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ELECTRONICALLY

F I L E D

*Superior Court of California,
County of San Francisco*

FEB 26 2015

Clerk of the Court

BY: ROMY RISK

Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

11 STAN HELLER, KATHLEEN DREW, SOPHIA
12 HELLER, and CRAIG PURSELL,

13 Plaintiffs,

14 vs.

15 CANDU CAPITAL GROUP, LLC., RITU
16 VOHRA, ARJUN DUTT, et al.,

17 Defendants.

Case No.: CGC-15-543483
UNLIMITED JURISDICTION

**DEFENDANT'S MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO STRIKE; EXHIBIT A**

DATE: April 9, 2015

TIME: 9:30 a.m.

DEPT: 501

**[Filed concurrently with Notice of Motion to
Strike]**

19 **I. INTRODUCTION**

20 The Complaint in this matter filed on January 2, 2015, alleges a landlord tenant dispute regarding
21 alleged habitability defects and a wrongful eviction and tenant relocation from the property located at
22 1155-1157 Church Street, San Francisco, California. Exhibit A is a true and correct copy of the
23 Complaint. Plaintiffs allege that they had been living in the Premises since approximately 2003 and that
24 defendants acquitted the subject property on September 2013. After the purchase, defendants started a
25 series of extension remodeling projects on the property which allegedly caused plaintiffs to be displaced
26 from the units. (Plaintiff's Complaint ¶1-30.)

1 Plaintiffs have alleged 8 causes, and seeks compensatory, statutory as well as injunctive relief.
2 Plaintiffs also pleads a prayer for punitive damages. However, the complaint does not state facts
3 demonstrating the requisite fraud, oppression or malice required for a claim for punitive damages.
4

5 **II. THE COURT MAY STRIKE ANY IRRELEVANT, FALSE OR IMPROPER MATTER**

6 This Court may, upon a motion made pursuant to Code of Civil Procedure section 435, or at any
7 time in its discretion strike out any irrelevant, false, or improper matter inserted in any pleading. (Cal.
8 Civ. Proc. Code § 436(a).)

9 For the reasons described below, the language set forth in the notice of this motion constitutes
10 irrelevant, false, or improper matter which should be stricken from the first amended complaint.
11

12 **III. THE FACTUAL ALLEGATIONS OF THE COMPLAINT ARE INSUFFICIENT TO**
13 **SUPPORT AN AWARD OF PUNITIVE DAMAGES**

14 **A. Claims For Damages Which May Not Be Imposed May Properly Be Stricken From**
15 **A Complaint.**

16 The pleading, when stripped of its legal conclusions, fails to allege facts sufficient to provide a
17 basis for imposing punitive damages. Accordingly, all reference thereto should be stricken.

18 Matter in a pleading which is not essential to the claim is surplusage and may be stricken out or
19 disregarded. (*Stafford v. Schultz*, 42 Cal. 2d 767, 782 (1954).) It is longstanding law in California that
20 allegations of damages which are not recoverable should be disregarded and treated as a surplusage.
21 (*Newman v. Smith*, 77 Cal. 2d 27 (1888).)

22 For example, in *Cohen v. Groman Mortuary, Inc.*, 231 Cal. App. 2d 1,8 (1964), the court held
23 that the pleading contained only legal conclusions, thus warranting the restriction of the claim for
24 exemplary damages.

25 Predicated on the action in tort, appellants seek exemplary damages for
26 implied malice under Section 3294 Civil Code. . . . The extent of the
27 pleading at bar in regard to malice is that the 'wrongful conduct of the
28 defendants . . . was committed with such wanton and willful disregard of

1 the sensibilities of plaintiff(s) as to constitute implied malice.¹ No facts
2 relative to malice are alleged, only allegations consisting of legal
3 conclusions--that the acts were 'wrongful', 'wanton' and 'willful'. This
4 does not create a cause of action. [Citation.]"

5 (*Cohen v. Groman Mortuary, Inc.*, 231 Cal. App. 2d 1, 8 (1964); disapproved on other grounds by
6 *Christensen v. Superior Court*, 54 Cal. 3d 868 (1991).)

7 The complaint herein alleges merely by conclusion that defendant's acts were "malicious and
8 oppressive". However, no facts are alleged that demonstrate that defendants were acting with a motive
9 to hurt or oppress the plaintiffs. Thus, the requirement of Code of Civil Procedure section 425.10, that a
10 complaint must set forth "facts constituting a cause of action" has not been met. All reference to
11 recovery of punitive damages must therefore be stricken from the pleading.

12 **B. Punitive Damages Are Not Recoverable Without Clear And Convincin Evidence**
13 **Of Malice, Oppression Or Fraud.**

14 In California, the basis upon which punitive damages may be awarded is governed by Civil Code
15 section 3294(a), which allows recovery only if plaintiff proves, by clear and convincing evidence, "that
16 the defendant has been guilty of oppression, fraud, or malice."

