



December 31, 2020

SENT VIA U.S. MAIL AND EMAIL (michael@byldholdings.com)

BYLD 2 LLC
In care of Michael You
2310 Homestead Rd. Suite C1-710
Los Altos, CA 94074

Re: Demand for immediate repairs at 1821-1825 28th Avenue, Oakland, CA and mediation of legal claims

Dear Mr. You:

We are attorneys representing families renting the six apartments at 1821 28th Avenue, Oakland (“the property”): Felix Martinez and Matilda Ochoa (apartment one), Elizabeth Barrera, Ruben Tapia, Oscar Tapia, Jaqueline Tapia (apartment two), Luz Maria Acevedo and Jorge Alberto Flores (apartment three), Reina Rivas, Evelyn Rivas, Jose Rivas (apartment four), Angelica Rivas Munoz, Cesar Dominguez, Isaac Rivas (apartment five), and Adan Rivas, Maria Rivas, and Miguel Angel Martinez (apartment six). Please instruct your legal counsel to respond directly to us regarding this letter.

We write to demand immediate repair of unlawful conditions our clients have been forced to endure due to your continuing failure to properly abate and correct numerous dangerous and deplorable problems, and to assert other legal claims. This letter is intended to provide formal notice pursuant to the Oakland Tenant Protection Ordinance, Oakland Ordinance No. 13608, Section 8.22.650, and to demand immediate mediation, to the extent mediation is necessary under paragraph 40 of our clients’ lease agreement, before we take further legal action to protect our clients’ rights to safe and decent housing conditions. Failing to receive a fully satisfactory response to these demands, we intend to bring legal action to vindicate our clients’ rights.

BYLD 2 LLC, and Michael You as its alter ego (collectively “the Landlord”) failed to maintain the property in a safe and habitable condition in violation of state and local law as explained below. Their willful neglect and negligence resulted in dangerous defects and dilapidations creating a substandard and untenable environment. These legal violations will subject BYLD 2 LLC and Michael You to liability for a range of illegal actions, including harassment, retaliation, intentional infliction of emotional distress, negligence, nuisance, and other grounds.

I. DEMAND

We demand immediate repair of all dangerous, unsafe and/or unlawful conditions in each of the six units, and all common areas at the property, no later than January 15, 2021, including all conditions listed in Attachment A. These repairs must correct all unlawful conditions, beginning with the following conditions that are life-threatening and/or urgent:

1. Replace missing/expired fire extinguishers and smoke detectors
2. Control pest and rodent infestations
3. Repair broken/inoperable heating systems
4. Repair faulty plumbing systems/water pressure failures
5. Repair and/or replace broken/improper door locks
6. Repair sewage leaks from drains/pipes/sinks
7. Replace illegal window bars
8. Repair leaking roof/ceiling/windows
9. Repair water heaters improperly installed/attached
10. Repair stoves/cooktops not working properly
11. All other life-threatening conditions underlined in Attachment A

We further demand that the Landlord and all of its agents immediately cease and desist from all acts of retaliation and harassment of residents at the property, including but not limited to:

- Service of any eviction notice or demand for rent, or filing of any unlawful detainer lawsuit;
- Efforts to negotiate a move-out agreement with any tenant at the property;
- Efforts to enter any unit at the property for any purpose without 24-hour prior notice to the residents and their counsel. All entries must be authorized per Civil Code Section 1954 and restricted to strictly necessary interactions (such as repairs) during the pandemic to minimize contact and potential COVID-19 exposure;
- Entry into any unit for any purpose by any person not trained in and compliant with all COVID-19 safety measures, and/or not equipped with all recommended PPE, including wearing an N-95 mask at all times.

In advance of all entries, the Landlord must provide the tenants and their counsel the written COVID-19 safety protocols of the Landlord and of any authorized agent, and must ensure that any contractor sent by the Landlord complies with all safety protocols.

