

SUMMONS
(CITACION JUDICIAL)

ORIGINAL

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Gregory S. Walston
The Walston Law Group
Does 1-50, Inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

640 Octavia, LLC
Edward Kountze

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Francisco County Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER: (Número del Caso)

CGC-20-585410

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jonathan Herschel Bornstein (SBN 163392)
2701 Telegraph Avenue, Suite 200
San Francisco, CA 94612-1715

Bornstein & Bornstein Law Group
(510) 901-0010

DATE: **JUL 15 2020**
(Fecha)

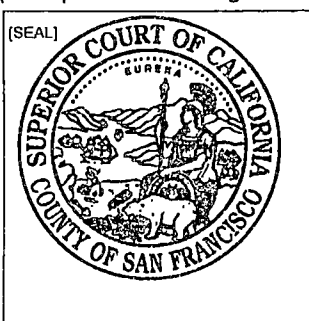
Clerk by
CLERK OF THE COURT
(Secretario)

[Signature]
SALEME APOLONIO

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under:
- ☐ CCP 416.10 (corporation)
 - ☐ CCP 416.20 (defunct corporation)
 - ☐ CCP 416.40 (association or partnership)
 - ☐ other (specify):

- ☐ CCP 416.60 (minor)
- ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

JONATHAN HERSCHEL BORNSTEIN (SBN 163392)
BORNSTEIN & BORNSTEIN LAW GROUP
 2701 Telegraph Avenue, Suite 200
 Oakland, CA 94612-1715
 Telephone: (510) 901-0010
 Facsimile: (510) 560-3590
 Email: jonathan@bornsteinlaw.com

Attorneys for Plaintiffs
 640 Octavia, LLC and Edward Kountze

FILED
 San Francisco County Superior Court

JUL 15 2020

CLERK OF THE COURT
 BY: *Shalene Hobnis*
 Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF SAN FRANCISCO
 – UNLIMITED CIVIL JURISDICTION –
 – CIVIC CENTER COURTHOUSE –

640 OCTAVIA LLC AND EDWARD)
 KOUNTZE,)
)
 Plaintiff,)
)
 v.)
)
 GREGORY S. WALSTON, THE WALSTON)
 LAW GROUP AND DOES 1 - 50, INCLUSIVE,)
)
 Defendants.)

Case Number: **CGC-20-585410**
 COMPLAINT FOR PERSONAL INJURIES,
 AND DAMAGES:
 1. Breach of Contract;
 2. Negligence – including Negligence Per Se;
 3. Breach of Fiduciary Duty;
 4. Negligent Misrepresentation;
 5. Intentional Infliction of Emotional Distress; and
 6. Negligent Infliction of Emotional Distress;

Plaintiffs 640 Octavia LLC and Edward Kountze (hereinafter collectively “plaintiff”) by this complaint against defendants Gregory S. Walston, The Walston Law Group, and Does 1-50, inclusive (hereinafter collectively referred to as “defendant”) hereby allege causes of action against defendant for breach of contract, professional legal malpractice and breach of fiduciary duty, among other things, as follows:

BY FAX

2701 Telegraph Ave., Ste. 200, Antioch, CA 94612
 Tele: 510-901-0010 / Fax: 510-560-3590
 Email: jonathan@bornsteinlaw.com

PARTIES

1
2
3 1. For purposes of these pleadings only and no other, at all relevant times stated herein,
4 plaintiff **640 OCTAVIA LLC** is a State of Wyoming Limited Liability Company in good standing and
5 authorized to conduct business in the City and County of San Francisco and State of California.

6 2. For purposes of these pleadings only and no other, at all relevant times stated herein,
7 plaintiff **EDWARD KOUNTZE** is an individual, over the age of eighteen (18) years, and engaged in the
8 actions alleged herein in the City and County of San Francisco and State of California

9 3. At all relevant times stated herein, each and every defendant was a resident of the City and
10 County of San Francisco, and State of California and/or conducted business therein.

11 4. At all relevant times stated herein, defendant **GREGORY S. WALSTON** is an attorney
12 licensed to practice law before all of the courts of the State of California. Mr. Walston State Bar License
13 Number is 196776 and was admitted to the California Bar on November 23, 1998. Mr. Walston is, and at
14 all times mentioned in this Complaint, was a resident of San Francisco County and State of California.
15 Alternatively, at all relevant times stated herein, Mr. Walston was an owner, partner, manager, associate,
16 employee, agent or worker of The Walston Law Work and conducted business in the City and County of
17 San Francisco and State of California.

18
19 5. At all relevant times stated herein, defendant **THE WALSTON LAW GROUP** at all
20 relevant times alleged herein is a California business entity, whose form is unknown. At all times
21 mentioned in this Complaint, The Walston Law Group was formed, owned, operated and managed by
22 Gregory S. Walston. It is the law firm of Gregory S. Walston. The Walston Law Group is, and at all times
23 mentioned in this Complaint, based and headquartered in the City and County of San Francisco, and State
24 of California.

25 6. Plaintiff requests a jury trial.

26 7. Plaintiff is presently unaware of the true names and capacities, whether individual,
27 associate, corporate, or otherwise of defendant DOES 1 through 50, or any of them, and therefore sue such
28 defendants by such fictitious names. Plaintiff will seek leave to amend this complaint to show the true
29 names and capacities of such fictitiously named defendants when they have been ascertained. Plaintiff is

1 informed and believe and thereon allege that each of the defendants designated herein as a DOE is legally
2 responsible in some manner for the acts, omissions, and events alleged herein and in each of the causes of
3 action, and has proximately caused damages and injury to plaintiff as alleged.
4

5 6 **ALTER EGO ALLEGATIONS**

7 8. At all times mentioned in this complaint, each individually named defendant was and is
8 the alter ego of each business entity defendant and that at all times herein mentioned there existed such a
9 unity of interest in ownership between the defendants such that any separateness has ceased to exist
10 between them because (a) the defendants commingled and used the assets of the other defendant(s) for
11 defendant's own benefit and has caused the assets of the defendant(s) to be transferred between and among
12 the other defendant(s) without adequate consideration; and (b) defendant(s) has exercised complete
13 dominance and control over the other defendant(s), and its properties, such that the defendant(s) and its
14 assets are mere shells and instrumentalities for the conduct of the personal business and activities of the
15 other defendant(s). Adherence to the fiction of a separate existence would sanction fraud upon plaintiff
16 and permit an abuse of the legal benefits of true business entities. Plaintiff alleges that each defendant is
17 therefore liable for any judgment rendered against any other defendant, and each individual defendant is
18 liable for any judgment rendered against any business entity defendant.
19

20 21 **JOINT AND SEVERAL LIABILITY OF DEFENDANTS**

22 9. At all times mentioned herein each of the defendants named in the complaint, inclusive,
23 were agents, servants, partners, joint venturers or employees of each of the remaining defendants and
24 acting within the purpose, scope and course of that agency, service, partnership or employment, with the
25 express or implied knowledge, permission and consent of the remaining defendants, and each of them,
26 ratified and approved of the acts and omissions of the other defendants.

