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CITY OF SOUTH PASADENA

**Exempt from Filing Fees
Government Code § 6103**

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES, BURBANK COURTHOUSE**

Colantuono, Highsmith & Whatley, PC
790 E. COLORADO BOULEVARD, SUITE 850
PASADENA, CA 91101-2109

11 ALISON SMITH, an individual,
12
13 Plaintiff,

14 v.

15 CITY OF SOUTH PASADENA; and, DOES 1
16 through 25, inclusive,
17 Defendants.

18 CITY OF SOUTH PASADENA,
19
20 Cross-Complainant,

21 v.

22 ALISON SMITH; PAUL SMITH; ROES 1-100,
23
24 Cross-Defendants.

CASE NO. 19BBCV00118
Unlimited Jurisdiction

(Case assigned to Hon. John J. Kralik)

**CITY OF SOUTH PASADENA'S
CROSS-COMPLAINT FOR:**

1. **PRELIMINARY AND PERMANENT
INJUNCTION FOR ABATEMENT OF
PUBLIC NUISANCE;**
2. **DECLARATORY RELIEF;**
3. **QUANTUM MERUIT**

Complaint Filed: February 6, 2019

1 Cross-Complainant CITY OF SOUTH PASADENA (“City”) hereby alleges as follows:

2 **GENERAL ALLEGATIONS**

3 1. The City was incorporated on March 2, 1888 as a municipal corporation, duly
4 organized and existing as a general law city under the laws of the State of California and is located
5 entirely within the County of Los Angeles. The City is charged with maintaining the public health,
6 safety, and welfare of its citizens. To that end, the City enacted the South Pasadena City Code,
7 which applies to all persons and entities within its territorial boundaries and to all persons and
8 entities who do business or use land within the City.

9 2. The City Council of the City of South Pasadena has duly authorized the filing of this
10 action.

11 3. The City is informed and believes and based thereon alleges that at all relevant times,
12 Plaintiff and Cross-Defendant ALISON SMITH and Cross-Defendant PAUL SMITH (collectively
13 “the Owners”) were and are, the owners of record and/or are in control of the property located at
14 1726 Hanscom Drive, in the City of South Pasadena, County of Los Angeles, and State of
15 California, identified by Los Angeles County Assessor’s Parcel Number 5308-017-052 (“Property”).

16 4. The City does not know the true names and capacities of the Cross-Defendants sued
17 herein as Roes 1 through 100, inclusive, and therefore sues those Cross-Defendants under such
18 fictitious names. The City will seek leave to amend this Cross-Complaint by inserting their true
19 names and capacities when ascertained.

20 5. The City is informed and believes and based thereon alleges that each of the
21 fictitiously-named Cross-Defendants have some interest, whether legal or equitable, in the real
22 property described in this Cross-Complaint or are responsible in some manner for the conditions
23 complained of and the continuing maintenance of those conditions, the facts of which are more fully
24 described below.

25 6. On information and belief, the City alleges that at all material times, each
26 Cross-Defendant acted as an agent, servant and employee of each other Cross-Defendant. The
27 Cross-Defendants, and each of them, were acting within the time, place, scope, course and authority
28 of their agency and employment.

1 7. On or about February 6, 2019, Plaintiff and Cross-Defendant ALISON SMITH filed a
2 Complaint in Los Angeles Superior Court, entitled *Alison Smith v. City of South Pasadena, et al*;
3 case number 19BBCV00118. After a voluntary amendment of the pleading and the City’s Demurrer
4 to the First Amended Complaint, Plaintiff and Cross-Defendant ALISON SMITH filed her Second
5 Amended Complaint (“underlying Complaint”) on September 13, 2019. Plaintiff and Cross-
6 Defendant ALISON SMITH claims that a sewage overflow occurred on January 11 and 12, 2018 at
7 her home located at the Property. ALISON SMITH alleges that the overflow of the sewer has
8 caused damage to her property and has caused her to suffer emotional distress. In the underlying
9 Complaint she alleges claims of inverse condemnation, nuisance and dangerous condition of public
10 property.

11 8. The City does not admit any of allegations of the underlying Complaint, but it is
12 incorporated by reference as if fully set forth herein.

13 9. At all times relevant to this action, the Property is and has been located within the
14 territorial boundaries of the City and is subject to the City’s jurisdiction.

