratory/Injunctive relief, 28 U.S.C. § 1201 (enjoining city and county practices violating Fourth Amendment rights of citizens);
2. Violation of the Fourth Amendment, 28 U.S.C. § 1983 (Seizure);
3. Violation of the Fourth Amendment, 28 U.S.C. § 1983 (Search) (facially invalid warrant);
4. Violation of the Fourth Amendment, 28 U.S.C. § 1983 (Search) (judicial deception);
5. Violation of the Fourth Amendment, 28 U.S.C. § 1983 (media presence);
6. Violation of the Fourth Amendment, 28 U.S.C. § 1983 (county probation search);
7. Violation of the Fourth Amendment, 28 U.S.C. § 1983 (Seizure) (taking photographs of interior of residences);
8. Violation of the Fourth Amendment, 28 U.S.C. § 1983 (posting photographs of interior residences on Facebook pages of Chief of Police Burguan and Mayor Davis' Official Pages);
9. Conspiracy to Violate Civil Rights, 42 U.S.C. § 1985;
10. Intentional Infliction of Emotional Distress;
11. Invasion of Privacy, in violation of California Constitution Art. I, § 1;
12. Invasion of Common Law Right to Privacy; and
13. Intrusion on Solitude.

(*Id.* ¶¶ 39-148). In addition to injunctive and declaratory relief, Plaintiffs seek monetary damages, attorneys’ fees, and costs. (Compl., Prayer for Relief ¶¶ 3-6).

II. LEGAL STANDARD

Issuance of a temporary restraining order, as a form of preliminary injunctive relief, is an extraordinary remedy, and Plaintiffs have the burden of proving the propriety of such a remedy by clear and convincing evidence. *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997); *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 442 (1974). In general, the showing required for a temporary restraining order and a preliminary injunction are the same. *Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001).

As recognized by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), the party requesting preliminary injunctive relief must show that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20). The significant threat of irreparable injury must be imminent in nature. *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). The Ninth Circuit has cautioned that there are very few circumstances justifying the issuance of an ex parte TRO. *See Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006).

III. DISCUSSION

Issuance of a TRO or preliminary injunction requires the party seeking that relief to clearly and convincingly demonstrate that irreparable harm will result if the TRO or preliminary injunction does not issue. *See Mazurek*, 520 U.S. at 972; *Stormans*, 586 F.3d at 1127. The photographs that Plaintiffs challenge — those of the interiors of the Edgehill Apartments that were posted on Facebook — were removed from public view on Facebook on November 26, 2014. (Lawhead Decl. ¶ 13). Given that the photographs are no longer viewable by the public,¹ Plaintiffs fail to point to any imminent, irreparable harm that will result if the Court does not issue a TRO or preliminary injunction to order the removal of those photographs. Therefore Plaintiffs have not satisfied their burden of proving by clear and convincing evidence the propriety of the requested injunctive relief.

The Court also notes that it is prevented from considering or granting any further relief in this case by the bankruptcy automatic stay that applies to the City of San Bernardino (the “City”). The City filed a petition for Chapter 9 bankruptcy on August 1, 2012. (Doc. No. 24, Exs. 1, 2). Pursuant to 11 U.S.C. § 362(a), that application operates as an automatic stay of “any act to obtain possession of property of the state or of property from the estate or to exercise control over property of the estate.” *See* 11 U.S.C. § 362(a)(3). Furthermore, in addition to the stay provided by 11 U.S.C. § 362, a Chapter 9 bankruptcy petition also operates as a stay of “the commencement or continuation, including the issuance or employment of process, of a judicial,

¹ Moreover, the photographs at issue had been posted for almost three months before Plaintiffs sought a TRO and preliminary injunction to remove them. (Lawhead Decl. ¶ 12).

administrative, or other action or proceeding against an officer or inhabitant of the debtor that seeks to enforce a claim against the debtor.” See 11 U.S.C. § 922(a)(1). Those stays are “applicable to all entities.” 11 U.S.C. §§ 362(a), 922(a). Moreover, the stay of an act against property continues until the “property is no longer property of the estate,” the case is closed or dismissed, or relief is obtained from the bankruptcy court. See 11 U.S.C. 362(c)(1)-(2), (d).

This action is thus stayed by the City’s bankruptcy proceedings. Contrary to Plaintiffs’ assertions, (Reply at 2-3), the plain language of 11 U.S.C. § 362(a)(3) and § 922(a)(1) applies the stay to actions initiated after the bankruptcy proceedings are commenced. Moreover, although Plaintiffs argue that they seek only injunctive relief, (Reply at 3), the Complaint clearly seeks monetary damages, attorneys’ fees, and costs, (Compl., Prayer for Relief ¶¶ 3-6). “The City’s money is property of the debtor within the meaning of § 362(a)(3).” In re City of Stockton, 499 B.R. 802, 807 (Bankr. E.D. Cal. 2013). Even an action for nonmonetary relief may nonetheless “lead to some form of monetary award in the form of fees, costs, or otherwise that might offend § 922(a)(1).” Id. at 808. Although a bankruptcy court may allow the commencement of an action for certain nonmonetary relief, such exceptions are only made where the case does “not implicate a right to payment and . . . would not constitute a ‘claim against the debtor’ within the meaning of [Bankruptcy Act].” Id. at 807-08. For example, the bankruptcy court in In re City of Stockton permitted the action to amend a ballot measure to proceed because the plaintiff “promise[d] that there w[ould] be no . . . attempt to obtain a monetary award of any nature and . . . expressly waived all rights to attorney fees and costs.” Id. at 808. Because Plaintiffs clearly seek monetary damages, this action is easily distinguishable from In re City of Stockton. Accordingly, the Court concludes that further proceedings in this action are stayed by the City of Stockton’s automatic bankruptcy stay.

IV. CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiffs’ Application for a Temporary Restraining Order and for an Order to Show Cause on a Preliminary Injunction. In addition, the Court STAYS all further proceedings in this case for 180 days from the date of this Order. The parties shall jointly file a status report with the Court 175 days from the date of this Order, or within 5 days after the automatic stay is lifted, whichever comes sooner. The status report shall indicate the status of the City’s bankruptcy and explain whether or not a further stay is appropriate.

IT IS SO ORDERED.

TIME: 00:25

EXHIBIT 2

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*No Filing Fee Per
Government Code § 6103*

7 Attorneys for Defendants City of San Bernardino; Chief Jarrod Burguan; Mayor
Carey Davis; Lt. Richard Lawhead; Rebecca Daugherty; Curtis Stone; Patricia
8 Johns; Jim Sowers

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

RAYMOND NEWBERRY;
PATRICIA MENDOZA; MARIA
ABOYTIA; JUANA PULIDO;
JESUS PULIDO; JONATHAN
PULIDO; RICHARD GONZALEZ
LOZADA; MELINDA MCNEAL;
BERTHA LOZADA; MILDRED
LYTWYNEC; NICHOLAS
LYTWYNEC; GLORIA BASUA;
AND OTHERS SIMILARLY
SITUATED,

Plaintiffs,

vs.

COUNTY OF SAN
BERNARDINO; CITY OF SAN
BERNARDINO; CHIEF JARROD
BURGUAN, CHIEF OF SAN
BERNARDINO POLICE
DEPARTMENT; MAYOR CAREY
DAVIS; LT. RICHARD
LAWHEAD; REBECCA
DAUGHERTY; CURTIS STONE;
PATRICIA JOHNS; JIM SOWERS;
Sued In Their Individual and
Official Capacities; AND DOES 1-
20,

Defendants.

**CASE NO.: ED CV14-02298 JGB
(SPx)**

**DEFENDANTS' OPPOSITION
TO PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

Filed Concurrently with:

*1. Declaration of Lt. Richard
Lawhead;*

*2. Notice of Automatic Stay due
to Bankruptcy; Exhibits*

Complaint Filed: 11/14/14

1 Defendants, City of San Bernardino; Chief Jarrod Burguan; Mayor Carey
2 Davis; Lt. Richard Lawhead; Rebecca Daugherty; Curtis Stone; Patricia Johns;
3 Jim Sowers, hereby submit their Opposition to Plaintiffs' Ex Parte Application for
4 Temporary Restraining Order.

5 **I. INTRODUCTION**

6 Plaintiffs are tenants of Edgehill Apartments. On August 18, 2014, the Hon.
7 Judge Steve Malone of the San Bernardino Superior Court signed a no-notice
8 inspection/administrative warrant that allowed the City of San Bernardino to enter
9 the Edgehill Apartment units for the purpose of inspecting and abating code
10 violations. **The administrative warrant allowed the City “to take photographs**
11 **and/or video films of any and all...areas of inspection for evidence of**
12 **violations of San Bernardino’s Health, Fire, Safety, Nuisance and Zoning**
13 **Ordinances.”** See “Inspection/Abatement/Administrative Warrant,” marked as
14 Exhibit “J” of *Plaintiffs’ Ex Parte Application for Temporary Restraining Order*.
15 On August 19, 2014, the City of San Bernardino executed the warrant.

16 On August 20, 2014, the San Bernardino Police Department and the Mayor
17 of San Bernardino posted about the inspection as a matter of public interest on
18 their official Facebook pages. Photographs of the violations were included in the
19 posts. Citizens commented on the posts.

20 Plaintiffs now seek a temporary restraining order (“TRO”) that would
21 require Defendant City of San Bernardino to remove the content from the official
22 Facebook pages of the San Bernardino Police Department and Mayor, as well as
23 the social media pages of any employee of the City of San Bernardino, regardless
24 of whether or not the employee commented on the matter in their private capacity
25 on their private pages. Plaintiffs want to further prohibit the City from
26 “publishing” any of the photographs “in any public forum”—which would include
27 in the course of public administrative hearings.

28 ///

1 The City of San Bernardino filed its Chapter 9 petition for bankruptcy on
2 August 1, 2012. This case is subject to an automatic stay. Defendants are
3 requesting that this application be dismissed without prejudice, or alternatively,
4 denied.