27 10. At all times mentioned herein, each defendant conspired with each other to commit the
28 wrongful acts and omissions complained of herein. Although not all of the defendants committed all of
29 the acts of the conspiracy or were members of the conspiracy at all times during its existence, each

1 defendant knowingly performed one or more acts in direct furtherance of the objectives of the conspiracy,
2 and thus each defendant is liable for the acts of all of the other conspirators.
3

4 5 **JURISDICTION AND VENUE**

6 11. The Superior Court of the State of California for the County of San Francisco has proper
7 personal jurisdiction over the parties to this action under Civil Procedure Code section 410.10 because
8 each individual defendant is domiciled in San Francisco county, employed in said county, conducted
9 business in said county, and each business entity defendant maintains its principal executive offices in
10 said county.

11 12. The Superior Court of the State of California for the County of San Francisco has proper
12 subject matter jurisdiction over this action under Civil Procedure Code section 88 because the amount of
13 damages claimed exceeds this court's jurisdictional minimum amount.

14 13. Venue is proper in this court under Civil Procedure Code sections 395 and 395.5 because
15 (a) the individual defendants are or were either domiciled or employed in the City and County of San
16 Francisco and State of California, (b) the injuries that give rise to the causes of action took place in San
17 Francisco county, and/or (c) the corporate and business entity defendants either maintain their principal
18 places of business, or conduct business, in the City and County of San Francisco County and State of
19 California.
20

21 **FIRST CAUSE OF ACTION**

22 **Breach of Contract** 23 **(Against all Defendants)**

24 13. Plaintiff re-alleges and incorporates by reference the allegations set forth in preceding
25 paragraphs of the Complaint. Where any of the allegations in the referenced paragraphs of this cause of
26 action conflict, the plaintiff re-alleges the conflicting allegations in the alternative.

27 14. On or about August 22, 2017, defendant agreed to represent plaintiff to enforce plaintiff's
28 rights as owner and landlord of 640 Octavia Street, Unit No. 3, City and County of San Francisco, and
29 State of California (hereinafter "Subject Premises"). The agreement was partially written and partially

1 order. Plaintiff also retained defendant to pursue and obtain possession of the subject premises pursuant
2 to lawful process, including claims against the tenants and occupants of the subject premises Karl Heinz-
3 Pieper and Jose Montoya, among others.
4

5 15. Plaintiff paid defendant all moneys demanded of plaintiff.

6 16. On or about August 22, 2017, defendant accepted said employment and agreed to perform
7 all proper, necessary, standard, and reasonable legal services in compliance of the parties' agreement.

8 17. Plaintiff performed all conditions, duties, obligations and burdens of the agreement
9 between plaintiff and defendant, except those where were excused.

10 18. Pursuant to the parties' agreement, on February 16, 2029, defendant commenced and
11 pursued a breach of contract and nuisance action in the United States District Court for the Northern
12 District of California, case *640 Octavia, LLC v. Karl-Heinze Piper and Does 1-45, inclusive*, Case Number
13 3:18-cv-01047-WHA (hereinafter "*Underlying Action*"). (Exhibit A.)
14

15 19. Defendant breached the parties' agreement by pursuing a "federal eviction action" wherein
16 there was no such thing, as compared to a California State Court Civil eviction action under California
17 Code of Civil Procedure Secs. 1161, et seq.

18 20. Defendant also issued an eviction notice that was defective under the City & County of
19 San Francisco: Residential Rent Stabilization & Arbitration Ordinance, Chapter 37 of the San Francisco
20 Administrative Code (File #188-79; Ord. #276-79); Adopted: 6/13/79, and as amended.

21 21. Defendant failed to name all occupants and tenants of the subject premises in the
22 *Underlying Action*.

23 22. Defendant also violated the parties' attorney-client relationship by failing to inform, advise
24 or consult with plaintiff regarding filing the *Underlying Action* and keeping plaintiff informed about the
25 status of the *Underlying Action*.

26 23. As a direct and proximate result of defendant's failures or omissions, plaintiff lost the
27 ability to pursue, assert or go forward with plaintiff's claims and rights and recover damages as defendant
28 agreed to do. Plaintiff loss the *Underlying Action* and suffered damages as a result, including a monetary
29

1 judgment against plaintiff. Defendant did not fully, completely or otherwise satisfy defendant's duties,
2 obligations, promises and/or agreements made in the parties' agreement.
3

4 24. As a direct and proximate result of the defendant's breaches, plaintiff suffered discomfort
5 and annoyance to plaintiff's general and compensatory damage. As a further direct and proximate result
6 of defendant's breach of the contract as alleged, plaintiff has suffered damages in an amount to be proved
7 at trial.

8
9 **SECOND CAUSE OF ACTION**
10 **Negligence - including but not limited to Negligence Per Se**
(Against all Defendants)

11 25. Plaintiff re-alleges and incorporates by reference the allegations set forth in preceding
12 paragraphs of the Complaint. Where any of the allegations in the referenced paragraphs of this cause of
13 action conflict, the plaintiff re-alleges the conflicting allegations in the alternative.

14 26. Defendant was retained to represent plaintiff in the *Underlying Action* as plaintiff's
15 attorney at law with respect to pursuing said action, among other retained matters.

16 27. Defendant accepted such employment and agreed to carefully, competently and diligently
17 advise plaintiff and to perform said services for plaintiff.

