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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CITY OF SACRAMENTO, a municipal corporation, Plaintiff, vs. DANIEL J. ALSTATT, and DOES 1 - 20 inclusive, Defendants.	Case No.: 34-2015-00184866 JUDGMENT BY COURT AFTER DEFAULT ISSUING PERMANENT INJUNCTION AND AWARDING CIVIL PENALTIES APN: 008-052-0800-0000 (Filed Mar. 11, 2020)
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In this action, Defendant DANIEL J. ALSTATT (also known as Daniel J. Altstatt), having been sued herein for equitable relief and civil penalties, having been personally served with the summons and complaint, having failed to answer the complaint within the time allowed by law, and upon application by Plaintiff, default of said Defendant having been entered.

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I. The Court finds that Defendant DANIEL J. ALSTATT is the owner of 4432 H Street, Sacramento, California, County Assessor's Parcel Number 008-052-0800-0000 ("Subject Property"), and is more particularly described as follows:

LOT 93 AS SHOWN ON THE "PLAT OF MONT CLAIR OR BROOKE REALTY COMPANY'S SUBDIVISION NO. 106" RECORDED TN THE OFFICE OF THE COUNTY RECORDER OF SACRAMENTO COUNTY, NOVEMBER 28, 1906, IN BOOK 7 OF MAPS, MAP NO. 31.

II. Judgment is hereby rendered in favor of Plaintiff CITY OF SACRAMENTO, it is HEREBY ORDERED that:

A. Defendant DANIEL J. ALSTATT pay Plaintiff CITY OF SACRAMENTO civil penalties pursuant to Sacramento City Code section 8.04.080(B) of two-hundred and fifty dollars (\$250.00) per day commencing on November 2, 2014, and continuing through December 12, 2017, for a total of \$284,000.00.

B. Defendant DANIEL J. ALSTATT pay Plaintiff CITY OF SACRAMENTO civil penalties pursuant to Sacramento City Code section 8.100.170(A) of two-hundred and fifty dollars (\$250.00) per day commencing on November 2, 2014, and continuing through December 12, 2017, for a total of \$284,000.00.

III. The Court having found that good cause exists to issue a Permanent Injunction against Defendant

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DANIEL J. ALSTATT, hereby further orders the following:

DANIEL J. ALSTATT shall be and hereby is permanently enjoined and restrained from:

- A. Violating any and all applicable building, health, fire, and safety codes, regulations, ordinances, and laws in connection with the Subject Property;
- B. Refusing or failing to carry out, in a proper and workmanlike manner, all corrections needed to clean and maintain the Subject Property;
- C. Storing, causing or allowing to be stored, parking, causing or allowing to be parked, any vehicles and/or trailers of any type on any unimproved surface or portion of any unimproved surface of the Subject Property, including but not limited to the front, side, and rear yards of the Subject Property; and
- D. Impeding, interfering, hindering, or otherwise obstructing any investigation undertaken by a law enforcement or regulatory agency.

DANIEL J. ALSTATT shall be and hereby is required and mandated to:

- A. Abide by all laws and manage the Subject Property in a manner that enhances the peace and quiet of the surrounding neighborhood and discourages nuisance behaviors such as loud noises, visual blight, and keeping of junk and debris;

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B. Conduct and perform routine inspections of the Subject Property to ensure that all nuisance conditions and/or activities are prevented from occurring.

IV. It is further ordered that, in the event Defendant DANIEL J. ALSTATT fails to keep the Subject Property free of the nuisance conditions, Plaintiff may lodge a proposed order by which a receiver shall be appointed to take possession, custody, and control of the Subject Property to remove, repair, and/or abate all violations existing thereon. An appointed receiver shall have all powers enumerated under California Code of Civil Procedure section 568 and California Health and Safety Code section 17980.7.

V. It is further ordered that Defendant DANIEL J. ALSTATT pay Plaintiff CITY OF SACRAMENTO reasonable attorney's fees pursuant to Sacramento City Code section 1.28.040 in the amount of FIVE THOUSAND DOLLARS (\$5,000.00).

DATED: 3-11-2020

[SEAL] /s/ Christopher E. Krueger
JUDGE OF THE
SUPERIOR COURT
CHRISTOPHER E. KRUEGER

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

CITY OF SACRAMENTO,	C092141
Plaintiff and	(Super. Ct. No.
Respondent,	34201500184866CUMCGDS)
v.	(Filed May 18, 2022)
DANIEL JAMES ALTSTATT,	
Defendant and	
Appellant.	

Defendant Daniel James Altstatt appeals from a default judgment entered against him in plaintiff City of Sacramento's (City) action for civil penalties and injunctive relief based on a public nuisance. The City asserts defendant's appeal should be dismissed because he fails to comply with fundamental appellate requirements. Although defendant's briefing is flawed, we will nevertheless address his arguments.

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Defendant, representing himself, now contends (1) the civil penalties imposed were constitutionally excessive in violation of the Eighth Amendment, (2) reversal is necessary based on accusations defendant makes against the City and the trial court, (3) the trial court violated his due process rights, and (4) the trial court abused its discretion by not setting aside the default judgment. Concluding that defendant's contentions lack merit, we will affirm the judgment.

BACKGROUND

Defendant owned residential property in Sacramento, which he maintained in a manner that created a severe public nuisance. In 2014, the City began enforcement efforts to require defendant to remedy multiple code violations, but defendant did not take the necessary actions. Instead, defendant insisted that the City cease its code enforcement activities.

