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6

7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9

10 BRANDI GARRIS, JOHN SWITZER  
11 *and* JASON TEAGUE,

12 Plaintiffs,

13 vs.

14 CITY OF LOS ANGELES *and* LOS  
15 ANGELES HOUSING AND  
COMMUNITY INVESTMENT  
16 DEPARTMENT, f/k/a LOS ANGELES  
HOUSING DEPARTMENT,

17 Defendants  
18  
19

CASE NO. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**FOR DECLARATORY  
JUDGMENT, PRELIMINARY AND  
PERMANENT INJUNCTION AND  
DAMAGES PURSUANT TO 42  
U.S.C. § 1983**

20 Plaintiffs Brandi Garris and Jason Teague, as individuals and as proposed  
21 class representatives for all putative class member landlords owning rental  
22 residential properties subject to Los Angeles Housing Code §§ 161.101 through  
23 161.906 ("Inspection Ordinance") during the class period, and Plaintiff John  
24 Switzer, as an individual and as a proposed class representative for all putative class  
25 member renters who paid inspection fees pursuant to the Inspection Ordinance  
26 during the class period, file this action against Defendants the City of Los Angeles  
27 ("the City") and the Los Angeles Housing and Community Investment Department  
28 ("L.A. Housing"), for violation of 42 U.S.C. § 1983.

1 The City's Inspection Ordinance is facially unconstitutional for two reasons.  
2 First, it purports to be an administrative search scheme, “that is, searches conducted  
3 as part of a general regulatory scheme in furtherance of an administrative purpose,  
4 rather than as part of a criminal investigation to secure evidence of crime.” *U.S. v.*  
5 *\$124,570 U.S. Currency*, 873 F.2d 1240, 1243 (9<sup>th</sup> Cir. 1988). Its stated purpose is  
6 avoid unsafe and unhealthy conditions in the City’s rental residential apartments.  
7 The Inspection Ordinance, however, empowers all city employees conducting these  
8 ostensibly “administrative” searches to exercise all the powers of law enforcement  
9 officers, including seizing evidence and making arrests. An administrative scheme  
10 that allows systematic searches for evidence of crimes — as the Inspection  
11 Ordinance expressly does —facially violates the Fourth Amendment rights of those  
12 subject to the scheme. *See U.S. v. McCarty*, 648 F.3d 820, 830, 833-834 (9<sup>th</sup> Cir.  
13 2011); *U.S. v. Bulacan*, 156 F.3d 963, 967-968, 971, 973 (9<sup>th</sup> Cir. 1998), *U.S.*  
14 *Currency*, 873 F.2d at 1244, 1247. Second, even if the Inspection Ordinance is  
15 treated as an administrative scheme, it facially violates the Fourth Amendment in  
16 that it does not allow the landlord or rental tenant "precompliance review" before a  
17 neutral decision-maker if he or she objects to the search, as expressly required by  
18 *City of Los Angeles v. Patel*, 135 S. Ct. 2243 (2015) (search ordinance of the City of  
19 Los Angeles concerning hotel guest registries facially unconstitutional due to failure  
20 to provide precompliance review). Rather, if the landlord or tenant does not allow  
21 the search, he or she is guilty of a criminal misdemeanor and is subject to a fine of  
22 \$1,000 a day, without ever having a hearing before a neutral decision maker. Under  
23 black-letter law, these penalties for non-compliance renders every “consent” to an  
24 inspection any class member has given ineffective as unlawfully coerced, so that  
25 every search conducted by the City violates the Fourth Amendment.

26 With knowledge of their own conduct and such matters as to which this Court  
27 may take judicial notice, and upon information and belief as to all others, Plaintiffs  
28 allege as follows:

1 **Nature of the Action**

2 1. Pursuant to the Inspection Ordinance, each of the over 700,000 rental  
3 residential apartments in the City must be inspected once every three years, or more  
4 often if the relevant City officials deem it appropriate. (Exhibit A to this Complaint  
5 attaches the true and correct text of the current Inspection Ordinance.)

