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8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
9 **NORTH COUNTY DIVISION**

11 CITY OF ESCONDIDO, a municipal
12 corporation,

13 Plaintiff,

14 v.

15 THERESE A. BEARER, an individual; KAREN
16 M. CASH, an individual; MICHAEL A.
17 KLUEY, an individual; KEITH BRYANT
18 INGLIS, an individual; and DOES 1 through 20,
inclusive,

Defendants.

CASE NO.: 37-2022-00014840-CU-MC-NC

JUDGE: Judge Cynthia A. Freeland

DEPT.:

COMPLAINT FOR PERMANENT
INJUNCTION, DECLARATORY RELIEF,
AND OTHER EQUITABLE RELIEF TO
ABATE A PUBLIC NUISANCE

- (1) VIOLATIONS OF THE ESCONDIDO
MUNICIPAL CODE AND
INJUNCTIVE RELIEF
- (2) DECLARATORY RELIEF

“IMAGED FILE”

19 The CITY OF ESCONDIDO, a municipal corporation in the County of San Diego (hereinafter,
20 “City”), alleges as follows:

21 **INTRODUCTION**

22 1. Defendants THERESE A. BEARER, an individual; KAREN M. CASH, an individual;
23 MICHAEL A. KLUEY, an individual; and KEITH BRYANT INGLIS, an individual (collectively at
24 times, “OCCUPANTS”) occupy the property located at 2130 W. El Norte Parkway, Escondido,
25 California, 92026, Assessor’s Parcel No. 226-832-4600 (hereinafter, “Property”). OCCUPANTS are
26 using, allowing, maintaining and depositing large amounts of trash, junk, debris, inoperable vehicles, and
27 occupied recreational vehicles and trailer coaches connected to public utilities on the Property.

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1 OCCUPANTS further utilize tarpaulin and green plastic sheeting to screen these prohibited items from
2 public view.

3 2. The City, through its Code Compliance Division and City Attorney’s Office, has for an
4 extended time been working with OCCUPANTS to have the Property’s use come into conformance with
5 the Escondido Municipal Code (“EMC”). However, OCCUPANTS have failed to take any corrective
6 action. The City seeks to return the Property to a lawful condition.

7 **PARTIES, JURISDICTION AND VENUE**

8 3. The City brings this action pursuant to EMC sections 1-14, 6-484, 29-17, and 29-21
9 seeking to permanently enjoin OCCUPANTS and DOES 1 through 20, inclusive, (collectively,
10 “DEFENDANTS”) from violating the law on the Property, and to recover fees, costs and/or penalties as
11 permitted by law relating to enforcement of this action.

12 4. At all times mentioned herein, the City was and is a municipal corporation organized and
13 existing under the laws of the State of California.

14 5. At all times mentioned herein, up to and including the present, DEFENDANTS own,
15 manage, maintain, reside upon, have control and authority over, conduct business upon, and/or are the
16 holders of some right, title or interest in the Property, a 1.19 acre parcel of real property with a one-story
17 residence in the City of Escondido.

18 6. DEFENDANTS, and each of them, as responsible parties for the Property, have knowledge
19 about and are responsible for the violations of law at the Property.

20 7. Defendants DOES 1 through 20, inclusive, are sued herein as fictitious names, under the
21 provisions of Code of Civil Procedure section 474, their true names and capacities being unknown to the
22 City. Defendants DOES 1 through 20, inclusive, are in some manner responsible for the events and
23 happenings alleged in the Complaint with each acting as agent for the others. When ascertained, the City
24 will amend this Complaint by inserting their true names and capacities.

25 8. The City deems any act or omission of one or more of the DEFENDANTS referenced in
26 this Complaint to mean the act of each and every defendant acting individually, jointly and severally.

27 9. Any act or omission of the DEFENDANTS referenced in this Complaint shall mean their
28 officers, principals, agents, managers, representatives, heirs, tenants, assigns and employees, who did or

1 authorized such acts while actively engaged in the operation, management, direction, control of the affairs
2 of DEFENDANTS while acting within the course and scope of their duties.