After further unproductive enforcement efforts, the City filed a complaint in 2015 based on public nuisance, seeking civil penalties and injunctive relief. Defendant was personally served. Defendant filed numerous requests, demands, objections, motions, and notices in response to the complaint. Twice, defendant attempted to remove the action to federal court, and in each instance the case was remanded to the state trial court. Despite defendant's many filings, he never answered the City's complaint.

On February 1, 2018, defendant's default was entered. Twenty months later, on October 29, 2019,

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defendant filed a motion to set aside the default. He asserted (1) the default was void because the trial court lacked personal jurisdiction over him, (2) the City failed to file a timely request for default, (3) the City failed to obtain a timely default judgment, (4) there was extrinsic mistake, and (5) the default was harsh and unfair under federal law.

The trial court denied defendant's motion to set aside the default. It concluded (1) the trial court had personal jurisdiction over defendant, (2) the rule concerning a timely request for default does not provide for setting aside a default properly entered, (3) the rule concerning obtaining a timely default judgment does not provide for setting aside a default properly entered, (4) defendant presented no valid argument concerning extrinsic fraud, (5) defendant's motion to set aside the default was untimely, and (6) defendant failed to include a copy of the proposed answer or responsive pleading. The trial court noted but did not address defendant's argument that the default was harsh and unfair under federal law.

On March 11, 2020, the trial court entered default judgment against defendant. The judgment imposed a total of \$568,000 in civil penalties for three years of continuing violations of the Sacramento City Code and, in essence, permanently enjoined defendant from maintaining his residential property as a public nuisance. Sacramento City Code section 8.04.080, subdivision (B) provides for civil penalties for nuisance violations of between \$250 and \$25,000 per day. The trial court imposed the minimum of \$250 per day.

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Further, Sacramento City Code section 8.100.170, subdivision (A) provides the same civil penalties for violations of the Housing Code. The trial court again imposed the minimum \$250-per-day penalty. The judgment also provided that the City may lodge a proposed order appointing a receiver of the property if defendant fails to keep the property free of nuisance conditions. Finally, the judgment required defendant to pay the City \$5,000 for attorney's fees.

DISCUSSION

I

Defendant contends the civil penalties imposed were constitutionally excessive in violation of the Eighth Amendment.

“The Eighth Amendment to the United States Constitution states: ‘Excessive bail shall not be required, *nor excessive fines imposed*, nor cruel and unusual punishments inflicted.’ (Italics added.) ‘[T]he Due Process Clause of the Fourteenth Amendment to the Federal Constitution . . . makes the Eighth Amendment’s prohibition against excessive fines and cruel and unusual punishments applicable to the States. [Citation.] The Due Process Clause of its own force also prohibits the States from imposing “grossly excessive” punishments. . . .” [Citation.] [¶] The California Constitution contains similar protections. Article I, section 17, prohibits ‘cruel or unusual punishment’ and ‘excessive fines’; article I, section 7, prohibits the taking of property ‘without due process of law.’” (*People ex rel.*

Lockyer v. R.J. Reynolds Tobacco Co. (2005) 37 Cal.4th 707, 727-728.)

Although a default judgment is reviewable on appeal the same as any other civil judgment (*Misic v. Segars* (1995) 37 Cal.App.4th 1149, 1153-1154), a defendant may not contest the merits of the case in an appeal from a default judgment. (*Steven M Garber & Associates v. Eskandarian* (2007) 150 Cal.App.4th 813, 823-824 [a default operates as an express admission of well-pleaded factual allegations in the complaint].) Instead, the defendant may contest only whether the trial court had jurisdiction over the defendant, whether the pleadings were sufficient, and whether the relief granted exceeds that sought in the pleadings. Defendant may also assert any procedural issues relating to the entry of default, the default judgment, or motions for relief from such default. (*Id.* at p. 824.)

We review de novo a civil penalty for constitutional excessiveness under the Eighth Amendment. In doing so, we accept the trial court's factual findings unless they are clearly erroneous. (*Sweeney v. California Regional Water Quality Control Bd.* (2021) 61 Cal.App.5th 1093, 1136-1137.) Defendant's problem with raising a constitutional excessiveness claim on appeal is that he did not provide the trial court an opportunity to conduct an excessiveness inquiry or make factual findings. Even after he defaulted, defendant could have, but did not, file a motion for new trial. Instead, he filed a motion for reconsideration. A defendant may attack a default judgment in the trial court by filing a motion for new trial on the ground of excessive

damages. (*Misic v. Segars, supra*, 37 Cal.App.4th at p. 1154.) On the other hand, the trial court is without jurisdiction to entertain a motion for reconsideration after judgment. (*Safeco Ins. Co. v. Architectural Facades Unlimited, Inc.* (2005) 134 Cal.App.4th 1477, 1482.) Additionally, defendant filed his notice of appeal before the hearing set for the motion for reconsideration. Therefore, having filed no motion for new trial and having filed his notice of appeal, defendant did not give the trial court the opportunity to evaluate whether the civil penalties were constitutionally excessive. Because we have no factual findings to consider, defendant's only prospect of success is to establish that the civil penalties imposed were constitutionally excessive as a matter of law under any circumstances.

But defendant does not make such an argument. Indeed, similar penalties were upheld in a case involving continuing local housing code violations. (*City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1321-1323 [\$663,000 in civil penalties for continuing violations not constitutionally excessive].)