5 **II. STATEMENT OF FACTS**

6 On August 18, 2014, the City sought and obtained an administrative warrant
7 pursuant to the *United States Constitution*, Amendments 4 and 14; and § 1822.50-
8 1822.58 of *California's Code of Civil Procedure*. Declaration of Richard Lawhead
9 ["Decl. Lawhead"], 2: 11-14. The purpose and goal of the administrative warrant
10 was to inspect the premises for code enforcement violations and, if necessary,
11 abate those violations. Decl. Lawhead, 2:15-16. At no time was the purpose or
12 goal of the administrative warrant to serve as a pretext for any activity beyond the
13 scope of what is stated in the administrative warrant. Decl. Lawhead, 2: 17-19.

14 The administrative warrant was granted on August 18, 2014, by the
15 Honorable Steven Malone, a Superior Court Judge for the County of San
16 Bernardino. Decl. Lawhead, 2: 20-22.

17 On August 19, 2014, pursuant to the administrative warrant, the City of San
18 Bernardino conducted code enforcement inspections and abatement at the
19 properties listed on the administrative warrant. Decl. Lawhead, 2: 23-25. In total,
20 the City of San Bernardino cited the various properties for over two hundred code
21 violations, and all violations were properly cited pursuant to state law and San
22 Bernardino Municipal Code. Decl. Lawhead, 2: 26 - 3: 2. No criminal citations
23 were issued during the inspection and no arrests were made. Decl. Lawhead, 3: 3-

24 On August 20, 2014 the SBPD held a press conference to inform the public
25 and media about the previous day's code enforcement activities, as the health and
26 safety of the residents of the City of San Bernardino is a topic of public concern.
27 Decl. Lawhead, 3: 5-9. At that press conference, the SBPD displayed photographs
28 of code violations that had been located. *Id.*

1 On August 21, 2014, as part of the City of San Bernardino’s mission to
2 increase transparency and constituent engagement through the use of social media,
3 photographs of code violations were posted to the SBPD’s Facebook page. Decl.
4 Lawhead, 3: 10-12. Mayor Carey Davis then reposted the SBPD’s post.

5 On November 7, 2014, Plaintiffs filed a public complaint with the United
6 States Central District that identified the occupants of the inspected units and
7 attached the pictures of the violations. An application for a temporary restraining
8 order followed.

9 On November 26, 2014, after receipt of the Plaintiff’s *Ex Parte Application*
10 *for Temporary Restraining Order*, the SBPD removed the photographs from
11 public view on the Facebook page. Decl. Lawhead, 13-15.

12 **III. ARGUMENT**

13 **A. PLAINTIFFS’ APPLICATION CANNOT BE HEARD**
14 **BECAUSE PLAINTIFFS’ CLAIMS ARE SUBJECT TO THE**
15 **AUTOMATIC STAY.**

16 The City of San Bernardino filed its Chapter 9 petition for bankruptcy on
17 August 1, 2012. The bankruptcy stays all legal actions against Defendant City and
18 other individual defendants to the extent that any recovery is sought from or may
19 be asserted against the City for claims against those defendants. *See* 11 U.S.C. §§
20 362, 901, 922; *See also New Magma Irrigation & Drainage Dist. v. Board of*
21 *Supervisors of Maricopa Cnty. (In re New Magma Irrigation & Drainage Dist.)*,
22 193 B.R. 528, 535-36 (Bankr. D. Ariz. 1994) (“The automatic stay is fundamental
23 to a bankruptcy proceeding because it halts all collection efforts and allows a
24 municipal debtor to attempt to formulate a plan of reorganization. It also prevents
25 any creditor from obtaining an advantage over any other creditor.”); *Williams v.*
26 *Kenney*, 2008 U.S. Dist. LEXIS 71791, 23 (E.D. Cal. Aug. 12, 2008) (Court held
27 that the automatic stay applies to actions in which a chapter 9 debtor must “satisfy
28 any judgment or settlement”); see Order Regarding Motion To Lift Automatic

1 Stay entered in Case No. 11-05736-TBB9 [Docket No. 588] (Bankr. N.D. Al.
2 January 24, 2012) (Court ordered that “the stay applies to any effort by [plaintiffs]
3 to liquidate, assert, assess, recover or collect a claim with respect to any funds or
4 other property of the County, including, without limitation, funds derived from or
5 allocated or budgeted by the County to Sheriff Hale, the Jefferson County Election
6 Commission (the ‘JCEC’), or the constituent members of the JCEC in their official
7 capacities, under applicable State law.”); *Maddalone v. Solano County*, 2009 U.S.
8 Dist. LEXIS 2116, 4 (E.D. Cal. Jan. 5, 2009) (“Section 922 expands the provisions
9 of section 362 to prohibit the bringing or continuing of an action against ‘an
10 officer’ of the debtor on account of a prepetition debt.”).

11 The stay applies to Defendant city employees, as well. *California*
12 *Government Code* section 995 provides that: “[a] public entity shall provide the
13 defense of any civil action or proceeding brought against an employee in his
14 official or individual capacity or both or on account of an act or omission in the
15 scope of his employment as an employee of the public entity.” The California
16 Supreme court held in *Williams v. Hovath* (1976) 16 Cal.3d 834, at 848, that the
17 indemnification requirement under *Government Code* section 995 applies to
18 claims based on 42 U.S.C. §1983 stating:

19 “From a policy standpoint, moreover, we are sensitive to
20 the concerns of law enforcement personnel on this issue.
21 A rule forbidding indemnification in section 1983
22 actions would subject police officers to unlimited and
23 unforeseeable personal liability for acts committed in the
24 course and scope of employment. This liability would be
25 dependent not on the degree of culpability of the acts
26 themselves but on the purely fortuitous circumstance of
27 whether a given plaintiff chose to ground his complaint
28 on the Tort Claims Act or on section 1983. The
employee's personal liability would thus be a matter
totally beyond his control. The Legislature cannot have
intended this haphazard result.” *Id.* (Citations omitted).

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27 ///
28 ///

1 **In the present case, the stay is automatic and can only be lifted by the**
2 **Bankruptcy Court.** The TRO that Plaintiffs’ are seeking relates to a Complaint
3 for Damages that was filed on November 7, 2014, and other potential judgment
4 creditors are disadvantaged if Plaintiffs are allowed to go forward with their
5 application and further their claims.

6 For these reasons, Plaintiffs’ application should be dismissed without
7 prejudice pending relief from the Bankruptcy Court.

8 **B. PLAINTIFFS WILL NOT PREVAIL ON THE MERITS**
9 **BECAUSE THE PHOTOGRAPHS WERE TAKEN**
10 **LAWFULLY AND IT WAS WITHIN THE DEFENDANTS’**
11 **RIGHT TO DISCLOSE THEM.**

12 In order to succeed on a preliminary injunction motion, movant bears the
13 burden of showing that (1) it has a likelihood of success on the merits, (2) there
14 exists, absent the injunction, a significant risk of irreparable harm, (3) the balance
15 of hardships tilts in its favor, and (4) granting the injunction will not adversely
16 affect the public interest. *See Winter v. Natural Resources Defense Council, Inc.*,
17 555 U.S. 7, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008).

18 Because a preliminary injunction is an extraordinary remedy, courts require
19 the movant to carry its burden of persuasion by a “clear showing.” *See Towery v.*
20 *Brewer* 672 F3d 650, 657 (9th Cir. 2012).

21 Moving parties must make a stronger showing of likely success on the
22 merits when the harm likely to be suffered by a responding party substantially
23 outweighs any potential injury to the moving party. *Melendres v. Arpaio* 695 F3d
24 990, 1002 (9th Cir. 2012).

25 Here, Plaintiffs have not made a strong showing that they would succeed on
26 the merits. Plaintiffs couch the issue before the court as whether “the inspection
27 warrant allow[s] the Defendants to seize images from the interior portions of
28 Plaintiffs’ homes and publish them on the internet.” *See Plaintiffs’ Memorandum,*

1 10: 19-22. In presenting the merits of their argument, Plaintiffs allege that the
2 publication of the photographs was a Fourth Amendment violation and a privacy
3 violation.

4 The publication of the photographs did not violate the Fourth Amendment.
5 **The warrant clearly allowed for photographs to be taken as record of the**
6 **violation, so those photographs were lawfully taken.** How those photographs
7 were subsequently used is not a Fourth Amendment issue, especially as it
8 concerns how other parties used them.

9 Moreover, Defendants' decision to post those photographs was not a
10 violation of Plaintiffs' privacy rights because there was no reasonable expectation
11 of privacy under the circumstances. The photographs are part of an administrative
12 file that is in itself subject to disclosure because of the State of California's Open
13 Meeting Laws. The Administrative Hearing procedures used by the City of San
14 Bernardino subject the hearing to the Brown Act. *See Cal. Gov't Code § 54950, et*
15 *seq.* The photographs taken during a code enforcement inspection are provided to
16 the Hearing Officer, and, pursuant to the Brown Act, become public records
17 required to be disclosed. *Cal. Gov't Code § 54957.5.* The City is unable to cite for
18 code violations, hold public hearings pursuant to state law to administratively
19 enforce those violations, and then withhold its evidence from public scrutiny.
20 Such a result is incongruous with the transparency mandated by the PRA, Brown
21 Act, and California Constitution.

22 As such, Plaintiffs have not shown that they would prevail on the merits,
23 and their application for a TRO should be denied.

24 **C. PLAINTIFFS WILL SUFFER NO IRREPARABLE HARM IF**
25 **THEIR APPLICATION IS DENIED.**

26 Parties seeking injunctive relief must demonstrate that irreparable injury is
27 likely in the absence of an injunction. *See Winter v. Natural Resources Defense*
28 *Council, Inc.* 555 US 7, 22, 129 S.Ct. 365, 375 (2008). This requirement is "the

1 single most important prerequisite for the issuance of a preliminary injunction.”
2 *See Apple, Inc. v. Samsung Electronics Co., Ltd.* 678 F3d 1314, 1325 (Fed. Cir.
3 2012).