3 10. All of the actions of DEFENDANTS alleged herein have occurred, been carried out or
4 have furthered violations of the law at or in connection with the Property, which nuisance and violations
5 of law are sought to be restrained by this action.

6 11. Code of Civil Procedure section 394 allows venue for this action in the County of San
7 Diego. San Diego County Superior Court Rule 1.2.2 mandates venue for this action in the North County
8 Division.

9 **FACTS ESTABLISHING LIABILITY**

10 12. On December 15, 2020, the City received a complaint regarding recreational vehicles,
11 tarpaulins, junk, trash and debris on the Property.

12 13. The City's Code Compliance Division opened a case and assigned an investigator.

13 14. On December 23, 2020, the City's investigators inspected the Property from the public
14 right-of-way and observed multiple vehicles, recreational vehicles, trailers, trash, junk, debris, sheds with
15 tarpaulins on them, and a cargo container on the Property.

16 15. Defendant CASH informed the City's investigator that she was working on cleaning the
17 Property.

18 16. On January 5, 2021, the City's investigator issued by regular mail an initial Notice of
19 Violation ("NOV") for the violations observed from the public right-of-way to Defendants CASH and
20 BEARER, and all unknown occupants. The NOV noted the following violations:

- 21 a. Various tarpaulins throughout the property, a violation of EMC section
22 6-484(a)(5)(B).
- 23 b. Multiple inoperable vehicles on the Property, a violation of EMC section
24 6-484(a)(6).
- 25 c. A trailer connected to public utilities on the Property, a violation of EMC section
26 29-17.
- 27 d. A trailer occupied as a dwelling outside of a licensed trailer park, a violation of
28 EMC section 29-21.

1 e. Trash, junk and debris throughout the Property, a violation of EMC section
2 6-484(a)(1).

3 f. An unpermitted cargo container on the Property, a violation of EMC section
4 33-721(a).

5 17. On March 11, 2021, the City’s investigators inspected the Property with the consent of
6 Defendant KLUEY. Both Defendants CASH and KLUEY were present for the inspection.

7 18. The City’s investigators observed a recreational vehicle in the front yard of the Property
8 that was completely “gutted” with no utilities attached. In the rear yard, they observed a trailer coach
9 parked within one foot of the house with a large amount of debris and a fence around it. They also
10 observed a canopy near this trailer coach with a fire pit underneath. Defendant CASH stated the trailer
11 coach belonged to her son and that it was “just storage.” Defendant KLUEY disagreed stating Defendant
12 CASH’s son lived in the trailer coach. Defendant CASH refused access to the trailer coach to confirm
13 whether anyone was living in it. The City’s investigators confirmed the sheds were not occupied and that
14 the cargo container and the recreational vehicle with utilities attached were on a separate property.
15 Defendant CASH agreed to correct all EMC violations on the Property.

16 19. On March 24, 2021, the City’s investigator issued an Administrative Citation (“AC”) to
17 Defendant CASH observing no corrections on the Property.

18 20. On April 22, 2021, the City’s investigator issued a second AC to Defendant CASH
19 observing no corrections, a new green plastic sheeting installed on the chain link fence, and a new wooden
20 structure next to the trailer coach parked in the rear yard on the Property. The City’s investigator also
21 amended the NOV to remove the unpermitted cargo container violation and issued it by regular mail to
22 Defendants BEARER, CASH, and KLUEY, and all unknown occupants.

23 21. On May 6, 2021, the City’s investigator received records which showed “The Secretary of
24 Housing and Urban Development” was assigned a deed of trust in 2012 for the reverse mortgage to the
25 Property. The City’s investigator reached out to the Department of Housing and Urban Development
26 (“HUD”) at “answers@hud.gov.”

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1 22. On May 25, 2021, Defendant KLUEY informed the City's investigator that Defendant
2 CASH's son overdosed and passed away on the Property. Defendant KLUEY agreed to correct all EMC
3 violations on the Property.

4 23. On May 27, 2021, the City's investigators inspected the Property. They observed a
5 noticeable amount of trash removed, along with the canopy next to the trailer coach parked in the rear
6 yard, and the tarpaulins on the sheds. However, a large amount of trash remained and new recreational
7 vehicles moved onto the Property. Defendant CASH refused access to the new recreational vehicles to
8 confirm whether anyone was living in them. The City's investigator also received an email from Victoria
9 Stream-Johnson, a HECM Foreclosure Specialist with NOVAD Management Consulting, HUD's
10 representative, informing the City's investigator that she would need to conduct further research into the
11 Property.