In any event, defendant makes no factual argument that the civil penalties were constitutionally excessive. "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality." [Citation.] [The principle includes] four considerations: (1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay. [Citations.]" (*People ex*

rel. Lockyer v. R.J. Reynolds Tobacco Co., supra, 37 Cal.4th at p. 728.)

Defendant does not attempt to apply these principles to any facts associated with his case. Instead, his argument concerning excessiveness consists of quoting various sources concerning excessive fines and then arguing that the civil penalties here are excessive because they are more than the civil penalties imposed in *Timbs v. Indiana* (2019) ____ U.S. ____ [203 L.Ed.2d 11]. However, that case does not help defendant because its holding was that the Excessive Fines Clause of the Eighth Amendment applies to the states. The United States Supreme Court did not consider whether the fine in that case violated the Excessive Fines Clause but instead sent it back to the state court for that determination. (*Timbs*, at p. ____ [203 L.Ed.2d at pp. 15-16, 20].) Accordingly, defendant's argument that the civil penalties were unconstitutionally excessive is without factual or legal support and is without merit.

II

Defendant makes several unfounded and unsupported accusations against the City and the trial court, contending reversal is therefore necessary. He asserts the default judgment is a miscarriage of justice and shocks the judicial conscience. He claims the City's code enforcement merely serves to provide revenue for the City. He argues the City has engaged in predatory action for unjust enrichment. And he concludes that

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the trial court is complicit in all of the City's wrongdoing.

Defendant's accusations are unfounded because he fails to cite evidence in the record to support them. The only evidence he presents is the amount of the judgment against him. As one example of the failure to provide supporting evidence, defendant alleges the judgment will render him "homeless and penniless," but he does not provide a citation to the record on appeal to support that allegation. We are not free to accept a party's assertions of fact on appeal because we are constrained to review cases based on the appellate record presented to us. (*In re Ketchel* (1968) 68 Cal.2d 397, 401.)

Because we must presume the judgment is correct, an appellant bears the burden of overcoming that presumption by affirmatively demonstrating error and accompanying prejudice. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, the appellant must affirmatively show prejudicial error based on citation to relevant evidence and proceedings in the record. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655-656.)

While we understand that it can be frustrating for appellants who are self-represented to confine their arguments to the record on appeal, defendant's accusations do not constitute proper argument based on the evidence in the record and its legal effect. "In propria persona litigants are entitled to the same, but no greater, rights than represented litigants and are presumed to know the [procedural and court] rules.

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[Citations.]” (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.) We reject defendant’s accusations as unfounded on this record.

III

Defendant next contends the trial court violated his due process rights.

It appears that one of defendant’s specific arguments in this regard is that, because he appeared generally in the actions by making various motions and other filings, he was not in default. This argument is without merit because a general appearance is not the same as an answer to the complaint, and none of defendant’s filings were a substitute for an answer. To avoid default, a defendant must file either an answer or a pleading that substitutes for an answer, such as a demurrer. (Code Civ. Proc., § 585, subds. (a), (b) [authorizing clerk, upon application, to enter the defendant’s default if “no answer, demurrer, [or other enumerated response] has been filed”].) Defendant did not make such a filing, so he defaulted on the complaint.

Defendant also argues the default judgment is void for lack of jurisdiction because the trial court failed to apply the rules concerning timely requests for default and for default judgment. Defendant cites California Rules of Court, rule 3.110(g) & (h).

California Rules of Court, rule 3.110(g) provides: “If a responsive pleading is not served within the time

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limits specified in this rule and no extension of time has been granted, the plaintiff must file a request for entry of default within 10 days after the time for service has elapsed. The court may issue an order to show cause why sanctions should not be imposed if the plaintiff fails to timely file the request for the entry of default.”

In addition, California Rules of Court, rule 3.110(h) provides: “When a default is entered, the party who requested the entry of default must obtain a default judgment against the defaulting party within 45 days after the default was entered, unless the court has granted an extension of time. The court may issue an order to show cause why sanctions should not be imposed if that party fails to obtain entry of judgment against a defaulting party or to request an extension of time to apply for a default judgment within that time.”

It is undisputed the City did not request entry of default and obtain a default judgment within the time prescribed by these rules. However, defendant makes no argument and cites to no authority for the proposition that the trial court lacks jurisdiction to enter default or default judgment if a plaintiff does not comply with these rules. An appellate brief must “support each point by argument and, if possible, by citation of authority.” (Cal. Rules of Court, rule 8.204(a)(1)(B).) If a party fails to cite authority or present argument, the party forfeits the issue on appeal. (*Estate of Cairns* (2010) 188 Cal.App.4th 937, 949.)

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Finally, defendant argues default judgment was improper because the City should have filed a motion for summary judgment. Defendant is mistaken. The City properly requested entry of default and moved to obtain default judgment because defendant did not answer the complaint. (Code Civ. Proc., § 585.) Defendant fails to provide authority for his argument that the City should have filed a motion for summary judgment. (*Estate of Cairns, supra*, 188 Cal.App.4th at p. 949.)

IV

Defendant further contends the trial court abused its discretion by not setting aside the default judgment.

Defendant's argument is unfocused and difficult to discern. He apparently raises anew issues we have already discussed above. We need not discuss them again.

