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January 10, 2020

ORIGINAL BY U.S. MAIL

VIA EMAIL Serena.Christion@lacity.org

Serena L. Christion
Deputy City Attorney
Los Angeles City Attorney
200 N. Main Street
City Hall East, 5th Floor
Los Angeles, CA 90012

Re: People v. Nader Mohebkhosravi, et al.
LASC Case No. 9CJ01382

Dear Ms. Christion:

This office represents Hope of the Valley Rescue Mission (“HOTV”) with regard to the case referenced above. HOTV offers a family housing program to prevent and end homelessness for the most vulnerable Angelenos. Most of these people suffer from disabilities protected by state and federal fair housing law.

HOTV operates this program out of several properties, including the property located at 10337 N. De Soto Avenue in Chatsworth, which is the property that is the subject of the case (the “Property”). HOTV is the lessee of the Property and the subject case was filed against the property owner. The purpose of this correspondence is to request that the City dismiss the case in its entirety, as we believe that it has been filed by mistake.

There are no life, fire, health or safety issues at the property. In fact, Los Angeles County Public Health inspects the home and issued a permit for a new category of housing, Interim Housing Facility¹. The Los Angeles Municipal Code has not been amended to reference this type of home.

Notice of Violation.

HOTV received a Los Angeles Fire Department (“LAFD”) notice of Fire/Life Safety Violation (“Notice of Violation”) on or about February 14, 2019 indicating that the Property was in violation of two sections of the Los Angeles Fire Code. With respect to Los Angeles Municipal Code (“LAMC”)

¹ Los Angeles County Interim Housing Facility Ordinance No. 2018-0046, adopted November 27, 2018

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§ 57.110.1.1, Unsafe Conditions, the Notice of Violation noted that all double keyed locks on exit doors required removal. HOTV immediately remedied the violation, and advised LAFD of such via letter dated March 12, 2019. A true and correct copy of the March 12, 2019 letter is attached as Exhibit A. The letter both enclosed photographs of the subject exit doors and invited LAFD to return to the Property for a reinspection, as directed in the Notice of Violation.

The Notice of Violation also noted a violation of LAMC § 57.105.3.9.2. To resolve this purported violation, HOTV was required to obtain a Certificate of Occupancy “showing the occupant load use of the building. Residential living.” Please see the Certificate of Occupancy for the Property, indicating that the structure’s approved use is a “Dwelling - Single Family,” attached as Exhibit B. As the Property is used as a residential dwelling, the existing Certificate of Occupancy correctly identifies the use of the building.

Moreover, under the Uniform Housing Code, adopted pursuant to California Health and Safety Code § 17922(a)(1), every dwelling unit in this state is required to have at least one room with a minimum of 120 square feet of floor area; other habitable rooms are required to have an area of at least 70 square feet; and in any room used for sleeping purposes, “the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two.” Uniform Housing Code, § 503(b). The City has failed to adopt any ordinance modifying such occupancy standards pursuant to the procedures set forth in Health and Safety Code §§ 17958.5 and 17958.7, and the occupancy at the Property complies with the state standards.

The Pending Case Was Filed in Error.

HOTV did not receive a written response to its March 12, 2019 letter, and the Property was never reinspected by LAFD. Despite its compliance with the Notice of Violation, the criminal case referenced above was filed on October 31, 2019. The complaint references two offenses. Count 1 is a violation of LAMC § 57.109.1 and Count 2 is a violation of LAMC § 57.110.1.1. Again, please note that the violation that relates to Count 2 was remedied immediately upon receipt of the Notice of Violation. See Exhibit A. As such, this Count was clearly filed in error.

With respect to Count 1, while the Notice of Violation does not include the referenced code section, it is our understanding that the violation stems from the purported lack of a valid Certificate of Occupancy for HOTV’s use of the Property. There is no evidence to support the allegation that the single family dwelling is being utilized for anything other than its intended purpose.

We understand that our client has been advised that to comply with the use allowed by the current Certificate of Occupancy for the Property, a maximum of six persons may live at the home. Such a requirement has no basis in law. In 1980, the California Supreme Court struck down a municipal ordinance that permitted any number of related people to live in a house in a single-family zone, but limited the number of unrelated people who were allowed to do so to five. See City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123. The court held that the residents of the Adamson household,

although unrelated, were a single housekeeping unit that could be termed an alternative family and as such could not be excluded from the single family zone, nor made to apply for a conditional use permit.