4 Irreparable harm may not be presumed simply because the moving party is
5 likely to succeed on the merits. *Flexible Lifeline Systems, Inc. v. Precision Lift,*
6 *Inc.* 654 F3d 989, 998 (9th Cir. 2011). Furthermore, a moving party “must do
7 more than merely allege imminent harm.” *Los Angeles Memorial Coliseum*
8 *Comm'n v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980).

9 Here, Plaintiffs make no efforts to show that they will in fact suffer
10 irreparable harm if the postings are not taken down. Plaintiffs claim that the mere
11 presence of an alleged constitutional violation is a sufficient showing that the
12 harm is irreparable.

13 In fact, if one looks at the photographs, they do not depict or otherwise
14 identify Plaintiffs. The pictures merely show violations at the property. None of
15 the plaintiffs are identified in the comments or articles regarding the inspection.
16 Plaintiffs were not publicly identified until this complaint was filed. Furthermore,
17 these pictures and articles were posted over two months ago. In this time, the
18 SBPD has since taken its posts down.

19 As such, Plaintiffs have not shown that they will suffer irreparable harm,
20 and their application for a TRO should be denied.

21 **D. THE BALANCE OF HARDSHIPS FAVORS DEFENDANT**
22 **CITY AND ITS EMPLOYEES BECAUSE DEFENDANTS**
23 **HAVE TO COMPLY WITH THE PUBLIC RECORDS ACT**
24 **AND CANNOT INFRINGE UPON THE FIRST AMENDMENT**
25 **RIGHTS OF EMPLOYEES.**

26 The harm in granting the TRO must be weighed against the potential
27 injuries caused by its denial. *Armstrong v. Mazurek*, 94 F.3d 566, 568 (9th Cir.
28 1996). Injunctive relief may be refused where it would adversely affect the rights

1 of persons who are not parties to the litigation. *See Publications Int'l, Ltd. v.*
2 *Meredith Corp.* 88 F3d 473, 478 (7th Cir. 1996) .

3 Here, Plaintiffs are demanding that the court order Defendants to remove
4 postings made by Defendant City, a public agency, and by Defendant City's
5 employees in their personal capacity. Defendants have an affirmative duty to
6 foster government transparency. Furthermore, forcing the Defendants to order
7 employees to remove personal posts from their personal accounts would not only
8 compromise the freedom of expression of those employees, it would require
9 Defendants to deprive these individuals of their First Amendment rights.

10 The balance of hardships thus favors the Defendants because the
11 Defendants cannot comply with Plaintiffs' request without exposing itself to
12 adverse litigation on multiple fronts. Plaintiffs' application should therefore be
13 denied.

14 **E. PLAINTIFF HAS NOT SHOWN THAT THE PUBLIC**
15 **INTEREST WILL NOT BE ADVERSELY AFFECTED BY**
16 **GRANTING THE APPLICATION.**

17 In evaluating an application for a TRO, courts "pay particular regard for the
18 public consequences in employing the extraordinary remedy of injunction."
19 *Winter v. Natural Resources Defense Council, Inc.* 555 US 7, 24, 129 S.Ct. 365,
20 376–377 (2008); *Salazar v. Buono* 559 US 700, 714, 130 S.Ct. 1803, 1816
21 (2010); *Flexible Lifeline Systems, Inc. v. Precision Lift, Inc.* 654 F3d 989,
22 996–997 (9th Cir. 2011). This is especially true when an injunction has an effect
23 on nonparties. *See Stormans, Inc. v. Selecky* 586 F3d 1109, 1139 (9th Cir. 2009).

24 Courts "may, and frequently do, go much farther both to give and withhold
25 relief in furtherance of the public interest than they are accustomed to go when
26 only private interests are involved." *United States v. First Nat'l City Bank* 379 US
27 378, 383, 85 S.Ct. 528, 531 (1965).

28 ///

1 In the present case, the public interest would be adversely affected by
2 granting the application. Under the California Public Records Act, *Government*
3 *Code* § 6250 *et seq.* (“PRA”), all records that are prepared, owned, used, or
4 retained by any public agency, and that are not subject to the PRA’s statutory
5 exemptions to disclosure must be made publicly available. *Cal. Gov’t Code* §
6 6253. “This definition is intended to cover every conceivable kind of record that
7 is involved in the governmental process.... Only purely personal information
8 unrelated to ‘the conduct of the public’s business could be considered exempt
9 from this definition...” *Sander v. State Bar of Cal.*, 58 Cal. 4th 300, 322 (2013).

10 The California Constitution provides an additional, independent right of
11 access to government records: “The people have the right of access to information
12 concerning the conduct of the people’s business, and, therefore, the meetings of
13 public bodies and the writings of public officials and agencies shall be open to
14 public scrutiny.” *Cal. Const. art. I, § 3(b)(1)*. This provision was adopted by the
15 voters in 2004 with an aim to increase local government transparency. Statutory
16 exemptions from disclosure under the PRA must be narrowly construed: “[a]
17 statute, court rule, or other authority, including those in effect on the effective
18 date of this subdivision, shall be ... narrowly construed if it limits the right of
19 access.” *Cal. Const. art. I, § 3(b)(2)*; see *Sonoma County Employees’ Retirement*
20 *Assn. v. Superior Court*, 198 Cal.App.4th 986, 992 (2011).

21 The City of San Bernardino’s use of social media pages, like the Facebook
22 page at issue here, is designed to augment traditional communication methods and
23 increase government transparency. This primarily stems from public demand and
24 the rapid growth of social media use by other local, state and federal government
25 entities to enhance constituent communications. Social media has offered the City
26 new ways of informing the public and engaging residents. In this way, the City of
27 San Bernardino is complying with its statutory and constitutional obligation to
28 operate in a transparent and efficient manner.

1 The photographs are public records. The public interest in their release is
2 readily apparent, the public has a desire and a right to know how the City of San
3 Bernardino is performing its obligations to protect the health and safety of its
4 residents. Conversely, there is little public interest in nondisclosure of the
5 photographs.

6 The public interest would be adversely affected if the application was
7 granted, and Plaintiffs' application for a TRO should be denied.

8 **IV. CONCLUSION**

9 For the reasons stated above, Plaintiffs' application for a TRO should be
10 dismissed, or alternatively, denied.

11 Dated: November 26, 2014

GARY D. SAENZ, City Attorney

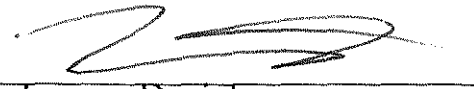
12
13
14 By: 
15 Lauren Daniels
16 Deputy City Attorney
17 Attorneys for Defendants City of San
18 Bernardino; Chief Jarrod Burguan;
19 Mayor Carey Davis; Lt. Richard
20 Lawhead; Rebecca Daugherty; Curtis
21 Stone; Patricia Johns; Jim Sowers
22
23
24
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EXHIBIT 3

1 GARY D. SAENZ, City Attorney
State Bar No. 79539
2 JASON M. EWERT, Deputy City Attorney
State Bar No. 290171
3 LAUREN DANIELS, Deputy City Attorney
State Bar No. 287238
4 CITY ATTORNEY'S OFFICE
300 North D Street, 6th Floor, Room 668
5 San Bernardino, CA 92418
(909) 384-5355; Fax: (909) 384-5238
6 Email: ewert_ja@sbcity.org

*No Filing Fee Per
Government Code § 6103*

7 Attorneys for Defendants City of San Bernardino; Chief Jarrod Burguan; Mayor
Carey Davis; Lt. Richard Lawhead; Rebecca Daugherty; Curtis Stone; Patricia
8 Johns; Jim Sowers

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

RAYMOND NEWBERRY;
PATRICIA MENDOZA; MARIA
ABOYTIA; JUANA PULIDO;
JESUS PULIDO; JONATHAN
PULIDO; RICHARD GONZALEZ
LOZADA; MELINDA MCNEAL;
BERTHA LOZADA; MILDRED
LYTWYNEC; NICHOLAS
LYTWYNEC; GLORIA BASUA;
AND OTHERS SIMILARLY
SITUATED,

**CASE NO.: ED CV14-02298 JGB
(SPx)**

**DECLARATION OF LT.
RICHARD LAWHEAD IN
SUPPORT OF OPPOSITION
TO PLAINTIFFS' EX PARTE
APPLICATION FOR TRO**

Plaintiffs,

vs.

Complaint Filed: 11/14/14

COUNTY OF SAN
BERNARDINO; CITY OF SAN
BERNARDINO; CHIEF JARROD
BURGUAN, CHIEF OF SAN
BERNARDINO POLICE
DEPARTMENT; MAYOR CAREY
DAVIS; LT. RICHARD
LAWHEAD; REBECCA
DAUGHERTY; CURTIS STONE;
PATRICIA JOHNS; JIM SOWERS;
Sued In Their Individual and
Official Capacities; AND DOES 1-
20,

Defendants.

1 I, Lt. Richard Lawhead, declare as follows:

2 1. I am a Lieutenant of the San Bernardino Police Department
3 (“SBPD”). In that capacity, I am a peace officer, the SBPD’s Public Information
4 Officer, and I supervise the Community Policing Bureau, a sub-division of the
5 SBPD composed primarily of non-sworn code enforcement personnel. I have
6 personal knowledge of the facts set forth in this Declaration and could
7 competently testify to such facts if called as a witness.

8 2. The SBPD is a law enforcement agency and a department of the City
9 of San Bernardino, a municipal corporation organized under the laws and
10 Constitution of the State of California.