Defendant also recounts that the trial court changed its tentative ruling five minutes before the hearing on the motion for relief from default. He claims this establishes prejudice, lack of due process, and abuse of discretion. To the contrary, “[a] tentative ruling is just that, tentative.” (*Guzman v. Visalia Community Bank* (1999) 71 Cal.App.4th 1370, 1378.) The trial court may change it before making a final ruling. (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 646-647.) It did so here.

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Any other arguments defendant makes on the issue of abuse of discretion are not sufficiently raised and supported by authority to merit consideration on appeal. (*People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2.)

DISPOSITION

The judgment is affirmed. The City is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

/s/ Mauro
MAURO, J.

We concur:

/s/ Blease
BLEASE, Acting P. J.

/s/ Hoch
HOCH, J.

[Mailing List Omitted]

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**IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT**

CITY OF SACRAMENTO,
Plaintiff and
Respondent,
v.
DANIEL JAMES ALTSTATT,
Defendant and
Appellant.

C092141
Sacramento County
No.
34201500184866CUMCGDS
(Filed Jun. 10, 2022)

BY THE COURT:

Appellant's petition for rehearing is denied.

/s/ Mauro
MAURO, Acting P.J.

cc: See Mailing List

[Mailing List Omitted]

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Court of Appeal, Third Appellate District -
No. C092141

S275246

IN THE SUPREME COURT OF CALIFORNIA
En Banc

CITY OF SACRAMENTO, Plaintiff and Respondent,

v.

DANIEL JAMES ALTSTATT, Defendant and Appellant.

(Filed Aug. 17, 2022)

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

JAMES SANCHEZ, City Attorney (SBN 116356)
ADRIAN CARPENTER, Deputy City Attorney
(SBN 283316)

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CITY OF SACRAMENTO,
a Municipal Corporation,

Plaintiff,

vs.

DANIEL J. ALSTATT
and DOES 1 through 20,
inclusive,

Defendants.

Case No.:
APN: 008-0052-008-0000

**COMPLAINT FOR PRE-
LIMINARY INJUNC-
TION, ABATEMENT,
CIVIL PENALTIES,
AND OTHER
EQUITABLE RELIEF**

- 1. PUBLIC NUISANCE,
CAL. CIVIL CODE
§§ 3479, 3480;**
- 2. SUBSTANDARD
HOUSING, SACRA-
MENTO CITY CODE
§8.100, *et seq.***
- 3. GENERAL BLIGHT,
SACRAMENTO CITY
CODE § 8.04, *et. seq.***

(Filed Sep. 29, 2015)

The CITY OF SACRAMENTO, a municipal corporation, alleges:

I.

JURISDICTION AND VENUE

1. The City of Sacramento is a municipal corporation organized and existing under a Charter adopted and from time to time amended pursuant to Article XI, Section 3, of the Constitution of the State of California.

2. Pursuant to Code of Civil Procedure Section 392, venue is proper in the Sacramento County Superior Court, because the real Subject Property which is the subject of this action is located in the City and County of Sacramento.

3. Plaintiff brings this action pursuant to Section 731 of the California Code of Civil Procedure and Sacramento City Code (“SCC”) §§ 8.04.080 and 8.100.170, on behalf of itself to abate a public nuisance.

II.

DEFENDANT DANIEL J. ALSTATT

4. Defendant DANIEL J. ALSTATT is now and at all times herein mentioned, is the record owner, tenant, occupant, visitor and/or person responsible for and in control of the real Subject Property and all buildings, including the single-story, single family residence and other improvements located at 4432 H Street,

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Sacramento, California (hereafter referred to as the "Subject Property"), and more particularly *described as*:

Lot 93 as shown on the "Plat of Mont Clair or Brooke Realty Company's Subdivision No. 106" recorded in the office of the County Recorder of Sacramento County, November 28, 1906, in Book 7 of maps, Map No. 31.

A copy of the deed is attached hereto as **Exhibit A.**

5. Defendant DANIEL J. ALSTATTE is and has been living within the City of Sacramento, is a resident of the City of Sacramento and owner of the Subject Property. The violations hereinafter described have been carried out within the City of Sacramento. The actions of Defendant and each of them, jointly and severally as set forth below, are in violation of the law and public policy of the State of California, and are inimical to the rights and interests of the general public.

6. Plaintiff is informed and believes and thereupon alleges that, at all times relevant hereto Defendant was and .currently is responsible for the maintenance, repair, operation, direction, and control of all or portions of the Subject Property.

7. Plaintiff is informed and believes and, therefore, alleges upon such information and belief that commencing on or about June 4, 2014, a public nuisance existed on the Subject Property and continues to be unabated.

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8. Plaintiff does not know the true names or capacities, whether individual, corporate, associate, partnership, or otherwise of those named herein as DOES 1 through 20, inclusive, and when the true names of these defendants so fictitiously named are ascertained, Plaintiff will ask leave of the court to amend this complaint and to insert the true names of the fictitiously named Defendants.

9. Each Defendant and each Defendant DOE named herein has some substantial interest, financial, and/or otherwise direct and/or indirect, in the Subject Property, and/or has participated in each of the complained of acts specifically set forth in this complaint, and/or were the beneficial owners, tenants, occupants and/or persons in control of the Subject Property.