A relevant Code provisions important for this issue is Code Section 12.03, which has the following pertinent definitions:

“DWELLING, ONE-FAMILY. A detached dwelling containing only one *dwelling unit*.”²

“DWELLING UNIT. A group of two or more rooms, one of which is a kitchen, designed for occupancy *by one family* for living and sleeping purposes.”³

“FAMILY. One or more persons living together in a *dwelling unit*, with common access to, and common use of all living, kitchen, and eating areas within the dwelling unit.”⁴

Each of these definitions are based on the concept of “*family*,” and Adamson makes clear that the City has no authority to intrude upon the manner in which persons chose to form their family and live together in a single-family home.

Moreover, under Code Section 12.07 A.1, in the “RA” Suburban Zone, a “ONE-FAMILY DWELLING” is an *expressly permitted* use within that Zone. Again, that use is premised upon the definitions listed above, all of which ultimately rest on the concept of “*family*” which Adamson safeguards from governmental intrusion.

In contrast with this long-standing and well-accepted authority, LAFD’s position is that the subject property is occupied in some manner other than by a “*family*.” The simple fact is that there is no basis for this allegation, and no right for LAFD to intrude into the privacy rights of the persons residing at the property and prevent them from continuing to live with the familial relationships that they choose. This is squarely prohibited under Adamson and should likewise be prohibited as a result of this case.

Notably, the California Supreme Court in Adamson also considered whether Santa Barbara’s regulations could be saved by requiring persons living as a single group to apply for a conditional use permit, variance, or similar discretionary permit. California’s high court soundly rejected these

² Emphasis added.

³ Emphasis added.

⁴ Emphasis added.

contentions, holding that such discretionary authority vests in the government inordinate power to infringe on the personal choices individuals make in deciding fundamental issues in their lives, such as who they should live with and how to constitute their households.⁵

Prior to issuance of the Notice of Violation, the LAFD inspector made comments to HOTV concerning occupancy limits for a "homeless shelter," indicating that LAFD sought from the outset to characterize the Property in a manner which differs from its actual use. The inspector's comment did not reference any specific code and reveals LAFD's inherent misunderstanding of the mostly disabled family occupying the dwelling and relevant law. Most everyone living in the home suffers from disabilities, and are members of a disabled class entitled to protection under the California Fair Employment and Housing Act⁶ and the Federal Fair Housing Act⁷ (collectively, the "Fair Housing Acts"), as well as the Americans with Disabilities Act and its related regulations⁸ (the "ADA"). None of the residents presently require licensed care in an institutional setting, and each is enjoying housing in the least restrictive setting and in their community and residence of choice.

Furthermore, living in such environment – in which all family members adhere to household expectations – is necessary for each resident to live with their disability and lead a normal life. Because their disability hampers their daily life activities, the residents must live together in this environment in order to simply live life and maintain housing stability. The California and Federal Fair Housing Acts, as well as the ADA, prohibit housing discrimination against persons with disabilities, and apply exactly to the residents who are now threatened by the City's enforcement action.⁹

Using the fire department to enforce zoning and building regulations under the guise of a fire safety concern, to appease neighbors who do not like the characteristics of certain types and classes of people, is nothing new. Courts across the country have repeatedly seen through the thin veneer of legitimacy to unmask the discriminatory intent inherent in fire officials doing the bidding of neighbors who want to dictate how and by what type or people neighborhood homes are occupied. For example, see Tsombanidis v City of West Haven, 352 F.3d 565 (1st Cir. 2003) where the court found intentional discrimination against the occupants in a case strikingly similar to this matter.

⁵ Adamson at 135, 137.

⁶ Gov't Code § 12900, *et seq.*

⁷ 42 U.S.C. § 3601, *et seq.*

⁸ 28 CFR Part 35 §35.131.

⁹ Corporation of the Episcopal Church in Utah v. West Valley City (2000) 119 F.Supp.2d 1215, 1219 ("It is well established that individuals recovering from drug or alcohol addiction are handicapped under the Fair Housing Act."); Behavioral Health Services v. City of Gardena (C.D. Cal. Feb. 26, 2003) No. CV 01-07183, 2003 WL 21750852; Oxford House v. Town of Babylon (E.D.N.Y. 1993) 819 F.Supp. 1179, 1181.

The residents of the Property, which consists of twelve (12) bedrooms, function as an alternative family as defined by the California Supreme Court in City of Santa Barbara v. Adamson. They have established ties and familiarity with each other, jointly use common areas, interact with each other, and share meals, household activities and responsibilities, consistent with a “family” as defined by the Los Angeles Municipal Code. Residence at the Property is fairly stable and not transient in nature, and residential activities at the Property are conducted on a nonprofit basis.