6 2. The Supreme Court in *Patel* ruled that before private materials  
7 protected by the Fourth Amendment may be searched (in that case, hotel registries  
8 containing guest information) pursuant to an administrative search scheme when the  
9 target of the search objects, or before a party may be punished for non-compliance, a  
10 party is constitutionally entitled to "precompliance review," that is, review before a  
11 neutral decision-maker. *See Patel*, 135 S.Ct. at 2451 & 2454.

12 3. The Inspection Ordinance fails to provide precompliance review.  
13 Pursuant to it, searches of over 700,000 private residences occur without  
14 precompliance review. What is more, non-complying landlords or tenants are  
15 subject to a fine of a \$1,000 per day and are deemed "guilty" of criminal  
16 misdemeanor violations, again without precompliance review. *See* Inspection  
17 Ordinance, § 161.905 & .906.

18 4. The Inspection Ordinance empowers the city officials or employees  
19 inspecting the over 700,000 private rental residence to act as "law enforcement  
20 officer[s]" and authorizes them "to make arrests without a warrant." *See id.* §§  
21 161.405 & .410.1 Once inside a private residence, in their capacity of "law  
22 enforcement officers," the city inspectors would be empowered to seize any  
23 evidence of illegal conduct "in plain sight." *Bulacan*, 156 F.3d at 968. In other  
24 words, the Inspection Ordinance in reality authorizes wholesale searches by law  
25 enforcement officers of every rental residence in the City without any showing of  
26 probable cause, which is facially unconstitutional under the Ninth Circuit authorities  
27 cited above.

28

1           5.       Plaintiffs seek a declaratory judgment that the Inspection Ordinance is  
2 facially unconstitutional under *McCarty, Bulacan, U.S. Currency, Patel* and the  
3 Supreme Court cases on which they rely; a preliminary and permanent injunction  
4 against Defendants' enforcement of the Inspection Ordinance until such time as it is  
5 modified to make it constitutionally compliant; damages; and their counsel's  
6 reasonable attorney's fees and expenses. Under controlling doctrine, all fees a  
7 public entity collects pursuant to an unconstitutional statute must be reimbursed to  
8 the citizens who paid the unconstitutional fees. *See California State Outdoor*  
9 *Advertising Ass'n v. Department of Transportation*, 2006 U.S. Dist. LEXIS 11174  
10 (E.D. Cal. March 16, 2006) at \* 15 (citing *Jordan v. Department of Motor Vehicles*,  
11 75 Cal. App. 4<sup>th</sup> 449, 89 Cal. Rptr. 2<sup>nd</sup> 333 (1999) and three other California  
12 decisions).

13           6.       As class representatives, Plaintiffs seek to recover all inspection fees  
14 and other related fees and fines paid to the City pursuant to the Inspection Ordinance  
15 during the class period — that is, for the two years prior to the filing of this  
16 Complaint and any such fees the City collects from the filing of this Complaint until  
17 this matter is fully and finally resolved.

18           7.       A person's right to be free of unwanted government searches is one of  
19 the most cherished and protected rights under the Constitution. Courts will not  
20 allow encroachments, even if seemingly minor, to infringe it:

21                   It may be that it is the obnoxious thing in its mildest and  
22                   least repulsive form; but illegitimate and unconstitutional  
23                   practices get their first footing in that way, namely, by  
24                   silent approaches and slight deviations from legal modes  
25                   of procedure. This can only be obviated by adhering to  
26                   the rule that constitutional provisions for the security of  
27                   person and property should be liberally construed. A close  
28                   and literal construction deprives them of half their

1 efficacy, and leads to gradual depreciation of the right, as  
2 if it consisted more in sound than in substance. It is the  
3 duty of courts to be watchful for the constitutional rights  
4 of the citizen, and against any stealthy encroachments.

5 *Boyd v. U.S.*, 116 U.S. 616, 635 (1886). The "encroachments" at issue here are  
6 neither minor nor mild. The Fourth Amendment privacy rights of Plaintiffs and  
7 more than 700,000 putative class members have been sacrificed in the name of  
8 administrative convenience. This suit seeks to right that wrong.