10. Plaintiff is informed and believes and thereupon alleges that, at all times pertinent to this complaint, all the acts and omissions alleged herein were duly performed by and attributable to all defendants, each acting as agent, employee, or under the direction and control of the others. Said acts and failures to act were within the scope of said agency or employment, and each defendant ratified the acts and omissions by the other defendants. Whenever reference is made in this complaint to any act or omission of a defendant, such allegation shall be deemed to mean defendant, or his, her or its officers, agents, managers, representatives, employees, or defendants named herein as DOES 1 through 20, did or authorized such acts while actively engaged in the operation, management, direction or control of the affairs of such defendant while acting

within the course and scope of their duties, and further shall be deemed to mean the acts by each defendant herein acting individually, jointly, or severally.

III.

GENERAL ALLEGATIONS

11. Beginning on or about June 4, 2014 and continuing to the present, Plaintiff, the CITY OF SACRAMENTO, has had an open and pending Code Enforcement case as a result of the conditions and violations that have existed and continue to exist at the Subject Property at 4432 H Street, Sacramento, CA, in violation of the Sacramento City Code.

12. The Subject Property is located within the City and County of Sacramento. The Subject Property contains a single family residence.

13. On or about October 1, 2014, the City of Sacramento caused to be filed in the County Recorder's Office of the County of Sacramento a Notice of Pending Enforcement Proceeding or Action for the Subject Property, in order to place the public and any successor in interest on notice of the nuisance conditions at the Subject Property pursuant to Sacramento City Code Chapter 8. This Notice of Pending Enforcement Proceeding or Action was recorded on the Subject Property on November 25, 2014. Said Notice of Pending Enforcement Proceeding or Action still remains in full force and effect and has never been withdrawn. A recorded

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copy of the Notice of Pending Enforcement Proceeding or Action is attached hereto as **Exhibit B**.

14. On September 30, 2014, the City issued a Notice and Order to clean, remove, or repair the Subject Property because of the numerous City Code violations that existed on the Subject Property. Defendant DANIEL J. ALSTATT was personally served with this Notice and Order on or about December 10, 2014. Defendants failed to appeal this Notice and Order, and it became final on October 30, 2014. A copy of this Notice and Order to repair or demolish and the Proof of Service is attached hereto as **Exhibit C**.

15. Sacramento City Code sections 8.04.110 and 8.100.700 through 8.100.770, of the Sacramento City Code set forth the procedures concerning Notice and Orders. Sections 8.04.170, 8.100.760 and 8.100.770 of the Sacramento City Code together state that any person wishing to appeal a Notice and Order must do so within thirty (30) days of service thereof, and if no such appeal is filed within that time such failure constitutes a waiver of all rights to an administrative hearing and shall be a final determination and adjudication of the matter of the Notice and Order.

16. Sacramento City Code sections 8.04.290 and 8.100.850(ii) state that after any Notice and Order has become final and any person(s) to whom such order has been directed fails, neglects or refuses to obey such an order, Plaintiff may institute any appropriate action to abate such a building and Subject Property as a public nuisance.

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17. As no appeal was received from Defendant, or anyone else claiming to be an heir or beneficiary, Plaintiff's determinations became final and binding as the record owner, has failed to exhaust their administrative remedy by seeking to administratively appeal Plaintiff's determinations that the violations existing at the Subject Property constituted a public nuisance.

18. The Subject Property continues to be left in a state of complete disrepair, with junk and debris overtaking the Subject Property. The aforementioned lack of maintenance and rehabilitation of the Subject Property by Defendant constitutes a public nuisance within the meaning of Section 3479 of the Civil Code, Sacramento City Code Section 8.04.100 (general nuisance) and 8.100.110 (substandard buildings).

19. Defendant has had ample opportunity to correct the substandard, dangerous conditions on the Subject Property; but, despite knowledge of the conditions and their opportunities to correct them, Defendant has failed and refused, and continues to fail and refuse, to make all repairs necessary to bring the Subject Property into compliance with all applicable building, health, fire, safety codes, regulations, ordinances, and laws. Therefore, Plaintiff is informed and believes that the Defendant will continue to maintain the Subject Property in the above-described condition, thereby causing irreparable injury and harm to the public's health, safety and welfare.

20. Plaintiff is informed and believes that the Defendant will not correct these violations or abate the

nuisance within a reasonable time. If it becomes necessary for Plaintiff to correct the violations or abate the nuisance, Plaintiff will incur substantial costs. As part of its prayer, Plaintiff requests recovery of its costs to correct these violations or abate the nuisance and establish a prior lien on the Subject Property for such costs.

IV.
FIRST CAUSE OF ACTION PUBLIC NUISANCE
(Civil Code Section 3480)

21. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 20, inclusive, as if fully set forth in this paragraph.

22. Defendant DANIEL J. ALSTATT has caused and is maintaining a continuing public nuisance on or about the Subject Property since on or about June 4, 2014, and most likely longer than that. Conditions which render the Subject Property a public nuisance include but are not limited to:

- A. Keeping, storage, depositing, and accumulation of junk and debris (SCC 8.04.100A);
- B. Parking on Unimproved Surface (SCC 10.44.010B);
- C. Storing Inoperable Vehicles (SCC 8.04.100A); and,
- D. Hazardous or unsanitary premises (SCC 8.100.650).

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23. Maintenance of the Subject Property in the condition described above is a continuing public nuisance as defined in Civil Code sections 3479 and 3480. It is injurious to the health, offensive to the senses, and obstructs the free use of public and private Subject Property, so as to interfere with the comfortable enjoyment of life or Subject Property. Defendants' conduct affects an entire community or neighborhood.