17 California courts require that *specific facts* be pled in support of punitive damage allegations;
18 mere conclusions are not enough. (*Hilliard v. A.H. Robbins*, 148 Cal. App. 3d 374, 391 (1983);
19 *Perkins v. Superior Court*, 117 Cal. App. 3d 1, 6-7 (1981); *Grieves v. Superior Court, supra*, 157 Cal.
20 App. 3d at 166.) Broad allegations that a defendant acted maliciously and willfully are not enough;
21 specific facts must be alleged. (*Austin v. Regents of University of California*, 89 Cal. App. 3d 354
22 (1979) disapproved on other grounds by *Ochoa v. Superior Court*, 39 Cal.3d 159 (1985); *Brousseau v.*
23 *Jarrett*, 73 Cal. App. 3d 864 (1977).) All reference to punitive damages in this action is inappropriate
24 and unsupported, and thus must be stricken.

25 Plaintiffs fail to state *specific facts* which show that defendants acted with malice or intent to
26 oppress the plaintiffs. To establish malice, a plaintiff must demonstrate that the defendant acted not just
27 with a conscious disregard of the rights or safety of others, but also that the defendant willfully engaged
28 in despicable conduct. (Civil Code section 3294(c)(1); *College Hospital, Inc., supra*, 8 Cal. 4th at p.

1 713.) As the Supreme Court noted in *College Hospital*, the reference to “despicable” conduct is a
2 substantive limitation on punitive damage awards because the term refers to circumstances which are
3 base, vile or contemptible. (8 Cal. 4th at p. 725.) Likewise, oppression requires “despicable conduct
4 that subjects a person to cruel and unjust hardship in conscious disregard” of another’s rights. (Civil
5 Code, section 3294(c)(2).) In other words, the bar for recovery of punitive damages under Civil Code
6 section 3294 is quite high.

7 Even before Civil Code section 3294 was amended, a plaintiff was required to allege facts
8 establishing malice or oppression, not just legal conclusions that defendant’s acts were “wrongful” or
9 “willful” or “wanton.” (*Cohen v. Groman Mortuary, Inc.*, 231 Cal. App.2d 1, 8-9 (1964), disapproved
10 on other grounds by *Christensen v. Superior Court*, 54 Cal. 3d 868 (1991).) “Punitive or exemplary
11 damages are remedies available to a party who can plead and prove the facts and circumstances set forth
12 in Civil Code section 3294, the cases interpreting this code section, or by other statutory authority.”
13 (*Hilliard v. A.H. Robbins*, 148 Cal. App.3d 374, 391 (1983), emphasis added, footnotes omitted.)

14 Plaintiffs’ pleading contains only *conclusions* that defendants acted with malice or with the
15 intention to oppress plaintiff, the complaint is completely devoid of any factual support for those
16 conclusions. Plaintiffs fail to allege the type of despicable conduct required to support their claim for
17 punitive damages.

18 In judging the sufficiency of the allegations in the Complaint, it is important to note that the law
19 does not favor the imposition of the punitive damages. (See *Gombos v. Ashe*, 158 Cal. App. 2d 517, 526
20 (1958), disapproved on other grounds by *Taylor v. Superior Court*, 24 Cal. 3d 890 (1979); *Beck v. State*
21 *Farm Mutual Automobile Ins. Co.*, 54 Cal. App. 3d 347, 355 (1976); *Nolin v. National Convenience*
22 *Stores*, 95 Cal. App. 3d 279, 285 (1969).) Plaintiffs should be required to plead sufficient facts to
23 support the requested relief.

24

25 **IV. CONCLUSIONS OF LAW ARE IMPROPER AND MAY BE STRICKEN FROM A**
COMPLAINT

26 This Complaint is replete with conclusions. Moving party request that this Court
27 strike from the complaint the conclusions of law set forth in the notice of this motion. It is wholly
28

1 improper to plead conclusions of law; therefore, all such conclusions must be stricken.

2 In *Waco-Porter Corp. v. Superior Court*, 211 Cal. App. 2d 559, 567 (1963), the court stated the
3 test for determining the difference between an allegation or ultimate facts and conclusions of law was a
4 question of whether a plaintiff's allegations "usurp" the province of the court. Specifically:

5
6 The basic test of whether an allegation is a statement of fact or a
7 conclusion lies in the answer to the question: Does it usurp the province
8 of the court to draw from it all legal inferences or conclusions which are
9 determinative of the issue? [Citations.] As a general rule, if it does, it is a
10 conclusion; if it does not, it is a statement of fact."

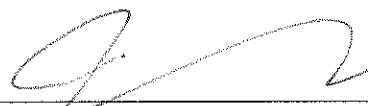
11
12 Passages referenced in the notice of this motion would usurp the province of this Court, and
13 therefore, it is appropriate that these conclusions be stricken from the pleading.

14
15 **IV. CONCLUSION**

16 For all the foregoing reasons, defendants respectfully request that this Court strike from the
17 complaint all reference to punitive damages and the conclusions of law set forth in the notice of this
18 motion.