18 28. At all times after accepting employment, defendant failed to exercise reasonable care and
19 skill in advising plaintiff of plaintiff's available claims, causes of action, rights, obligations, limitations,
20 remedies, and in undertaking to perform legal services for plaintiff. Defendant additionally failed to
21 exercise reasonable skill and diligence in representing plaintiff in the *Underlying Action*.

22 29. Defendant negligently breached defendant's duty of care and counsel as herein alleged,
23 including but not limited to those matters alleged herein and throughout.

24 30. Defendant, in defendant's conduct and/or omissions violated federal, state and local law,
25 and by engaging in the acts and/or omissions as described herein and throughout, among others, violated
26 an ordinance, rules of ethics, statute, regulation, law, and/or rule of a public entity which was adopted for
27 the protection of a class of persons of which plaintiff is a member. Because of said violations, plaintiff
28 suffered a harm which said laws were designed to prevent.
29

1
2 31. As a direct and legal result of the carelessness and negligence of defendant, plaintiff has
3 been deprived of the full value of their claims alleged in the *Underlying Action*, among other things, to
4 plaintiff's general and special damages in an amount according to proof at time of trial.

5 32. As a proximate result of the negligence of defendant and plaintiff has been damaged,
6 including but not limited to losing the *Underlying Action*. Also, defendant's failure to name Jose Montoya,
7 which permitted Jose Montoya to pursue a subsequent action, *Pieper, Montoya v. 640 Octavia, et. al*, San
8 Francisco County Superior Court, Unlimited Civil Jurisdiction, Case Number CGC-18-571890,
9 (hereinafter "*SF Action*") which has caused plaintiff to expend money and injured plaintiff.

10 33. By reason of the relationship between defendant and plaintiff, defendant owed plaintiff the
11 duty to exercise reasonable care to enforce plaintiff's rights as owner and landlord of Subject Premises,
12 which include the duties listed herein.

13 34. As a direct and proximate result of these breaches of duty by defendant, plaintiff suffered
14 actual and special damages as listed herein and as prayed for below.

15 35. The aforementioned duties breached by defendant were breached with knowing and
16 reckless disregard for plaintiff's rights, and therefore justify an award of substantial exemplary and
17 punitive damages in an amount to be determined at trial.
18

19
20 **THIRD CAUSE OF ACTION**
21 **Breach of Fiduciary Duty**
(Against all Defendants)

22 36. Plaintiff re-alleges and incorporates by reference the allegations set forth in preceding
23 paragraphs of the Complaint. Where any of the allegations in the referenced paragraphs of this cause of
24 action conflict, the plaintiff re-alleges the conflicting allegations in the alternative.

25 35. By virtue of the attorney-client relationship that existed between defendant and plaintiff,
26 defendant owed to plaintiff a fiduciary duty, and by virtue of plaintiff's having placed confidence in the
27 fidelity and integrity of defendant and in entrusting defendant with representing plaintiff in the *Underlying*
28 *Action*, including pursuing plaintiff's rights as owner and landlord of the Subject Premises, a confidential
29 relationship existed at all times herein mentioned between plaintiff and defendant.

1
2 36. Despite having voluntarily accepted the trust and confidence of plaintiff with regard to the
3 Subject Premises representing plaintiff in the *Underlying Action* and in violation of this relationship of
4 trust and confidence, defendant abused the trust and confidence of plaintiff by placing the interest of
5 defendant ahead of plaintiff's interest, including but not limited to failing to name all occupants of the
6 Subject Premises in the *Underlying Action*, pursuing a "federal" eviction action when no such thing existed,
7 issuing and pursuing a defective and improper eviction notice, mishandling the *Underlying Action*, failing
8 to comply with the parties agreement and agreements, all without any consideration of the consequences
9 to plaintiff. Defendant also violated the relationship of trust and confidence by failing to inform plaintiff
10 of plaintiff's right, obligations and duties to during the *Underlying Action* and in regards to the Subject
11 Premises, among other things as more fully alleged herein and throughout, and incorporated by this
12 reference as though fully alleged herein.

13 37. Plaintiff reasonably relied on the defendant in view of their attorney-client relationship.

14 38. As a result of defendant's aforementioned breach of fiduciary duties to plaintiff, defendant
15 gained the following advantage: plaintiff paid defendant money, plaintiff did not seek out and obtain
16 competent legal services from another or other attorneys, among other things.

17 39. Defendant performed the acts herein alleged with the intent to deceive and defraud
18 plaintiff, and defendant employed the following devices to conceal from plaintiff the fact that defendant
19 intended to protect defendant instead of plaintiff in the *Underly Action* and as owner and landlord of the
20 Subject Premises. Defendant performed these acts with the intent to induce reliance by plaintiff in the
21 continuing fidelity of defendant as plaintiff's attorney.

22 40. As a proximate result of defendant's breach of fiduciary duties to plaintiff, plaintiff loss
23 the *Underlying Action*, had judgment entered against plaintiff, paid attorneys' fees to pursue said action,
24 among other things, all to plaintiff's damage. As a further proximate result of defendant's breach of
25 fiduciary duty herein alleged, plaintiff incurred costs as attorney's fees to pursue the *Underlying Action*
26 and the *SF Action*, will continue to incur fees with regard to said action and the claims sought therein.

27 41. In doing the acts and omissions herein alleged, defendant acted with oppression, fraud, and
28 malice, and plaintiff is entitled to exemplary damages.
29

1 42. The conduct of defendant alleged herein was oppressive, fraudulent, malicious, and with
2 conscious disregard of plaintiff's rights. Plaintiff is therefore entitled to punitive damages in an amount to
3 be determined at trial.
4

5
6 **FOURTH CAUSE OF ACTION**
7 **Negligent Misrepresentation**
8 **(Against all Defendants)**

9 43. Plaintiff re-alleges and incorporates by reference the allegations set forth in preceding
10 paragraphs of the Complaint. Where any of the allegations in the referenced paragraphs of this cause of
11 action conflict, the plaintiff re-alleges the conflicting allegations in the alternative.

12 44. When defendant made these representations as alleged herein and throughout, defendant
13 had no reasonable ground for believing them to be true in that defendant would perform all obligations
14 related to their attorney-client relationship; that defendant would comply with all court orders; comply
15 with all court procedures; keep plaintiff informed of the status of plaintiff's case; not waive any of
16 plaintiff's substantial rights without first obtaining plaintiff's informed consent, attend all court hearings;
17 file all claims, name all occupants of the Subject Premises in the *Underlying Action*, file all compulsory
18 and permissive cross-complaints; and preserve, protect and promote plaintiff's rights.