11 3. In the furtherance of the City of San Bernardino’s obligation to
12 ensure the health and safety of its residents, the City sought and obtained an
13 administrative warrant pursuant to the United States Constitution, Amendments 4
14 and 14; and § 1822.50-1822.58 of California’s *Code of Civil Procedure*.

15 4. The purpose and goal of the administrative warrant was to inspect the
16 premises for code enforcement violations and, if necessary, abate those violations.

17 5. At no time was the purpose or goal of the administrative warrant to
18 serve as a pretext for any activity beyond the scope of what is stated in the
19 administrative warrant.

20 6. The administrative warrant was granted on August 18, 2014, by the
21 Honorable Steven Malone, a Superior Court Judge for the County of San
22 Bernardino.

23 7. On August 19, 2014, pursuant to the administrative warrant, the City
24 of San Bernardino conducted code enforcement inspections and abatement at the
25 properties listed on the administrative warrant.

26 8. In total, the City of San Bernardino cited the various properties for
27 over 200 code violations.

28 ///

1 9. The code violations were all cited administratively pursuant to state
2 law and the San Bernardino Municipal Code.

3 10. As part of the code enforcement activity at the properties on August
4 19, 2014, no criminal citations or arrests were made.

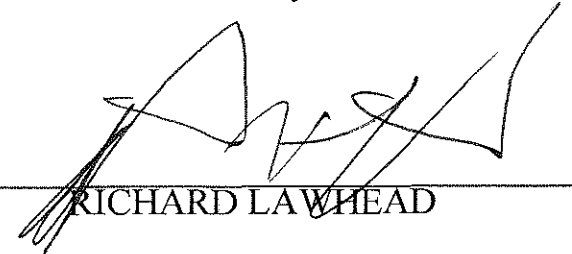
5 11. On August 20, 2014, the SBPD held a press conference to inform the
6 public and media about the previous day's code enforcement activities, as the
7 health and safety of the residents of the City of San Bernardino is a topic of public
8 concern. At that press conference the SBPD displayed photographs of code
9 violations that had been located.

10 12. On August 21, 2014, as part of the City of San Bernardino's mission
11 to increase transparency and constituent engagement through the use of social
12 media, photographs of code violations were posted to the SBPD's Facebook page.

13 13. On November 26, 2014, after receipt of the Plaintiffs' Ex Parte
14 Application for Temporary Restraining Order, the SBPD removed the photographs
15 from public view on the Facebook page.

16 I declare under penalty of perjury, under the laws of the State of California,
17 that the foregoing is true and correct. Executed this 26th day of November, 2014,
18 in San Bernardino, California.

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RICHARD LAWHEAD

EXHIBIT 4

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IN THE SUPERIOR COURT
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA
SAN BERNARDINO DISTRICT

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) **AFFIDAVIT IN SUPPORT OF**
_____) **INSPECTION/ABATEMENT/**
) **ADMINISTRATIVE WARRANT**

I, KRISTIE ROHLEDER, declare as follows:

1. At all times pertinent hereto, I am employed as a Code Enforcement Officer for the City of San Bernardino, Code Enforcement Division, located at 300 N. "D" Street, San Bernardino, California.

2. I have been employed with the City of San Bernardino as a Code Enforcement Officer since May 2008. I have had in-house training to include: Property Maintenance & Housing Inspector Training; Administrative Hearing Process; Notice of Hearing Review; Administrative Warrant Process; Municipal Code Citation Writing; Records Search from First American Title; Photo Documentation; and the Vehicle Abatement Process. I have successfully completed PC 832. While in Code Enforcement, I have conducted thousands of residential property and commercial property inspections.

3. My duties as a Code Enforcement Officer include the inspection of buildings/structures for compliance with the Uniform Housing Code, Uniform Code for the Abatement of Dangerous Buildings and the San Bernardino Municipal Code which relate to building, electrical, mechanical, plumbing, and property maintenance issues. I am required to make determinations as to whether conditions of the buildings/structures constitute violations of the above codes that may cause any building/structure to become unsafe and/or inhabitable for occupancy. This affidavit is based on information and belief, except those matters that are based on my personal knowledge.

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1 4. On or about July 29, 2014, I conducted an inspection of the property located at
2 **110-145 West 43rd Street (a multi-family residence)** San Bernardino, California 92407, APN:
3 0154-221-35-0000, and legally described in Exhibit "A" attached hereto. Upon inspection, I observed
4 numerous violations, however, decided to return with additional city personnel.

5 5. On or about July 29, 2014, I checked the Code Enforcement web-site which
6 includes records from the City of San Bernardino Business Registration Division, San Bernardino
7 Municipal Water Department, and the San Bernardino County Assessor's Parcel Database
8 Information for the property located at **110-145 West 43rd Street (a multi-family residence)** San
9 Bernardino, California 92407. The Business Registration listed the owner as ORANGE LEMON
10 LTD PARTNERSHIP, 430 W. Orange Heights Lane, Corona, CA 92882-6321, with rental
11 registration expired as of October 31, 2013. The Assessor's database listed the owner as
12 ORANGE-LEMON LIMITED PARTNERSHIP, 430 Orange Heights Lane, Corona, CA 92882. The
13 Water records listed ORANGE LEMON LTD PARTNERSHIP, Attn: Husain Zafar, P.O. Box 3007,
14 Corona, CA 92882.

15 6. On or about July 29, 2014, I received documents from First American Title
16 Company to identify/confirm the owner of record and/or interested parties for the property located
17 at **110-145 West 43rd Street (a multi-family residence)** San Bernardino, California 92407. The
18 following parties were listed: ORANGE-LEMON LIMITED PARTNERSHIP, 430 Orange Heights
19 Lane, Corona, CA 92882; HAWTHORNE SAVINGS, Attn.: LN SVCG Dept., P.O. Box 908, 2381
20 Rosecrans Avenue, 2nd Floor, El Segundo, CA 90245; HAWTHORNE SAVINGS, F.S.B.,
21 3061 Edinger Avenue, Tustin, CA 92780; ORANGE-LEMON LIMITED PARTNERSHIP, C/O
22 Zafar Husain, 770 Magnolia Avenue, Suite 2A, Corona, CA 92879.

23 7. On or about July 30, 2014, I checked the city's permitting database and observed
24 permits #B9800155, #B0502241, #B0502240, #A0500184, #B0502241, and #E1100386 were
25 expired without inspections or approvals from building and safety for the property located at **110-145**
26 **West 43rd Street (a multi-family residence)** San Bernardino, California 92407.

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1 8. On or about July 30, 2014, Code Enforcement Officer Jessica Farrell and I
2 conducted an inspection of the property located at **110-145 West 43rd Street (a multi-family**
3 **residence)** San Bernardino, California 92407 with interior inspections granted by tenant written
4 consent. The following violations were observed:

5 MUNICIPAL CODE VIOLATIONS:

- 6 SBMC 5.04.005 - Business Registration Required (rental registration expired October of 2013);
- 7 SBMC 8.30.010(H) - Broken Windows (broken windows require replacement);
- 8 SBMC 15.24.040(A)(2) - Unmaintained Landscaping (yard areas lack regular maintenance to include watering and mowing);
- 9 SBMC 15.24.040(A)(3) - Weeds, Dry Brush, and Overgrown Vegetation (overgrown trees, plants, and bushes; tree limbs resting on structure roof tops and blocking play areas; dead palm fronds on trees);
- 10 SBMC 15.24.040(A)(4) - Trash, Debris, and Improper Storage (junk, trash, debris, and items improperly stored outdoors to include boxes, mattresses, vehicle tires, etc.);
- 11 SBMC 15.24.040(A)(6) - Inoperable and Abandoned Vehicles (inoperable and abandoned vehicles in covered parking areas);
- 12 SBMC 15.24.040(A)(7) - Condition of Structures (areas of cracking, peeling, chipping paint and/or damaged wood on the structures; eaves on /under carports are damaged including dry rot; flashing and rain gutters missing on roof tops; particle board material under eaves; blocks and bricks missing from planters and walls; damaged gating; improper repairs to exterior walls; sliding doors and windows with missing or damaged locking mechanisms; security doors and screens not maintained);
- 13 SBMC 15.24.040(A)(8) - Improved Surfaces (lack of maintenance to parking lots; striping and resurfacing necessary; missing parking stops; unsafe walkway surfaces pose trip hazards; exposed and uncovered concrete and plastic ground utility boxes pose trip hazards);