If the Landlord contends any type of mediation is necessary, it must commence forthwith in order to quickly correct these dangerous conditions threatening our clients' health and safety.

Finally, all attempts to communicate with the tenants for any reason by the Landlord or any agent thereof must be copied to the tenants' counsel. Contact information is listed at the end of this letter.

II. PROPERTY DESCRIPTION AND SUMMARY OF UNLAWFUL CONDITIONS AND ACTIONS

This rental property is a six-unit building located at 1821 28th Avenue ("the property") owned by BYLD 2 LLC, and its alter ego Michael You, which purchased the property in October 2018. The property also includes a parking lot and common areas.

Our clients moved into the property at various times between 1998 and 2012. All six units are two-bedroom units, and the contract rent for each unit ranges from approximately \$1,050-\$1,450 per month. On or about October 2018, the Landlord issued paperwork continuing terms of existing month-to-month leases, and these lease agreements promise the prevailing party in any action arising out of the agreement to reasonable attorneys' fees. These leases were signed with the prior landlord and assumed by Mr. You/BYLD 2 LLC when they took ownership.

Shortly after the purchase, in about October 2018, Mr. You visited the property. Several tenants immediately complained to him of extensive habitability issues in person while he was at the property. All six units complained of mice infestations, roach infestations and mold. The Landlord has previously been notified that many apartments also suffer, among other things, from plumbing problems, leaking ceilings and walls, and inadequate water pressure. In willful disregard of our clients' concerns, the Landlord made no attempt to reply or attend to these problems.

Instead of properly addressing these hazardous conditions, the Landlord attempted to evict all of the tenants by three times issuing 15-day notices demanding that tenants either pay rent or move out of their units. Fifteen-day notices were issued with regard to three of the units (nos. 1, 4, and 6), after the Landlord's failure to abate serious habitability violations that Oakland City Code Enforcement had informed BYLD 2 LLC of, in writing, more than thirty-five days earlier. Mr. You also harassed the tenants by making frequent in-person visits to the units, asking tenants to move out, and constantly demanding rent payments either by letter, phone, or in person -- even after they filed COVID-related declarations that protect them from losing their homes during the pandemic for rent issues.

In or about August 2020, the tenants requested code enforcement inspections by the City of Oakland. Three units were inspected by city code enforcement personnel. On October 12, 2020, the City's code enforcement agency issued Notices of Violation for Unit Nos. 1 and 6. On October 22, 2020, the City issued a Notice of Violation for Unit 4. The Notices found and cited serious violations pursuant to the Oakland Municipal Code. These violations have not been corrected.

Each family has suffered and continues to suffer from substandard conditions the Landlord refuses to correct. These hazardous and unlawful conditions include roach and mice infestation, inadequate hot water, inadequately draining plumbing, broken windows and damaged walls that allow moisture in, extensive mold, malfunctioning stoves and refrigerators, and nonfunctioning heating systems, as set forth in more detail below.

III. EVERY APARTMENT SUFFERS FROM SERIOUS PROBLEMS AND DANGEROUS CONDITIONS

A complete list of substandard conditions requiring immediate repair is included in Attachment A to this letter. Below is an illustrative description by unit:

Unit 1 is occupied by Felix Martinez and Matilda Ochoa. They moved into the unit in 2010, and their rent is \$1096.00 per month. The unit is infested with cockroaches, mice, and other rodents. There is also mold growth in one of the rooms, a closet, and the bathroom. The freezer, heaters, and cabinets in the unit are not in working order. There are several holes on the floors including a large hole in the living room and several others in the kitchen and bedroom. The windows do not open properly and have gaps that let air in. There is no hot water and there is a large leak in the bathroom. Finally, there are several electrical issues including an outlet in the kitchen that sparks when tenants try to use it and the light in the dining room does not work.