9 **Parties**

10 8. Plaintiff Brandi Garris is a resident of Pasadena, California and a  
11 landlord owning rental residential apartments subject to the Inspection Ordinance.

12 9. Plaintiff Jason Teague is a resident of Venice, California and a landlord  
13 owning rental residential apartments subject to the Inspection Ordinance.

14 10. Plaintiff John Switzer is a resident of Los Angeles, California and a  
15 tenant who paid inspection fees pursuant to the Inspection Ordinance.

16 11. Defendant the City of Los Angeles is charter city located in the County  
17 of Los Angeles. The current charter was adopted on June 8, 1999 and has been  
18 amended many times since. The City has many departments and appointed officers,  
19 including Defendant L.A. Housing.

20 **Plaintiffs' Compliance with the City's Administrative Code § 350**

21 12. On October 10, 2016, Plaintiffs, through counsel, submitted claims to  
22 the City pursuant to the City's Administrative Code § 350 in an eight-page single  
23 spaced letter closely arguing why the Inspection Ordinance was unconstitutional.  
24 (Exhibit B to this Complaint attaches a true and correct copy of that letter.)

25 13. On November 22, 2016, the City denied those claims in a one-page  
26 form letter providing no analysis. (Exhibit C to this Complaint attaches a true and  
27 correct copy of that letter.)  
28

1 **Jurisdiction and Venue**

2 14. This Court has subject matter jurisdiction over this case pursuant to 28  
3 U.S.C. § 1331, as this action arises under the Fourth Amendment to the United  
4 States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover  
5 damages and secure equitable relief under an Act of Congress, specifically, 42  
6 U.S.C. § 1983; under 28 U.S.C. § 2201(a), to secure declaratory relief; under 28  
7 U.S.C. § 2202, to secure preliminary and permanent injunctive relief and damages;  
8 and under 42 U.S.C. § 1988 to grant Plaintiffs' prayer for relief regarding the  
9 recovery of costs, including damages, restitution and reasonable attorney fees.

10 15. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)  
11 as (a) Defendants are situated and transact business within this District; and (b) the  
12 conduct complained of occurred within this District.

13 **Legal Framework**

14 **A. The Facial Unconstitutionality of An Administrative Search**  
15 **Scheme That Allows Systematic Searches For Evidence of Criminal**  
16 **Behavior**

17 16. “The Fourth Amendment protects against unreasonable and seizures of  
18 people and their effects. U.S. Const. amend. IV.” *United States v. McCarty*, 648  
19 F.3d 820, 830 (9<sup>th</sup> Cir. 2011).

20 17. “Searches and seizures are ordinarily unreasonable in the absence of  
21 individualized suspicion of wrongdoing.” *Id.* (quotations omitted).

22 18. It is, however, “well established that searches conducted as part of a  
23 general regulatory scheme, done in furtherance of administrative goals rather than to  
24 secure evidence of a crime, may be permissible under the Fourth Amendment  
25 without a particularized showing of probable cause.” *United States v. Bulacan*, 156  
26 F.3d 963, 967 (9<sup>th</sup> Cir. 1998).

27 19. “Because these [administrative] searches require no warrant or  
28 particularized suspicion, an administrative search scheme invests the Government

1 with the power to intrude into the privacy of ordinary citizens. This power carries  
2 with it a vast potential for abuse.” *Id.*

3 20. “Therefore, courts must take care to ensure that an administrative  
4 search is not subverted into a general search for evidence of crime.” *Id.*

5 21. “This Court has repeatedly warned against the potential dangers of  
6 administrative searches and noted that courts must guard against the danger that a  
7 permissible administrative search will be subverted into a general search for  
8 evidence of crime.” *Id.* at 973.

9 22. “The risk that administrative searches will be infected by general law  
10 enforcement objectives, and the concomitant need for the courts to maintain  
11 vigilance, is a recurrent theme in our cases and those of other courts.” *U.S.*  
12 *Currency*, 873 F.2d at 1244.

13 23. “Further, an administrative search scheme has long term implications.  
14 Therefore, in determining whether the scheme is valid, the Court should consider the  
15 entire class of searches permissible under the scheme, rather than focusing on the  
16 facts of the case before it.” *Id.* at 967-968.