24. Plaintiff is informed and believe that Defendants will continue to maintain the Subject Property in the above-described condition, thereby causing irreparable injury and harm to the public health, safety, and welfare.

25. Plaintiff has no plain, speedy, or adequate remedy at law to prevent Defendants from continuing to maintain the above-described public nuisance. The public nuisance will be maintained, unless restrained and enjoined by this court.

26. Defendants have not taken any meaningful measures to permanently correct these violations and even after numerous notices to do so, the Subject Property continues to maintain the public nuisance activity. Plaintiffs are informed and believe that Defendants' will not correct these violations within a reasonable time. If it becomes necessary for Plaintiffs to correct the violations or abate the nuisance, the City will incur substantial costs. Plaintiffs request recovery of its costs to correct these violations or abate the nuisance and establish a priority lien against the Subject Property

and/or a personal obligation against each of the Defendants for such costs.

V.

**SECOND CAUSE OF ACTION
SUBSTANDARD HOUSING – NUISANCE
PER SE, VIOLATION OF SACRAMENTO
CITY CODE CHAPTER 8.100**

27. Plaintiff incorporates by *reference* the allegations set forth in Paragraphs 1 through 26, inclusive, of this Complaint.

28. Defendants have caused, permitted and maintained a public nuisance in violation of Sacramento City Code section 8.100.100.

29. Sacramento City Code section 8.100.110 provides that any building that is determined to be dangerous/ substandard is declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition, board-up, fencing or removal.

30. Defendants have caused, permitted and maintained a public nuisance in violation of Sacramento City Code section 8.100, *et seq.*, including, but not limited to the following violations:

A. SCC 8.100.650 – Hazardous or unsanitary premises.

31. Sacramento City Code section 8.100.170, provides that any person who maintains a dangerous building shall be liable for civil penalties of not less than two hundred and fifty (\$250) dollars or more than

twenty-five thousand (\$25,000) dollars for each day the violation continues.

32. Pursuant to Sacramento City Code section 8.100.170, the City Attorney's Office is authorized to pursue an action for civil penalties.

33. Plaintiff requests that civil penalties be assessed against Defendants commencing on and from October 30, 2014, which date the Notice and Order issued against the Subject Property became final.

VI.

THIRD CAUSE OF ACTION GENERAL NUISANCE - BLIGHT VIOLATION OF SACRAMENTO CITY CODE CHAPTER 8.04

34. Plaintiff realleges and incorporates by reference paragraphs I through 33, inclusive, as if fully set forth in this paragraph.

35. Defendant has caused, permitted and maintained a public nuisance in violation of Sacramento City Code section 8.04.100 – General Nuisance.

36. Sacramento City Code section 8.04.100 provides that it is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in this city to maintain such premises in such a manner that any one or more of the conditions or activities described thereafter are found to exist and allowed to continue:

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37. Defendant has caused, permitted and maintained a public nuisance in violation of Sacramento City Code section 8.04.100, et seq., including but not limited to the following violations:

- A. SCC 8.04.100(A) – The keeping, storage, depositing, or accumulating trash, junk, and debris.
- B. SCC 8.04.100(A)- The keeping, storage, depositing or acclamation of inoperative, abandoned, dismantled or wrecked vehicles.

38. Sacramento City Code section 8.04.080(B) provides that any person violating Chapter 8.04 shall be liable for civil penalties of not less than two hundred and fifty (\$250) dollars or more than twenty-five thousand (\$25,000) dollars for each day the violation continues.

39. Pursuant to Sacramento City Code section 8.04.290, the City Attorney's Office is authorized to pursue an action for civil penalties.

40. Plaintiff requests that civil penalties be assessed against Defendant commencing on and from October 30, 2014, the date on which the original Notice and Order issued against the Subject Property became final.

VII.
PRAYER

WHEREFORE, Plaintiff prays judgment against Defendant as follows:

1. For an order requiring Defendant to show cause why he should not be enjoined as hereinafter set forth during the pendency of this action.
2. For a preliminary injunction and permanent injunction, each enjoining and prohibiting Defendant and his agents, servants, employees, and all persons acting under, in concert with, or for him from:
 - A. Violating any and all applicable building, fire, health, and safety codes, ordinances regulations, and laws in connection with the Subject Property; and,
 - B. Refusing or failing to carry out, in a proper and workmanlike manner, pursuant to a building permit, all repairs needed to correct conditions of the structure which rendered it untenable, uninhabitable, unsafe, or unhealthy, in connection with the Subject Property; or, in lieu thereof, to forthwith seek and obtain from the Sacramento City Building Inspections Division a sewer and demolition permit and to demolish the structures on the Subject Property pursuant to Sacramento City Codes.
3. For a preliminary injunction and permanent injunction, each enjoining and mandating Defendant, his agents, servants, employees, and all persons acting under, in concert with, or for him to:

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- A. Abide by all laws and manage the Subject Property in a manner that enhances the peace and quiet of the surrounding neighborhood and discourages social nuisances such as loud noises, visual blight, and keeping of junk and debris;
- B. Clean, remove, clear, all junk, debris, trash, rubbish and vegetation from the Subject Property;
- C. Secure all buildings, dwellings, structures and fixtures at the Subject Property, in order to prevent unauthorized individuals from gaining access and/or entry;
- D. Defendants shall conduct and perform routine inspections of the Subject Property to ensure it remains secure and all nuisance conditions and/or activities are prevented from occurring;
- E. Defendants shall not impede, interfere, hinder or otherwise obstruct any investigation(s) undertaken by law enforcement or regulatory agency;
- F. Obtain all required permits and comply with all previously issued orders issued by the building inspectors and code enforcement officers in connection with the Subject Property within thirty (30) days of any order or judgment; or in the alternative to seek and obtain, within thirty (30) days of the order or judgment, a sewer disconnect and demolition permit and to thereafter demolish the structure(s)

App. 33

within a reasonable time to be set by the court following issuance of the permit.