The Property is Not a Community Care Facility.

We believe that the purported six person limitation is derived from state law that requires that group homes of six or fewer residents be regulated in the same manner as single-family residences for zoning purposes. California Health & Safety Code § 1566.3. However, the Property does not operate as a “community care facility” as defined by California Health & Safety Code § 1502. Such facilities provide services such as detoxification, counseling sessions, educational sessions, or alcoholism or drug abuse recovery or treatment planning. Services such as these are not provided at the Property, the use does not require licensing by the California Department of Health Care Services, and under the circumstances the attempt to limit occupancy to no more than six runs afoul of state law.

The City's Housing Element, Fair Housing Impediments Study, discusses in this misunderstanding:

"Those staff of the Departments of Building and Safety and Planning interviewed for this Study indicated an understanding of the Community Care Facilities Act, often referred to by them as the 'six and under rule.' Some staff explained that this state preemptive law probably superseded the City's definition of 'family' which includes only five unrelated individuals. However, there was a general presumption among those interviewed that the 'six and under rule' meant that the City could impose restrictions on households of seven or more individuals with disabilities.

"While under the Fair Housing Act jurisdictions may have reasonable restrictions on the maximum number of occupants permitted to occupy a dwelling, the restrictions cannot be based on the characteristics of the occupants; the restrictions must apply to all citizens, and are based upon health and safety standards."

LAFD has taken a position which repeats the misunderstanding related by this passage from the City's Housing Element study. That mistaken understanding of the law is leading to violations of Fair Housing Acts and the ADA and should be soundly rejected.

Moreover, such an occupancy limitation will unnecessarily impact families in crisis. Establishing community, stability, and routines are essential first steps in securing permanent housing. Given that the City of Los Angeles has fallen woefully short on supplying shelter beds and other accommodations for Angelenos experiencing homelessness, pursuing this case against a party offering a solution is short sighted, to say the least.

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Given that the current use of the Property is permitted under the existing Certificate of Occupancy, it is clear that Count 2 was additionally filed in error. As such, we request that the case be dismissed in its entirety.

Continued Pursuit of the Case Violates Our Client's Civil Rights.

LAFD's enforcement action violates Equal Protection requirements guaranteed under the U.S. and California Constitutions.¹⁰ In Coalition Advocating Legal Housing Options v. City of Santa Monica ("Legal Housing Options"), the California Supreme Court held that Equal Protection is violated where a city's regulation treats "unrelated" residential occupants differently than those who are "related."¹¹ In the case, Santa Monica relied on evidence of traffic impacts, population congestion, and similar concerns in attempts to justify the "unrelated" versus "related" distinction made by its code; but the California Supreme Court rejected the argument and found Santa Monica's Code at odds with basic principles of equality.

LAFD's enforcement action makes exactly the types of unconstitutional distinctions that were stricken by the California Supreme Court in Legal Housing Options: it singles-out the "*family*" living at the subject property as a '*type of family that is not allowed*' because of their former house-less status and disabilities, with the unlawful belief that the family they comprise is not composed of persons who are like other '*normal*' families in the neighborhood.

The unconstitutional consequence of this distinction is that those deemed '*normal*' are granted preferential housing rights as compared to those sharing an equally-close (or even closer) familial relationship but are not blood relatives. Such result expressly violates Equal Protection.

LAFD's enforcement action will require the property owner to immediately terminate any tenancy and other possessor interest of residents at the property. Essentially, the enforcement action requires the owner to make a "forced eviction" of such persons, but entirely without regard to State law which occupies the legal field of this subject, and in direct conflict with California's Unlawful Detainer requirements.

The State's Unlawful Detainer requirements are provided in the Code of Civil Procedure, Part 3, Title 3, Chapter 4,¹² otherwise known as the State's "unlawful detainer" statute ("Unlawful Detainer Law"). California's Unlawful Detainer Law preempts the field of regulation over the removal of tenants, lodgers, and others occupying or possessing real property owned by a landlord or other

¹⁰ See, U.S. Const. amend. XIV, § 1 (establishing Equal Protection rights and prohibiting the violation of Equal Protection rights throughout the States); Cal. Const. art. I, § 7 (Equal Protection rights afforded to persons under the California Constitution are coextensive with those afforded under the U.S. Constitution; *In re Conservatorship and Estate of Edde* (2009) 173 Cal.App.4th 883).

¹¹ Coalition Advocating Legal Housing Options v. City of Santa Monica (2001) 88 Cal.App.4th 451, 462-463.