19 45. Defendant made these representations with the intention of inducing plaintiff to act in
20 reliance on them in the manner hereafter alleged, or with the expectation that plaintiff would so act.

21 **FIFTH CAUSE OF ACTION**
22 **Intentional Infliction of Emotional Distress**
23 **(Against All Defendants)**

24 46. Plaintiff re-alleges and incorporates by reference the allegations set forth in preceding
25 paragraphs of the complaint. Where any of the allegations in the referenced paragraphs of this cause of
26 action conflict, the plaintiff re-alleges the conflicting allegations in the alternative.

27 47. Plaintiff alleges on information and belief that the defendant's conduct and/or omissions,
28 as specified above and herein was intentional, malicious and done for the purpose of causing plaintiff to
29 suffer mental anguish, together with emotional and physical distress.

1 48. Said conduct abused defendant's position which gave defendant power to damage
2 plaintiff's interests. Plaintiff further alleges on information and belief that defendant knew or should have
3 known that plaintiff was particularly susceptible to injury through mental distress and acted unreasonably
4 with the recognition the acts and/or omissions were likely to result in such illness.
5

6 49. Plaintiff alleges on information and belief that as a proximate and foreseeable result of the
7 aforementioned conduct of the defendant, plaintiff suffered extreme mental anguish, together with
8 emotional and physical distress, injuring plaintiff in mind and body, all to plaintiff's damage in an amount
9 to be ascertained at trial.
10

11 **SIXTH CAUSE OF ACTION**
12 **Negligent Infliction of Emotional Distress**
13 **(Against All Defendants)**

14 50. Plaintiff re-alleges and incorporates by reference the allegations set forth in preceding
15 paragraphs of the complaint. Where any of the allegations in the referenced paragraphs of this cause of
16 action conflict, the plaintiff re-alleges the conflicting allegations in the alternative.

17 51. Plaintiff alleges on information and belief that defendant's conduct and/or omissions
18 together, as specified above was negligent and had the foreseeable result of causing plaintiff to suffer
19 mental anguish, together with emotional and physical distress.

20 52. Plaintiff alleges on information and belief that as a proximate and foreseeable result of the
21 aforementioned conduct of defendant, plaintiff suffered extreme mental anguish, together with emotional
22 and physical distress, injuring plaintiff in plaintiff's mind and body, all to plaintiff's damage in an amount
23 to be ascertained at trial.
24

25 **PRAYER FOR RELIEF**

26 WHEREFORE, plaintiffs 640 Octavia LLC and Edward Kountze pray for judgment
27 against defendants Gregory S. Walston, The Waltson Law Group, and Does 1-50, inclusive for duties,
28 obligations, representations, violation of laws, statutes, ordinances, agreements, interference with and
29

1 damage to plaintiff's rights, property, body, and mind, among other things and as alleged above, as
2 follows:
3

- 4
- 5 53. Judgment for plaintiff and against defendant;
- 6 54. Damages awarded to plaintiff in an amount proven at trial;
- 7 55. Contract damages according to proof;
- 8 56. For benefit of the bargain damages according to proof;
- 9 57. For general damages according to proof;
- 10 58. For special damages according to proof;
- 11 59. For statutory damages, as permitted, and according to proof;
- 12 60. For punitive damages, as permitted, and according to proof;
- 13 61. Interest on all such damages at the legal rate from the original date of harm proven to the
14 date of judgment;
- 15 62. Reasonable attorneys' fees, costs and expenses incurred herein as provided by contract,
16 statute or law, if applicable;
- 17 50. For costs of suit herein; and
- 18 51. For such other and further relief as the Court deems just and proper.
19

20

21 Dated: July 15, 2020

22 BORNSTEIN & BORNSTEIN LAW GROUP

23

24

25

26 By: 

27 Jonathan Herschel Bornstein
28 Attorneys for Plaintiffs
29 640 Octavia LLC and Edward Kountze

A

Exhibit

1 Gregory S. Walston, State Bar No. 196776
2 THE WALSTON LAW GROUP
3 A Professional Corporation
4 Four Charlton Court
5 San Francisco, California 94123
6 Telephone: (415) 956-9200
7 Facsimile: (415) 956-9205
8 Email: gwalston@walstonlaw.com

9 ATTORNEYS FOR PLAINTIFF

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 640 OCTAVIA, LLC;

14 Plaintiff,

15 v.

16 KARL HEINZ-PIEPER, DOES ONE through
17 FORTY-FIVE, inclusive,

18 Defendants.

Case No. 3:18-cv-1047

**PLAINTIFF'S VERIFIED
COMPLAINT FOR DAMAGES
AND DECLARATORY AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

19
20
21 **INTRODUCTION**

22 Plaintiff 640 OCTAVIA, LLC, alleges as follows:

- 23 1. Plaintiff 640 OCTAVIA, LLC ("Plaintiff"), owns real property located in the City
24 and County of San Francisco, located at 640 Octavia Street, which is a four-unit residential
25 dwelling. Defendant KARL HEINZ-PIEPER ("Defendant") is Plaintiff's residential tenant. For
26 the past several years, Defendant has violated his obligations to Plaintiff in the following ways:
- 27 a. From approximately 11 p.m. to 3 a.m. for periods of days and weeks over
28 the past year, Defendant has had unidentified, disheveled individuals going in and out of his unit



1 every ten to fifteen minutes. An individual will show up at the apartment building, call, text or just
2 ring random buzzers in the building until they gain entry, and occasionally knock on the wrong
3 unit doors once inside, all in an attempt to gain access to Defendant's apartment unit. Several
4 minutes later, the individual will emerge from Defendant's apartment and leave. Several minutes
5 after that, another individual will show up and the process repeats itself. The unidentified
6 individuals have been observed trying to jimmy the locks to the building doors to gain entry, they
7 threaten lawful occupants of the premises, wander around the building and knock on doors of
8 lawful residents and make threatening remarks to them. Some litter empty beer cans on the ground
9 and stub cigarettes out on the floor and walls, despite it being a No Smoking building. On other
10 occasions, the unidentified individuals have threatened passersby on the street, thus creating a
11 generally disruptive, hostile environment around the building.