15 10. While investigating its defenses to the underlying Complaint, the City investigated
16 the building permit file related to the Property. The building permit file contained no permits for the
17 installation of a sewer cleanout pipe, an outdoor terrace and retaining walls where the sewer cleanout
18 pipe is located, or the installation of a backflow prevention device.

19 11. The City is informed and believes that the Property has been in violation of the South
20 Pasadena City Code and the California Plumbing Code for approximately two years and that the
21 sewer cleanout pipe, terrace and retaining walls, and absence of a backflow prevention device were
22 in violation of the South Pasadena City Code and California Plumbing Code at the time of the sewer
23 overflow alleged in the underlying Complaint.

24 12. The City is informed and believes that the sewer cleanout pipe, terrace and retaining
25 walls were constructed illegally without permits and without inspection by the City in violation of
26 the South Pasadena City Code and California Plumbing Code.

27 13. The City is informed and believes that Cross-Defendants were required to install a
28 backflow prevention device and that the lack of a backflow prevention device is an illegal condition

1 of the Property in violation of the South Pasadena City Code and California Plumbing Code.

2 14. The City is informed and believes that there exist the following code violations with
3 respect to the sewer cleanout pipe, the terrace and retaining walls and the absence of a backflow
4 prevention device at the Property:

- 5 • California Plumbing Code Section 102.3
 - 6 ○ No backflow prevention valve installed to protect the underfloor space that
 - 7 is below the next upstream manhole
- 8 • California Plumbing Code Section 102.4
 - 9 ○ No backflow prevention valve installed to protect the underfloor space that
 - 10 is below the next upstream manhole
- 11 • California Plumbing Code Section 102.4.2
 - 12 ○ As of January 11, 2018 and thereafter, the sewer cleanout pipe was
 - 13 uncapped
- 14 • California Plumbing Code Section 105.0
 - 15 ○ No plumbing permit for installation/extension of existing or new sewer
 - 16 cleanout
- 17 • California Plumbing Code Section 105.2.1.2
 - 18 ○ No plumbing permit for installation/extension of existing or new sewer
 - 19 cleanout
- 20 • California Plumbing Code Section 106.1
 - 21 ○ No plumbing permit for installation/extension of existing or new sewer
 - 22 cleanout
- 23 • California Plumbing Code Section 710.0
 - 24 ○ No plumbing permit for installation/extension of existing or new sewer
 - 25 cleanout
- 26 • South Pasadena City Code Chapter 9.1, 103.1 (Compliance with Code)
 - 27 ○ No building permit for construction of retaining walls surcharged by the
 - 28 existing or modified topography

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- No grading permit for grading of the patio terrace, including backfill greater than 2 feet in vertical height
- No plumbing permit for installation/extension of existing or new sewer cleanout
- South Pasadena City Code Chapter 9.1, 103.2 (Violation)
 - No building permit for construction of retaining walls surcharged by the existing or modified topography
 - No grading permit for grading of the patio terrace, including backfill greater than 2 feet in vertical height
 - No plumbing permit for installation/extension of existing or new sewer cleanout
- South Pasadena City Code Chapter 9.1, 106.4 (Drainage Review Requirement):
 - No plans submitted to City for review of proposed changes in grading and stormwater drainage
- South Pasadena City Code, Chapter 9.1, 107.1 (Building Permit Required):
 - No building permit for construction of retaining walls surcharged by the existing or modified topography
- South Pasadena City Code, Chapter 9.1, 117.1 (Inspections Required):
 - No building permit for construction of retaining walls surcharged by the existing or modified topography
 - No grading permit for grading of the patio terrace, including backfill greater than 2 feet in vertical height
 - No plumbing permit for installation/extension of existing or new sewer cleanout
- South Pasadena City Code, Chapter 9, 117.9 (Maintaining Non-Inspected Work):
 - No building permit for construction of retaining walls surcharged by the existing or modified topography
 - No grading permit for grading of the patio terrace, including backfill