17 24. “[A] unlawful secondary purpose invalidates an otherwise permissible  
18 administrative search scheme.” *Id.* at 969, citing *U.S. Currency*, 873 F.2d at 1247.

19 25. “[W]hen an administrative search scheme encompasses both a  
20 permissible and impermissible purpose, and when the officer conducting the search  
21 has broad discretion in carrying out the search, that search does not meet the Fourth  
22 Amendment’s reasonableness requirement.” *McCarty*, 648 F.3d at 833, quoting  
23 *Bulacan*, 156 F.3d at 971.

24 26. When the improper purpose is “explicit” in the language of the statute,  
25 it operates in a “programmatic” fashion and invalidates the statute on its face.  
26 *McCarty*, 648 F.3d at 833-834.

27  
28

1           **B.     The Facial Unconstitutionality of An Administrative Search**  
2           **Scheme Of Private Residences That Fails to Provide Precompliance**  
3           **Review when the Party Subject to the Search Objects or before an**  
4           **Offending Party Is Subject To Liability for Non-Compliance**

5           27.     An administrative inspection scheme that provides the search will go  
6 forward over the target’s objection or non-compliance will subject the target to  
7 potential criminal or civil liability without providing for an opportunity for  
8 “precompliance review” before a neutral decision maker is facially unconstitutional.  
9 *Patel*, 135 S.Ct. at 2447, 2449.

10          28.     “Precompliance review” is an opportunity for the party objecting to the  
11 search to be heard before a “neutral decisionmaker” before the search goes forward  
12 or before the non-complying party faces civil or criminal penalties. *Id.* at 2453.

13          29.     Citing past Supreme Court precedent, *Patel* explained (*id.* at 2452):

14                 The Court has held that absent consent, exigent  
15                 circumstances, or the like, in order for an administrative  
16                 search to be constitutional, the subject of the search must  
17                 be afforded an opportunity to obtain precompliance review  
18                 before a neutral decisionmaker. *See See* [v. City of  
19                 Seattle], 387 U.S. [541] at 545 [(1967)]; [Donovan v.]  
20                 *Lone Steer* [Inc.], 464 U.S. [408], at 415 [(1984)] (noting  
21                 that an administrative search may proceed with only a  
22                 subpoena where the subpoenaed party is sufficiently  
23                 protected by the opportunity to ‘question the  
24                 reasonableness of the subpoena, before suffering any  
25                 penalties for refusing to comply with it, by raising  
26                 objections in an action in district court’). . . . While the  
27                 Court has never attempted to prescribe the exact form an  
28                 opportunity for precompliance review must take, the City  
                  [of Los Angeles] does not even attempt to argue that §



1 41.49(3)(a) affords hotel operators any opportunity  
2 whatsoever. Section 41.49(3)(a) is, therefore, facially  
3 invalid.

4 30. In many, if not most cases, actually providing precompliance review  
5 under the Inspection Ordinance (as modified to make it constitutional) would not be  
6 necessary.<sup>1</sup> If neither the landlord nor the tenant objects to an inspection request  
7 pursuant to a constitutionally-compliant Inspection Ordinance, the inspection could  
8 go forward. *Cf. id.* at 2454.

9 31. Where the party to the intended search does object, however, the search  
10 may not go forward, nor may the objecting party be subject to the potential of  
11 criminal or civil liability, prior to the objecting party having an opportunity to  
12 present his or her objections to a neutral decisionmaker. *Id.* at 2452 (“we hold that  
13 [the challenged City’s statute allowing the inspection of hotel’s registers of guests]  
14 is facially unconstitutional because it fails to provide hotel operators with an  
15 opportunity for precompliance review”).

16 32. The Inspection Ordinance punishes the landlord or tenant who  
17 withholds consent, deeming them “guilty of a misdemeanor” and subject to a \$1,000  
18 a day fine. The misdemeanor violation and \$1,000 a day fine are expressly *not*  
19 limited to landlords, but to “[a]ny person or entity violating” it. (§ 161.905 & .905.)  
20 Under well-established doctrine, the threat of criminal and financial liability renders  
21 any consent given to a search by any class member coerced and ineffective.

