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8 CITY OF POWAY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO – CENTRAL DIVISION

11	CITY OF POWAY, a municipal corporation,)	CASE NO:
12)	
13	Plaintiff,)	COMPLAINT FOR PRELIMINARY
14)	AND PERMANENT INJUNCTION
15	vs.)	AND NUISANCE PER SE
16)	(CCP §§ 526, 527, and 731)
17	BILL MORITZ and LORI C. MORITZ,)	
18	individuals; and DOES 1 through 10, inclusive,)	
19)	
20	Defendants.)	
21)	

22 Plaintiff City of Poway alleges as follows:

- 23 1. At all times mentioned, Plaintiff, City of Poway (“City”), was and now is, a municipal
- 24 corporation organized and existing under the laws of the State of California.
- 25 2. The City is informed and believes and, based on that information and belief, alleges that
- 26 Defendants BILL MORITZ and LORI C. MORITZ, and Does 1 through 10 (hereinafter “Defendants”),
- 27 are and at all relevant times were the owners of certain real property located at 14272 Jerome Drive in
- 28 Poway, California, APN 321-040-49 (hereinafter “the property”).
3. Defendants caused, participated in, or maintained the violations or the conduct alleged herein.
4. Does 1 through 10 are sued by fictitious names, because their true names and capacities are unknown to the City. The City alleges that each of the fictitiously named Defendants is in some way

1 responsible for the injury and damages sustained by the City or the conduct alleged below. The City
2 requests leave to amend this complaint to show the true names, capacities, and involvement of these
3 Defendants when that information is determined.

4 5. Each of the Defendants is and at all relevant times was the agent, servant, or employee of the co-
5 defendants and, in doing the things alleged below, was acting within the course and scope of authority
6 and with the permission and consent of the other Defendants.

7 6. In the exercise of the police power vested in it by the California Constitution, specifically Article
8 XI, Section 7, the City has enacted comprehensive building and zoning ordinances governing the
9 alteration, maintenance, construction, and use of structures and property. These ordinances can be found
10 in the Poway Municipal Code (hereinafter "PMC").

11 7. Since at least February 2008, Defendants have committed numerous violations of the Poway
12 Municipal Code. Defendants have violated the following sections of the Poway Municipal Code:

- 13 a. PMC § 16.42.010, Failing to obtain a grading permit;
- 14 b. PMC § 16.50.160, Failing to obtain a permit for grubbing and clearing of land;
- 15 c. PMC § 16.48.050, Failing to submit a haul route for import or export of earth material;
- 16 d. PMC § 16.50.040, Use of prohibited fill materials;
- 17 e. PMC § 16.50.050, Failing to compact fill materials;
- 18 f. PMC § 16.50.170, Failing to implement required erosion control;
- 19 g. PMC § 16.58.020, Depositing material in a watercourse;
- 20 h. PMC § 16.58.030, Altering or impeding the flow of water in a watercourse;
- 21 i. PMC § 16.43.070, Failing to comply with stop work notice.

22 (See Request for Judicial Notice ("RJN", Exhibit "A").

23 8. The City has declared by ordinance that violations of any of the City's codes, zoning codes, or
24 ordinances, constitute a nuisance. (PMC §§ 1.08.010(C); 8.72.020.) By violating the PMC, Defendants
25 have created a public nuisance on the property.

26 9. The Defendants have violated and continue to violate the PMC, despite numerous requests that
27 steps be taken to correct the violations and abate the nuisance.

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1 10. Beginning in or about February 2008, and continuing to the present, the City, through its
2 officers, agents, and employees, has notified the Defendants of violations of the PMC and other laws,
3 including but not limited to the following efforts:

4 a. On February 7, 2008, Don Sharp, Engineering Inspector, issued a Stop Work Order to
5 Defendants after observing mud being tracked from Espola Road down Jerome Drive, and observing
6 Defendants performing grading work at the property improperly and without appropriate permits. The
7 Order specified that Defendants must immediately contact Land Development Engineer Sam Tadros.

8 b. On February 8, 2008, Inspector Sharp issued a second Stop Work Order to Defendants after
9 determining that grading on the property had damaged an ephemeral stream. The Order specified that
10 all grading and import work had to stop immediately, and that no restoration work should be done prior
11 to contacting Jim Lyon, Senior Planner.

12 c. On February 8, 2008, the City's Code Compliance Officer received an anonymous telephone call
13 from a female caller who stated that she was a "downstream" neighbor, complaining about illegal
14 grading and filling in of the creek.

15 d. On February 8, 2008, Tomas Borobia, Code Compliance Officer, visited the property and
16 observed fresh mud on the property and in the street. Mr. Borobia observed several individuals,
17 including Defendant Bill Moritz, operating tractor equipment. No erosion control measures were in
18 place. Mr. Moritz told Mr. Borobia that he was "in over his head" and that he was not aware that he was
19 causing an erosion control problem. Mr. Moritz verified that he had been issued a Stop Work Notice
20 that same day, and stated that he would obtain permits and install erosion control measures.