¹² Commencing at CCP § 1159, *et seq.*

individual or entity. No city action – including enforcement action of LAFD – may be exercised so as to require a “forced eviction” which would violate California’s Unlawful Detainer Law. Such action is, rather, preempted by State law.

In Cook v. City of Buena Park,¹³ the California Court of Appeal, Fourth District, held that a city regulation that mandates that an owner evict occupants of his/her property or else face criminal or other liability violates the Due Process clause of the U.S. Constitution¹⁴ and is invalid as a matter of law.¹⁵ In doing so, the Court stated:

“We agree with Cook that the ordinance violates his right to procedural due process under the federal Constitution. [Citation.] As a threshold matter, his due process claim depends on having a protected life, liberty, or property interest at stake. [Citations.] The City argues Cook fails this requirement because no landlord ‘has a fundamental right to conduct business in a manner that creates, maintains or constitutes a nuisance.’ But the City’s argument is conclusory, assuming that which must be proved. In other words, whether the rental property constitutes a nuisance is precisely the question to be determined by the unlawful detainer proceedings required by the ordinance.”¹⁶

The enforcement action of LAFD triggers these same violations, by subjecting the owners to liability under the City’s Code unless they forcibly evict persons residing at the property. But LAFD’s action actually is even more egregious than this, because the City’s Code which LAFD has relied on to pursue enforcement does not even provide an opportunity for the owners to exercise rights under the Unlawful Detainer Law, effectively placing them in a proverbial “Catch 22”:

They either face enforcement by LAFD to remove occupants immediately, which will violate the Unlawful Detainer Law and subject them to liability from those occupants once they are removed; or they face fines and criminal liability from LAFD and the City if they refuse to remove the occupants and respect the requirements of the Unlawful Detain Law. Either way, LAFD’s action forces them in to a no-win situation where they cannot escape liability. Such result is a gross violation of Due Process and is patently unconstitutional.

¹³ Cook v. City of Buena Park (2005) 126 Cal.App.4th 1.

¹⁴ U.S. Const., 14th Amend.

¹⁵ Cook v. City of Buena Park, *supra*, at p. 6.

¹⁶ Id. (citing Cleveland Bd. of Educ. v. Loudermill (1985) 470 U.S. 532, *et al.*).

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Conclusion.

As the subject case appears to have been filed in error, we request that it be dismissed in its entirety without delay. All fire life safety issues have been resolved, and the use of the property is consistent with the existing Certificate of Occupancy.

Thank you for your prompt attention to this matter. We request that you contact us as soon as possible so that an unnecessary appearance at the currently scheduled February 18, 2020 arraignment can be avoided. As always, please do not hesitate to contact me at any time with any questions or comments you may have.

Sincerely,

GAINES & STACEY LLP

By 
ALICIA B. BARTLEY

EXHIBIT "A"

HOPE OF THE VALLEY

11076 Norris Street, Pacoima, CA 91331

March 12, 2019

LAFD Prevention & Public Safety Bureau
Valley Public Safety Bureau Rm # 451
6262 Van Nuys Blvd, Van Nuys 91406

Re: Notice # 1916731001

Address: 10337 De Soto Ave. Chatsworth, CA 91311

Dear Inspector,

Per the Fire/Life Safety violation referenced above, Hope of the Valley has removed all double-keyed locks on exit doors. I am attaching pictures for your review.

Please note that this site is not a shelter, rather it is a family residence operated by Hope of the Valley, not LA Family Housing.

If you would like to re-inspect the property to verify workmanship, please feel free to call me on my cell at 805.279.3055.

Please confirm that no fines or fees are due and that you consider this matter resolved.

Thank you for working with us to ensure fire and life safety,

Sincerely,



Ken Craft - CEO

Property Address – 10337 De Soto Ave Chatsworth, CA 91311

Re: Removal of Double Key Locks on Exit Doors:



Backdoor 2nd floor outside



Backdoor 2nd floor inside



Backdoor 1st floor inside



Backdoor 1st floor outside

EXHIBIT “B”

CITY OF LOS ANGELES CALIFORNIA



ANTONIO R VILLARIAGOSA
MAYOR

CERTIFICATE OF OCCUPANCY

OWNER	HALEH M KHOSRAVI	
	10337 DESOTO CHATSWORTH CA	91311

No building or structure or portion thereof and no trailer park or portion thereof shall be used or occupied until a Certificate of Occupancy has been issued thereof. Section 91.109.1 LAMC