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- greater than 2 feet in vertical height
- No plumbing permit for installation/extension of existing or new sewer cleanout
- South Pasadena City Code Chapter 9.1, adopting Los Angeles County Building Code Title 26, J103.1 (Grading Permit Required):
 - No grading permit for grading of the patio terrace, including backfill greater than 2 feet in vertical height
- South Pasadena City Code Chapter 9.1, adopting Los Angeles County Building Code Title 26, J103.3 (Maintaining Unpermitted Grading):
 - No grading permit for grading of the patio terrace, including backfill greater than 2 feet in vertical height
- South Pasadena City Code Chapter 9.1, adopting Los Angeles County Building Code Title 26, J103.4 (Availability of Permit at Site):
 - No grading permit for grading of the patio terrace, including backfill greater than 2 feet in vertical height
- South Pasadena City Code Chapter 9.1, adopting Los Angeles County Building Code Title 26, J105.10 (Maintaining Non-Inspected Grading):
 - No grading permit for grading of the patio terrace, including backfill greater than 2 feet in vertical height
- South Pasadena City Code Chapter 9.3, 106.1 (Plumbing Plan Check Required)
 - No plumbing permit for installation/extension of existing or new sewer cleanout
- South Pasadena City Code Chapter 9.3, 107.1 (Plumbing Permit Required)
 - No plumbing permit for installation/extension of existing or new sewer cleanout
- South Pasadena City Code Chapter 9.3, adopting Los Angeles County Plumbing Code Title 28, 101.3.1.3
 - As of January 11, 2018, and thereafter the sewer cleanout pipe was

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uncapped

- No backflow prevention valve installed to protect the underfloor space that are below the next upstream manhole
- South Pasadena City Code Chapter 9.3, adopting Los Angeles County Plumbing Code Title 28, 101.3.1.3101.3.2 (Maintenance)
 - As of January 11, 2018, and thereafter the sewer cleanout pipe was uncapped
 - No backflow prevention valve installed to protect the underfloor space that are below the next upstream manhole

15. The City is informed and believes that additional code violations may exist at the Property and the City will seek leave to amend to include such additional violations as they are discovered.

FIRST CAUSE OF ACTION

(Preliminary and Permanent Injunction to Abate a Public Nuisance against all Defendants)

16. The City realleges and reincorporates paragraphs 1-15 of the Cross-Complaint as though fully set forth herein.

17. As alleged above in Paragraph 14, the City is informed and believes and thereon alleges that, commencing in or about 2016, and continuing up to the present time, Cross-Defendants have constructed and maintained unpermitted and uninspected improvements on the Property in violation of multiple provisions of the California Plumbing Code and the South Pasadena City Code.

18. The City brings this cause of action to stop violations of the South Pasadena City Code and California Plumbing Code pursuant to South Pasadena City Code Chapter 24, including section 24.16. At all pertinent times, Chapter 24, § 24.16 of the South Pasadena City Code was in effect and permits the City Council to order the City Attorney to “commence a civil or criminal proceeding to abate a public nuisance under applicable Civil or Penal Code provisions....”

19. At all pertinent times, Chapter 24, § 24.02(c)(24) of the South Pasadena City Code

1 was in effect and provides that “[c]onditions that qualify as a public nuisance include, but are not
2 limited to, the following: ... Any violation of this code.”

3 20. At all pertinent times, Chapter 24, § 24.13 of the South Pasadena City Code was in
4 effect and provides that “the cost of abatement, which shall include, as applicable, the cost of
5 demolishing, rehabilitating, repairing, or closure of the premises or structures, including any salvage
6 value, as well the cost of investigating the nuisance, enforcing money judgments, and attorney fees
7 and costs.”

8 21. At all pertinent times, Chapter 9.1, § 103.1 of the South Pasadena City Code was in
9 effect and provides that “It shall be unlawful for a person to erect, construct, enlarge, alter, repair,
10 move, improve, remove, connect, convert, demolish, equip, or perform any other work on any
11 building or structure or portion thereof, or perform any grading in the City, or cause the same to be
12 done, contrary to, or in violation of, any of the provisions of this Code.”

13 22. At all pertinent times, Chapter 9.1, § 103.2 of the South Pasadena City Code was in
14 effect and provides that “It shall be unlawful for any person to own, use, occupy or maintain any
15 building or structure or portion thereof, in the City, or cause the same to be done, contrary to, or in
16 violation of, any of the provisions of this Code.”