12 Defendant has been warned on numerous occasions, both verbally and in writing to cease
13 this behavior. He instead offers belated excuses, limits the behavior for a few days, and then it
14 inevitably resumes. This conduct disrupts the quiet enjoyment of the other residents in the
15 premises, creates a clear threat to safety and security in the building, and is now so unsafe that
16 Plaintiff will not rent out further units until Defendant's conduct is abated.

17 b. On information and belief, Defendant is handing out copies of keys to the
18 building to multiple unidentified individuals, also in violation of his lease agreement.

19 PARTIES AND JURISDICTION

20 2. Plaintiff is a Wyoming Limited Liability Company.

21 3. Defendant is a natural person, residing and domiciled in the State of California, in
22 the City and County of San Francisco.

23 4. DOES ONE through FORTY-FIVE, inclusive, are individuals, businesses or other
24 entities responsible for the acts and omissions alleged in this Complaint. Plaintiff is presently
25 unaware of the identities of DOES ONE through FORTY-FIVE, inclusive, and therefore identifies
26 them with fictitious names until their true identities are revealed.

27 5. This matter involves over seventy-five thousand dollars (\$75,000) in controversy,
28 stemming *inter alia* from the lost rent in connection with Plaintiff's inability to rent two units

1 because of excessive safety risks. The value of those units alone is \$3,500-\$4,500 per month each,
2 and they have been vacant for over a year. Therefore, this Court has jurisdiction over this matter
3 under 28 U.S.C. Section 1332.

4 6. All rights and remedies sought in this Complaint are sought under California law.

5 **BACKGROUND**

6 7. Plaintiff incorporates by reference and realleges all above allegations.

7 8. On or about September 9, 1993, Defendant signed a residential lease agreement
8 ("Lease") for the apartment unit known as Apartment 3 at 640 Octavia Street in the City and
9 County of San Francisco, California. (See Exhibit 1). The Lease was for a period of one year, but
10 became a month-to-month tenancy afterwards under San Francisco residential tenancy laws.

11 9. Specifically, paragraph 7 of the original 1993 Lease provides that "the premises
12 are strictly used for residential purposes only, not as a place of business or commercial front, and
13 for not more than one adult[] and none children." Either party may terminate this lease in the event
14 of a violation. . . ."

15 10. The Lease also requires Defendant to abide by the building's Rules and
16 Regulations, which, *inter alia*, require Defendant to refrain from disturbing residents after 10 p.m.,
17 to refrain from having disruptive or threatening guests at any hour, and refrain from handing out
18 any copies of the keys to the apartment building's front door.

19 11. The landlord's rights and obligations of this Lease have passed to Plaintiff under
20 operation of law, and Plaintiff may enforce any and all of landlord's rights under this Lease.

21 12. In or around December 2016, ownership in the subject property was transferred to
22 another individual named Edward Kountze, who, in turn, placed the property in the 640
23 OCTAVIA, LLC, in or around October 2017.

24 13. Upon acquiring the property in 2016, the new owner immediately noticed bizarre
25 and unruly behavior related to Defendant's apartment unit. Specifically, almost every night,
26 Defendant would invite and allow multiple unidentified individuals up into his apartment. This
27 process would begin late at night – around 11 p.m. – and continue into the early morning – around
28 3 a.m. More bizarre was the fact that no two individuals would be in the apartment at the same

1 time, nor would they stay more than approximately ten minutes. In other words, one would enter
2 the apartment, stay for several minutes, and leave. Then another would come up to Defendant's
3 apartment. To add to the perplexity, the individuals do not appear to have anything in
4 common. Some were old, some were young. Some were well-dressed, some were disheveled and
5 appeared transient. This went on nearly every night, week after week and month after month, and
6 continues to this day.

7 14. The aforementioned bizarre activities have caused significant and pervasive safety
8 and security threats within the subject property. On many occasions, the unidentified individuals
9 going in and out of the Defendant's apartment threatened lawful occupants of the apartment
10 building. They often wander around the building, knocking on the doors of the other lawful
11 occupants. They attempt to open locked building doors. Even once they leave, the problem
12 continues. They accost passersby on the street and attempt to start fights. They yell at and threaten
13 random law abiding people, including neighbors. They generally create a disruptive and hostile
14 environment in and around the entire property.

15 15. On information and belief, Defendant has also handed out copies of keys to the
16 front door of the apartment building to multiple unidentified third parties. This allows multiple
17 people with no legitimate reason to have access inside the apartment building to enter the building
18 at their will, thus causing further severe safety and security problems at the subject property.

19 16. As a result of Defendant's aforementioned conduct, there have been recurrent and
20 ongoing disturbances, threats, and various other safety problems at the subject building. At this
21 point, two of the four units in the building are vacant, and Plaintiff cannot rent them because of
22 concerns that the building is not safe. Further, the only other building occupants – Mr. Kountze
23 and his partner – are frequently subject to the aforementioned threats and disturbances, and often
24 do not sleep at the building because of them. Plaintiff's inability to rent the vacant units – each of
25 which have a market value of \$3,500- \$4,500 per month – has caused severe economic hardship in
26 light of the fact that the Plaintiff is responsible for paying a significant mortgage on the
27 building. If Plaintiff is unable to resolve the issues alleged in this complaint and make the
28 building profitable, Plaintiff may lose the building altogether.

**FIRST CAUSE OF ACTION
AGAINST ALL DEFENDANTS
UNLAWFUL DETAINER**

24. In 1993, Plaintiff's predecessor landlord signed a Lease with Defendant. Having acquired to property from the predecessor landlord, the rights and responsibilities of the lease have

1 passed to Plaintiff under operation of law. Under the Lease agreement as well as implied
2 covenants under applicable law -- Defendant was required to:

- 3 a. Refrain from violating the building's Rules and Regulations, which, *inter alia*,
4 preclude him from disrupting other tenants after 10 p.m., having threatening or
5 disruptive guests at any time;
6 b. Refrain from handing out copies of the keys to the building.

7 25. As discussed above, Plaintiff properly gave Defendant all legally required notices
8 demanding that he quit the aforementioned violations.