Unit 2 is occupied by Elizabeth Barrera, Ruben Tapia, Oscar Tapia, Jacqueline Tapia and two minor children. They moved into the unit in 2013, and their rent is \$1,172.00 per month. The unit is infested with cockroaches, mice, and other rodents. There is also mold growth throughout the unit and it is especially notable near windows, closet, and beds. The ceiling in the bathroom and kitchen is leaking, and water from another unit comes in through the leaks. The refrigerator in the unit was not in working order and tenants had to purchase their own. There are several holes in the walls and floors throughout the unit. The front door does not close properly.

Unit 3 is occupied by Luz Maria Acevedo, Jorge Alberto Flores and their three minor children. They moved into the unit in 2012, and their rent is \$1,055.00. The unit is infested with cockroaches, mice, and other rodents. There is also black and yellow mold near appliances, near the restroom, and in the dining room ceiling. There are several holes in the walls measuring approximately 2x2 inches, and the ceiling in the kitchen appears to be collapsing. There is no cold water in the kitchen and there is a hole under the sink that allows tenants to look into unit #2. The freezer and heater do not work. The front and back windows do not lock; the restroom window is too big for its frame and allows cold air in. None of the doorknobs close or lock properly.

Unit 4 is occupied by Reina Rivas, Evelyn Rivas, Jose Rivas, and their two minor children. They moved into the unit prior to 2010, and their current rent is \$1,450.00. The unit is infested with cockroaches, mice, and other rodents. There is also mold growth throughout the unit on the ceilings. The stove and refrigerator are not in working order and the vent above the stove does not turn on. The heater does not work. The drainage in the unit is not in working order and results in pipes regularly backing up. The wood around the window in the living room is deteriorated and water comes in through the frame when it rains. Tenants residing in unit 4 paint

their unit every year and replace their carpet at their own expense because the old carpet had mold growing out of it.

Unit 5 is occupied by Angelica Rivas Munoz, Cesar Dominguez, Isaac Rivas, and their two minor children. They moved into the unit in 2004, and their current rent is \$1,115.00. The unit is infested by cockroaches, mice, and other rodents. There is also mold growth throughout the unit on the ceilings and walls. The restroom wall in particular is rotting and has significant black and yellow mold growth. The stove is not in working order and the refrigerator door does not close. There is no hot water in the restroom sink. The carpet in the unit has never been replaced and there is a large hole in the kitchen floor. None of the doors close or lock properly. The family does not have hot water in their bathroom, and they must use a neighbor's shower to bathe. Half of the burners on their stovetop do not work, and cooking is difficult for the family.

Unit 6 is occupied by Adan Rivas, Maria Rivas and Miguel Angel. They moved into the unit in 1998, and their current rent is \$1,450.00. Their stove is broken, and one burner stays on at all times. They are missing smoke detectors, and a light fixture/fan is broken and hanging by wires only. Leaks have caused peeling paint and mold in the apartment. The water heater is not properly installed or secured, and it lacks important safety features.

These unlawful conditions have had severe impacts on the lives of our clients. For instance, they lack privacy due to holes so large that their private conversations can be overheard by their neighbors. The lack of hot water pressure in the showers forces them to heat up water in the kitchen and carry buckets into the restroom with them when they want to shower, requiring them to wake up much earlier than would otherwise be necessary. They have repeatedly lost food due to defects in refrigeration and/or rodent and insect infestation. And they have been forced to spend out of pocket, and to sacrifice other necessities as well as their time to buy products to mitigate the cockroach and rodent infestations, and to make certain repairs on their own, such as painting their units.

IV. SUMMARY OF LEGAL VIOLATIONS

The Landlord is liable under numerous legal theories for breaching its obligations to our clients, including its duty to provide safe and habitable accommodations. Our clients' damage claims are supported under multiple grounds, including the following bases.