19
20 DATED: February 25, 2015

STRATMAN, PATTERSON & HUNTER

21
22 BY: 

23
24 DAVID W. CHEN, ESQ.
Attorney for Defendants
CANDU CAPITAL GROUP, LLC., RITU VOHRA,
ARJUN DUTT

EXHIBIT “A”

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1 Solveig Rose (SBN: 230808)
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5 Attorneys for the Plaintiffs, Stan Heller, Kathleen Drew
6 Sophia Heller, and Craig Pursell

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 COURT OF UNLIMITED JURISDICTION

10 STAN HELLER, KATHLEEN DREW, SOPHIA)
11 HELLER, and CRAIG PURSELL)

Case No CGC-15-543483

12 Plaintiffs,

13 vs.

14 CANDU CAPITAL GROUP, LLC., RITU
15 VOHRA, ARJUN DUTT and
16 DOES 1-25

17 Defendants

18 COMPLAINT FOR DAMAGES FOR
19 INJUNCTIVE RELIEF, WRONGFUL
20 EVICTION, INFILCTION OF EMOTIONAL
21 DISTRESS, BREACH OF IMPLIED
22 WARRANTY OF HABITABILITY, BREACH
23 OF COVENANT OF QUIET ENJOYMENT,
24 UNLAWFUL BUSINESS PRACTICES,
25 NEGLIGENCE, AND
26 VIOLATION OF RENT ORDINANCE
27 SECTION 37.10B

28 Plaintiffs, STAN HELLER, KATHLEEN DREW, SOPHIA HELLER, and CRAIG PURSELL
19 allege against Defendants as follows:

21 PRELIMINARY ALLEGATIONS

22 1. Plaintiffs are informed and believe that defendants, RITU VOHRA and ARJUN DUTT,
23 own a legal or equitable interest in the Property situated at 1155-1157 Church Street, San Francisco,
24 California, more particularly described as Block 3650, Lot 028. ("Property"). The Property is a two-
25 unit apartment building that was built in 1906 and falls under the jurisdiction of the San Francisco
26 Residential Rent Stabilization and Arbitration Ordinance ("Rent Ordinance") and plaintiffs' tenancy is
27 within the jurisdiction of the Chapter 37 of the Rent Ordinance at all relevant times herein.

28 At all times herein mentioned, defendants, RITU VOHRA and ARJUN DUTT, were acting for

FILED
Superior Court of California
County of San Francisco
JAN 02 2015
CLERK OF THE COURT
By: [Signature] Deputy Clerk

1 themselves individually and for and on behalf of CANDU CAPITAL GROUP, LLC. as officers of
2 CANDU CAPITAL GROUP, LLC.

3 2. Plaintiffs are informed and believe that defendant CANDU CAPITAL GROUP, a
4 limited liability company, owns a legal or equitable interest in the Property.

5 3. Defendants are a "landlord" as defined in San Francisco Administrative Code Section
6 37.2(h).

7 4. Plaintiffs are unaware of the true identities of those defendants designated as DOES
8 ONE through TWENTY-FIVE, inclusive, and said defendants are sued herein under fictitious names.
9 When their true names and capacities are ascertained, plaintiffs will amend this complaint by inserting
10 their true names and capacities herein.

11 5. At all times mentioned herein, each of the DOE defendants was the agent, officer,
12 director, officer, shareholder, subtenant, assignee, licensee, employee or partner of the other
13 defendants, and each was acting within the course and scope of such agency or employment or
14 pursuant to such partnership agreement, sublease, assignment or license.

15 6. 1157 Church Street now comprises the second floor and the attic level of the building.

16 7. The Subject Premises, located at 1155 Church Street, comprises the street level unit
17 and a basement unit linked by an internal staircase.

18 8. Plaintiffs, Stan Heller and Kathleen Drew, signed a rental agreement for the street level
19 unit with defendants' predecessor-in-interest on March 20, 1987. In March 2003, Plaintiffs and their
20 former landlords modified the lease to include the basement unit. The street level unit and the
21 basement unit have been leased as one residential unit since March 2003. The base rent for the entire
22 Premises is currently \$1,937.32 per month.

23 9. Plaintiffs, Stan Heller and Kathleen Drew occupied the street level unit and plaintiffs,
24 Sophia Heller and Craig Pursell occupied the basement unit.

25 10. The Subject Premises is and was at all times relevant subject to the "just cause" eviction
26 provisions of Section 37.9(a) of the San Francisco Rent Stabilization and Arbitration Ordinance, which
27 sets forth exclusive grounds for recovering possession of covered residential rental units in San
28 Francisco.

1 11. In May 2013, prior to their acquisition of the property, defendants met with plaintiffs to
2 discuss plaintiffs' options, including plaintiffs' purchase of the Subject Premises or a buy-out of
3 plaintiffs' tenancy.

4 12. Defendants purchased the Subject Property in September 2013.