- 1 SBMC 15.24.040(A)(9) - Graffiti (graffiti throughout complex
2 requires removal);
- 3 SBMC 15.24.040(A)(10) - Rodent and Vermin Control (roach and
4 bed bug infestations);
- 5 SBMC 15.27.050(B) - Mandatory 8-Hour Course (property
6 owners and all managers are required to
7 register for phase I of the Crime-Free
8 Multi-family course);
- 9 SBMC 15.27.050(C) - Lease Addendum (property owner and
10 managers must provide copies of
11 crime-free lease addendum to all new
12 tenants);
- 13 SBMC 15.27.050(D) - 24-Hour Notice (under the crime-free
14 multi-housing program regulations,
15 property owner must provide immediate
16 contact information to the coordinator for
17 emergency use);
- 18 SBMC 15.27.060(A)(1)(c) - Background Check Required (property
19 owner and managers must provide copies
20 of crime-free lease addendum to all new
21 tenants);
- 22 UNIFORM HOUSING CODE VIOLATIONS:
23 UHC 1001.2.1 - Lack Of/Improper Bathroom Fixture(s)
24 (bathroom fixtures to include toilets and
25 sinks installed without required permits
26 from building and safety; shower handles
27 missing);
- 28 UHC 1001.2.7 - Lack Of/Improper Required Ventilating
Equipment (dryer ventilation systems
improperly installed and/or have
blockages);
- UHC 1001.5 - Hazardous Electrical (exterior security
lamps improperly installed; outlets
installed outdoors that are designed for
interior use; exposed electrical wiring to
porch lamps, gate systems, security lamps,
and carport lamps, and/or missing
coverings; no permits/inspections on file
with building and safety for the removal of
pool equipment or electrical system;
improper installations of thermostats in
units; interior outlets and switches without
faceplates);
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- 1 UHC 1001.6 - Hazardous Plumbing (new plumbing
2 installed for washing machine units; new
3 garbage disposals installed without
4 UHC 1001.7 - Hazardous Mechanical Equipment (roof
5 top a/c units improperly installed and not
6 permitted with building and safety; window
7 a/c units improperly installed inside of
8 individual units require proper installation,
9 supports, and restraints);
- 10 UHC 1001.8.1 - Deteriorated, Crumbling or Loose Plaster
11 (plaster missing and/or damaged
12 throughout exterior walls of complex);
- 13 UHC 1001.8.3 - Lack of Weather Protection (doors and
14 windows of units are not properly
15 weatherized allowing outside elements into
16 the units);
- 17 UHC 1001.14 - Improper Occupancy (gated and covered
18 carports used as living quarters);
- 19 CALIFORNIA BUILDING CODE VIOLATIONS:
20 CBC App. Chapter 1, Sect. 105.5 - Expired Permit (permits #B9800155,
21 #B0502241, #B0502240, #A0500184,
22 #B0502241, and #E1100386 have all
23 expired without inspections from building
24 and safety);
- 25 CBC App. Chapter 1, Sect. 116.1 - 72-Hour Unsafe Structure (open and
26 vacant units with evidence of transient
27 activity);
- 28 DANGEROUS BUILDING CODE VIOLATIONS:
UCADB 302.6 - Insufficient Strength/Stability (block wall
on the southeast side of complex attached
to garage Unit #13 has split and is
unstable); and
- UNIFORM ADMINISTRATIVE CODE VIOLATIONS:
UAC 205 - Unpermitted Construction (new doors
installed without permits; modifications to
wall dimensions without permits; illegal
conversion of trash enclosures to storage
rooms; gas lines for stoves and clothing
appliances installed without permits).

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1 9. On or about July 30, 2014, copies of a 72-hour Hazardous Condition Notice of
2 Violation for the afformentioned violations, were posted on each unit at the property located at
3 **110-145 West 43rd Street (a multi-family residence)** San Bernardino, California 92407, and mailed
4 via certified and first class mail to: ORANGE LEMON LTD PARTNERSHIP, 430 W. Orange
5 Heights Lane, Corona, CA 92882-6321 (to date, no mailings returned); ORANGE LEMON LTD
6 PARTNERSHIP, Attn.: Zafar Husain, P.O. Box 3007, Corona, CA 92882 (to date, no mailings
7 returned); HAWTHORNE SAVINGS, Attn.: LN SVCG Dept., P.O. Box 908, 2381 Rosecrans
8 Avenue, 2nd Floor, El Segundo, CA 90245 (returned to sender unable to forward); HAWTHORNE
9 SAVINGS, F.S.B., Attn.: Portfolio Manager, 3061 Edinger Avenue, Tustin, CA 92780 (to date, no
10 mailings returned); TENANT/OCCUPANT, 110 W. 43rd Street, San Bernardino, CA 92404
11 (certified receipt signed and returned); TENANT/OCCUPANT, 111 W. 43rd Street, San Bernardino,
12 CA 92404 (certified receipt signed and returned); TENANT/OCCUPANT, 112 W. 43rd Street, San
13 Bernardino, CA 92404 (returned vacant/unable to forward); TENANT/OCCUPANT, 113 W. 43rd
14 Street, San Bernardino, CA 92404 (certified receipt signed and returned); TENANT/OCCUPANT,
15 114 W. 43rd Street, San Bernardino, CA 92404 (certified receipt signed and returned);
16 TENANT/OCCUPANT, 115 W. 43rd Street, San Bernardino, CA 92404 (certified receipt signed and
17 returned); TENANT/OCCUPANT, 116 W. 43rd Street, San Bernardino, CA 92404;
18 TENANT/OCCUPANT, 117 W. 43rd Street, San Bernardino, CA 92404 (to date, no mailings
19 returned); TENANT/OCCUPANT, 118 W. 43rd Street, San Bernardino, CA 92404 (certified receipt
20 signed and returned); TENANT/OCCUPANT, 119 W. 43rd Street, San Bernardino, CA 92404
21 (certified receipt signed and returned); TENANT/OCCUPANT, 120 W. 43rd Street, San Bernardino,
22 CA 92404 (certified receipt signed and returned); TENANT/OCCUPANT, 121 W. 43rd Street, San
23 Bernardino, CA 92404 (certified receipt signed and returned); TENANT/OCCUPANT, 122 W. 43rd
24 Street, San Bernardino, CA 92404 (returned to sender/unable to forward); TENANT/OCCUPANT,
25 123 W. 43rd Street, San Bernardino, CA 92404 (to date, no mailings returned);
26 TENANT/OCCUPANT, 124 W. 43rd Street, San Bernardino, CA 92404 (to date, no mailings
27 returned); TENANT/OCCUPANT, 125 W. 43rd Street, San Bernardino, CA 92404 (certified receipt
28 signed and returned); TENANT/OCCUPANT, 126 W. 43rd Street, San Bernardino, CA 92404

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1 (returned to sender/unable to forward); TENANT/OCCUPANT, 127 W. 43rd Street, San Bernardino,
2 CA 92404 (certified receipt signed and returned); TENANT/OCCUPANT, 128 W. 43rd Street, San
3 Bernardino, CA 92404 (certified receipt signed and returned); TENANT/OCCUPANT, 129 W. 43rd
4 Street, San Bernardino, CA 92404 (return to sender/unable to forward); TENANT/OCCUPANT, 130
5 W. 43rd Street, San Bernardino, CA 92404 (return to sender/unable to forward);
6 TENANT/OCCUPANT, 131 W. 43rd Street, San Bernardino, CA 92404 (certified receipt signed and
7 returned); TENANT/OCCUPANT, 132 W. 43rd Street, San Bernardino, CA 92404 (certified receipt
8 signed and returned); TENANT/OCCUPANT, 133 W. 43rd Street, San Bernardino, CA 92404 (to
9 date, no mailings returned); TENANT/OCCUPANT, 134 W. 43rd Street, San Bernardino, CA 92404
10 (to date, no mailings returned); TENANT/OCCUPANT, 135 W. 43rd Street, San Bernardino, CA
11 92404 (certified receipt signed and returned); TENANT/OCCUPANT, 136 W. 43rd Street, San
12 Bernardino, CA 92404 (certified receipt signed and returned); TENANT/OCCUPANT, 137 W. 43rd
13 Street, San Bernardino, CA 92404 (certified receipt signed and returned); TENANT/OCCUPANT,
14 138 W. 43rd Street, San Bernardino, CA 92404 (certified receipt signed and returned);
15 TENANT/OCCUPANT, 139 W. 43rd Street, San Bernardino, CA 92404 (certified receipt signed and
16 returned); TENANT/OCCUPANT, 140 W. 43rd Street, San Bernardino, CA 92404 (return to
17 sender/unable to forward); TENANT/OCCUPANT, 141 W. 43rd Street, San Bernardino, CA 92404
18 (certified receipt signed and returned); TENANT/OCCUPANT, 142 W. 43rd Street, San Bernardino,
19 CA 92404 (certified receipt signed and returned); TENANT/OCCUPANT, 143 W. 43rd Street, San
20 Bernardino, CA 92404 (certified receipt signed and returned); TENANT/OCCUPANT, 144 W. 43rd
21 Street, San Bernardino, CA 92404 (certified receipt signed and returned); and
22 TENANT/OCCUPANT, 145 W. 43rd Street, San Bernardino, CA 92404 (to date, no mailings
23 returned).

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1 10. On or about July 31, 2014, I spoke with the property owner, Dr. Hussain, via
2 telephone and he asked for another chance to fix up the property located at **110-145 West 43rd Street**
3 **(a multi-family residence)** San Bernardino, California 92407, I advised of all violations observed
4 at the property and the fact that this property has posed a nuisance for the tenants, surrounding areas,
5 and has incurred several hours of city time. The property owner said that he would immediately work
6 on the issues.

7 11. On or about July 31, 2014, I received an e-mail from a tenant advising that this
8 property located at **110-145 West 43rd Street (a multi-family residence)** San Bernardino, California
9 92407, has not been maintained for some time and despite efforts to work with the owner and
10 manager, no progress is ever made.

11 12. On or about July 21, 2014, a homicide occurred in one of the units located at
12 **110-145 West 43rd Street (a multi-family residence)** San Bernardino, California 92407. The
13 homicide suspect remains at large.

14 13. On July 31, 2014, the Code Enforcement Division received crime stats for the
15 previous year (365 days) for the Edgehill Apartment complex located at **110-145 West 43rd Street**
16 **(a multi-family residence)** San Bernardino, California 92407. The Part 1 crimes include; burglary,
17 assault and battery, disturbance with weapons. Part 2 crimes include simple assault and fraud. In the
18 last year (365 days) the Edgehill Apartment complex created approximately 85 calls for service for
19 the San Bernardino City Police Department.

20 14. On or about August 4, 2014, a re-inspection of the property located at **110-145**
21 **West 43rd Street (a multi-family residence)** San Bernardino, California 92407, was conducted, and
22 the previously noted violations were found to still exist along with additional violations. During the
23 course of the inspection, several occupants approached me and advised of the failure on behalf of
24 the property owner to fix problems within their units to include bed bugs and roaches. Contact was
25 also made by the property owner, Zafar Husain, who said that he was not aware of the problems at
26 the property and that the illegal construction that was present was done before he purchased the
27 property.