A. Violations of the Oakland Tenant Protection Ordinance

The Oakland Tenant Protection Ordinance (TPO), prohibits "harassment," broadly defined, in case of landlord "bad faith." Oakland Mun. Code § 8.22.640(A). Among other things, harassment includes the failure of a landlord to "perform repairs and maintenance required by contract or by State, County or municipal housing, health or safety laws," or "to exercise due diligence in completing repairs and maintenance once undertaken..." *Id.*, subds. (2), (3). It also includes misrepresenting to a tenant that they are required to vacate a rental unit. *Id.*, subd. (20). Under a regulation adopted by the administering agency, the Oakland Rent Board, "bad faith" is defined for purposes of the TPO as "willful, reckless, or grossly negligent conduct in disregard for legal requirements or in a manner indifferent to the rights of or impact on Tenants. The scope

and effect of the conduct will be taken into account in determining whether it is in Bad Faith.” Oakland Mun. Code Reg. § 8.22.640A, available at <https://cao-94612.s3.amazonaws.com/documents/OAK066545.pdf>. Substantially and directly interfering with a tenant's right to quiet use and enjoyment of a rental housing unit and retaliation against tenants for asserting their rights under the TPO are also prohibited. Oakland Mun. Code §§ 8.22.640(A)(10),(B).

The Landlord engaged in unlawful tenant harassment under the Tenant Protection Ordinance by failing to provide safe and habitable conditions for tenants for years and failing to make repairs necessary to correct violations of the implied warranty of habitability, as described above. They also failed to exercise reasonable care in repairs and neglected to ensure that maintenance personnel who entered tenants' homes during a pandemic followed adequate COVID-19 safety protocols. Finally, the Landlord also unlawfully misrepresented that tenants were required to leave their homes by repeatedly issuing multiple unlawful eviction notices to tenants during the pandemic, in violation of the extant local eviction moratoriums, which prohibit the notices. *See* Alameda County Code § 6.120.040(D); Oakland Ord. 13606, § 3 (2020).

This letter serves as a fifteen-day notice period of the Landlord’s violation of subsections 8.22.640.A.2. and 3. *See* Oakland Mun. Code § 8.22.650(B).

B. Breach of Warranty of Habitability (common law and statutory claims)

The conditions listed above violate the warranty of habitability that is implied in every residential tenancy in California at common law. *Green v. Superior Court* (1974) 10 Cal.3d 616. Under that implied warranty, building owners are responsible for repairing conditions that seriously affect the habitability of their tenant's unit, and this represents a promise by the landlord to obey housing and health laws and to keep the property safe, sanitary, decent and fit for the purposes for which it was rented. *Green, supra.*, 10 Cal.3d 616.

Our clients also have statutory claims for breach of the implied warranty of habitability pursuant to Civil Code Sections 1941.1 and 1942.4 (b)(1), (c). *See also* Civ. Code §§ 1940.2, 1941, 1942.4, 1942.5; Cal. Health & Safety Code § 17920. These laws provide a dwelling is untenantable if it fails to meet basic standards, such as: (1) effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors, (2) plumbing or gas facilities that conformed to applicable law in effect at the time of installation, maintained in good working order, (3) a water supply approved under applicable law that is under the control of the tenant, capable of producing hot and cold running water, or a system that is under the control of the landlord, that produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law, (4) heating facilities that conformed with applicable law at the time of installation, maintained in good working order.

The duty of reasonable care owed to our clients was violated by the failure to provide our clients with legal, tenantable housing, fit for human occupancy; the duty to refrain from interfering with our clients' full use and enjoyment of their rented residence; and the duty to comply with all applicable state and local laws governing the rights of our clients as tenants.

The Landlord, by its acts and failures to act, as explained above, was negligent and careless and therefore in breach of his duties. As such, the Landlord is the direct cause of our clients' injuries. The Landlord breached its duties by failing to properly inspect, repair, and maintain the property free of any defects or hazards, along with its failure to warn our clients of the hazardous nature of known dilapidation or hire competent management, and are therefore liable for all the harm suffered by our clients as a result. Because the owners had both actual and constructive notice of the unsafe conditions, and failed to make any effort to remediate them, the Landlord is liable to the tenants for breach of both the common law implied warranty and statutory violations, including the warranty of habitability.