22 33. Consent is an exception to the warrant requirement under the Fourth  
23 Amendment. For the exception to apply, however, the consent must be valid and it  
24 is not valid when coerced. *See Schneekloth v. Bustamonte*, 412 U.S. 218, 228

25 \_\_\_\_\_  
26 <sup>1</sup> Counsel for Plaintiffs has explained to counsel for the City how the Inspection  
27 Ordinance could be modified to make it constitutional. *See Exh. C* at 7-8; *see also*  
28 letter dated January 18, 2017 at 2-4 (a true and correct copy of which is attached to  
this Complaint as Exhibit D).

1 (1973) (“the Fourth and Fourteenth Amendments require that consent not be  
2 coerced, by explicit or implicit means, by implied threat or covert force . . . . For,  
3 no matter how subtly the coercion was applied, the resulting ‘consent’ would be no  
4 more than a pretext for the unjustified police intrusion against which the Fourth  
5 Amendment is directed”).

6 34. The material at issue in *Patel* was information about hotel guests. *Id.* at  
7 2448. While this information, as *Patel* found, is protected by the Fourth  
8 Amendment, the Inspection Ordinance targets the core of Fourth Amendment  
9 privacy protection: private residences. "The Fourth Amendment protects an  
10 individual's privacy in a variety of settings. In none is the zone of privacy more  
11 clearly defined than when bounded by the unambiguous physical dimensions of an  
12 individual's home." *Payton v. New York*, 445 U.S. 573, 589 (1980).

### 13 **Factual Allegations**

#### 14 **A. The Inspection Ordinance**

15 35. Powers, including Police Powers, of the General Manager and  
16 Requirements for Inspection of Rental Residential Units. The Inspection Ordinance  
17 requires landlords of all residential rental units within the City to pay a "regulatory  
18 fee" (currently \$43.32) per rental unit per year. (§ 161.352.)

19 36. A "General Manager" appointed by the City is responsible for the  
20 enforcement of the Inspection Ordinance. (§ 161.401-404.)

21 37. The General Manager or his or her representatives "shall have the  
22 powers of a law enforcement officer" (§ 161.405) and are empowered "to make  
23 arrests without a warrant" (§ 161.410.1).

24 38. Each residential rental unit must be inspected "at least once every three  
25 years," although the General Manager or his or her representatives can require more  
26 frequent inspections. (§ 161.353.)

27 39. Authority to Inspect Residential Rental Units, Including When the  
28 Landlord and/or the Renter Object. The General Manager or his or her

1 representative are "authorized to enter the premise at any reasonable time." (§  
2 161.601.)

3 40. If either the landlord or the renter resident refuses to allow the  
4 inspection, "the General Manager shall have recourse to every remedy provided by  
5 law to secure lawful entry and inspect the premise, including but not limited to  
6 securing an inspection warrant pursuant to California Code of Civil Procedure  
7 Sections 1822.50 through 1822.57."

8 41. The procedure for obtaining an inspection warrant pursuant to CCP §§  
9 1822.50 through .57 is *ex parte*.<sup>2</sup> No notice would be provided in this context to  
10 either the landlord or the renter resident.

11 42. If the General Manager "has reasonable cause" to think public safety  
12 requires an immediate inspection, he or she is authorized "to immediately enter and  
13 inspect the premises" without obtaining consent or an inspection warrant.

14 43. If a complaint has been made about a rental residence, the "General  
15 Manager may inspect" not only the residence about which the complaint was made  
16 "without prior notice to the landlord or tenants" but also "the common areas of the  
17 building *or other dwelling units subject to this article*". (§ 161.603; emphasis  
18 added.)

19 44. Civil Penalties and Fines. "Any person" who violates the Inspection  
20 Ordinance "shall be liable for a civil fine of up to \$1,000 for each day the violation  
21 is committed." (§ 161.905.)