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1 15. The property located at **110-145 West 43rd Street (a multi-family residence)** San
2 Bernardino, California 92407, has a long history of violations with a lack of compliance. Upon
3 further research into archived records, the property remains in violation of prior hearing orders in
4 which Zafar Husain was present. The property was found in violation for the following:

5 MUNICIPAL CODES VIOLATIONS:
6 SBMC 8.30.160(A)

- Violation of Hearing Order (property remains in violation of hearing orders #BBC 05-05 and H/O 05-053); and

7 UNIFORM HOUSING CODE VIOLATIONS:
8 UHC 1001.8.2

- Deteriorated or Ineffective Waterproofing (water intrusion damages to interior ceilings/ faulty roofing materials).

9
10 16. On or about August 11, 2014, it was determined that a Notice of Violation for the
11 property located at **110-145 West 43rd Street (a multi-family residence)** San Bernardino, California
12 92407, had not been mailed to: ZAFAR HUSAIN, 770 Magnolia Avenue, Suite 2A, Corona, CA
13 92879.

14 17. On or about August 11, 2014, copies of a 72-hour Hazardous Condition Notice of
15 Violation for the property located at **110-145 West 43rd Street (a multi-family residence)** San
16 Bernardino, California 92407, were mailed via certified and first class mail to: ZAFAR HUSAIN,
17 770 Magnolia Avenue, Suite A, Corona, CA 92874.

18 18. On or about August 14, 2014, a re-inspection of the property located at **110-145**
19 **West 43rd Street (a multi-family residence)** San Bernardino, California 92407, was conducted, and
20 the previously noted violations were found to still exist.

21 Since the property located at **110-145 West 43rd Street (a multi-family residence)** San
22 Bernardino, California 92407, poses a danger to the health and safety to the tenants, children and the
23 local neighborhood and since the owner(s) have failed to maintain the property to the minimum
24 standard of the San Bernardino Municipal Codes and since there are several units that may be
25 involved with possible criminal activity, including harboring a potential homicide suspect, I am
26 requesting a no notice warrant be issued to inspect the interiors of the structure.

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1 WHEREFORE, your affiant prays that the Court permit this Code Enforcement Officer
2 or any authorized employee of the City, along with the Department of Community Development,
3 City Attorney, Fire Department, Police Department, as well as Neighborhood Housing Services of
4 the Inland Empire or any of their authorized employees and contractors, to forcibly, if necessary,
5 inspect, abate, and secure the structure if the property is found to be in violation of City and State
6 Laws.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct, and, if called to testify as a witness herein, I could and would testify
9 competently as to the matters contained in this Affidavit.

10 Dated this 18th day of August, 2014, at San Bernardino, California.

11

12


KRISTIE ROHLER

13

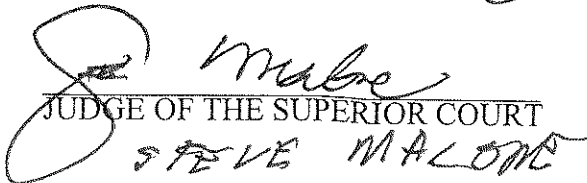
14

Subscribed and sworn to before me on 8-18, 2014, @ 1:15 p.m.

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JUDGE OF THE SUPERIOR COURT
STEVE MALONE

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Exhibit "A "

THE NORTH 350 FEET OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN (UNSURVEYED), BEING A PORTION OF GOVERNMENT LOT 38 OF MUSCUIABE RANCHO, IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGE(S) 23, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE EAST 169.75 FEET THEREOF.

ALSO SAVING AND EXCEPTING THE WEST 30 FEET.

ALSO SAVING AND EXCEPTING ANY PORTION LYING WITHIN THE BOUNDARIES OF TRACT NO. 3541, AS PER PLAT RECORDED IN BOOK 47 OF MAPS, PAGE 4, RECORDS OF SAID COUNTY.

ALSO EXCEPTING THEREFROM ALL MINERALS, INCLUDING BUT NOT LIMITED TO, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES LYING UNDER A PLANE 500 FEET BELOW THE SURFACE OF THE PROPERTY DESCRIBED HEREIN; TOGETHER WITH THE EXCLUSIVE RIGHT TO ENTER INTO AND DRILL THROUGH SAID PROPERTY BELOW SAID PLANE (FROM OTHER PROPERTY) FOR THE PURPOSE OF PRODUCING, EXTRACTING AND TAKING THEREFROM (OR FROM OTHER PROPERTY) ALL SUCH MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES; PROVIDED, HOWEVER, THAT THE GRANTEE HEREIN SHALL NOT HAVE THE RIGHT OF ENTRY TO THE SURFACE THEREOF OR ANY PORTION THEREOF LYING ABOVE SAID PLANE, AS CONVEYED TO GREENWOOD SALES, CO., A CALIFORNIA CORPORATION, BY A DEED RECORDED OCTOBER 18, 1965, IN BOOK 6494, PAGE 510, OFFICIAL RECORDS.

1 GARY D. SAENZ, City Attorney
State Bar No. 79539
2 JASON M. EWERT, Deputy City Attorney
State Bar No. 290171
3 300 North "D" Street, Room 668
San Bernardino, CA 92418
4 Telephone: (909) 384-5355
Facsimile: (909) 384-5238
5

6 **IN THE SUPERIOR COURT, SAN BERNARDINO DISTRICT**
7 **COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA**

8 **INSPECTION/ABATEMENT/ADMINISTRATIVE WARRANT**
9 **United States Constitution, Amendments 4 and 14;**
10 **§ 1822.50-1822.58 Code of Civil Procedure**
11 **(Conner v. City of Santa Ana)**

12 THE PEOPLE OF THE STATE OF CALIFORNIA: To any peace officer or any person authorized
13 by ordinance of the Mayor and Common Council of the City of San Bernardino to enforce the
14 San Bernardino Municipal Code:

15 Upon good cause shown to the Court:

16 YOU ARE HEREBY COMMANDED to enter the buildings, interiors, structures, and
17 grounds at **110-145 West 43rd Street (a multi-family residence)** San Bernardino, California 92407,
18 APN: 0154-221-35-0000, and legally described in Exhibit "A" attached hereto to conduct an
19 inspection abatement of the buildings, interiors, structures, and grounds as authorized by Chapters
20 8.18, 8.27, 8.30, 8.36, 15.04, 15.16, 15.24 and 15.28, of the San Bernardino Municipal Code and the
21 California Fire Code, Uniform Building Code, Uniform Code for the Abatement of Dangerous
22 Buildings, and Uniform Housing Code as adopted by the San Bernardino Municipal Code.

23 YOU ARE COMMANDED to enter the premises to inspect, abate, vacate, board and
24 secure the buildings, interiors, structures, and grounds **110-145 West 43rd Street (a multi-family**
25 **residence)** San Bernardino, California 92407, to take photographs and/or video films of any and all
26 of the above-mentioned areas of inspection for evidence of violations of San Bernardino's Health,
27 Fire, Safety, Nuisance and Zoning Ordinances.

28 This inspection and abatement shall be conducted pursuant to Amendments 4 and 14 of
the United States Constitution and Section 1822.56 of the Code of Civil Procedure, in a reasonable
manner for the purpose of insuring compliance with all applicable laws.

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- 1 This inspection and abatement shall be conducted subject to the following conditions:
- 2 1. The inspection and abatement must be conducted within 10 days of the date hereof.
- 3 2. This warrant may not be executed after 6:00 p.m., or before 8:00 a.m., of any day.
- 4 3. Notice by personal service, posting on the premises or by First Class Mail of issuance
- 5 of this warrant 24 hours prior to its execution is waived.
- 6 4. Good cause appearing, forcible entry onto the premises is authorized, if necessary, to
- 7 effectuate entry.
- 8 5. If a significant health risk is present, vacant buildings may be boarded up and secured
- 9 from unauthorized entry.
- 10 6. Good cause appearing, this inspection and abatement may be made in the absence of
- 11 the occupant.
- 12 7. Good cause appearing, the requirement that the occupants permission must be sought
- 13 and said permission denied prior to the issuing of this warrant is waived.
- 14 8. Any animals found on the premises may be restrained by the Animal Control
- 15 Department until the inspection and abatement is completed.
- 16 9. Any abandoned wrecked, dismantled, or inoperative vehicles, or parts thereof, creating
- 17 a potential fire and/or safety hazard may be removed from the above property.
- 18 10. Any accumulated rubbish, refuse, waste material, scrap metal, combustible matter,
- 19 dead vegetation or other debris creating a public nuisance and/or a potential fire and safety hazard
- 20 may be abated.
- 21 11. If any unauthorized persons are found on the premises, those persons may be ejected

22 GIVEN UNDER MY HAND THIS 15th day of April, 2014.

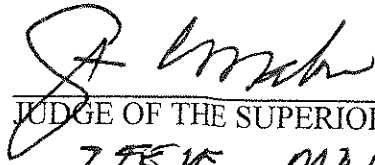
23
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25 JUDGE OF THE SUPERIOR COURT
26 JEFFREY MALONE
27
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Exhibit "A "

THE NORTH 350 FEET OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN (UNSURVEYED), BEING A PORTION OF GOVERNMENT LOT 38 OF MUSCUIABE RANCHO, IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGE(S) 23, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE EAST 169.75 FEET THEREOF.

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ALSO EXCEPTING THEREFROM ALL MINERALS, INCLUDING BUT NOT LIMITED TO, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES LYING UNDER A PLANE 500 FEET BELOW THE SURFACE OF THE PROPERTY DESCRIBED HEREIN; TOGETHER WITH THE EXCLUSIVE RIGHT TO ENTER INTO AND DRILL THROUGH SAID PROPERTY BELOW SAID PLANE (FROM OTHER PROPERTY) FOR THE PURPOSE OF PRODUCING, EXTRACTING AND TAKING THEREFROM (OR FROM OTHER PROPERTY) ALL SUCH MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES; PROVIDED, HOWEVER, THAT THE GRANTEE HEREIN SHALL NOT HAVE THE RIGHT OF ENTRY TO THE SURFACE THEREOF OR ANY PORTION THEREOF LYING ABOVE SAID PLANE, AS CONVEYED TO GREENWOOD SALES, CO., A CALIFORNIA CORPORATION, BY A DEED RECORDED OCTOBER 18, 1965, IN BOOK 6494, PAGE 510, OFFICIAL RECORDS.