5 13. Plaintiffs are informed and believe and therefore allege, that defendants bought the
6 Subject Property with the intention to capitally improve the property and change its use into a three
7 unit building. Defendants are planning to divide the Premises into two separate units.

8 14. Plaintiffs are further informed and believe and therefore allege that defendants acquired
9 the property for the purpose to renovate and sell the units as tenancies-in common.

10 15. Defendants hired project architect, Bryan Murdock, shortly after acquisition of the
11 Property. Mr. Murdock, from Murdock Architecture, drew a full set of plans for the development and
12 renovation of the Property.

13 16. In October 2013, defendants, ARJUN DUTT and RITU VOHRA, met again with
14 plaintiffs, STAN HELLER and KATHLEEN DREW, to discuss the tenancy and defendants' plans for
15 the Property. During their meeting, defendants informed plaintiffs about the extensive construction
16 plans and that completion of the work would take an estimated nine months. Defendants further
17 informed plaintiffs, who are both older than 60 years of age, that following the capital improvement
18 work plaintiffs would not be able to return to the Premises because their rent would not cover
19 defendants' mortgage. Defendants were fully aware that the construction work would displace
20 plaintiffs for more than three months.

21 17. Defendants requested entry to the Premises and inspected the Premises on multiple
22 occasions. Defendants attempted to illegally increase plaintiffs' rent, harass, intimidate and interfered
23 with plaintiffs' quiet use and enjoyment of the Premises in an effort to influence plaintiffs to vacate the
24 Premises.

25 18. Defendants filed a building permit application to extensively remodel the entire
26 building (Building Permit No. 201312053445) with the San Francisco Department of Building
27 Inspection ("DBI") on December 5, 2013. The permit was approved on December 30, 2013. (A true
28 and correct copy of said Building Permit is attached hereto and incorporated herein as Exhibit A.)

1 19. Defendants served plaintiffs with a 60-day Notice to Vacate pursuant to San Francisco
2 Rent Ordinance Section 37.9 (a)(11) on January 3, 2014. The notice to vacate states: "CANDU
3 CAPITAL GROUP anticipates that work will take more than three months, and you may be able to
4 reoccupy the Subject property no earlier than June 1, 2014 (...)." Defendants also admitted to plaintiffs
5 in an email that the construction work would take longer than three months. (A true and correct copy
6 of said Notice is attached hereto and incorporated herein as Exhibit B.)

7 20. Defendants commenced construction work at the Property in mid-January 2014. During
8 the construction work, defendants broke through plaintiffs' ceiling, performed the work in a dangerous
9 manner, caused a glass ceiling fixture in the Premises to shatter and water to leak into plaintiff's
10 bathroom on three separate occasions. DBI inspected the Premises issued a Notice of Violation on
11 January 23, 2014.

12 21. On January 14, 2014, defendants filed a second Building Permit Application No.
13 201401146235 with DBI to convert the Premises into two separate units by removing the internal
14 staircase. Defendants are changing the use of the Property from a two-unit into a three-unit building.
15 DBI approved Building Permit Application No. 201401146235 on December 17, 2014. (A true and
16 correct copy of Permit Details Report from the Department of Building Inspection website is attached
17 hereto and incorporated herein as Exhibit C.)

18 22. Defendants filed a Petition for Extension of Time to Complete Capital Improvements
19 with the Rent Board on February 5, 2014. (A true and correct copy of said Petition is attached hereto
20 and incorporated herein as Exhibit D.) Defendants requested permission to displace plaintiffs from the
21 Premises beyond the allowable three-month period until August 3, 2014. The case was heard at the San
22 Francisco Rent and Stabilization Board under case number L140340 on March 25, 2014. The
23 Administrative Law Judge denied defendants' petition on April 11, 2014. Defendants appealed the
24 decision, Rent Board appeal no: AL140038. The Rent Board Commissioners affirmed the denial on
25 June 17, 2014.

26 23. Plaintiffs vacated the Subject Premises on March 3, 2014 in anticipation of and with the
27 statutory right to reoccupy the Premises upon the completion of the renovation.

28 24. On March 7, 2014, defendants obtained additional permits for electrical upgrade, new

1 furnace, and new tankless water heaters. (A true and correct copy of said Permits are attached hereto

2 25. On March 7, 2014, defendants obtained additional permits for electrical upgrade, new
3 furnace, and new tankless water heaters. (A true and correct copy of said Permits are attached hereto
4 and incorporated herein as Exhibit E.)

5 26. On May 15, 2014, defendants obtained a building permit to install a fire sprinkler
6 system throughout the Subject Property. (A true and correct copy of said Building Permit is attached
7 hereto and incorporated herein as Exhibit F.) On June 3, 2014, defendants filed a second Petition for
8 Extension of Time to Complete Capital Improvements with the Rent Board. (A true and correct copy
9 of said Petition is attached hereto and incorporated herein as Exhibit G.) The basis for the second
10 petition was the additional work that needed to be performed under a fire sprinkler permit, Building
11 Permit Application No. 201405155894, and the addition of a second water meter to the property. Now
12 Defendants requested permission to displace plaintiffs from the Premises beyond the allowable three-
13 month period until November 30, 2014. The case was heard before the San Francisco Rent and
14 Stabilization Board under case number L141053 on July 31, 2014. The Administrative Law Judge
15 denied defendants' petition on October 21, 2014.