12 24. On June 15, 2021, the City's investigators inspected the Property from the public right-of-
13 way. They observed a large amount of trash removed from the Property. However, multiple vehicles
14 parked near the area where Defendant KLUEY stated inoperable vehicles were parked on the Property
15 remained.

16 25. On July 1, 2021, the City's investigators inspected the Property from the public right-of-
17 way. They observed several vehicles were removed from the Property. However, multiple inoperable
18 vehicles, two trailers filled with trash, junk and debris, and the green plastic sheeting installed on the chain
19 link fence remained on the Property.

20 26. On July 15, 2021, Defendant INGLIS informed the City's investigator that two inoperable
21 vehicles were removed from the Property.

22 27. On July 29, 2021, the City's investigator received two voicemails from Defendant CASH.
23 Defendant CASH stated she would not correct the EMC violations on the Property. The City's
24 investigator also received an email from Ms. Stream-Johnson that the Property had been referred to a
25 local foreclosure attorney for processing. The City's investigators again inspected the Property from the
26 public right-of-way. They observed no corrections and a newly erected portable carport on the Property.
27 The City's investigator amended the NOV to include the unpermitted portable carport which is a violation

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1 of EMC section 33-96 and issued the NOV by regular mail to HUD, Defendants BEARER, CASH, and
2 KLUEY, and all unknown occupants.

3 28. On August 5, 2021, the City's investigator issued an AC to Defendant KLUEY observing
4 no corrections on the Property.

5 29. On September 14, 2021, the City's investigator received an email from Jayme Scott Dark,
6 a HECM Foreclosure Specialist with NOVAD Management Consulting, HUD's representative, stating
7 that HUD was the successful bidder at the foreclosure sale and that the eviction process would begin after
8 the federal eviction moratorium expired on September 30, 2021.

9 30. On November 2, 2021, the City's investigator inspected the Property from the public right-
10 of-way. She observed eight recreational vehicles and trailer coaches, one full size bus, two utility trailers,
11 approximately ten vehicles, and trash, junk and debris on the Property.

12 31. On November 8, 2021, Defendant INGLIS confirmed that Defendants CASH, BEARER,
13 and KLUEY continue to occupy the Property. Additionally, Angela Wilke, a Team Lead with NOVAD
14 Management Consulting, HUD's representative, confirmed a Notice of Foreclosure and Future
15 Occupancy had been issued to the occupants on September 30, 2021, and that HUD's case would be
16 referred to an eviction attorney the following week.

17 32. On November 30, 2021, the Escondido City Attorney's Office mailed a letter to HUD,
18 Defendants BEARER, CASH, KLUEY and INGLIS, and all unknown tenants and occupants demanding
19 all parties comply with the NOV issued on July 29, 2021.

20 33. On December 1, 2021, the City's investigator inspected the Property from a neighboring
21 property. She observed ten recreational vehicles and trailer coaches with an extension cord attached to
22 and the shade pulled out on one of the trailer coaches located in the rear yard, a large accumulation of
23 trash, junk and debris, and a portable canopy structure made of tarpaulins.

24 34. On February 28, 2022, Baron Tennell, a Paralegal for the Law Offices of Jason C. Tatman,
25 APC, HUD's counsel in the unlawful detainer case (Case No. 37-2022-00002685-CL-UD-CTL),
26 informed the City that the Complaint was filed and the parties were served.

27 35. On April 11, 2022, Mr. Tennell informed the City that the parties filed an Answer to the
28 Complaint and Summons.

1 43. Escondido Municipal Code section 6-482(f) defines responsible person as “a property
2 owner, a tenant, a person occupying or having control or possession of any property, any person with a
3 legal interest in real property (including banks or mortgage holders), and any person who directly manages
4 a business or property or who demonstrates responsibility for the maintenance and repair of the property,
5 or any agents thereof.”