- G. To comply with and to proceed with due diligence to obtain approval from any City of Sacramento board or commission which may require to improve, repair or demolish any structure on the Subject Property.
4. For an order permitting the Plaintiff to inspect the Subject Property upon twenty-four (24) hours' notice. Such notice shall be made by way of posting notice on the Subject Property.
5. In addition to the issuance of a preliminary injunction, for an abatement order as authorized by Health and Safety Code section 17982, that the Plaintiff, as the enforcement agency, is authorized to remove any violations and abate any nuisance specified in the Plaintiff's Notices and Orders by entering upon the Subject Property in the absence of a warrant and between the hours of 8 a.m. to 6 p.m., in the event Defendant fails to abate the nuisance conditions as ordered by the preliminary injunction, order, or judgment. Such abatement shall include demolition of the structures in non-compliance upon the Subject Property. Any costs associated with demolition of the Subject Property shall be the responsibility of the Defendant.
6. For an order that should Defendant fail to obtain all required permits and comply with all previously issued orders issued by the building inspectors and code enforcement officers in connection with the

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Subject Property within thirty (30) days of any order or judgment, that a Receiver may be appointed to enforce the terms of the order or judgment and who shall take possession, custody, and control of the Subject Property in order to remove, repair, and/or abate all violations existing thereon at the Subject Property. An appointed receiver shall have all powers as enumerated pursuant to Code of Civil Procedure section 568 and Health and Safety Code section 17980.7.

7. For civil penalties pursuant to SCC § 8.100.170(A), in the court's discretion, of no less than two hundred and fifty dollars (\$250.00) and not more than twenty-five thousand (\$25,000.00) dollars per day commencing on October 30, 2014 and continuing through the date of judgment or the date Defendant complied, whichever is sooner.

8. For civil penalties pursuant to SCC § 8.04.080(B), in the court's discretion, of no less than two hundred and fifty dollars (\$250.00) and not more than twenty-five thousand (\$25,000.00) dollars per day commencing on October 30, 2014 and continuing through the date of judgment or the date Defendant complied, whichever is sooner.

9. For payment of the outstanding Community Development Department fees, costs and penalties outstanding on the Subject Property, in an amount no less than \$7,470.00.

10. That the Subject Property be declared a public nuisance and for a declaration that each and every

condition described in the First, Second, and Third Causes of Action constitutes a public nuisance per se.

11. For costs of suit.

12. For recovery of reasonable attorney's fees as authorized pursuant to Sacramento City Code section 1.28.040;

13. For such other and additional relief as the court may deem proper and just.

DATED: **JAMES SANCHEZ,**
September 29, 2015 **City Attorney**

By: /s/ Adrian Carpenter
ADRIAN CARPENTER
Deputy City Attorney
Attorneys for the
CITY OF SACRAMENTO

[Exhibits Omitted]

[SEAL]

**CITY OF SACRAMENTO
CALIFORNIA**

CODMMUNITY	915 I STREET, MC 20000
DEVELOPMENT	SACRAMENTO, CA
DEPARTMENT	95814-2996
Neighborhood Code	PH: 916-808-5404
Compliance Division	FAX: 916-808-6633
	www.cityofsacramento.org/code

14-009810 Julie Mason 4432 H ST N&OIB
ALTSTATT DANIEL J
4432 H ST
SACRAMENTO, CA 95819

09/30/2014

Subject: Property located at 4432 H ST
Assessor's Parcel Number: 00800520080000

Enclosed is a Notice and Order to Clean, Remove, Repair or Cease Illegal use on the property of which you are the owner of record and/or beneficiary. A fee of **\$970.00** has been charged against this property. Additionally, a Title fee of **\$100.00 for Residential or \$650.00 for a Commercially zoned property is due per parcel**. All charges are pursuant to Chapter 8 of the Sacramento City Code and are due and payable. This fee is to recover enforcement costs and does not include permits or other related fees if applicable.

A Declaration of Public Nuisance regarding this property has been recorded with the County Recorder. When all violations have been corrected and when all fees are paid, and a **\$100.00 Termination fee** paid,

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the Declaration of Public Nuisance will be cleared with the County Recorder.

If you disagree with the requirements of the Notice and Order, you have the right to appeal. Your appeal must be in writing and must be filed with the Code Enforcement Department within **30 days** of such Notice and Order.

If you need clarification of the Notice and Order, or any information provided herein, it is recommended that you contact the code enforcement officer shown below.