9 26. Despite the aforementioned notices, the aforementioned violations remain uncured.

10 27. Defendant was properly served with a Three-Day Quit notice on January 29, 2018,
11 in accordance with California Code of Civil Procedure Section 1161(4).

12 28. Defendant is still occupying the property.

13 29. Plaintiff is therefore entitled to an order evicting Defendant from the subject
14 premises.

15 **SECOND CAUSE OF ACTION**

16 **AGAINST ALL DEFENDANTS**

17 **BREACH OF CONTRACT**

18 30. Plaintiff incorporates by reference and realleges all above allegations.

19 31. In 1993, Plaintiff's predecessor landlord signed a Lease with Defendant. Having
20 acquired to property from the predecessor landlord, the rights and responsibilities of the lease have
21 passed to Plaintiff under operation of law.

22 32. Under the Lease agreement -- Defendant is required to:

- 23 a. Refrain from violating the building's Rules and Regulations, which, *inter alia*,
24 preclude him disrupting other tenants after 10 p.m., having threatening or
25 disruptive guests at any time;
26 b. Refrain from handing out copies of the keys to the building.



1 33. As discussed above, despite numerous verbal and written warnings and notices,
2 Defendant has willfully violated each of the provisions in the above paragraph by engaging in the
3 acts and omissions alleged above.

4 34. Defendant is therefore liable to Plaintiff for breach of contract in an amount subject
5 to proof.

6 **THIRD CAUSE OF ACTION**
7 **AGAINST ALL DEFENDANTS**
8 **PRIVATE NUISANCE**

9 35. Plaintiff incorporates by reference and realleges all above allegations.

10 36. Plaintiff owns the subject property.

11 37. Defendant, by acting or failing to act, created a condition or permitted a condition
12 to exist that was harmful to safety, was indecent or offensive to the senses, and was an obstruction
13 to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

14 38. This condition, random strangers entering the building during the middle of the
15 night for days and weeks on end, buzzing and knowing on the wrong doors, threatening tenants
16 and neighbors, interfered with Plaintiff and its tenants use or enjoyment of the subject property.

17 39. Plaintiff did not consent to Defendants' conduct.

18 40. An ordinary person would be reasonably annoyed or disturbed by the
19 aforementioned conduct.

20 41. Plaintiff was harmed. Its tenants were barred from the quiet use and enjoyment of
21 the property. Further, Plaintiff was unable to rent vacate units due to the safety concerns caused by
22 Defendants' nuisance.

23 42. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

24 43. The seriousness of the harm outweighs any public benefit.

25 44. Thus, since Defendant has created this nuisance by allowing his guests to behave in
26 this manner and doing nothing to meaningfully cease the disruptions and safety issues, Plaintiff
27 asks that the Court order Defendant to abate such nuisance.
28



DECLARATORY RELIEF

48. Based on the aforementioned allegations, Plaintiff is entitled to a declaratory judgment against Defendant resolving the lawfulness of each and every of Defendants' acts and omissions alleged herein.

Plaintiff prays for judgment as follows:

- THE WALSTON LAW GROUP

Plaintiff's Complaint

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Dated: February 16, 2018

THE WALSTON LAW GROUP



Gregory S. Walston
Attorneys for Plaintiff



VERIFICATION

I declare under penalty of perjury that I have read the foregoing and that it is true and correct and based on my personal knowledge, except those paragraphs made on information and belief, and with respect to those paragraphs, I believe them to be true. Executed February 16, 2018, in Denver, Colorado, U.S.A.


Edward Kountze, for Plaintiff 640 OCTAVIA LLC

EXHIBIT 1

RESIDENTIAL LEASE AGREEMENT

(THIS LEASE is intended to be a legally binding agreement)

1. This LEASE, made this 9th day, September, 1993,
between Lessor, Bob Dare, and
Lessee(s), a) Mr. Karl-Henry Pieper b)
for the Premises described as, Apt. # 3, 640 Octavia Street, S.F., CA.
2. The Term of this lease shall be one year (1 yr.), commencing on
September 10, 1993, and terminating September 10, 1994. After lease
termination date, at lessor's written consent, lease will run "month to month", or by
an agreement if any, between Lessor and Lessee.
3. Monthly Rent of Six Hundred Dollars Dollars, (~~\$600.00~~ \$600.00), payable in
lawful money of the United States, by either a personal check, cashier's check, or
money order from a local San Francisco or California bank or savings institution. No
payment for rent can be made in coins or currency valued under one dollar. The rent will
be paid without any offset or prior demand on or before the first day (1st.) of each
month, with a late fee of Fifteen Dollars (\$15.00) for rent received after Three days
(3 days) from the first of each month, plus Five Dollars (\$5.00) for each day thereafter.
Lessee for any reason is responsible for bounced or invalid checks returned for nonpayment,
and shall pay the lessor immediately upon notification, the bank's fee plus a handling fee
of Fifteen Dollars (\$15.00). Lessee is liable for damages caused to lessor from a bounced
or invalid check under California Civil Code 1719, which can be three times the amount of
the check or One Hundred Dollars, whichever is greater.
4. Lessee has deposited with Lessor Nine Hundred Fifty Dollars (\$950.00), as
security for the full and faithful performance of each and every term and condition of
this lease. If Lessee defaults in respect to any terms of this lease, including but not
limited to the payment of rent, repairing any damages created, creating noise, waste,
disturbing the enjoyment of others, performing unlawful acts, failing to clean or leave
the premises and property in a sanitary or broom swept condition; Lessor may retain or
apply the whole or any part of the security deposit to recover for costs incurred. Lessor
may consider any property left on the premises to be abandoned and may dispose of it if
the Lessor deems it has no value. Lessor will return or refund any and or all remaining
security deposit to Lessee within two weeks (2 wks.) or ten days (10 days), with a list
of charges if any to Lessee by certified or regular mail. Lessee may not apply the deposit
in lieu of last month's rent.
5. Lessor will maintain and repair the building structure and public or common areas. Lessee
is responsible for clogged or stopped-up pipes or drains if evidence of hair or other
matter is revealed, or if strainers that are provided are not kept in place or were not
being used. Lessee will be responsible for damages caused by negligence, or caused by his
guests or invitees. Lessee will not alter, remodel, install or paint the premises without
prior written consent from the Lessor. A service charge may be included to the Lessee if
certain repair or maintenance work is performed by the Lessor or his agent at the request
of the Lessee, except for those repairs to the building electrical, heating, internal
plumbing, structural integrity and mechanical aspects. Lessee is expected to perform or
provide ordinary care necessary in the premises for day to day living.
6. Lessor agrees to pay for water and garbage. Lessee will
pay for his/her own basic utilities otherwise and phone usage.
7. The premises are strictly used for residential purposes only, not as a place of business
or commercial front, and for not more than one adults and four children. Lessee ac-
knowledges the receipt of the rules and regulations for the premises, a copy which is
attached hereto. Lessee further acknowledges he/she has read the same and understands
them, and shall abide said rules and regulations. Initial HP) ()
8. No pets are allowed in or on the premises, or any other flying, crawling, swimming,
walking creature or thing (Homo sapiens excluded) except for none. Violation of this
pet prohibition is considered a substantial breach of this lease. This prohibition is of
the essence.
9. Lessee has examined the premises and all furniture and fixtures and accepts the same as
being clean and in good order, condition and repair. An attached copy will be used as a
move-in checklist.