C. Violation of Civil Code Section 1942.4

Civil Code Section 1942.4 provides that a landlord may not issue a three-day notice to pay rent or quit pursuant to Code of Civil Procedure Section 1161(2) if certain conditions exist. It applies where a public employee who is responsible for the enforcement of housing law, inspects the premises and finds that it lacks required characteristics under Civil Code Section 1941.1 or is deemed substandard, has informed the landlord in writing, and the conditions have not been abated within thirty-five days.

Oakland City Code Enforcement issued Notices of Violation to BYLD 2 LLC regarding Units 1 and 6 on October 12, 2020. They issued an additional notice regarding Unit 4 on October 22, 2020. All notices contained serious violations of the implied warranty of habitability and Oakland Municipal Code health and safety regulations. More than thirty-five days later, on or about December 11, 2020 and later, BYLD 2 LLC issued 15-day notices to pay rent or quit to all three households, after failing to abate the substandard conditions listed in each Notice.

D. Breach of Contract – written and implied

Both the lease agreement and landlord-tenant relationship create an affirmative duty to exercise reasonable care in the management, inspection, and control of the property, as well as a statutory duty to comply with all applicable laws governing the rights of individuals living at the premises. The Landlord owes our clients a duty to exercise reasonable care in maintaining the property free of any defects and/or hazards, as well as inspect the property for such in order to protect our clients from the unreasonable risk of harm. The violations listed above breached obligations, both written and implied, in our clients' lease agreements.

E. Negligence and Negligence Per Se

The Landlord has a statutory duty as “[t]he lessor of a building intended for the occupation of human beings” to “put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable. Civ. Code § 1941; *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 922-25 (in a cause of action for negligent violation of a statutory duty, “all persons must exercise due care in the management of their property to avoid foreseeable injury to others” and “the tenant will have the benefit of Evidence Code section 669 if the tenant is able to prove that the landlord violated a statute or regulation and the violation proximately caused injury to his person or property”); *Peterson v. Superior Court* (1995) 10

Cal.4th 1185, 1205-06 (landlord that breaches the applicable standard of care may be held liable under general tort principles for injuries resulting from defects in their premises).

Unquestionably, the property failed to meet the affirmative characteristics of habitable housing as prescribed by law. As detailed above, the Landlord had actual and constructive notice (through the various complaints issued by all the tenants) of the deteriorating and dangerous conditions and failed to make any effort whatsoever to remediate the fallout. The Landlord is liable to our clients for failure to maintain the Property in a safe and habitable condition, knowingly renting a substandard unit to our clients.

F. Unfair Competition Law- Business and Professions Code Section 17200

The Landlord has also violated Unfair Competition Law which prohibits “any unlawful, unfair or fraudulent business act or practice.” Business & Professions Code (“BPC”) Section 17200 et seq. Our clients have suffered injury and have lost money or property as a result of these unfair business practices. *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1000. Tenants living in “unsafe or unsanitary condition[s]” such as our clients may claim under this law that they have overpaid rent in the amount of the difference between “the fair rental value of the premises if they had been as warranted and the fair rental value of the premises as they were during occupancy.” *Green, supra*, 10 Cal.3d at 638.

A violation of Civil Code Section 1941 may serve as the basis for an unlawful business practice claim under Section 17200. A single act or omission can form the basis for a UCL claim. *Klein v. Earth Elements, Inc.* (1997) 59 Cal.App.4th 965, 968-69, fn. 3. Here, the landlord has failed to maintain our clients’ homes in tenantable condition in violation of Civil Code Section 1941; this also constitutes an unfair business practice in violation of Section 17200.