17 23. At all pertinent times, Chapter 9.1, § 106.4 of the South Pasadena City Code was in
18 effect and provides that “Where proposed construction will affect site drainage, existing and
19 proposed drainage patterns shall be shown on the plot plan. A site inspection may be required prior
20 to plan check of building plans for lots or parcels in areas having slopes of five horizontal to one
21 vertical (5:1) or steeper when the building official finds that a visual inspection of the site is
22 necessary to establish drainage requirements for the protection of property, existing buildings or the
23 proposed construction.”

24 24. At all pertinent times, Chapter 9.1, § 107.1 of the South Pasadena City Code was in
25 effect and provides that “No person shall erect, construct, enlarge, alter, repair, move, improve,
26 remove, connect, convert, demolish, or equip any building, structure, or portion thereof, perform any
27 grading, or cause the same to be done, without first obtaining a separate permit for each such
28 building, structure or grading from the building official.”

1 25. At all pertinent times, Chapter 9.1, § 117.1 of the South Pasadena City Code was in
2 effect and provides that “[a]ll construction or work for which a permit is required shall be subject to
3 inspection by the building official....”

4 26. At all pertinent times, Chapter 9.1, § 117.9 of the South Pasadena City Code was in
5 effect and provides that “[n]o person shall own, use, occupy or maintain any structure on which
6 noninspected work has been performed.”

7 27. At all pertinent times, Chapter 9.1, § 9.1.1 of the South Pasadena City Code, which
8 incorporates by reference Title 26, Appendix J, § J103.1 of the Los Angeles County Code was in
9 effect and provides that “no grading shall be performed without first having obtained a permit from
10 the Building Official.”

11 28. At all pertinent times, Chapter 9.1, § 9.1.1. of the South Pasadena City Code, which
12 incorporates by reference Title 26, Appendix J, § J103.3 of the Los Angeles County Code was in
13 effect and provides that “a person shall not own, use, occupy, or maintain any site containing
14 unpermitted grading.”

15 29. At all pertinent times, Chapter 9.1, § 9.1.1. of the South Pasadena City Code, which
16 incorporates by reference Title 26, Appendix J, § J103.4 of the Los Angeles County Code was in
17 effect and provides that “[n]o person shall perform any grading that requires a permit under this
18 Appendix unless a copy of the grading permit and approved grading plans are in the possession of a
19 responsible person and available at the site for the Building Official's reference.”

20 30. At all pertinent times, Chapter 9.1, § 9.1.1 of the South Pasadena City Code, which
21 incorporates by reference Title 26, Appendix J, § J105.10 of the Los Angeles County Code was in
22 effect and provides that “[n]o person shall own, use, occupy, or maintain any non-inspected
23 grading.”

24 31. At all pertinent times, Chapter 9.3, § 106.1 of the South Pasadena City Code was in
25 effect and provides that “Separate Plumbing Code plan review is required for any of the following:
26 ... (h) Plumbing fixtures located below the next upstream manhole or below the sewer main.”

27 32. At all pertinent times, Chapter 9.3, § 107.1 of the South Pasadena City Code was in
28 effect and provides that “No person shall erect, alter, install, repair, move, improve, remove, connect

1 or convert, or cause the same to be done, to any plumbing equipment or fixtures without first
2 obtaining a plumbing permit from the building official. A Plumbing Permit is required for any
3 installation, alteration, reconstruction or repair of any plumbing (including fixtures, traps, tailpieces
4 and valves), drainage piping, vent piping, waste piping, soil piping, water piping (potable or
5 nonpotable but which is connected to a potable water source) or gas piping located within or on any
6 building, structure or premises.”

7 33. At all pertinent times, Chapter 9.3, § 9.3.1 of the South Pasadena City Code, which
8 incorporates by reference Title 28, § 101.3.1.3 of the Los Angeles County Code was in effect and
9 provides that “All openings into a drainage or vent system, excepting those openings to which
10 plumbing fixtures are properly connected or which constitute vent terminals, shall be permanently
11 plugged or capped in an approved manner, using the appropriate materials required by this Code.”

12 34. At all pertinent times, Chapter 9.3, § 9.3.1 of the South Pasadena City Code, which
13 incorporates by reference Title 28, § 101.3.2 of the Los Angeles County Code was in effect and
14 provides that “The plumbing and drainage system of any premises under the jurisdiction of the
15 Authority Having Jurisdiction shall be maintained in a sanitary and safe operating condition by the
16 owner or the owner's agent.”