16 27. On November 26, 2014, defendants filed a third Petition for Extension of Time to
17 Complete Capital Improvements with the Rent Board. (A true and correct copy of said Petition is
18 attached hereto and incorporated herein as Exhibit H.) Defendants requested permission to displace
19 plaintiffs from the Premises beyond the allowable three-month period (June 3, 2014) until January 31,
20 2015.

21 28. Plaintiffs were not allowed to return to the Premises as of the filing of this lawsuit on
22 January 2, 2015. Defendants informed plaintiffs again on December 7, 2014, that they would not be
23 able to return to the Premises because defendants plan to evict plaintiffs pursuant to San Francisco
24 Rent Ordinance Section 37.9 (a)(8) by moving defendants' elderly parents into the Premises.

25 29. Plaintiffs are informed and believe and thereafter allege that defendants, RITU VOHRA
26 and ARJUN DUTT, are in the business of purchasing tenant occupied properties in the San Francisco
27 Bay Area all with the intent to improve and sell the properties for profit. Defendants bought and
28 developed for sale several properties including but not limited to the properties located at 848 Kansas

1 Street Unit 1, San Francisco, CA; 404 Andover Street, San Francisco, CA; 166 Encline Court, San
2 Francisco, CA; and 349 Banks Street, San Francisco, CA.

3 30. Plaintiffs are informed and believe and therefore allege that defendants routinely and in
4 an effort to influence tenants to vacate their units, harass, intimidate, and interfere with plaintiffs' right
5 of quiet use and enjoyment of the rental unit and abuse the landlord's right of access into the rental
6 housing. Plaintiffs are informed and believe and therefore allege that defendants attempted to
7 influence their former tenants to vacate the rental units with threats of an owner and relative-move-in
8 eviction.

9 **FIRST CAUSE OF ACTION**

10 [Violation of San Francisco Administrative Code Ch. 37, Sec. 37.9(f) and Injunctive Relief]

11 31. Plaintiffs reallege and incorporate by reference, all the allegations set forth in the
12 preceding paragraphs of this Complaint as though set forth in full.

13 32. San Francisco Administrative Code Section 37.9(a)(11) states that a landlord may
14 temporarily remove an apartment from housing use in order to carry out capital improvements or
15 rehabilitation work, but that any tenant who vacates the unit shall have the right to reoccupy the unit
16 and that the tenant shall vacate the the unit only for the minimum time required to do the work,
17 normally not to exceed three months.

18 33. In doing the actions alleged above, defendants intended to circumvent the Rent
19 Ordinance, by unlawfully endeavoring to evict and evicting plaintiffs from the Premises. The
20 foregoing conduct constitutes a statutory wrongful eviction.

21 34. As a proximate result of said defendants' wrongful and malicious acts, plaintiffs have
22 suffered actual damages including but not limited to reduced and loss of enjoyment of the Premises
23 over the period that plaintiffs would have enjoyed the use and occupancy of the rent controlled
24 Premises, fear of homelessness, fear for their safety, loss of job productivity, relocation expenses and
25 increased housing costs, anxiety, depression, pains, inconvenience, annoyance and emotional distress,
26 all to their damage. The exact amount of these damages will be proved at trial.

27 35. Plaintiffs additionally request to re-occupy the Premises pursuant to Rent Ordinance
28 section 37.9(a)(11) and San Francisco Residential Rent Stabilization and Arbitration Board Rules

1 Regulation Section 12.16. Plaintiffs request to reoccupy the entire Premises, comprising of the first and
2 second floor of the Property, once defendants completed all necessary capital improvements.

3 36. Plaintiffs have incurred and will continue to incur attorneys fees that plaintiffs are
4 entitle to recover as provided in Section 37.9(f) of the Ordinance in an amount according to proof.

5 37. Section 37.9(f) of the Ordinance further provides that whenever a landlord successfully
6 or unsuccessfully endeavors to recover possession of a rental unit in violation of Section 37.9(a) of
7 said Ordinance, the tenant may sue for not less than three times actual damages, including emotional
8 distress damages.

9 38. In committing the acts alleged herein, and wrongfully endeavoring to recover and
10 successfully recovering possession of the Premises, said defendants acted maliciously and oppressively
11 in that: (1) defendants knew that the capital improvement work would last longer than three months
12 prior to serving the 60-day notice to vacate on plaintiffs, but failed to obtain all necessary permits for
13 the construction project prior to serving the notice to vacate and (2) defendants intentionally failed to
14 apply for an extension of time for completion of the capital improvement work with the Rent Board
15 prior to the service of the notice to vacate. Defendants' eviction of plaintiffs was oppressive and
16 malicious within the meaning of Civil Code Section 3294 in that it subjected plaintiffs to cruel and
17 unjust hardship in willful and conscious disregard of plaintiffs' rights and safety thereby entitling
18 plaintiffs to punitive damages.