G. Nuisance

The lease agreement gave our clients a property interest in the Property at all times during their tenancy. Our clients complied with all aspects of the lease by maintaining the Property, furnishings, and appliances. However, the Landlord’s abject failure and complete disregard to repair the violations listed above ruined our clients’ quiet enjoyment of their homes. The Landlord’s conduct in failing to maintain a safe, habitable dwelling created and maintained multiple nuisances, as described herein. This nuisance was injurious to the health of our clients, offensive to our clients’ senses, and interfered with their comfortable enjoyment of life, personal property, and their property interest in the Property.

H. Breach of Covenant of Quiet Enjoyment/Private Nuisance/Constructive Eviction

The violations listed above breached the covenant of quiet enjoyment implied in every residential rental contract in California. Cal. Civ. Code Ann. 1927. Landlords have a duty to provide tenants with full and beneficial use of the dwelling, including peaceful possession and enjoyment of each Property. The implied covenant of quiet enjoyment implies a term in a contract, and a breach of the covenant gives rise to an action in contract; as such, the damages available for a breach of the covenant are contract damages. *Ginsberg v. Gamson* (2012) 205 Cal. App. 4th 873. Here, the Landlord’s failure to properly remediate the numerous habitability

violations, or complete the repairs in a timely fashion, deprived our clients of the beneficial use and enjoyment of the Property. The Landlord breached the covenant of quiet enjoyment through its failure to perform necessary repairs to render the Property habitable.

I. Breach of Covenant of Good Faith and Fair Dealing for Each Agreement

The Landlord also violated the covenant of good faith and fair dealing implied in all contracts by failing to provide our clients with a habitable dwelling and acting in such a manner as to thwart and frustrate the contractual benefits to which our clients were entitled. In leases, as in contracts, a covenant of good faith and fair dealing is implied. This requires that neither party do anything that will have the effect of destroying or injuring the right of the other party to receive the benefits of the lease. *Sachs v. Exxon Co., U.S.A.* (1992) 9 Cal. App. 4th 1491. The covenant of good faith and fair dealing protects the tenant from any act or omission of the landlord that interferes with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy. A breach of the implied covenant of good faith and fair dealing is a breach of contract that entitles the non-breaching party to exercise remedies for breach of contract, including the recovery of compensatory damages.

J. Retaliation in Violation of California Civil Code Section 1942.5

The Landlord retaliated against families who complained about these serious problems by threatening them with eviction. Our clients informed the Landlord of serious problems and the repairs they needed, yet the Landlord failed to address the issues. The Landlord's avoidance and lack of repairs prevented our clients from enjoying a habitable dwelling, and instead our clients were issued retaliatory Notice to Terminate Tenancy constitute an attempt to wrongfully recover possession of the Premises. These serious violations also subject the Landlord to liability for attorneys' fees and other damages. *See* Civ. Code § 1942.5.

K. Intentional and Negligent Infliction of Emotional Distress

The Landlord has intentionally and/or recklessly inflicted emotional distress on our clients by its extreme and outrageous failure to maintain the premises.

V. OUR CLIENTS SUFFERED MULTIPLE CATEGORIES OF LEGAL DAMAGES

Our clients incurred a broad range of damages due to the Landlord's unlawful conduct, including personal injury, anxiety and emotional distress, and overpayment of rent, all of which are compensable due to Mr. You and BYLD 2 LLC's breach of duty as a landlord.

A. Damages for Tort Claims

Our clients incurred a broad range of damages due to the Landlord's illegal conduct, including out of pocket costs to repair some of the substandard conditions, anxiety and emotional distress, and overpayment of rent, all of which are compensable due to Mr. You and BYLD 2 LLC's breach of duty as a landlord.

Our clients are entitled to damages for emotional distress arising from the suffering caused by the Landlord's deliberate negligence and callous refusal to make repairs. Our clients suffered

significant anxiety, lost hours of sleep, and suffered from constant worry for their health and safety. Worse, the retaliatory Notices of Termination of Tenancy added additional stress on our clients. These actions deprived our clients of the safety and security they are entitled to enjoy at home and in a safe haven, as well as the numerous substandard conditions that endured.