17 35. At all pertinent times, California Plumbing Code § 102.3 was in effect and provides
18 that “The plumbing and drainage system, both existing and new, of a premises under the Authority
19 Having Jurisdiction shall be maintained in a sanitary and safe operating condition. Devices or
20 safeguards required by this code shall be maintained in accordance with the code edition under
21 which installed ... The owner or the owner’s designated agency shall be responsible for maintenance
22 of plumbing systems.”

23 36. At all pertinent times, California Plumbing Code § 102.4 was in effect and provides
24 that “Additions, alterations, renovations, or repairs shall not cause an existing system to become
25 unsafe, insanitary, or overloaded.”

26 37. At all pertinent times, California Plumbing Code § 102.4.2 was in effect and provides
27 that “Openings into a drainage or vent system, excepting those openings to which plumbing fixtures
28 are properly connected or which constitute vent terminals, shall be permanently plugged or capped

1 in an approved manner, using the appropriate materials in accordance with this code.”

2 38. At all pertinent times, California Plumbing Code § 105.0 was in effect and provides
3 that “Plumbing systems for which a permit is required by this code shall be inspected by the
4 Authority Having Jurisdiction.”

5 39. At all pertinent times, California Plumbing Code § 105.2.1.2 was in effect and
6 provides that “No plumbing or drainage system, building sewer, private sewer disposal system, or
7 part thereof, shall be covered, concealed, or put into use until it has been tested, inspected, and
8 accepted as prescribed in this code.”

9 40. At all pertinent times, California Plumbing Code § 106.1 was in effect and provides
10 that “It shall be unlawful for a person, firm, or corporation to erect, construct, enlarge, alter, repair,
11 move, improve, remove, convert, demolish, equip, use or maintain plumbing or permit the same to
12 be done in violation of this code.”

13 41. At all pertinent times, California Plumbing Code §710.0 was in effect and provides
14 that “Fixtures installed on a floor level that is lower than the next upstream manhole cover of the
15 public or private sewer shall be protected from backflow of sewage by installing an approved type of
16 backwater valve ... Cleanouts for drains that pass through a backwater valve shall be clearly
17 identified with a permanent label stating ‘backwater valve downstream.’”

18 42. The City is informed and believes that as detailed in paragraph 14 above, at all
19 pertinent times, and since at least January 1, 2016 and continuing to the present, Cross-Defendants,
20 and each of them, have maintained the Property in violation of Chapter 9 of the South Pasadena City
21 Code and the California Plumbing Code. These violations of the South Pasadena City Code
22 constitute a public nuisance *per se*.

23 43. The City is informed and believes that the conditions at the Property with respect to
24 the sewer cleanout pipe, terrace and retaining walls, and the absence of a backflow prevention device
25 have remained in violation of the above-referenced code sections and as such continue to constitute a
26 public nuisance *per se*.

27 44. At all material times since at least January of 2016, and continuing to the present, said
28 conditions on the Property have been and continue to be a public nuisance as defined by California

1 Civil Code § 38771. This public nuisance is the result of the aforesaid South Pasadena City Code
2 violations. (*City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068 [An act or condition
3 legislatively declared to be a public nuisance is a nuisance per se against which an injunction may
4 issue without allegation or proof of irreparable injury].)

5 45. The wrongful and unlawful acts by Cross-Defendants continue and will continue
6 unless this Court enjoins Cross-Defendants from doing so.

7 46. The City has no plain, speedy or adequate remedy at law to compel Cross-Defendants
8 to stop violating the South Pasadena City Code and California Plumbing Code. The Court is
9 expressly authorized under Code of Civil Procedure sections 536 and 731 to fashion injunctive relief
10 to prohibit continued violations of the South Pasadena City Code and California Plumbing Code at
11 the Property.

12 47. Unless preliminarily and permanently enjoined by this Court, Cross-Defendants will
13 continue to violate the South Pasadena City Code and California Plumbing Code by maintaining the
14 sewer cleanout pipe, terrace and retaining walls, and the absence of a backflow prevention device on
15 the Property while the unpermitted conditions persist.