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22  
23 <sup>2</sup> The *ex parte* nature of CCP §1822.50 Inspection Warrants is obvious from the  
24 face of the statute. *See also* "Access, Entry, and Warrants," by Lisa Brown,  
25 Assistant Counsel for Enforcement, Cal/EPA, [www.wrcb.ca.gov/academy/  
26 documents/stormwater\\_enforcement/brown-access-entry-warrants.pdf](http://www.wrcb.ca.gov/academy/documents/stormwater_enforcement/brown-access-entry-warrants.pdf). Referring to  
27 the CCP inspection warrants, it states (at unnumbered page 37): "It is an 'ex parte'  
28 proceeding, no requirement to give notice, no right for 'defendant' or his/her lawyer  
to be there."

1           45.    Misdemeanor Liability. "Any person violating any of the provisions, or  
2 failing to comply with any of the requirements of this article shall be guilty of a  
3 misdemeanor except" for exceptions irrelevant here. (§ 161.906, second paragraph.)

4           **B.    Plaintiffs' Individual Claims**

5           46.    Plaintiffs' individual claims against the City are set forth in Exhibit B to  
6 this Complaint at pages 3-4 and the exhibits therefore, and are adopted by reference  
7 as though fully set forth herein.

8           **C.    Class Definitions and Class Allegations**

9           47.    Plaintiffs bring this action on behalf of themselves and all other  
10 similarly situated individuals and seek class certification under Federal Rule of Civil  
11 Procedure 23.

12          48.    Class Plaintiffs Garris and Teague seek to represent a class ("Landlord  
13 Class") defined as follows:

14           All landlords who, between the applicable statute of limitations and the  
15 present, owned residential rent properties subject to the Inspection Ordinance  
16 and paid a fee pursuant to the Inspection Ordinance.

17          49.    Class Plaintiff Switzer seek to represent a class ("Renter Class")  
18 defined as follows:

19           All renters who, between the applicable statute of limitations and the present,  
20 paid a fee pursuant to the Inspection Ordinance.

21          50.    As used herein, the term "Landlord Class Members" shall mean and  
22 refer to the members of the Landlord Class described above.

23          51.    As used herein, the term "Renter Class Members" shall mean and refer  
24 to the members of the Renter Class described above.

25          52.    Excluded from the Class are Defendants, their employees, agents, and  
26 attorneys, and the Court.

27  
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1           53. Each of the proposed Classes is composed of hundreds of thousands of  
2 persons. The Landlord Class Members and Renter Class Members are so numerous  
3 that joinder of all members would be unfeasible and impractical.

4           54. The constitutional violations alleged in this Complaint are not  
5 contingent on any individualized interaction between class members and Defendants  
6 but instead arise from the face of the Inspection Ordinance.

7           55. There are common questions of law and fact as to the Class Members  
8 that predominate over questions affecting only individual members, including but  
9 not limited to:

- 10           (a) Whether the Inspection Ordinance facially violates the Fourth  
11 Amendment under *McCarty*, *Bulacan* and *U.S. Currency* and the  
12 cases on which they rely because its allows systematic inspection  
13 of private residence for evidence of criminal conduct without  
14 probable cause;
- 15           (b) Whether the Inspection Ordinance facially violates the Fourth  
16 Amendment under *Patel* and the cases on which it relies because  
17 it authorizes administrative searches of private residences and  
18 imposes both monetary penalties and criminal misdemeanor  
19 liability while affording no opportunity for precompliance  
20 review before a neutral decisionmaker;
- 21           (c) Whether any purported "consent" to any search conducted  
22 pursuant to the Inspection Ordinance was ineffective as coerced;
- 23           (d) Whether Plaintiffs, Landlord Class Members and Renter Class  
24 Members are entitled to declaratory and injunctive relief; and
- 25           (e) Whether Plaintiffs, Landlord Class Members and Renter Class  
26 Members are entitled to refunds of all fees they paid pursuant to  
27 the Inspection Ordinance.
- 28

1           56. The Landlord Class Members and the Renter Class Members are  
2 readily ascertainable in the books and records, both electronic and paper, of  
3 Defendants.