21 e. On February 19, 2008, the Code Compliance Officer received an anonymous call from a male
22 caller who stated that he was "downstream", and complained that Defendant Bill Moritz was continuing
23 work. The caller also stated that rain had caused erosion and mud into his yard, and that he would sue
24 the City if action were not taken to correct the situation.

25 f. On February 19, 2008, the Code Compliance Officer received an anonymous call from a female
26 who stated that work was continuing on the Defendant's property, and that rain had caused erosion into
27 the stream and adjacent properties.

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1 g. On an unknown date in early March 2008, a male neighbor who lives on Jerome Drive came to
2 City Hall and spoke to Inspector Dave Rizzuto about the grading activity at the Defendants' property,
3 and complained about damages to the shared private road. Inspector Rizzuto visited the property and
4 observed Defendant Bill Moritz grading with a tractor in the area northwest of the corral on his property.
5 This area is shown as a stream in aerial photographs from 2005. Inspector Rizzuto observed
6 approximately 30-40 cubic yards of material stockpiled on the site, recently disturbed soils of different
7 colors. He observed that portions of the stream south of the area where Defendant was grading appeared
8 undisturbed. Rizzuto issued a verbal order to Mr. Moritz to stay out of the stream and to stay within the
9 City's restrictions for grading without a permit.

10 h. On March 21, 2008, Defendant Bill Moritz came to City Hall and spoke to Inspector Sharp and
11 Senior Planner Jim Lyon. Mr. Moritz agreed to: 1) stop all grading and importing of material; 2) meet
12 with Inspector Danis Bechter about how to correct the violations; 3) install erosion control devices; and
13 4) reestablish the stream per topography photographs.

14 i. On an unknown date in March 2008, several days after Mr. Moritz's March 21, 2008 visit to City
15 Hall, Inspector Sharp visited the property and observed Mr. Moritz grading using a tractor. Mr. Moritz
16 denied that he was importing material, however, Inspector Sharp observed a dump truck loaded with soil
17 arriving on the site. Mr. Moritz spoke to the dump truck driver, and the truck left. Mr. Moritz denied
18 that the truckload of soil was intended for his property.

19 j. On April 24, 2008, Inspector Sharp visited the property and observed that illegal grading had
20 continued in the ephemeral stream, with no erosion control in place. Inspector Sharp issued a third Stop
21 Work Order which specifically instructed Defendants to stop all importation of soil, and to install
22 erosion control.

23 k. On May 19, 2008, Code Compliance Officer Borobia sent a Notice of Violation letter to
24 Defendants outlining the provisions of the PMC that Defendants had violated, and ordering that the
25 violations be corrected by June 2, 2008. The letter stated that Defendants should contact Sam Tadros,
26 Land Development Engineer, if they had specific questions about how to correct the violations.

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1 l. On May 21, 2008 Defendant Bill Moritz sent a letter to Code Compliance Officer Borobia
2 stating that he would contact Land Development Engineer Sam Tadros, and that he would attempt to
3 complete the repairs by June 2, 2008.

4 m. On May 27, 2008, Administrative Assistant Karen Tansey-Becerra received a call from an
5 unknown neighbor of the Defendants who stated that grading work had been performed on Defendants'
6 property over the Memorial Day holiday weekend.

7 n. On May 27, 2008, Inspector Sharp and Code Compliance Officer Marc LeDrew conducted an
8 inspection of Defendants' property and noted that a 24-inch drain had been installed underground,
9 running the length of Defendants' property. Mr. Sharp and Mr. LeDrew spoke to Defendant Bill Moritz
10 and another individual who was present, Stuart Sandrock, and verbally ordered them to stop all work,
11 and to contact Land Development Engineer Sam Tadros to submit plans before resuming any work.

12 o. On May 27, 2008, Code Compliance Officer LeDrew received an electronic mail message from
13 Mr. Sandrock stating that all work had been stopped, and that erosion control had been placed, but
14 expressing concern about the June 2, 2008 deadline for completing repairs.

15 p. On May 28, 2008, Code Compliance Officer LeDrew sent a Second Notice of Violation to
16 Defendants stating that the drain pipe that had been installed on the property was a violation of the
17 PMC, and repeating the order that all work on the property must cease until permits were obtained.

18 q. On May 30, 2008, the City received a letter from Defendant Bill Moritz dated May 27, 2008,
19 stating that he would not be able to complete repairs on his property prior to June 2, 2008, due to Stop
20 Work Orders issued by the City. The letter also stated that Defendant would file a police report and seek
21 a restraining order if Inspector Sharp returned to his property.