19 **SECOND CAUSE OF ACTION**

20 [Breach of Implied Warranty of Habitability]

21 40. Plaintiffs reallege and incorporate by reference, all the allegations set forth in the
22 preceding paragraphs of this Complaint as though set forth in full.

23 41. Starting January 2014 through plaintiffs' vacation of the Premises on or about March 3,
24 2014, the Premises were uninhabitable and unfit for human occupation in that there were multiple,
25 substantial violations of the San Francisco Building Code, including without limitation the conditions
26 set forth the Notice of Violation.

27 42. Plaintiff notified defendants of the foregoing conditions as alleged above and
28 defendants ignored all requests by plaintiffs to make the repairs necessary to place the Premises to a

1 habitable condition. The maintenance of said conditions at the Premise constitute a breach of the
2 implied warranty of habitability.

3 43. As a result of the breach of the implied warranty of habitability, plaintiffs suffered
4 general damage in an amount according to proof.

THIRD CAUSE OF ACTION

[Intentional Infliction of Emotional Distress]

7 44. Plaintiffs reallege and incorporate by reference, all the allegations set forth in the
8 preceding paragraphs of this Complaint as though set forth in full.

9 45. Defendants owed plaintiffs the duties imposed by law upon a landlord to tenant and in
10 doing the acts herein alleged breached that duty proximally causing the harm suffered by plaintiffs as
11 herein alleged.

12 46. Defendants' conduct as alleged herein in the First and Second Causes of Action was
13 intentional and malicious and done for the purpose of causing plaintiffs to suffer humiliation, extreme
14 mental, emotional and physical distress. Defendants intentionally displaced plaintiffs for more than the
15 allowable three months by failing to obtain all necessary permits prior to evicting plaintiffs.
16 Defendants proceeded with the actual eviction against plaintiffs endeavoring to force plaintiffs out of
17 the Premises and terminate the tenancy by illegal means with reckless and wanton disregard of the
18 consequences to plaintiffs.

19 47. As a proximate result of the aforementioned acts plaintiffs, suffered humiliation, mental
20 anguish, and emotional distress and physical distress, loss of productivity at work and has been injured
21 in mind and body all to Plaintiff's damage as further alleged in paragraph 30 hereof.

48. The aforementioned acts of defendants, and each of them, were willful, wanton, malicious and oppressive within the meaning of Civil Code section 3294 in that defendants were attempting to intimidate and harass plaintiffs into voluntarily vacating the Premises as alleged in paragraph 30, and justifies the awarding of exemplary and punitive damages.

26 | *ii*

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FOURTH CAUSE OF ACTION

[Negligence]

49. Plaintiffs reallege and incorporate by reference, all the allegations set forth in the preceding paragraphs of this Complaint as though set forth in full.

5 50. By reason of the personal and fiduciary relationships between plaintiffs and defendants,
6 defendants owed plaintiffs the duty to exercise reasonable care in the ownership, operation,
7 management, and control of the subject premises, which included but was not limited to the following:
8 the duty to comply with all applicable state and local laws governing plaintiffs' rights; the duty not to
9 interfere with plaintiffs' quiet enjoyment of the premises; the duty to refrain from attempting to
10 wrongfully evict plaintiffs, and the duty to allow plaintiffs to re-occupy the premises.

51. Defendants, by their conduct as alleged herein, negligently and carelessly operated and
managed the subject premises, and thereby breached duties owed to plaintiffs, including those listed in
the paragraph immediately above.

14 52. As a direct and proximate result of these breaches of duty by defendants, plaintiffs
15 suffered general and special damages as alleged above.

FIFTH CAUSE OF ACTION

[Negligent Infliction of Emotional Distress]

53. Plaintiffs reallege and incorporate by reference, all the allegations set forth in the preceding paragraphs of this Complaint as though set forth in full.

20 54. Defendants should have known that plaintiffs would be forced to vacate the Premises,
21 and that defendants' failure to exercise due care in the performance of their statutory duties as landlords
22 would result in plaintiffs suffering severe emotional distress.

23 55. As a further proximate result of the defendants acts and omissions herein alleged,
24 plaintiffs have suffered severe emotional distress and mental suffering, all to his damage in an amount
25 to be proved at trial. Said conduct on the part of defendants would have caused a reasonable person to
26 suffer substantial emotional and physical distress.

27 | 11

28 11

SIXTH CAUSE OF ACTION

(Violation of Rent Ordinance section 37.10B)

56. Plaintiffs reallege and incorporate by reference, all the allegations set forth in the preceding paragraphs of this Complaint as though set forth in full.