at the sole risk of the Lessee. Lessee, its guests or invitees, are prohibited from the use of the building components. Lessee and his guests or invitees expressly and absolutely absolves Lessor or owner and his agents from all liability from any personal injury or negligence. Lessee agrees at his sole cost to keep and maintain his/her premises in a condition safe and free from dangerous situations, and to use utmost in ordinary care in doing so. Lessee agrees to pay or repair for damages caused by his/her guests or invitees, whether due to negligence or misuse.

11. In the event the premises become uninhabitable during the term of this lease, either party may terminate this lease upon not less than 30 days written notice. If Lessee abandons or vacates the premises without written notice, Lessor may terminate this lease and enter the premises to make repairs, inspect or re-market the premises. Lessor will give written or verbal notice of intention to enter the premises in advance. Lessee will upon not less than 24 hours notice, allow the lessor or owner and his agents or clients to enter the premises to make arranged repairs or necessary repairs, to show clients and prospective tenants, purchasers, encumbrancers or the like. In an emergency, Lessor or his agent may enter the premises at any time without first securing prior permission from Lessee, for the sole purpose of securing, repairing, alleviating or inspecting a condition(s) that is harmful, dangerous or hazardous, perilous to the building or occupants of the building. Lessor will make every attempt to enter the premises with a bonafide witness such as a tenant, fireman, policeman, or repairman, and Lessor will give written notice of entry during Lessee's absence. Lessor will respect the rights and use of Lessee's place of residence.
12. Door locks to the apartment doors may be changed at the Lessee's own expense. A key must be provided to the Lessor at all times for emergency or repair purposes. Upon move out all door locks must be restored to their original condition, and any damages to the door or hardware parts must be borne by the Lessee.
13. Lessee may not assign any part of this lease, or let or sublet any part of this lease and its premises. Premises are for the exclusive use of the Lessee under agreement. Either party may terminate this lease in the event of a violation of any provision of this lease.
14. If Lessee is unable to take occupancy of the premises because the present tenant has failed to vacate, rent will be reduced or pro-rated for this period.
15. Additional terms and conditions:
 - a) No parties (dinner guests excepted), loud music, dancing, waterbeds or pets.
 - b) No poster hanging or materials of any kind (political, business) are to hang on the windows visible to the streets below.
 - c) No nails, screws or other objects are to be driven into the walls, floors or ceiling.
 - d) Lessee shall change the battery in the smoke detector as needed.
 - e) Lessee shall wrap all garbage into plastic bags with a tie wrap for disposal.
 - f) Overnight guests staying more than two nights requires consent from the Lessor. Guests staying more than two nights can be revoked by Lessor anytime or Lessee must pay an additional fifteen dollars (\$15.00) per night per person.

16. Lessee is to pay rent as follows (move-in rent)

<u>Carl's CL # 8009192497</u>	(\$1250.00)	Date <u>9/8/93</u>
_____	(\$)	Date _____
_____	(\$)	Date _____

The rent is made payable to: Bob Darg

Rent can be deposited at in mailbox lobby of 640 Octavia St.

- g) Lessee is responsible for all excess garbage/trash upon move-in/out and during tenancy. No hazardous waste is allowed (paint, chemicals and other harmful waste products).
- h) Keys are to be retained for Lessee's use only. Disbursement of keys to invited guests may subject Lessee to damage claims or other unforeseen claims.
- i) Lock/re-entry fee of \$20.00 (Twenty Dollars) due for all re-entry assistance.

The undersigned tenant or Lessee acknowledges having read the foregoing prior to execution and received a copy hereof.

Building front door key received <u>one street door</u>	garage door key <u>me</u>
Apt. door key(s) received <u>me</u>	mailbox key <u>me</u>
Lost key charge: \$5.00 per key	lost mailbox key: \$20.00

Lessor <u>Bob Darg</u>	Date <u>9/9/93</u>
Lessee <u>S-P-23, Keller</u>	Date _____
Lessee _____	Date _____

- Parking space for one motorcycle (kept locked)
 No additional storage available in garage
 Lessee to perform painting & minor door & light switch repairs as needed
 BO. Keller

NOTICE OF CHANGE OF TENANCY TERMS

TO: Mr. Keith Piper
640 Octavia Street, Apt# 3, San Francisco, CA.

RE: San Francisco Residential Rent Board Annual Rent Increase And Interest Refund (A & B).

You are hereby notified, in accordance with Civil Code Section 827, that 30 days after service upon you of this Notice, effective March 1 2013, your tenancy of the premises will be changed as follows.

A) SPREB Annual Increase Rate: 1.9 % Your rate: 1.9 % or \$ 17.42
 Utility(s) Increase: 5 to 15 % Your rate: % or \$
 Capital Improvement Increase: % Your rate: % or \$
 (Sec 37.7 SF Adm. Code)

Total Increase: \$ 17.42

Based on these figures, your New Rent is: \$ 934.27
 (\$ 916.85 + 17.42)

B) 0.4% interest earned on security deposit of: \$ 950.00
 From: 3/2012 to 3/2013 - 12 months-days = \$ 3.80

1. Credits:

2. Debits (SPREB annual fee):

Other: SF water bond pass thru. This unit complies
with SF water conservation low flow devices.