16 48. The City seeks its reasonable costs and attorney fees the incurred in bringing this
17 action including, but not limited to, the costs and fees to enforce and/or remedy the aforementioned
18 unpermitted conditions, pursuant to South Pasadena City Code section 24.13, Government Code
19 section 38773.5 and Code of Civil Procedure section 1033.5 (a)(10).

20
21 **SECOND CAUSE OF ACTION**

22 **(Declaratory Relief Against All Cross-Defendants)**

23 49. The City realleges and reincorporates by reference paragraphs 1-48 of the Cross-
24 Complaint as though fully set forth herein.

25 50. An actual controversy has arisen and now exists between the City and
26 Cross-Defendants as to whether Cross-Defendants are maintaining the Property in such a manner as
27 constitutes a *per se* public nuisance, and as to whether Cross-Defendants should be ordered to
28 immediately correct the unpermitted conditions by, including, but not limited to, obtaining the

1 required permits and paying all fees and penalties required by the South Pasadena City Code.

2 51. The City contends that the unpermitted sewer cleanout pipe, terrace and retaining
3 walls, and the absence of a backflow prevention device on the Property are the cause of the damage
4 that Cross-Defendant ALISON SMITH claims in the underlying Complaint. Cross-Defendant
5 ALISON SMITH has stated that the lack of permits was not the cause of and had absolutely no
6 effect on the occurrence of the sewer overflow.

7 52. The City requests the Court make a judicial determination and decree that:

8 (a) The unpermitted sewer cleanout pipe, terrace and retaining walls, and the
9 absence of a backflow prevention device on the Property constitutes a public nuisance,
10 *per se*;

11 (b) The unpermitted sewer cleanout pipe, terrace and retaining walls, and the
12 absence of a backflow prevention device on the Property were the cause of the damage claimed in
13 the underlying Complaint;

14 (c) A declaration that Cross-Defendants are maintaining the sewer cleanout pipe,
15 terrace and retaining walls, and the absence of a backflow prevention device in a condition that
16 constitutes a general public nuisance under applicable law, including but not limited to. Civil Code
17 sections 3480, 3491, and 3494; and

18 (d) Make any other orders the Court deems necessary.

19 53. A judicial declaration is necessary and appropriate at this time so that the City and
20 Cross-Defendants may ascertain their respective rights and duties as to the sewer cleanout pipe,
21 terrace and retaining walls, and the absence of a backflow prevention device on the Property.

22
23 **THIRD CAUSE OF ACTION**

24 **(Quantum Meruit Against Cross-Defendant ALISON SMITH)**

25 54. The City realleges and reincorporates paragraphs 1-53 of the Cross-Complaint as
26 though fully set forth herein.

27 55. On or around January 11, 2018, sewage overflowed onto the Property from an
28 uncapped and unpermitted sewer cleanout pipe on the back yard terrace of the Property. The City

1 Public Works staff responded to the Property, inspected the City’s sewer main and advised Cross-
2 Defendant ALISON SMITH that the City’s sewer main was flowing and that the problem appeared
3 to be in her sewer lateral. Thereafter on or around January 12, 2018, sewage overflowed again from
4 the uncapped and unpermitted sewer cleanout pipe on the Property, and the City Public Works staff
5 responded again to the Property and cleared a blockage in the City’s sewer main. City staff then
6 advised Cross-Defendant ALISON SMITH to contact a cleaning company to remediate the sewage
7 which had overflowed onto the side of her backyard.

8 56. Thereafter, on or around January 17, 2019, Cross-Defendant ALISON SMITH
9 advised the City staff that she could not pay to clean up the sewage which had overflowed onto her
10 Property and she requested that the City pay for the cost of remediation. The City contracted with
11 Emergency Service Restoration, Inc. (“ESR”), which promptly performed the remediation work.

12 57. The City paid for the ESR remediation services in the amount of \$6,749.

13 58. The ESR remediation services benefitted the Property and Cross-Defendant ALISON
14 SMITH by removing and remediating the sewage that had spilled onto the Property from her
15 uncapped and unpermitted sewer cleanout pipe.

16 59. It would be unjust for Cross-Defendant ALISON SMITH to retain the benefit of the
17 ESR remediation services when the cause of the sewage overflow onto the Property was her
18 unpermitted sewer cleanout pipe, terrace and retaining walls, and the absence of a backflow
19 prevention device on the Property.