5 57. Rent Ordinance section 37.10 B (a) states that no landlord, and no agent, contractor,
6 subcontractor or employee of the landlord shall do in bad faith or with ulterior motive or without
7 honest intent influence, attempt to influence a tenant to vacate a rental housing unit through fraud,
8 intimidation, or coercion; interfere with tenant's right to quiet use and enjoyment of a rental housing
9 unit as that right is defined by California Law; and other repeated acts or omissions of such
10 significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any
11 person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are
12 intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling
13 unit or to surrender or waive any rights in relation to such occupancy.

14 58. Defendants and plaintiffs were in a landlord-tenant relationship at all times mentioned
15 herein.

16 59. Plaintiffs through their acts and omission as set forth above in bad faith attempted and
17 influenced plaintiff to vacate the Premises.

18 60. Rent Ordinance section 37.10B(c)(5) provides that: "Any person who violates or aids or
19 incites another person to violate the provisions of this Section is liable for each and every such offense
20 for money damages of not less than three times actual damages suffered by an aggrieved party
21 (including damages for mental or emotional distress), or for statutory damages in the sum of one
22 thousand dollars, whichever is greater, and whatever other relief the court deems appropriate... In
23 addition, a prevailing Plaintiff shall be entitled to reasonable attorney's fees and costs pursuant to order
24 of the court. The trier of fact may also award punitive damages to any Plaintiff, including the City, in a
25 proper case as defined by Civil Code Section 3294."

26 61. As a further proximate result of defendants' violation of the Rent Ordinance, plaintiffs
27 have suffered mental anguish, discomfort, worry, anxiety, annoyance, emotional distress all to their
28 general damage in a sum well in excess of the jurisdictional minimum of this Court.

1 62. The wrongful conduct of defendants described above was intended by defendants to
2 cause injury to plaintiffs and employed by defendants with a willful and conscious disregard of the
3 rights of plaintiffs, was done with reckless disregard, and was an intentional misrepresentation and
4 concealment of material facts known to defendants with the intent to deprive Plaintiff of property, legal
5 rights, or to otherwise cause injury, such as to constitute malice, oppression and/or fraud under Civil
6 Code section 3294 and which, pursuant to Rent Ordinance section 37.10B(c)(5), entitles plaintiffs to
7 punitive damages in an amount sufficient to punish defendants or to set an example of defendants to
8 prevent such conduct by others.

9 63. Plaintiffs are also entitled to not less than three times the amount of money damages
10 and the recovery of attorney's fees for prosecuting this cause of action as provided for in Rent
11 Ordinance section 37.10B(c)(5).

12 64. Rent Ordinance §37.10B(c)(5) also provides for the award of reasonable attorney's fees
13 and costs to the prevailing party to any action brought under this section. Plaintiffs are thereby entitled
14 to a reasonable attorney's fees and costs.

SEVENTH CAUSE OF ACTION

[Breach of Contract]

17 65. Plaintiffs reallege and incorporate by reference, all the allegations set forth in the
18 preceding paragraphs of this Complaint as though set forth in full.

19 66. Plaintiffs have performed each and every covenant to be performed by them under the
20 rental agreement.

21 67. The tenancy agreement contains a covenant of quiet enjoyment whereby the Landlord
22 has expressly agreed that the tenant shall be entitled to the quiet enjoyment of the Premises.

23 68. Defendants have breached that covenant of quiet enjoyment by wrongfully endeavoring
24 to recover possession of the Premises as alleged in the First Cause of Action herein, incorporated
25 herein by this reference and by failing to provide habitable living conditions to protect plaintiffs'
26 health and safety and, as alleged in the Second Cause of Action.

27 69. As a result of the foregoing acts of defendants, and each of them, plaintiffs has been
28 damaged in an amount that will be proved at trial.

EIGHTH CAUSE OF ACTION

[Negligence Per Se]

70. Plaintiffs reallege and incorporate by reference, all the allegations set forth in the preceding paragraphs of this Complaint as though set forth in full.

71. At all times mentioned herein, defendants owed plaintiffs the duties to only endeavor to recover possession of the Premises for the purposes allowed under the Rent Ordinance Section 37.9, et seq. and to provide habitable living conditions to plaintiffs pursuant to Civil Code Section 1941, et seq. and Health & Safety Code Section 17920.3.

9 72. In the course of their endeavor to recover possession of the Premises from plaintiffs,
10 defendants violated Section 37.9(a)(11) of the Ordinance, as alleged in the First Cause of Action, and
11 at all times that defendants owned the Property they failed to provide habitable living conditions to
12 plaintiffs in violation of Civil Code Section 1941, et seq. and Health & Safety Code Section 17920.3.

73. The wrongful endeavor to recover possession of the Premises and the failure to provide habitable living conditions were the proximate cause of the damage suffered by plaintiffs herein.

15 74. The damage suffered by plaintiffs in the course of defendants' endeavor to recover
16 possession of the Premises, as alleged in paragraph 30 is the type of injury that the Ordinance is
17 designed to prevent; i.e., mental suffering and emotional distress. Likewise, the damage suffered by
18 plaintiffs as alleged in paragraph 48 is the type of damage that Civil Code Section 1940, et seq. and
19 Health & Safety Code Section 17920.3 are designed to prevent.