EXHIBIT 5

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION
HONORABLE JESUS G. BERNAL, U.S. DISTRICT JUDGE

RAYMOND NEWBERRY; et al.,)
)
) PLAINTIFF,) Case No.
)
) vs.) EDCV-14-02298-JGB (SPx)
)
) COUNTY OF SAN BERNARDINO; et al.,)
)
) DEFENDANTS.)
)
)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
MONDAY, December 3, 2014
9:00 A.M.
RIVERSIDE, CALIFORNIA

ADELE C. FRAZIER, CSR 9690, CRR, RMR
FEDERAL OFFICIAL COURT REPORTER
3470 TWELFTH STREET
RIVERSIDE, CALIFORNIA 92501
ADELEFRAZIERCSR@GMAIL.COM

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APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

LAW OFFICES OF MARJORIE BARRIOS
BY: MARJORIE BARRIOS
P.O. Box 500
San Bernardino, California 92402
mbarrios@mbarrios.com

FOR THE DEFENDANTS:

COUNTY OF SAN BERNARDINO
BY: LAUREN DANIELS
JASON EWERT
Deputy County Counsels
385 North Arrowhead Avenue
Fourth Floor
San Bernardino, California 92415-0140

1 RIVERSIDE, CALIFORNIA; MONDAY, DECEMBER 3, 2014

2 10:00 A.M.

3 THE COURTROOM DEPUTY: Calling case number EDCV
4 14-2298-JGB, Raymond Newberry, et al., vs. County of San
5 Bernardino, et al. Counsel, please come forward and state
6 your appearances.

7 MR. EWERT: Good morning, your Honor. Jason Ewert
8 for City of San Bernardino and its named employees.

9 MS. DANIELS: Lauren Daniels for City of San
10 Bernardino and named employees. Good morning.

11 THE COURT: Good morning.

12 MS. BARRIOS: Good morning, your Honor. Marjorie
13 Barrios for plaintiffs Newberry, et al.

14 THE COURT: Good morning. I set today's hearing
15 for a hearing on the ex parte application filed by plaintiffs
16 for a temporary restraining order and order to show cause
17 regarding an injunction. I received and reviewed the papers.
18 I have a couple of questions, primarily for the defendants in
19 this case.

20 In the opposition to the application the City filed
21 a declaration by Mr. Lawhead stating that the City had -- or
22 the police department had removed the photographs from public
23 view on the Facebook page. Is that correct?

24 MS. DANIELS: Yes, your Honor. There was a mistake
25 made. We received -- our office received a phone call at

1 10:00 a.m. last Wednesday that we had until 5:00 p.m. to file
2 our opposition. Unfortunately, the day before Thanksgiving a
3 lot of the departments have people out, so when we contacted
4 the police department, they were confused as to the effect of
5 the application having been filed, and then someone pulled
6 that post when they were asked to locate Lawhead for the
7 declaration.

8 THE COURT: Very well. So those -- the photographs
9 have been removed from public view on the San Bernardino
10 police department's Facebook page, correct?

11 MS. DANIELS: Yes, your Honor. That includes
12 comments that were made in response to that particular post
13 as well.

14 THE COURT: So am I correct that a normal person
15 attempting to -- if a normal member from the public accessed
16 the police department's Facebook page, then they will not be
17 able to view the pictures, correct?

18 MS. DANIELS: Yes, your Honor. The picture should
19 not be viewable.

20 THE COURT: Very well. There was also evidence
21 that the mayor re-posted the pictures and the comments on his
22 Facebook page. Is there any information as to whether the
23 pictures are, then, viewable on that Facebook page currently
24 or on any other publicly-accessible site?

25 MS. DANIELS: I believe on the mayor's Facebook

1 page, if people go down to three months before the post, they
2 have to scroll down and click down a few times, but they
3 should be able to view the re-post still at this point, your
4 Honor.

5 THE COURT: And that re-post includes the
6 photographs?

7 MS. DANIELS: Yes, your Honor. The re-post does
8 include the photographs.

9 THE COURT: So has there been any effort to remove
10 those photographs from that Facebook page of the mayor?

11 MS. DANIELS: No, your Honor. The mayor and the
12 rest of the city right now is trying to target landlords who
13 live out of the city and don't maintain and care for the
14 properties that our lower income residents live at. In an
15 effort to further that mission, the mayor is wanting to
16 target the property owners and feels it necessary to keep
17 that post up at this time, your Honor.

18 MR. EWERT: They, essentially, lodged a social
19 media campaign notify the citizens of the city of their
20 attempt to remedy the substandard properties located within
21 the city. When we conferred with our client, they were
22 unwilling to take down the post at that time. As we
23 previously indicated, the police department also was
24 unwilling to take down their photos.

25 The only reason they were taken down was through an

1 inadvertent mistake that occurred because of miscommunication
2 between the city attorney's office and the police department.
3 They, essentially, thought that the district court had
4 already ruled on it, and they were required to take down the
5 post. We advised them that was not the case at all.
6 However, the damage had been done, and the post was not
7 re-posted on a new posting.

8 THE COURT: Is there any intention to re-post the
9 pictures at this point?

10 MR. EWERT: Not that I'm aware of, your Honor.

11 THE COURT: So how certain are you, either one of
12 you, as to whether the photographs, and not just the comments
13 by the police chief, can be viewed on the mayor's Facebook
14 page at this time?

15 MR. EWERT: I can check right now for your Honor.

16 THE COURT: Please do so. If you have access --
17 have you checked?

18 MS. BARRIOS: Thank you, your Honor.

19 THE COURT: Ms. Barrios?

20 MS. BARRIOS: Thank you, your Honor. May I grab my
21 iPad? I brought it for that purpose.

22 THE COURT: You may.

23 MS. BARRIOS: Thank you.

24 Your Honor, if I may just reply briefly to that.
25 As of yesterday at 4:00 when I checked, the comments were

1 still up, and the pictures were still up on the mayor's
2 website.

3 THE COURT: Mr. Ewert.

4 MR. EWERT: I don't have access to it right here, I
5 apologize.

6 Ms. Barrios, were you able to pull it up?

7 MS. BARRIOS: My phone is slower than usual now, I
8 think in here.

9 THE COURTROOM DEPUTY: They may need to step
10 outside. The WI-FI doesn't work in here.

11 THE COURT: Very well. We'll recess for five
12 minutes, ten minutes, to allow you to go outside and try to
13 attempt again to --

14 MS. BARRIOS: Thank you, your Honor.

15 MR. EWERT: Thank you, your Honor.

16 THE COURT: -- ascertain that information and then
17 we'll be back.

18 (Recess.)

19 THE COURTROOM DEPUTY: We're back on the record
20 here recalling case number EDCV 14-2298, Raymond Newberry vs.
21 County of San Bernardino.

22 MS. DANIELS: Lauren Daniels for City of San
23 Bernardino and named employee.

24 MR. EWERT: Jason Ewert for City of San Bernardino
25 and named employees.

1 MS. BARRIOS: Marjorie Barrios.

2 THE COURT: What's the answer?

3 MR. EWERT: We were unable to find any photos from
4 the post from the mayor's. The deletion of the link, I
5 believe, has deleted the photos off of the post. I can show
6 you if you prefer.

7 THE COURT: It's not necessary.

8 What is your position, Ms. Barrios?

9 MS. BARRIOS: Your Honor, I found the photos on
10 Facebook, the photos and the posting. They're still here and
11 I have them for the Court.

12 THE COURT: Can you confer with counsel?

13 MS. BARRIOS: Yes, sir.

14 MR. EWERT: Those aren't the photos that were the
15 subject of -- the posting is still there, but the photos are
16 not.

17 It appears that Ms. Barrios is referring to
18 different photos that weren't the subject of that same post.
19 The photos that were the subject of this TRO have been
20 removed.

21 THE COURT: Is that accurate, Ms. Barrios?

22 MS. BARRIOS: Yes, your Honor. I apologize. I was
23 confusing one of the media releases with the postings -- the
24 posted photographed. They're very similar.

25 THE COURT: Very well. So as to the challenged

1 photos, which were initially placed on the police
2 department's photo -- I'm sorry, as to the photographs that
3 were placed on the police department's Facebook page and were
4 then re-posted on the mayor's Facebook page, those photos are
5 no longer in either one of those Facebook pages?

6 MR. EWERT: Correct.

7 THE COURT: Correct.

8 MS. BARRIOS: Yes.

9 THE COURT: Very well. So I'll give you my
10 tentative, Ms. Barrios. I think there is a problem with
11 irreparable harm given that the photos are no longer there.
12 There's also a problem with the stay that I believe does
13 apply to suits that are filed after the filing of the
14 bankruptcy because they do affect potentially the property of
15 the bankrupt entity, which is the City in this case.

16 So I'll let you be heard if you want.

17 MS. BARRIOS: Yes, your Honor. Your Honor,
18 defendants themselves just told the Court that they -- it was
19 an inadvertent mistake that they took down the photos, and
20 that was Chief Burguan who took down the photos.

21 As for the mayor, he maintains his position that he
22 has a right to post those photographs.

23 As for irreparable harm, I would like to call
24 Court's attention to a death threat mentioned in one of
25 the -- one of the exhibits that we submitted, Exhibit F, page

1 60. One of the commentators noted that these tenants should
2 just be "D" period and implying, should just be dead. I
3 believe that is, definitely, irreparable harm, a potential
4 death threat.