6 44. DEFENDANTS currently occupy and/or have control or possession of the Property.

7 45. HUD initiated proceedings to evict the current occupants from the Property on September
8 30, 2021, and as of April 21, 2022, those proceedings are set to go to trial on May 3, 2022.

9 46. Since December 2020, the City’s inspectors observed large accumulations of trash, junk
10 and debris on the Property on several occasions. Although DEFENDANTS have removed significant
11 amounts of trash, junk and debris from the Property, to date there remains large amounts of trash, junk
12 and debris on the Property.

13 47. Escondido Municipal Code section 6-484(5)(B) declares “[t]arpaulins, plastic sheeting,
14 cloth and similar temporary coverings shall not be used to screen items prohibited by section 6-484(a)
15 from public view for any period of time.”

16 48. The City is informed and believes DEFENDANTS are utilizing the green plastic sheeting
17 installed on the chain link fence and tarpaulins to screen trash, junk, debris, and inoperable vehicles from
18 public view given, *inter alia*, (1) the green plastic sheeting was installed after the City’s inspector
19 communicated with Defendants BEARER, KLUEY and CASH, issued a NOV to Defendants BEARER
20 and CASH, inspected the Property with Defendants KLUEY and CASH, and issued an AC to Defendant
21 CASH; and (2) the tarpaulins are covering large piles of trash, junk and debris and individual vehicles and
22 recreational vehicles. To date, the green plastic sheeting and tarpaulins remain on the Property.

23 49. Escondido Municipal Code section 6-484(a)(6) declares “[i]t is unlawful for any
24 responsible person to use, allow, maintain, or deposit on such property any of the following: [a]bandoned,
25 wrecked, dismantled, or inoperative vehicles or parts thereof, including motor homes, trailers, campers
26 and boats, or any portions of any of the above, unless stored within an entirely enclosed space.”

27 50. The City is informed and believes DEFENDANTS are using, allowing, maintaining, or
28 depositing inoperable vehicles on the Property given, *inter alia*, (1) on March 11, 2021, the City’s

1 inspector observed a dismantled recreational vehicle parked in the front yard of the Property; (2)
2 Defendant KLUEY stated there was an area where inoperable vehicles are parked on the Property; (3) on
3 June 15, 2021 and July 1, 2021, the City’s inspector observed vehicles parked in the area where Defendant
4 KLUEY stated inoperable vehicles were parked on the Property; (4) on July 15, 2021, Defendant INGLIS
5 admitted to removing two inoperable vehicles from the Property; and (5) on April 20, 2022, the City’s
6 inspector observed multiple vehicles with flat tires, open hoods, propped on auto ramps and covered in
7 tarpaulins on the Property.

8 51. Escondido Municipal Code section 29-17 declares “[u]nless otherwise permitted by this
9 code, no trailer may be connected to any public utility within the city unless it is located within a licensed
10 trailer park.”

11 52. Escondido Municipal Code section 29-21 declares “[u]nless otherwise permitted by this
12 code, no trailer, mobile home or camper located outside a licensed trailer park shall be occupied as a
13 dwelling for any period of time.”

14 53. The City is informed and believes the trailer coaches are attached to public utilities given,
15 *inter alia*, (1) on December 1, 2021, the City’s investigator observed an extension cord attached to a trailer
16 coach on the Property; and (2) on April 20, 2022, the City’s investigator observed multiple utility cords
17 exposed on the ground as if recently disconnected.

18 54. The City is informed and believes the trailer coaches are occupied given, *inter alia*, (1) the
19 trailer coaches’ utility cords were exposed and on the ground indicating occupancy; (2) one of the trailer
20 coaches had an antenna propped on top of it indicating occupancy; (3) multiple trailer coaches were
21 extended indicating occupancy; (4) one of the trailer coaches had the shade pulled out indicating
22 occupancy; and (5) Defendant CASH admitted that the trailer coaches were occupied.

23 55. The Property is a 1.19 acre parcel of real property with a one-story residence not a licensed
24 trailer park.

25 56. The City notified DEFENDANTS of the violations contributing to the public nuisance by
26 written notice on January 5, 2021, April 22, 2021, July 29, 2021 and November 30, 2021. To date,
27 DEFENDANTS have not fully corrected the identified violations contributing to the public nuisance.