4           57. A class action is superior to other available means for the fair and  
5 efficient adjudication of this controversy. Joinder of all Landlord Class Members  
6 and Renter Class Members is not practicable. Questions of law and fact common to  
7 Plaintiffs and Members of both Classes predominate over any questions only  
8 affecting individual members of the Classes. Each Class Member has been  
9 damaged by reason of the City's unconstitutional Inspection Ordinance.  
10 Certification of the Landlord Class and the Renter Class will allow those similarly  
11 situated persons to litigate their claims in the manner most efficient and economical  
12 for Plaintiffs, Class Members, Defendants and the judiciary. The expense and  
13 burden of litigation of individual lawsuits by individual class members would  
14 dissuade most Members of both Classes from vindicating their Fourth Amendment  
15 rights.

16           58. Plaintiffs Garris and Teague are members of the Landlord Class.

17           59. Plaintiff Switzer is a member of the Renter Class.

18           60. The claims of Plaintiffs Garris and Teague are not only typical of all  
19 Landlord Class Members, they are identical.

20           61. The claims of Plaintiff Switzer is not only typical of all Renter Class  
21 Members, they are identical.

22           62. All claims of Plaintiffs and the Landlord Class and Renter Class are  
23 based on the exact same legal theories.

24           63. Plaintiffs Garris and Teague have no interest antagonistic to, or in  
25 conflict with, the Landlord Class.

26           64. Plaintiff Switzer has no interest antagonistic to, or in conflict with, the  
27 Renter Class.

28

1           65. Plaintiffs Garris and Teague are qualified to, and will, fairly and  
2 adequately protect the interests of each Landlord Class Member, because Plaintiffs  
3 were subject to the Inspection Ordinance as were all other members of the Landlord  
4 Class.

5           66. Plaintiff Switzer is qualified to, and will, fairly and adequately protect  
6 the interests of each Renter Class Member, because Mr. Switzer made inspection fee  
7 payments pursuant to the unconstitutional Inspection Ordinance as did all other  
8 members of the Renter Class.

9           67. Plaintiffs will thoroughly and adequately protect the interests of the  
10 Landlord Class and Renter Class, having retained qualified and competent legal  
11 counsel with substantial experience in class action litigation to represent themselves,  
12 the Landlord Class and the Renter Class.

13           68. Plaintiffs' counsel is the largest litigation-only law firm in the world,  
14 with three offices in California (Los Angeles, San Francisco and Redwood Shores),  
15 as well as offices in Seattle, Houston, Chicago, New York and Washington D.C.,  
16 and in the United Kingdom, Germany, Belgium, France, Switzerland, Russia,  
17 People's Republic of China, Hong Kong, Singapore and Australia. Plaintiffs'  
18 counsel have substantial resources to pursue this matter.

19           69. Common questions will predominate and there will be no unusual  
20 manageability issues.

21           70. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) because  
22 Defendants have acted in a way that is generally applicable to Plaintiffs and  
23 Landlord Class Members and Renter Class Members, making class-wide declaratory  
24 and injunctive relief appropriate and necessary.

25  
26  
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**DECLARATORY AND INJUNCTIVE RELIEF**

1  
2 71. Plaintiffs incorporate by reference each of the foregoing allegations as  
3 if fully set forth herein.

4 72. An actual controversy has arisen and presently exists between  
5 Plaintiffs, putative Landlord Class Members and putative Renter Class Members,  
6 and Defendants concerning the Fourth Amendment rights to privacy of Plaintiffs  
7 and putative class members subject to past and future inspections by Defendants  
8 pursuant to the Inspection Ordinance.

9 73. A judicial declaration of their rights and the unconstitutional nature of  
10 the Inspection Ordinance is necessary and appropriate at this time. Specifically,  
11 pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, this Court should declare §§  
12 161.405, .410.1, .410.2, .601, .603, .905 & .906 of the Inspection Ordinance  
13 unconstitutional on their face.

14 74. Pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, this Court should  
15 issue a preliminary and permanent injunction prohibiting Defendants from enforcing  
16 §§ 161.405, .410.1, .410.2, .601, .603, .905 & .906 of the Inspection Ordinance and  
17 searches and policies relating to them in order to protect Plaintiffs and putative  
18 Landlord Class Members and Renter Class Members from further and ongoing  
19 violation of their privacy rights under the Fourth Amendment.