STATUS:	CofO Issued	DATE APPLIED
BY:	ERROL T TATE	08/17/2007

SITE IDENTIFICATION
ADDRESS: 10337 N DE SOTO AVE 91311

LEGAL DESCRIPTION	BLOCK	LOT(s)	ARB CO. MAP REF #	PARCEL PIN	APN
TRACT TR 7754		138	2 MB 91-9/10	204B109 110	2706-016-015

This certifies that, so far as ascertained or made known to the undersigned, the building or portion of building described below and located at the above address(es) complies with the applicable construction requirements (Chapter 9) and/or the applicable zoning requirements (Chapter 1) of the Los Angeles Municipal Code for the use and occupancy group in which it is classified and with applicable requirements of the State Housing Law for the following occupancies and is subject to any affidavits or building and zoning code modifications whether listed or not.

COMMENT Dwelling with attached garage. See also 05016 20000 26794 for conversion of existing dwelling on lot to an accessory living quarters.
--

USE PRIMARY Dwelling - Single Family	OTHER (-) None
--	--------------------------

PERMITS 05010-20000-02871

STRUCTURAL INVENTORY	CHANGED	TOTAL
ITEM DESCRIPTION		
Stories	2 Stories	2 Stories
Length	80.5 Feet	80.5 Feet
Width	45 Feet	45 Feet
Height (BC)	24.6 Feet	24.6 Feet
Height (ZC)	29.3 Feet	29.3 Feet
Floor Area (ZC)	6586 Sqft	6586 Sqft
Type V-N Construction		
Dwelling Unit	1 Units	1 Units
U1 Occ. Group	483 Sqft	483 Sqft
R3 Occ. Load	6586 Max Occ.	6586 Max Occ.
Parking Req'd for Bldg (Auto+Bicycle)	2 Stalls	2 Stalls



APPROVAL	
CERTIFICATE NUMBER 23508	
BRANCH OFFICE	VN
COUNCIL DISTRICT	12
BUREAU:	INSPECTN
DIVISION	RESDINSP
STATUS:	CofO Issued
STATUS BY:	ERROL T TATE
STATUS DATE	08/17/2007

E. Tate

APPROVED BY: **ERROL T TATE**
EXPIRATION DATE:

<u>PERMIT DETAIL</u>			
PERMIT NUMBER	PERMIT ADDRESS	PERMIT DESCRIPTION	STATUS - DATE - BY
05010-20000-02871	10337 N De Soto Ave	NEW SFD	CofO Issued - 08/17/2007 ERROL T TATE

<u>PARCEL INFORMATION</u>		
Area Planning Commission: North Valley	LADBS Branch Office: VN	Bldg. Line: 25
Council District: 12	Certified Neighborhood Council: Chatsworth	Community Plan Area: Chatsworth - Porter Ranch
Census Tract: 1131.00	District Map: 204B109	Energy Zone: 9
Fire District: FBZ	Hillside Grading Area: YES	Hillside Ordinance: YES
High Wind Area: YES	Lot Cut Date: 05/08/1946	Lot Size: 75' X 314'
Lot Type: Interior	Near Source Zone Distance: 6.1	Thomas Brothers Map Grid: 500-B4
Thomas Brothers Map Grid: 500-C4	Zone: RA-1	

<u>PARCEL DOCUMENT</u>
Community Development Block Grant (CDBG) BID- Chatsworth

<u>CHECKLIST ITEMS</u>		
Attachment - Plot Plan	Combine Elec - Wrk. per 91.107.2.1.1.1	Combine HVAC - Wrk. per 91.107.2.1.1.1
Combine Plumbg - Wrk. per 91.107.2.1.1.1		

<u>PROPERTY OWNER, TENANT, APPLICANT INFORMATION</u>			
<u>OWNER(S)</u>			
Haleh M Khosravi	10337 Desoto	CHATSWORTH CA 91311	
<u>TENANT</u>			
<u>APPLICANT</u>			
Relationship: Owner			
Moheb Khosravi-	Po Box 601	P.P., CA 90272	(818) 256-7975

<u>BUILDING RELOCATED FROM:</u>

<u>(C)ONTRACTOR, (A)RCHITECT & (E)NGINEER INFORMATION</u>			
NAME	ADDRESS	CLASS LICENSE #	PHONE #
(O) , Owner-Builder		NA	0

<u>SITE IDENTIFICATION-ALL</u>
ADDRESS: 10337 N DE SOTO AVE 91311

<u>LEGAL DESCRIPTION - ALL</u>					
TRACT	BLOCK	LOT(s)	ARB CO. MAP REF #	PARCEL PIN	APN
TR 7754		138	2 M B 91-9/10	204B109 110	2706-016-015