22 r. On May 30, 2008, Inspector Sharp sent a fourth Stop Work Order by certified mail to
23 Defendants, outlining the PMC violations that had occurred, and stating that the installation of the drain
24 pipe was a PMC violation.

25 s. On June 2, 2008, Land Development Engineer Sam Tadros received a phone call from Mr.
26 Sandrock, who wanted to arrange a meeting with City staff for Mr. Moritz and his engineer. Mr.
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1 Sandrock was told that the City would need a plan to show the existing grading and how Defendants
2 were proposing to restore the stream to its original condition.

3 t. On June 9, 2008, a meeting was held at Poway City Hall which was attended by Mr. Sandrock,
4 City staff, and representatives from the Regional Water Quality Control Board, and Department of Fish
5 and Game. Defendants were not present. At that meeting, the City and State agency representatives
6 explained to Mr. Sandrock the steps that Defendants would need to take to correct the violations, and the
7 potential consequences if Defendants did not comply.

8 u. On June 12, 2008, Land Development Engineer Sam Tadros sent a letter to Defendants,
9 memorializing the discussion that occurred at the June 9, 2008 meeting. The letter listed the specific
10 PMC violations that had occurred, stated that various state laws had also been violated, and outlined the
11 potential penalties for failure to correct the violations. Mr. Tadros' letter ordered Defendants to have
12 their engineer contact City staff for direction no later than June 23, 2008.

13 v. On June 13, 2008, City Attorney Lisa Foster received a letter dated June 10, 2008 from Mr.
14 Sandrock, which stated that he had met with Defendant Bill Moritz, and that Mr. Moritz intended to hire
15 a California licensed engineer to provide the requested plans.

16 w. On June 18, 2008, Mr. Sandrock sent a letter to Christopher Means, Environmental Scientist for
17 the California Regional Water Quality Control Board, and copied to City staff. The letter threatened
18 legal action on behalf of Defendants if enforcement actions were pursued.

19 x. On June 19, 2008, a fifth Stop Work Order was issued to Defendants by Engineering Inspector
20 Supervisor/NPDES Coordinator Danis Bechter, based on new grading activity that had occurred on the
21 property. The new grading activity consisted of a vertical cut 200 feet in length, and from four to ten
22 feet in height. The Stop Work Order states that the cut poses safety and stability concerns. The Stop
23 Work Order directed Defendants to submit a corrective plan prior to performing any corrective work,
24 and imposed a ten-day deadline for submitting the plan.

25 y. On June 26, 2008, Mr. Sandrock sent an electronic mail message to Christopher Means, copied
26 to City staff, with an attached letter from Defendant Bill Moritz dated June 27, 2008. Moritz' letter

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1 stated that the property has already been repaired, that he has fully complied with all City directives, and
2 denied that any violations have occurred.

3 z. To date, Defendants have not complied with any of the City's orders to hire a licensed engineer,
4 to have the engineer contact the City, or to submit plans for the restoration of the property, and have not
5 complied with the City's orders to install erosion control devices to protect neighboring properties.

6 11. In accordance with Sections 1.08.010(c) and Chapter 8.72.020 of the Poway Municipal Code,
7 and pursuant to Government Code section 38771, the above-described violations of the Poway
8 Municipal Code and state law constitute a public nuisance and a nuisance per se.

9 12. Notwithstanding City's numerous verbal orders, letters, telephone calls, notices of violation, and
10 stop work orders, requesting that Defendants comply with the City's Municipal Code, Defendants have
11 failed, and continue to fail to respond and abate the nuisance. Therefore no plain, speedy, and adequate
12 remedy at law is available to City to seek compliance with the foregoing provisions of its Municipal
13 Code.

14 13. As a result of the public nuisance created and maintained by Defendants, the City and City
15 residents, in particular those who own neighboring properties, will suffer irreparable harm if the public
16 nuisance created and maintained by Defendants is not abated. Defendants have demonstrated that,
17 unless enjoined, they will continue to violate the Municipal Code, and to maintain the property in
18 violation of the City's Municipal Code.

19 THEREFORE, the City prays for judgment against each Defendant as follows:

20 1. For the issuance of a preliminary and permanent injunction commanding Defendants, their
21 agents, servants, and assigns, and all those acting in concert with them, from maintaining the property in
22 violation of the Poway Municipal Code.

23 2. For an order commanding the Defendants to take all necessary measures to correct all violations
24 on the property;

25 3. For attorney fees and the costs of suit; and

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1 4. All further relief the Court deems just and proper.

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3 Dated: July ____, 2008

Respectfully submitted,
McDOUGAL, LOVE, ECKIS,
SMITH, BOEHMER & FOLEY

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6 LISA A. FOSTER, Attorney for Plaintiff, City of Poway

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