20 60. The City is entitled to recover the costs of the remediation services in the amount of
21 \$6,749 under the doctrine of quantum meruit.

22
23 **WHEREFORE**, the City of South Pasadena prays for the following:

24 1. A declaration that the unpermitted sewer cleanout pipe, terrace and retaining walls,
25 and the absence of a backflow prevention device on the Property constitutes a public nuisance, *per*
26 *se*;

27 2. A declaration that the unpermitted sewer cleanout pipe, terrace and retaining walls,
28 and the absence of a backflow prevention device on the Property were the cause of the damage

1 claimed in the underlying Complaint;

2 3. A declaration that Cross-Defendants are maintaining the sewer cleanout pipe, terrace
3 and retaining walls, and the absence of a backflow prevention device in a condition that constitutes a
4 general public nuisance under applicable law, including but not limited to. Civil Code sections 3480,
5 3491, and 3494;

6 4. A Preliminary and Permanent Injunction requiring Cross-Defendants to immediately
7 bring the sewer cleanout pipe, terrace and retaining walls, and existence of backflow prevention
8 device Property into compliance with all South Pasadena City Code and California Plumbing Code
9 requirements and to immediately correct the unpermitted conditions by, including, but not limited to,
10 obtaining the required permits and paying all fees and penalties required by the South Pasadena City
11 Code;

12 5. An order requiring Cross-Defendants, and each of them, to show cause why they
13 should not be ordered to immediately commence and complete all corrective work necessary to bring
14 the sewer cleanout pipe, terrace and retaining walls, and existence of backflow prevention device
15 into full compliance with the South Pasadena City Code and California Plumbing Code.

16 6. An order stating that the sewer cleanout pipe, terrace and retaining walls, and
17 existence of backflow prevention device must be maintained in compliance with the South Pasadena
18 City Code and California Plumbing Code on an ongoing basis;

19 7. An order stating that any violations of any terms of any preliminary or permanent
20 injunction issues by the Court will result in a finding of contempt;

21 8. A continuing order authorizing the City and its officers, agents and/or employees to
22 enter upon, inspect, and otherwise conduct analysis, inspection or testing on the Property until such
23 time as the sewer cleanout pipe, terrace and retaining walls, and existence of backflow prevention
24 device are in full compliance with all applicable codes;

25 9. For damages according to proof to compensate and reimburse the City for the costs it
26 incurred to remediate the Property following the sewage overflow;

27 10. For reasonable costs and attorney fees the City incurred in this action including, but
28 not limited to, the costs to enforce and/or remedy the aforementioned conditions, the costs of this

1 suit, and attorney's fees pursuant to South Pasadena City Code section 24.13, Government Code
2 section 38773.5 and Code of Civil Procedure section 1033.5 (a)(10);

3 11. For ordinary costs of suit; and

4 12. For such other or further relief as the Court may deem just and proper.

5
6 DATED: October 25, 2019

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

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9 _____
10 TERESA L. HIGHSMITH
11 JENNIFER L. PANCAKE
12 LILIANE M. WYCKOFF
13 Attorneys for Defendants
14 CITY OF SOUTH PASADENA
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PROOF OF SERVICE

Alison Smith v. City of South Pasadena, et al.
County of Los Angeles, Case No. 19BBCV00118

I, Holly M. Mills, declare:

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. My email address is: HMills@chwlaw.us. On October 25, 2019, I served the document(s) described as **CITY OF SOUTH PASADENA'S CROSS-COMPLAINT FOR: 1. PRELIMINARY AND PERMANENT INJUNCTION FOR ABATEMENT OF PUBLIC NUISANCE; 2. DECLARATORY RELIEF; 3. QUANTUM MERUIT** on the interested parties in this action addressed as follows:

James T. Perez, Esq.
Law Office of James T. Perez
23679 Calabasas Road, Suite 422
Calabasas, California 91302

Attorney for Plaintiff ALISON SMITH

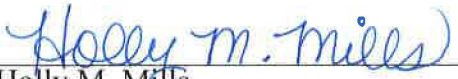
Telephone: (818) 884-8862

Email: JPerez@JamesPerezLaw.com

BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Grass Valley, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

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

Executed on October 25, 2019, at Grass Valley, California.



Holly M. Mills

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