20 75. Plaintiffs are tenants and are among the class of persons protected by the Ordinance and
21 those Statutes.

22 76. As result of defendants' violation of Section 37.9(a)(11) of the Ordinance and Civil
23 Code Section 1940, et seq. and Health & Safety Code Section 17920.3, plaintiffs have suffered damage
24 the character and amount of which will be proved at trial.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- 1 1. For general damages according to proof;
2 2. For special damages according to proof;
3 3. For treble damages under the First and Sixth Cause of Action;
4 4. For injunctive relief under the First Cause of Action.
5 5. For punitive and exemplary damages as allowed by law;
6 6. For attorneys' fees as allowed by law;
7 7. For costs of suit;
8 8. For such other and further relief as the Court may deem just and proper.

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10 Dated: January 2, 2015

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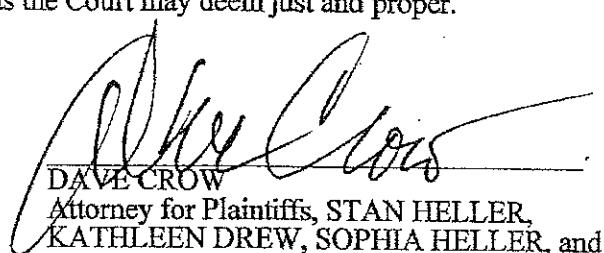
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DAVE CROW
Attorney for Plaintiffs, STAN HELLER,
KATHLEEN DREW, SOPHIA HELLER, and
CRAIG PURSELL

Exhibit List

Exhibit Number	Description	Date issued/filed
A	Building Permit [Application No. 201312053445]	12/30/2013
B	Sixty Day Notice to Vacate	01/03/2013
C	Permit Details Report Building Permit [Application No. 201401146235]	12/17/ 2014
D	Petition for Extension of Time to Complete Capital Improvements with the San Francisco Rent Stabilization and Arbitration Board	02/05/2014
E	Electrical Permit [Permit No. E201403047810] Mechanical Permit [PM20140307805] Plumbing Permit [PP20140307804]	03/07/2014
F	Building Permit [Application No. 201405155894]	05/16/2014
G	Petition for Extension of Time to Complete Capital Improvements with the San Francisco Rent Stabilization and Arbitration Board	
H	Petition for Extension of Time to Complete Capital Improvements with the San Francisco Rent Stabilization and Arbitration Board	11/26/2014

1 Re: Heller v. Candu Capital Group, LLC, et al
2 Case Number: CGC-15-543483

3
4 **PROOF OF SERVICE**
5 **Code of Civil Procedure 1013a, 2015.5**

6
7 I am a resident of the State of California and over the age of eighteen years, and not a party to the
8 within action. My business address is 505 14th Street, Suite 400, Oakland, CA 94612-1913. On
9 February 26, 2015, I served the following document(s):

10
11 **DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
12 **MOTION TO STRIKE; EXHIBIT A**

13
14 By placing the document(s) listed above in a sealed envelope, addressed as set forth
15 below, and placing the envelope for collection and mailing in the place designated for
16 such in our offices, following ordinary business practices.

17
18 By transmitting via facsimile the document(s) listed above to the fax number(s) set
19 forth below on this date before 5:00 p.m.

20
21 By causing a true copy thereof to be personally delivered to the person(s) at the
22 address(es) set forth below.

23
24 By electronically serving the document(s) described above via a Court approved File
25 & Serve vendor on those recipients designated on the Transaction Receipt located on
26 the vendor's Website.

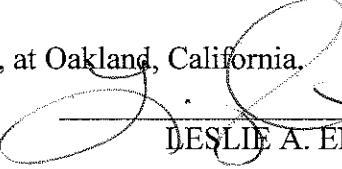
27
28 By electronically serving the document(s) to the electronic mail address set forth
below on this date before 5:00 p.m. pursuant to the signed stipulation of the parties
and consistent with Code of Civil Procedure section 1010.6(a)(2).

SEE ATTACHED SERVICE LIST

1 I am readily familiar with the firm's practice of collection and processing correspondence for
2 mailing with the United States Postal Service. Under that practice, it would be deposited with U.S.
3 Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
4 am aware that on motion of the party served, service is presumed invalid if postal cancellation date or
5 postage meter date is more than one day after date of deposit for mailing in affidavit.

6 I declare under penalty of perjury under the laws of the State of California that the above is true
7 and correct.

8 Executed on February 26, 2015, at Oakland, California.

9
10 
11 **LESLIE A. ENGELMEIER**

1 Re: Heller v. Candu Capital Group, LLC, et al
2 Case Number: CGC-15-543483

3 **SERVICE LIST**

4 Dave Crow, Esq.
5 Crow & Rose, Attorneys at Law
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7 San Francisco, CA 94105
8 Attorney for Plaintiffs, Stan Heller, et al
9 Phone: (415) 552-9060
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