The Landlord's reckless disregard for the safety and well-being of our clients, as detailed herein, caused our clients significant emotional distress. Our clients were constantly concerned for their health and well-being. The Landlord not only persistently and defiantly failed to perform remediation of all known defects, but also refused to respond to repeated requests. The Landlord's refusal to respond caused emotional distress when our clients could not live comfortably in their own homes.

B. Restitution and Retroactive Rent Abatement

The Unfair Business Practices Law provides for injunctive relief as well as restitution of sums paid. The proper measure of damages in cases of Breach of Implied Warranty of Habitability and excessive rent charges is a reduction of rent caused by a defendant's breach. That is, for each month the defective conditions existed, our clients made overpayments in rent commensurate with the diminished value of the Property due to the defects.

As discussed above, because the Landlord had actual and constructive notice of the substandard conditions, he is liable for all defects and resulting damages. During the relevant time periods, our clients' rent ranged from \$1,055-\$1,450.00. Considering that our clients had to live in the uninhabitable Property while the Landlord failed to maintain, repair and remediate the Property with actual knowledge of defects, we calculate an abatement of all rent due for that time-period.

For purposes of this demand our clients calculate their reduction in services damage from October 2018 through December 2020, i.e. two years and three months. Total rent paid for this period was approximately \$20,000 for each family. Our clients demand reimbursement of this amount and a waiver of any rent still claimed as owed from this time period.

C. Punitive Damages

Callous disregard of our clients' rights to live in habitable conditions under California law will subject a Landlord to punitive damages. *See Penner v. Falk* (1984) 153 Cal.App.3d 858, 867; *Smith v. David* (1981) 120 Cal.App.3d 101, 112, fn. 3; *see also* Oakland Mun. Code § 8.22.670(B)(2) (allowing punitive damages under Oakland Tenant Protection Ordinance).

D. Statutory Damages

Any person who commits tenant harassment under the Tenant Protection Ordinance or who violates, aids, or incites another person to do so is liable to a tenant for three times actual damages or minimum damages of \$1,000. Actual damages include mental and emotional distress, which shall be trebled for knowing or reckless violations. Oakland Mun. Code § 8.22.670(B)(1)(a). Minimum damages are increased where a tenant is elderly or disabled. Oakland Mun. Code § 8.22.670(B)(1)(b).

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A landlord who violates Civil Code Section 1942.4 is liable to a tenant for actual damages as well as special damages of up to \$5,000. Civ. Code § 1942.4(b)(1).

E. Attorney Fees

Should this matter fail to resolve promptly, short of litigation, our clients will seek the maximum amount of applicable attorneys' fees and all related court costs pursuant to the lease agreements. In particular, the lease provides that the prevailing party shall be entitled to reasonable attorneys' fees and costs. The right to attorney fees and costs are codified in Civil Code Section 1717(a): "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." A tenant who prevails on claims brought under the Tenant Protection Ordinance is entitled to recover reasonable attorneys' fees. Oakland Mun. Code § 8.22.670(D)(2). Reasonable attorney fees are also available for claims under Civil Code 1942.4. Civ. Code § 1942.4(b)(2). An award of attorneys fees is also available in an action to enforce an important right affecting the public interest pursuant to Code of Civil Procedure Section 1021.5.

Attorney time spent to date, plus anticipated negotiations to seek a pre-litigation resolution, is presently estimated to exceed 200 hours.

VI. CONCLUSION

As explained above, we demand immediate repair within fifteen days of these hazardous conditions threatening our clients' health and safety, and in accordance with the Oakland Tenant Protection Ordinance, our clients' lease agreements, and other state and local laws.

Please direct all questions and communications to:

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Sincerely,

David M. Levin, Esq., Law Office of David M. Levin

Ruby Acevedo, Esq., Public Advocates, Inc.

Jackie Zaneri, Esq., Alliance of Californians for Community Empowerment (ACCE)