5 In addition to the issue of the stay, 11 USC 362
6 mentions that any actions brought after the filing of the
7 bankruptcy are not stayed. And it is our position that an
8 injunction is not subject to the stay, your Honor.

9 THE COURT: Mr. Ewert.

10 MR. EWERT: In response to that, your Honor, I
11 would like to draw the Court's attention we have had
12 post-petition cases filed that came up on appeal -- I'm sorry
13 for relief from stay. The bankruptcy court did hold those
14 post-petition claims were subject to the automatic stay.

15 Essentially, what it turns on is -- and I believe
16 you previously stated that the BK court has held the stay
17 does apply to post-petition claims where the case would be an
18 encumbrance or burden on the attempts of the debtor to
19 reorganize and the essential administration of the estate.
20 The City's position is the stay is in effect, and Ms. Barrios
21 would need to apply for relief before being heard on the TRO,
22 because she has requested attorney's fees and exemplary
23 damages. I'm sure she's not doing this TRO for free.

24 THE COURT: Very well. I will find that I will
25 deny the application on two alternative bases: One is the

1 requirements of the TRO have not been met; specifically, the
2 irreparable harm I think is severely gone now due to the fact
3 that the photos are no longer -- no longer in public view by
4 either of the defendants that are mentioned in this case.

5 To the extent that there is potential death threats
6 that were made, that's not related to the posting. The
7 posting is no longer there. The action of having the
8 photographs online as an ongoing irreparable harm if the TRO
9 is not issued is not connected to any -- any potential
10 threat. And it's not really an irreparable harm. It's a
11 potential harm, but it's not a harm right now. So it's not
12 linked to the photos being up there or not being up there,
13 and the photos are not up there anymore.

14 In addition, I do find that the -- that the stay
15 applies to actions such as these in which there is some
16 component of monetary request made pursuant to the lawsuit.
17 So I think that that does potentially affect the assets of
18 the entity that is in bankruptcy right now, which is the City
19 of San Bernardino, and, therefore, the automatic stay applies
20 to such a lawsuit.

21 I will deny the TRO on those alternative bases, and
22 I will also stay the case. You will get a written ruling of
23 my decision that I've made to you today. And there will be
24 some instructions in that ruling to report back to me when
25 and if the bankruptcy proceedings are concluded. So if this

1 case has not been dismissed by then, this case can then
2 proceed at that time.

3 MS. BARRIOS: Thank you, your Honor.

4 MR. EWERT: Thank you, your Honor.

5 MS. DANIELS: Thank you, your Honor.

6 (Proceedings Concluded.)

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UNITED STATES DISTRICT COURT

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CERTIFICATE OF OFFICIAL REPORTER

I, ADELE C. FRAZIER, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 8th DAY OF APRIL, 2015

/S/ ADELE C. FRAZIER

ADELE C. FRAZIER, CSR No. 9690, CRR, RMR
FEDERAL OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT

EXHIBIT 6

1 GARY D. SAENZ, City Attorney
State Bar No. 79539
2 JASON M. EWERT, Deputy City Attorney
State Bar No. 290171
3 300 North "D" Street, Room 668
San Bernardino, CA 92418
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5

6 **IN THE SUPERIOR COURT, SAN BERNARDINO DISTRICT
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA**

7 **INSPECTION/ABATEMENT/ADMINISTRATIVE WARRANT**

8 **United States Constitution, Amendments 4 and 14;**

9 **§ 1822.50-1822.58 Code of Civil Procedure**

(Conner v. City of Santa Ana)

10 THE PEOPLE OF THE STATE OF CALIFORNIA: To any peace officer or any person authorized
11 by ordinance of the Mayor and Common Council of the City of San Bernardino to enforce the
12 San Bernardino Municipal Code:

13 Upon good cause shown to the Court:

14 YOU ARE HEREBY COMMANDED to enter the buildings, interiors, structures, and
15 grounds at **110-145 West 43rd Street (a multi-family residence)** San Bernardino, California 92407,
16 APN: 0154-221-35-0000, and legally described in Exhibit "A" attached hereto to conduct an
17 inspection abatement of the buildings, interiors, structures, and grounds as authorized by Chapters
18 8.18, 8.27, 8.30, 8.36, 15.04, 15.16, 15.24 and 15.28, of the San Bernardino Municipal Code and the
19 California Fire Code, Uniform Building Code, Uniform Code for the Abatement of Dangerous
20 Buildings, and Uniform Housing Code as adopted by the San Bernardino Municipal Code.

21 YOU ARE COMMANDED to enter the premises to inspect, abate, vacate, board and
22 secure the buildings, interiors, structures, and grounds **110-145 West 43rd Street (a multi-family**
23 **residence)** San Bernardino, California 92407, to take photographs and/or video films of any and all
24 of the above-mentioned areas of inspection for evidence of violations of San Bernardino's Health,
25 Fire, Safety, Nuisance and Zoning Ordinances.

26 This inspection and abatement shall be conducted pursuant to Amendments 4 and 14 of
27 the United States Constitution and Section 1822.56 of the Code of Civil Procedure, in a reasonable
28 manner for the purpose of insuring compliance with all applicable laws.

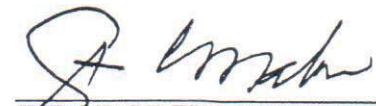
S:\GRIDER\Warrants & Affidavits\110-145W.43rdSt(WAR).wpd

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This inspection and abatement shall be conducted subject to the following conditions:

1. The inspection and abatement must be conducted within 10 days of the date hereof.
2. This warrant may not be executed after 6:00 p.m., or before 8:00 a.m., of any day.
3. Notice by personal service, posting on the premises or by First Class Mail of issuance of this warrant 24 hours prior to its execution is waived.
4. Good cause appearing, forcible entry onto the premises is authorized, if necessary, to effectuate entry.
5. If a significant health risk is present, vacant buildings may be boarded up and secured from unauthorized entry.
6. Good cause appearing, this inspection and abatement may be made in the absence of the occupant.
7. Good cause appearing, the requirement that the occupants permission must be sought and said permission denied prior to the issuing of this warrant is waived.
8. Any animals found on the premises may be restrained by the Animal Control Department until the inspection and abatement is completed.
9. Any abandoned wrecked, dismantled, or inoperative vehicles, or parts thereof, creating a potential fire and/or safety hazard may be removed from the above property.
10. Any accumulated rubbish, refuse, waste material, scrap metal, combustible matter, dead vegetation or other debris creating a public nuisance and/or a potential fire and safety hazard may be abated.
11. If any unauthorized persons are found on the premises, those persons may be ejected

GIVEN UNDER MY HAND THIS 12th day of August, 2014.



JUDGE OF THE SUPERIOR COURT
JANE MALONE

Exhibit "A "

THE NORTH 350 FEET OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN (UNSURVEYED), BEING A PORTION OF GOVERNMENT LOT 38 OF MUSCUPIABE RANCHO, IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGE(S) 23, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE EAST 169.75 FEET THEREOF.

ALSO SAVING AND EXCEPTING THE WEST 30 FEET.

ALSO SAVING AND EXCEPTING ANY PORTION LYING WITHIN THE BOUNDARIES OF TRACT NO. 3541, AS PER PLAT RECORDED IN BOOK 47 OF MAPS, PAGE 4, RECORDS OF SAID COUNTY.

ALSO EXCEPTING THEREFROM ALL MINERALS, INCLUDING BUT NOT LIMITED TO, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES LYING UNDER A PLANE 500 FEET BELOW THE SURFACE OF THE PROPERTY DESCRIBED HEREIN; TOGETHER WITH THE EXCLUSIVE RIGHT TO ENTER INTO AND DRILL THROUGH SAID PROPERTY BELOW SAID PLANE (FROM OTHER PROPERTY) FOR THE PURPOSE OF PRODUCING, EXTRACTING AND TAKING THEREFROM (OR FROM OTHER PROPERTY) ALL SUCH MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES; PROVIDED, HOWEVER, THAT THE GRANTEE HEREIN SHALL NOT HAVE THE RIGHT OF ENTRY TO THE SURFACE THEREOF OR ANY PORTION THEREOF LYING ABOVE SAID PLANE, AS CONVEYED TO GREENWOOD SALES, CO., A CALIFORNIA CORPORATION, BY A DEED RECORDED OCTOBER 18, 1965, IN BOOK 6494, PAGE 510, OFFICIAL RECORDS.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

100 Wilshire Blvd., 4th Floor, Santa Monica, CA 90401.

A true and correct copy of the foregoing document entitled REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF SAN BERNARDINO'S OPPOSITION TO NEWBERRY MOTION FOR ATTORNEY'S FEES AND COSTS will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On October 29, 2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

The United States trustee will be served electronically by the court to:
United States Trustee (RS) ustpreion16.rs.ecf@usdoj.gov

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Franklin C Adams on behalf of Big Independent Cities Excess Pool Joint Powers Authority ("BICEP")
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Julie A Belezzuoli on behalf of Defendant California Department of Finance

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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as minor Gonzalez by and through guardian ad litem Rosalsela Avalos, Brunilda Gonzalez, Angelina Cesar,
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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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Clarisse Young on behalf of Interested Party Courtesy NEF
youngshumaker@smcounsel.com, levern@smcounsel.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On October 29, 2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method

for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on October 29, 2015, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

PRESIDING JUDGE'S COPY

Honorable Meredith A. Jury (Overnight Mail)
U.S. Bankruptcy Court
3420 Twelfth Street, Suite 325
Riverside, CA 92501-3819
Via overnight delivery service with Golden State Overnight (www.gso.com)
Delivery Tracking number: 529786374

ATTORNEYS FOR UNITED PACIFIC RAILROAD COMPANY

Mary Ann Kilgore (Via Email)
via email to MKILGORE@UP.COM
Jennie L. Anderson
via email to JLANDERS01@UP.COM

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 29, 2015
Date

Christine Pesis
Printed Name

/s/ Christine Pesis
Signature