Sincerely,

/s/ Linda Douglas/2B
Linda Douglas
Code Enforcement Officer
(916) 808-8099

Case #:14-009810

[Bar Code]

[SEAL]

**CITY OF SACRAMENTO
CALIFORNIA**

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14-009810 Julie Mason 4432 H ST N&OIB
ALTSTATT DANIEL J
4432 H ST
SACRAMENTO, CA 95819

09/30/2014

**NOTICE AND ORDER TO CLEAN,
REMOVE, REPAIR AND/OR
CEASE A PUBLIC NUISANCE**

1. **YOU ARE BEING NOTIFIED AS** Record Owner and/or Beneficiary that the Code Enforcement Manager, Neighborhood Code Compliance Division of the Code Enforcement Department, has caused to be inspected and has determined that the property(s) at: 4432 H ST

County Assessor's Parcel Number: 00800520080000
(See Attachment A for legal description of property)

(is) (are) in a public nuisance conditions under the provisions of Title 8 of the Sacramento City Code.

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2. That the conditions which render the property as a public nuisance under are set forth on the attached list of existing violations.
3. The Code Enforcement Manager has determined that the violations on subject property(s) must be corrected.
4. If you elect to correct the violations, the work therefore shall commence within 14 days from the date of this Order and completed within 30 days from the date of this order.
5. YOU ARE FURTHER NOTIFIED that if the corrections are not commenced and/or completed within the specified time; the Code Enforcement Manager: (1) may assess Administrative Penalty; (2) may seek an Inspection/Abatement Warrant to bring the property into compliance; and (3) may submit this matter to Superior Court for injunctive relief. All costs shall be charged against the property or against you as the owner.
6. YOU ARE FURTHER NOTIFIED that any person having any record title or legal interest in the property may appeal this Notice and Order or any action of the Code Enforcement Manager to the Code Enforcement Appeals Hearing Examiner*; the appeal must be filed with the Code Enforcement Manager within 30 days from the date of this Notice and Order, and **that**

* Forms for Appeal may be obtained from the Public Assistance Counter of the Code Enforcement Department, 300 Richards Blvd., 3rd Floor, Sacramento, CA 95811

failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter. An appeal fee of \$400.00 is required at the time of the appeal request. Unless an appeal is filed, the Code Enforcement Manager will proceed to an inspection/abatement warrant and/or injunctive relief without further notice to you.

Dated: 09/30/2014 By /s/ Linda Douglas/2B

Linda Douglas
Code Enforcement Officer
(916) 808-8099

COMMUNITY DEVELOPMENT DEPARTMENT
NEIGHBORHOOD CODE COMPLIANCE DIVISION

Correction List

Case #: 14-009810 Address: 4432 H ST

Code: 013: SCC 8.04.100 A

Description: CODE - Storing Trash, Junk, Debris

Full Violation: Cease the keeping, storage, depositing or accumulation of trash, junk and debris.

Comments: REMOVE OR ENCLOSE ANY AND ALL JUNK, TRASH AND DEBRIS LOCATED ON YOUR PROPERTY INCLUDING BUT NOT LIMITED TO: JUNK AND DEBRIS CONSISTS OF BUT IS NOT LIMITED TO: SCRAP WOOD, SCRAP METAL, ELECTRONICS, TARPS, HOSES, BUCKETS, ENGINE PARTS, FUSES, GENERATORS, PROPANE TANKS, LADDERS, SATELITE DISH, WINDOWS, TIRES, FURNITURE, CAMP TOILETS, PLASTIC BINS, PLASTIC BARRELS/

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DRUMS, METAL BINS, FIRE EXTINGUISHERS(2),
ROTTING FRUIT, GLASS BOTTLES, VACUUM.

Code: C07: SCC 10.44.010 B

Description: CODE - Parking Unimproved Surface

Full Violation: Cease parking of vehicles on unimproved surface.

Comments: CEASE PARKING ANY AND ALL VEHICLES ON UNIMPROVED SURFACE, IMPROVED SURFACE IS CEMENT OR ASPHALT ONLY.

Code: C14: SCC 8.04.100 A

Description: CODE - Storing Inoperable Vehicles

Full Violation: Cease the keeping, storage, depositing or accumulation of inoperative, abandoned, dismantled or wrecked vehicle(s). Remove, repair or put in enclosed structure.

Comments: BLACK VW JETTA- NO PLATE VISIBLE, A RED/WHITE VW VAN- 530GZS, A VW BUG LIGHT COLORED 006 LDK. WHITE LINCOLN

TOWNCAR- 1KFN831

TAN AUDI, 4 DOOR, 5ARG468

DODGE VAN TAN/BROWN, FULL OF DEBRIS- 455

UHN

VW PASSAT- 2WKG464

Code: B22: 8.100.650

Description: BUILDING – Hazardous/Unsanitary Premises

Full Violation: Hazardous or unsanitary premises: Accumulation of weeds, vegetation, Junk, dead organic matter, debris, garbage, offal, rat harborage, stagnant water, combustible materials and similar materials, causing a safety hazard.

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Comments: OVERGROWN AND UNMAINTAINED LAWN, BUSHES, TREES IN THE REAR YARD CONTRIBUTE TO RODENT HARBORAGE. PLEASE MOW/CUT DOWN TALL GRASS, REMOVE FRUIT THAT IS LAYING ON THE GROUND.

[SEAL]

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NOTICE AND ORDER TO CLEAN, REMOVE,
REPAIR AND/OR CEASE A PUBLIC NUISANCE

Attachment A
09130/2014

Legal Property Description for 4432 HST
County Assessors Parcel Number: 00800520080000

Legal Description:
MONT CLAIR TRACT

Case #: 14-009810