20 **FIRST CAUSE OF ACTION**

21 **Violation of the 42 U.S.C. § 1983**

22 75. Plaintiffs incorporate by reference each of the foregoing allegations as  
23 if fully set forth herein.

24 76. 42 U.S.C. § 1983 states in part:

25 Every person who, under color of any statute, ordinance, regulation, custom,  
26 or usage, of any State or Territory or the District of Columbia, subjects, or  
27 causes to be subjected, any citizen of the United States or other person within  
28 the jurisdiction thereof to the deprivation of any rights, privileges, or



1 immunities secured by the Constitution and laws, shall be liable to the party  
2 injured in an action at law, suit in equity, or other proper proceeding for  
3 redress . . . .

4 77. A municipality and its departments are "persons" for purposes of  
5 Section 1983. *See Will v. Michigan Department of State Police*, 491 U.S. 58 (1989).

6 78. By adopting and/or enforcing the Inspection Ordinance, Defendants  
7 subjected all Landlord Class Members and Renter Class Members to the identical  
8 deprivation of rights of privacy guaranteed by the Fourth Amendment.

9 79. By adopting and/or enforcing the Inspection Ordinance, Defendants  
10 were acting under color of law.

11 80. All members of the Landlord Class and the Renter Class who paid  
12 inspections fees pursuant to the Inspection Ordinance were harmed in identical  
13 ways.

14 81. The Inspection Ordinance violates facially violates the Fourth  
15 Amendment because it empowers police officers to search private residence without  
16 probable cause and because it subjects both landlords and renters to unconstitutional  
17 searches, penalties, fines and criminal misdemeanor liability without precompliance  
18 review before a neutral decision maker.

19 82. Plaintiffs seek reinstatement of all fees and penalties they and all  
20 Landlord Class Members and Renter Class Members paid pursuant to the Inspection  
21 Ordinance, which is well over \$75,000 and likely over \$60 million in the two years  
22 prior to the filing of this Complaint.

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**PRAYER FOR RELIEF**

25 83. Plaintiffs Garris and Teague, on behalf of themselves and the Landlord  
26 Class, and Plaintiff Switzer on behalf of himself and the Renter Class, requests the  
27 following relief:


28

- 1 (a) An order certifying the Landlord Class and appointing Plaintiffs  
2 Garris and Teague as Representatives of the Landlord Class;  
3 (b) An order certifying the Renter Class and appointing Plaintiff  
4 Switzer as Representatives of the Renter Class;  
5 (c) An order certifying the undersigned counsel as Class Counsel for  
6 the Landlord Class and Renter Class;  
7 (d) An order enjoining Defendants from enforcing §§ 161.405,  
8 .410.1, .410.2, .601, .603, .905 & .906 of the Inspection  
9 Ordinance until those sections are revised to comport with the  
10 requirements of the Fourth Amendment;  
11 (e) reimbursement by Defendants of all inspection fees paid  
12 pursuant to the Inspection Ordinance by Landlord Class  
13 Members during the relevant class period;  
14 (f) reimbursement by Defendants of all inspection fees paid  
15 pursuant to the Inspection Ordinance by Renter Class Members  
16 during the relevant class period;  
17 (g) reimbursement by Defendants of all fines and penalties fees paid  
18 pursuant to the Inspection Ordinance by Landlord Class  
19 Members during the relevant class period;  
20 (h) reimbursement by Defendants of all fines and penalties fees paid  
21 pursuant to the Inspection Ordinance by Renter Class Members  
22 during the relevant class period  
23 (i) All reasonable and necessary attorneys' fees and costs pursuant  
24 to the Ninth Circuit's doctrine on recoverable and awardable  
25 attorneys fees in the class action context and pursuant to 42  
26 U.S.C. § 1988; and  
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(j) Such other relief that the Court may deem just and proper.

Dated: February 22, 2017

By   
\_\_\_\_\_  
Dominic Surprenant  
Attorneys for BRANDI GARRIS, JOHN  
SWITZER and JASON TEAGUE