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1 57. The City is informed and believes and thereon alleges that DEFENDANTS will not further
2 correct the violations contributing to the public nuisance given, *inter alia*, (1) the continuous and current
3 using, allowing, maintaining, or depositing of trash, junk, debris, tarpaulins, inoperable vehicles, and
4 occupied trailer coaches connected to public utilities on the Property; (2) the April 2021 installation of the
5 green plastic sheeting on the chain link fence screening the trash, junk, debris, tarpaulins, inoperable
6 vehicles, and occupied trailer coaches connected to public utilities from public view; and (3) Defendant
7 CASH's July 29, 2021 voicemail messages stating she would not correct the EMC violations on the
8 Property.

9 58. The City has no adequate remedy at law against DEFENDANTS because they refuse to
10 discontinue the unlawful use of the Property. DEFENDANTS continue to use, allow, maintain and
11 deposit a large amount of trash, junk debris, inoperable vehicles, tarpaulins, and occupied trailer coaches
12 attached to public utilities on the Property and maintain installed a green plastic sheeting on the chain link
13 fence to screen these items from public view.

14 59. Unless restrained by order of this Court, DEFENDANTS will continue the unlawful use
15 of the Property contributing to the violation of the law.

16 **SECOND CAUSE OF ACTION**

17 **DECLARATORY RELIEF**

18 **(Alleged Against All Defendants)**

19 60. The City incorporates by reference the allegations contained in paragraphs 1 through 58
20 into this Second Cause of Action as though fully set forth.

21 61. An actual controversy has arisen, and now exists, between the City and DEFENDANTS,
22 and each of them, concerning the respective rights, duties and obligations of the parties as it relates to the
23 permitted use of the Property.

24 62. The City is informed and believes, and thereon alleges, that absent a declaration issued by
25 the Court, the DEFENDANTS, and each of them, will continue to use or permit uses of the Property
26 which are in violation of the EMC, and constitute nuisances which must be abated.

27 63. Other than the relief sought in this action, the City has no plain, speedy or adequate remedy
28 at law.

64. Accordingly, the City respectfully requests that this Court issue a declaration that, by using or permitting to use the Property in violation of the EMC, the use constitutes a nuisance which must be abated.

PRAYER

WHEREFORE, CITY PRAYS FOR JUDGMENT AGAINST DEFENDANTS AS FOLLOWS:

On the First Cause of Action:

1. That pursuant to EMC sections 1-14, and the Court’s inherent powers, the Court grant a temporary, preliminary and/or permanent injunction enjoining and restraining DEFENDANTS and their agents, servants, employees, partners, associates, officers, representatives and all persons acting under or in concert with or for DEFENDANTS, in the following manner:

- a. DEFENDANTS shall not establish, own, allow, or maintain any violation of the law on the Property;
- b. DEFENDANTS shall remove all trash, junk and debris from the Property;
- c. DEFENDANTS shall remove all tarpaulins, plastic sheeting, cloth and similar temporary coverings from the Property;
- d. DEFENDANTS shall remove all abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof, including motor homes, trailers, campers and boats, or any portions of any of the above;
- e. DEFENDANTS shall remove all connections to public utilities from any trailer on the Property; and
- f. DEFENDANTS shall not allow any individual to occupy as a dwelling any trailer on the Property.

On the Second Cause of Action:

2. For a judicial determination that DEFENDANTS’ current use of the Property is a violation of EMC sections 6-484, 29-17, and 29-21, making such use unlawful and a public nuisance.

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On All Causes of Action:

3. That the City recover costs of this suit including, but not limited to, attorneys' fees; expert, consultant and investigatory fees; and other litigation expenses from DEFENDANTS, their successors and assigns in an amount to be proven at trial; and

4. That the Court grant the City such other and further relief as the nature of the case may require and the Court deems appropriate.

DATED: April 21, 2022

OFFICE OF THE CITY ATTORNEY
Michael R. McGuinness, City Attorney
Gary J. McCarthy, Assistant City Attorney

By: /s/ Alma Gurrola
ALMA GURROLA, Deputy City Attorney