Total Debit or Credit:

\$ 14.50

\$ 47.08

\$ 61.58 57.78

For you: March 2013 rent only, please add deduct \$ 61.58 57.78
 or: \$ 934.27 less 61.58 = \$ 872.69
 plus 57.78 = \$ 930.47

C) Other Changes

1. SMOKE DETECTORS: Test your smoke detectors regularly or contact us for assistance. Tampering or removing your smoke detector is a violation, subject to repair costs and terminating this lease.
2. SMOKING HEREBY PROHIBITED: Per CA Health & Safety Code 41700: Smoking is hereby prohibited in any area of the premise, private and common, in building exterior and open areas, and in individual apartments. Violation of this code is subject to terminating this lease and a minimum \$900.00 or more cleanup fee, to abate any related tobacco/smoking concerns.
3. Please complete and return smoke detector survey to Bob Dase

Except as provided, all other terms of this tenancy remains in effect. We appreciate and thank you for your tenancy.

Owner/Agent: B. Dase

Date: February 28, 2013

ADVICE REGARDING THIS NOTICE IS AVAILABLE FROM THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD

EXHIBIT 2

JANUARY 29, 2018
THREE-DAY NOTICE TO QUIT
(MAINTAINING A NUISANCE/ ILLEGAL ACTIVITY)

TO: Mr. Karl-Heinz Pieper

PLEASE TAKE NOTICE that at the expiration of **THREE (3) days** after service of this notice upon you, you are hereby requested to quit, and return possession of the premises now held and occupied by you at 640 Octavia St., #3, San Francisco, CA 94102.

The reason for terminating your tenancy is as follows:

You have received several prior warnings and written notices about nuisance, as well as a Three-Day Notice to Quit or Cure. You are committing or permitting to exist a continuous nuisance in the rental unit and to the common areas of the building containing the rental unit, and are creating unreasonable interference with the comfort, safety and enjoyment of any other residents of the building.

September 28-30, 2017:

On an ongoing and constant basis at all hours, including between the hours of 11pm and 3am, there was a parade of random people traveling in and out of the lessee's unit and fumbling around the building, disturbing the quiet and enjoyment of the other tenants. Some of the subjects inexplicably have keys (which were apparently given them by you), some forcibly access the building, and some stand outside ringing every doorbell to the building. All these individuals were apparently going to your unit. This is a violation of your rental agreement/lease and jeopardizes the safety of all residents.

October 1-31, 2017

Nearly every day at all hours, including between the hours of 11pm and 3am, there was a parade of random people traipsing in and out of the lessee's unit and fumbling around the building, disturbing the quiet and enjoyment of the other tenants.

There were been multiple occasions of strangers using keys to access the common areas of the building in order to go to your unit. This is a violation of your rental agreement/lease and jeopardizes the safety of all the tenants in the building.

November 17-19, 2017

Despite being on notice of the aforementioned violations, the inexplicable stream of strangers accessing the building continued, with strangers gathering outside, going inside (sometimes with keys), and going into your unit for 15 minutes or so before leaving. Some of the strangers even forcibly accessed the building, and some stand outside ringing every doorbell to the building.

December 10-17, 2017

Random strangers gathered outside late at night in a threatening manner and loudly rang ringing all of the buzzers in the building attempting to get into your unit and also trying to pick the locks to the front door to gain access.

December 24-28, 2017

Random strangers were coming into the building during all hours of the day and night, this time by accessing the back stairs to avoid being seen in the front of the building. This commotion was disturbing the tenant next door as well as a short-term tenant inside the building, who was frightened and had to lock himself inside his unit. He had difficulty sleeping due to the nightly disturbance and also felt unsafe due to the traffic of strangers going in and out of the building for apparently illicit purposes.

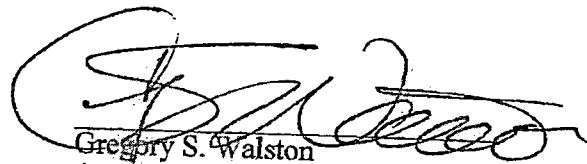
January 5-28, 2018

Approximately 35 strangers went in and out of the building, fumbling around the common areas before entering your unit. They stayed for a brief time, between 15 and 45 minutes, before leaving.

You have received a prior written Three-Day Notice to Quit or Cure about discontinuing this nuisance on December 15, 2017. Since you failed to heed this notice, pursuant to the San Francisco Rent Ordinance, Sections 37.9(a)(3) and 37.9(c), if you fail to vacate within THREE (3) days after service of this notice upon you, the undersigned will commence legal proceedings against you to 1) declare a forfeiture of your rental agreement/ lease, 2) to recover possession of the premises, and 3) to recover damages for each day you occupy the premises after the periods covered by this notice and costs of suit.

Please refer to the San Francisco Rent Board if you desire further advice.

Dated: January 29, 2018


Gregory S. Walston
Attorney for 640 Octavia, LLC

The Walston Law Group
Four Charlton Court
San Francisco, CA 94123
T: 415-956-9200
Email: gwalston@walstonlaw.com

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address):

Jonathan Herschel Bornstein (SBN 163392)

Bornstein & Bornstein Law Group
2701 Telegraph Avenue, Suite 200
San Francisco, CA 94612-1715

TELEPHONE NO.: (510) 901-0010

FAX NO.: (510) 560-3590

ATTORNEY FOR (Name): 640 Octavia, LLC and Edward Kountze

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister Street

MAILING ADDRESS: 400 McAllister Street

CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME: Civic Center Courthouse

CASE NAME: 640 Octavia, LLC v. Gregory S. Waltson

FOR COURT USE ONLY

FILED
San Francisco County Superior Court

JUL 15 2020

CLERK OF THE COURT
BY: *Kalene Johnson*
Deputy Clerk

CASE NUMBER:

JUDGE:

DEPT:

CGC-20-585410

CIVIL CASE COVER SHEET

- ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

- ☐ Counter ☐ Joinder

Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- ☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- ☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- ☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☒ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

- ☐ Wrongful termination (36)
☐ Other employment (15)

Contract

- ☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

- ☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

- ☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

- ☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

- ☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Six (6)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 7/15/2020

Jonathan Herschel Bornstein (SBN 163392)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition