SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation; and the PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J. Herrera, City Attorney for the City and County of San Francisco,

Plaintiffs,

vs.

SANTOS & URRUTIA ASSOCIATES, INC., a California corporation; RODRIGO SANTOS, an individual; ALBERT URRUTIA, an individual; KEVIN O'CONNOR as trustee of the 2012 O'CONNOR FAMILY TRUST; KEVIN J. O'CONNOR, an individual; PETER MCKENZIE, an individual and d/b/a Maverick Construction; AMERICAN BROWN DOG, LLC, a California limited liability corporation; ASHBURY ENGINEERING AND GENERAL CONTRACTING, a California corporation; KEVIN BORN, an individual; DONGWEI WANG, an individual; DAISY ZOU, an individual; VERONICA WANG, an individual; ANDRES MOUSSOURAS aka PETE MOUSSOURAS, an individual and d/b/a Archeon Construction Technology; and DOE ONE through DOE FIFTY,

Defendants.

DONGWEI WANG, an individual; DAISY ZOU, an individual; VERONICA WANG, an individual,

Cross-Complainants,

v.

SANTOS & URRUTIA ASSOCIATES, INC., a California corporation; RODRIGO SANTOS, an individual; ALBERT URRUTIA,

Case No. CGC-18-569923

STATEMENT OF DECISION

Date Action Filed: September 20, 2018
Trial Date: May 5, 2025

an individual; KEVIN O'CONNOR as trustee of the 2012 O'CONNOR FAMILY TRUST; KEVIN J. O'CONNOR, an individual; PETER MCKENZIE, an individual and d/b/a Maverick Construction; AMERICAN BROWN DOG, LLC, a California limited liability corporation; ASHBURY ENGINEERING AND GENERAL CONTRACTING, a California corporation; KEVIN BORN, an individual; ANDRES MOUSSOURAS aka PETE MOUSSOURAS, an individual and d/b/a Archeon Construction Technology; and ROES 1 – 20, inclusive,

Cross-Defendants.

MARILYN ANN JANES, as Trustee of the 1998 MARILYN ANN JANES REVOCABLE TRUST; KEVIN J. O'CONNOR as Trustee of the 1998 MARILYN ANN JANES REVOCABLE TRUST; KEVIN J. O'CONNOR, an individual,

Cross-Complainants,

v.

SANTOS & URRUTIA ASSOCIATES, INC., a California corporation; RODRIGO SANTOS, an individual; PETER MCKENZIE, an individual and d/b/a Maverick Construction; PETER SCHURMAN, an individual; and ROES 1 – 20, inclusive,

Cross-Defendants.

INTRODUCTION

The court presided over a bench trial involving Defendant Kevin O'Connor, as an individual and as trustee of the 2012 O'Connor Family Trust (collectively, "O'Connor"), and his conduct related to his ownership and management of construction projects to renovate 107 Marietta Drive and 147 Marietta Drive, two single-family homes in the Miraloma Park area of San Francisco. O'Connor's activities affected a third property, 151 Marietta, which shared a foundation with 147 Marietta. Plaintiffs City and County of San Francisco and People of the State of California ("Plaintiffs") presented evidence at trial that O'Connor and his proxies made a myriad of misrepresentations to the San Francisco Department of Building Inspection ("DBI") to renovate his properties. DBI found him often working without a building permit, deceiving inspectors to obtain a building permit, disobeying a building permit, or submitting a forged special inspection report to finalize building permit work.

The court did not require the parties to specify the principal controverted issues under Civil Code section 632 because the questions are straightforward. This decision requires the court to determine: (1) whether O'Connor is liable for violating the San Francisco Building Code ("Building Code"), the San Francisco Planning Code ("Planning Code"), the State Housing Law ("Housing Law"), the Unfair Competition Law or Business and Professions Code section 17206 ("UCL"), and (2) whether Plaintiffs' request for declaratory relief and injunctive relief should be granted under the Building Code, the California Civil Code, and the California Code of Civil Procedure. O'Connor stipulated to the validity of many Building Code violations but shifts fault to others. As discussed below, the admitted proof, both direct and circumstantial, shows that his explanations ring hollow.

After a critical review of the evidence at trial and O'Connor's lengthy set of objections to the proposed statement of decision, the court finds that O'Connor is liable for violating the Building Code, the Planning Code, and the Unfair Competition Law. These consumer protection laws use civil penalties as an enforcement tool. The factors guiding the court's imposition of civil penalties under these statutes warrant a substantial award. The court grants Plaintiffs' request for declaratory relief, finding that the properties were public nuisances, and that O'Connor violated the State Housing Law.

The violations at 147 Marietta Drive remain unabated. The court grants Plaintiffs' request for injunctive relief.

SUMMARY OF THE EVIDENCE PRESENTED AT TRIAL
PLAINTIFFS' CASE

I. 107 Marietta

O'Connor became the owner of 107 Marietta on June 3, 2015. (Vol. 2 RT 231:22-233:13; Exh. 134.) He renovated the property with the intent to sell it. (RT Exh. 884 (Deposition of Pete McKenzie ("McKenzie Depo.") at 71:12-21.) The project included excavation underneath the structure and the construction of a retaining wall. (RT Exh. 884 (McKenzie Depo.) at 92:1-14.) O'Connor hired former codefendant McKenzie for foundation work. (RT Exh. 884 (McKenzie Depo.) at 70:23-71:11.)

McKenzie lost his contractor's license in 2011 and was unlicensed through his deposition on September 25, 2024. (RT Exh. 884 (McKenzie Depo.) at 20:4-12.) O'Connor knew that McKenzie had no license but hired him to work at 107 Marietta (RT Exh. 884 (McKenzie Depo.) at 61:22-62:5; Vol. 2 RT 281:5-15.) O'Connor listed McKenzie's construction company Maverick as his general contractor for Permit Application ("PA") 201511243483 (Vol. 2 RT 288:2-23; RT Exh. 3). Maverick also had no valid contractor's license. (RT Exh. 884 (McKenzie Depo.) at 135:2-5.)

Any trench 5 feet or deeper, requires a contractor with a CAL/OSHA trench permit (Labor Code section 6500, subd. (1)(a)) and a Permit Application ("PA.") In San Francisco, a permit application is submitted to DBI for review and building permit approval. O'Connor's PA 201511243483 for work at 107 Marietta required a qualified contractor perform such an excavation. (PA 201511243483.Vol. 2 RT 291:5-12; 619:10-13; 624:1-7; RT Exh. 884 (McKenzie Depo.) at 136:9-11.) Neither McKenzie nor Maverick had a CAL/OSHA trench permit.

On November 14, 2015, O'Connor filed PA 201511243483 with DBI. The permit application included a copy of Associated Trucking's CAL/OSHA trench permit. (Vol. 2 RT 290:7-18; RT Exh. 3.) DBI relied on Associated Trucking's CAL/OSHA trench permit to issue the permit. (Vol. 3 RT 760:24-761:11.) Associate Trucking's president and CEO Eduardo Gonzalez testified that he did not

authorize O'Connor's use of his company's CAL/OSHA trench permit (Vol. 2 RT 174:22-175:6.) Associated Trucking did not perform excavation work at 107 Marietta. (Vol. 2 RT 173:25-174:3.)

McKenzie carried out an excavation that exceeded five feet in depth. (RT Exh. 884 (McKenzie Depo.) at 136:6-8.) He dug underneath the structure at 107 Marietta and built a 7' high retaining wall with the excavated soil. (RT Exh. 884 (McKenzie Depo.) at 92:1-14.) A crew of at least five workers worked with McKenzie for nine weeks to excavate and pour the foundation. (Vol. 8 RT 947:4-8; RT Exh. 884 (McKenzie Depo.) at 77:10-13; 79:18-22; 97:20-98:1.) Joe Turner ("Turner") testified as an expert on CAL/OSHA and on shoring. (Vol. 5 RT 608:21-23.) Turner opined that the excavation was not safe for workers. (Vol. 5 RT 624:1-625:6, RT Exh. 144 at KO0005858; Vol. 5 RT 635:5-11.) No expert evidence was presented to show otherwise.

O'Connor acted as an owner-builder instead of hiring a general contractor in three subsequent permit applications. (Vol. 2 RT 211:3-9; RT Exh. 77; Vol. 2 RT 213:20-214:6; RT Exh. 153; RT Exh. 65.)[1] Each permit application included a "Property Owner's Package" disclosure that described in detail the responsibilities and risks associated with acting as an owner-builder. (Vol. 9 RT 1081:12-1083:7.) O'Connor initialed twelve different statements, which included verifications that he was "the responsible party of record on the permit;" that he could protect himself "from potential financial risk by hiring a licensed Contractor and having the permit filed in his or her name;" and that he was "legally and financially responsible for proposed construction activity" at the property." (Vol. 9 RT 1084:11-1085:1; RT Exh. 65 at pp.3-4; see also RT Exh. 77 at pp.3-4; RT Exh. 153 at pp. 3-4.) "We will not issue a building permit until you have read, initialed your understanding of each provision, signed, and return this form to us at our official address indicated. An agent of the owner cannot

[1] Exh. 65 was not admitted into evidence because of an oversight by counsel, who clearly intended to have the document admitted and considered by the court. O'Connor's testimony provided sufficient evidence to support its authenticity. O'Connor testified that he: (1) recognized the permit application; (2) identified the document as a permit application for a retaining wall at 107 Marietta; (3) signed the permit application as the property owner; (4) completed the permit application as owner for the project; and (5) initialed the 12 paragraphs in the permit application calling for the owner's initials. O'Connor's testimony satisfies the foundational requirements to admit Exh. 65 into evidence. The court admits Exh. 65. (Vol. 9 RT 1080:18-1081:11.)

execute this notice unless you, the property owner, obtain the prior approval of the permitting authority." (*Id.*) O'Connor signed the acknowledgment for each Property Owner Package. At trial, O'Connor claimed never to have read or understood the admonitions in the Property Owner's Package. (Vol. 2 RT 211:15-215:7.)

On June 19, 2015, DBI issued Notice of Violation ("NOV") 201552801. (Vol. 2 RT 240:3-7; RT Exh. 100.) The NOV cited O'Connor for his 7' high retaining wall. He was in violation of Building Code sections 102A (unsafe building) and 106A.4.7 (work beyond the scope of the existing permit). DBI issued a stop work order. The abatement of NOV 201552801 required O'Connor to file PA 201506239633 (Vol. 6 RT 713:5-22; RT Exh. 889) and to submit a Special Inspection Report ("SIR")[2] for each violation. (Vol. 6 RT 714:16-715:1.) O'Connor submitted one SIR dated March 2, 2016[3] and two SIRs dated May 16, 2016,[4] upon which DBI relied to find abatement of NOV 201506239633. (Vol. 6 RT 714:16-717:3.) The SIRs were rescinded on June 18, 2019, after DBI discovered that the SIRs were forged. (Vol. 6 RT 715:18-717:20.)

At trial, O'Connor stipulated to the validity of the NOV and its abatement on May 9, 2017. (RT Exh. 890, ¶ I.1.) The court discusses the fraudulent scheme and its discovery below. Final inspections were approved on July 5, 2019. (RT Exh. 889.)

On October 28, 2016, DBI issued NOV 201632084 for violating Building Code section 103A (work without permit.) (Vol. 1 RT 64:18-66:14; RT Exh. 817.) According to the NOV, O'Connor had completed the work described in PA 201604185029 before the permit was issued. DBI issued a stop work order.

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[2] Special Inspection Reports a described more fully in Plaintiffs' Summary of Evidence, Section III "Special Inspections Fraud.

[3] Exh. 18 was a forged SIR that used the signature and stamp of Nathan Sherwood, P.E., and for (a) Concrete Placement, Sampling and Strength Testing, and (b) Reinforcing Steel.

[4] Exhibit 22 was a forged SIR that used the signature and stamp of Thomas Porter, P.E. and for (a) Concrete Placement, Sampling and Strength Testing, and (b) Reinforcing Steel. Exhibit 830 was a forged SIR that used the signature and stamp of Thomas Porter, P.E. and for (a) Concrete Placement, Sampling and Strength Testing, and (b) Reinforcing Steel in *New Concrete.* (Italics added.)

At trial, O'Connor stipulated to the validity of the NOV and to its abatement on June 9, 2017. (RT Exh. 890, ¶ I.2.)

PA 201604185029 also required special inspections. (Vol. 6 RT 710:21-711:2; RT Exh. 888.) DBI rescinded O'Connor's fraudulent SIRs on June 18, 2019. (Vol. 6 RT 712:7-18; RT Exh. 888.) Final inspections were approved on July 5, 2019. (RT Exh. 888.)

II. 147 Marietta

O'Connor purchased 147 Marietta on April 30, 2016. (Vol. 2 RT 292:6-9; RT Exh. 231.) He planned a renovation that included an excavation to create a retaining wall and additional living space. The proposed project intended to double the existing square footage. (RT Exh 884 (McKenzie Depo.) at 141:13-19.) O'Connor hired McKenzie again to do the work. (Vol. 2 RT 307:24-308:1.) He knew McKenzie's license remained suspended. (RT Exh. 884 (McKenzie Depo.) at 114:9-18.) O'Connor listed himself as the owner-builder on permit applications for 147 Marietta. (Vol. 2 RT 333:14-334:5.)

O'Connor's experience with DBI and 107 Marietta did not change his attitude and approach to the renovation of 147 Marietta. On January 17, 2017, DBI Building Inspector Collette Cummins issued NOV 201650611 and cited O'Connor for violating Building Code section 106A.4.7 (work beyond scope of permit) related to a retaining wall. He had obtained Permit 201611293708 to "repair fence" but created a retaining wall that was greater than four feet in height and that required additional plans and permits. (RT Exh. 873.) The NOV required O'Connor to correct the violations within 30 days, but NOV 201650611 was not, according to him, abated until May 15, 2025. (Vol. 6 RT 767:23-768:4.) At trial, the parties' written stipulation NOV 201650611's shows a different abatement date of May 9, 2017 (RT Exh. 890 ¶ II.1.). Even so, the abatement remains more than the allotted 30 days given to him by DBI.

NOV 201650611 did not give O'Connor pause regarding more serious risks. 147 Marietta sits in a landslide hazard zone (Vol. 2 RT 300:19-301:17) that is governed by the Slope and Seismic Protection Act, Building Code sections 106A.4.1.4 *et seq.* ("SPA")(Vol. 5 RT 553:6-24.) Local

officials enacted the SPA to address landslides that occur during and after the construction of San Francisco buildings. Under the SPA, properties in the geologic hazard zone must be evaluated for their static and earthquake stability and deemed appropriate and safe during and after construction. (Vol. 5 RT 553:8-19.) Once a property is deemed subject to the SPA, DBI must categorize the level of peer review in three categories.[5] DBI determined that 147 Marietta is subject to a Tier III review. (Vol. 5 RT 555:16-22.)

O'Connor knew that 147 Marietta was in a landslide zone but failed to comply with the SPA's requirements. (Vol. 2 RT 301:11-17; Vol. 2 RT 312:13-313:10; RT Exh. 431; Vol. 2 RT 322:2-323:23; RT Exh. 394.) "He (O'Connor) had a permit, not specific for the cut."[6] (RT Exh. 884 (McKenzie Depo.) at 51:22-25.) O'Connor also understood that a soils report was required before beginning excavation. (RT Exh. 884 (McKenzie Depo.) at 165:12-168:25.) O'Connor and McKenzie went ahead with the cut and without the permit. After nearly completing the excavation, O'Connor went to the Building Department to obtain a permit to allow the work at the site. A Building Department plan inspector told him to include a soils report to obtain a permit. (RT 884 (McKenzie Depo.) at 165:17-166:18.) Two days later, O'Connor tried to pass the same application by the same plan inspector but was again rejected. (RT Exh. 884 (McKenzie Depo.) at 165:17-168:25.) O'Connor, without permit in hand, continued to excavate 147 Marietta. (RT Exh. 884 (McKenzie Depo.) at 51:16-52:21; 147:7-148:12.) The excavation commenced as early as June 2017. (RT Exh. 884 (McKenzie Depo.) at 140:15-21.) O'Connor conceded that the excavation was substantial. (Vol. 2 RT 308:2-7.) McKenzie testified that there was an unshored four to five-foot excavation on the site when he first arrived, and that he continued the excavation. (RT Exh. 884 (McKenzie Depo.) at 145:1-11;

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[5] DBI has categorized the level of peer review of engineering work tied to the SPA in three categories: Tier I, Tier II and Tier III. Tier I is the highest level and requires a Structural Advisory Committee ("SAC") review done in a public forum. The SAC includes a geotechnical engineer, geologist, an architect and a civil engineer. Tier II does not require a SAC, but DBI chooses the professional discipline(s) that conduct the review, which typically include a geotechnical engineer, a geologist and a structural engineer. Tier III subjects a site to heightened review that requires the peer review of a geotechnical engineer and a structural engineer. (Vol. 5 RT 554:21-555:22.)

[6] A cut is a vertical excavation, as opposed to a sloped excavation. (Vol. 5 RT 564:8-13.)

147:7-9.) McKenzie and a crew of five workers conducted the excavation between four and six weeks. (RT Exh. 884 (McKenzie Depo.) at 185:4-9; 152:2-23.) They ended the excavation at 11 feet in depth. (RT Exh. 884 (McKenzie Depo.) at 153:9-11.)

On December 5, 2017, DBI Building Inspector Michael Chan discovered the unpermitted excavation and observed that O'Connor had excavated five to six feet below the foundation. DBI issued NOV 201722731, citing a violation of Building Code section 106A.4.7 (work beyond scope of permit) (Vol. 2 RT 216:12-217:7; RT Exh. 867.) NOV 201722731 required an additional permit as a corrective action. (RT Exh. 867.) To issue the permit, DBI required Tier III peer review of the renovation plans by geotechnical and structural engineers. (Vol. 5 RT 554:21-555:22.) O'Connor hired Frank Rollo ("Rollo") and John Hom ("Hom".) (Vol. 5 RT 560:4-23.)

Plaintiffs called Rollo to testify as an expert regarding geotechnical issues that he worked on as part of his peer review of 147 Marietta. (Vol. 5 RT 546:17-21; 551:24-552:22.) In preparation of the review, Rollo reviewed drawings from November 2017, a geologic report from January 2018, and a geotechnical report from January 2018. He was surprised to see the reports reference recent vertical cuts at the site. Rollo had not realized that a permit had been issued for the work before peer review. (Vol. 5 RT 562:14-564:7.) He was concerned because O'Connor had not provided any drawings showing plans for temporary shoring "that would be needed to support the cuts that were being made for the basement excavations." (Vol. 5 RT 561:24-562:4; see also Vol. 5 RT 572:6-15; Vol. 5 RT 594:10-15.)

Rollo testified that an excavation that exceeds four and a half feet in depth requires sloping the excavation or temporary shoring to hold the excavation vertical until permanent shoring in the form of a retaining wall can be constructed. (Vol. 5 RT 567:4-15.) He explained that temporary shoring serves to maintain stability of the excavation to protect workers who would otherwise risk death or injury if the cut failed. (Vol. 5 RT 567:16-21.) None of the documents provided to Rollo showed a design of temporary support for the excavations. (Vol. 5 RT 572:6-15.)

Rollo noted 147 Marietta was situated on the downhill side of Marietta Drive, and that when the property was developed, material cut from the uphill side was placed as fill on the downhill side to create "a level building pad." (Vol. 5 RT 573:18-24; Vol. 5 RT 575:1-22.) Both the fill and the soil underneath consisted of a "clayey sand," a mixture of "predominantly sand with some clay binder." (Vol. 5 RT 573:24-574:9; Vol. 5 RT 600:3-9.) He stated that clayey sand lacks cohesion and that when it fails, it will fail "quickly and dramatically." (Vol. 5 RT 574:9-13; Vol. 5 RT 582:19-583:5.) A person working in the trench has little ability to avoid a slope failure. (Vol. 5 RT 583:5-7.) He noted that workers have been injured or killed when slopes in open trenches failed. (Vol. 5 RT 583:8-11.)

Rollo visited the site on February 16, 2018. (Vol. 5 RT 572:3-5.) Rollo observed people working onsite. (Vol. 5 RT 578:2-13.) Cribbing supported the front of 147 Marietta. (Vol. 5 RT 578:21-579:1.) He observed a vertical cut greater than five feet in depth on the uphill side that exposed the foundation of 151 Marietta. (Vol. 5 RT 579:19-25.) The cut appeared to be recent. (Vol. 5 RT 595:5-12.) Rollo went to the excavation and saw a ten-foot-high cut on the west side, perpendicular to the uphill side. (Vol. 5 RT 580:2-10.) There was no shoring for the excavation. (Vol. 5 RT 582:1-4.) Rollo observed that the excavation site was dangerous. He testified that the danger to workers increases if the conditions on site persist because the probability of instability occurring becomes greater over time. (Vol. 5 RT 584:15-585:9; Vol. 5 RT 589:24-590:24.) Rollo told DBI to order a stop to the work and to "get the workers out of there." (Vol. 5 RT 583:19-25.)

DBI Inspector Kevin McHugh ("McHugh") joined Rollo and others at the site on February 16th. He witnessed an excavation that had completely undermined 147 Marietta's foundation. (Vol. 1 RT 104:13-18, RT 107:6-9.) Three sides of the foundation had been compromised. (Vol. 1 RT 156:7-18.) He described the conditions as "very hazardous" and noted that there was a risk that the building would collapse because there was nothing to support the foundations. (Vol. 1 RT: 102:19-103:2; Vol. 1 RT 104:19-105:10; Vol. 1 RT 107:12-108:10, RT Exh. 263 at p.2.) Everyone at the property was in danger. (Vol. 2 RT 190:19-24.) McHugh saw that 147 Marietta and 151 Marietta shared a foundation, and that O'Connor's work had undermined the foundation at 151 Marietta. (Vol. 1 RT 109:12-15.)

McHugh saw four or five workers in the area where the excavation was occurring. (Vol. 1 RT 105:15-21.)

O'Connor admitted that the excavation work at 147 Marietta required by NOV 201722731 was not performed by a contractor holding a CAL/OSHA trench permit. (RT Exh. 772 [Response to Request for Admission ("RFA") No. 17].)

At trial, he stipulated to the validity of the NOV and that the abatement did not occur until July 30, 2019 (RT Exh. 890, ¶ II.2.)

Based on his observations, McHugh issued NOV 201842491 on February 16, 2018. (Vol. 1 RT 97:22-98:9, RT Exhs. 848 (Notice: 1.)[7] NOV 201842491 cited violations of Building Code sections 103A (work without permit) and 102A (unsafe building) (Vol. 2 RT 222:9-11; RT Exh. 848), and contained a stop work order. (Vol. 2 RT 222:18-20.)

At trial, O'Connor stipulated to the validity of NOV 201842491 and that the abatement did not occur until July 22, 2019. (RT Exh. 890, ¶ II.3.)

McHugh also issued NOV 201842501 against O'Connor on February 16, 2018, for undermining 151 Marietta's foundation. (Vol. 2 RT 226:17-227:7; RT Exh. 465.) NOV 201842501 cited violations of Building Code sections 103A (work without permit) and 102A (unsafe building). At trial, O'Connor stipulated to the validity of NOV 201842501 and that the abatement did not occur until July 22, 2019. (RT Exh. 890, ¶ II.4.)

Despite the stop work order, O'Connor continued with the excavation. (RT Exh. 884 (McKenzie Depo.) at 183:2-186:12.) Todd Greenberg, who O'Connor had hired to recruit workers and to run errands, stated that he had "rall[ied] necessary workers so that the foundation could be done before the job site got shut down." (Vol. 3 RT 412:1-7, RT Exh. 332.) Greenberg procured at least 18 workers who were at the site between February 17, 2018, and February 19, 2018. (Vol. 3 RT 395:8-15; Vol. 3 RT 402:1-14; Vol. RT 404:17-25.)

[7] See also RT Exh 46, NOV 201842491 (Notice: 2), issued on February 18, 2018.

O'Connor applied for a building permit to DBI to abate NOV 201842491 (Vol. 3 RT 353:12-16; RT Exh. 199.) The corrective work was described as "emergency shoring of an excavation that undermined the existing foundation at 147 Marietta" and that required a contractor with a CAL/OSHA trench permit. On February 20, 2018, O'Connor filed PA 201802201756 to abate the excavation at 147 Marietta. (Vol. 3 RT 353:2-5; RT Exh 199.) On February 21, 2018, O'Connor filed PA 201802211852 to abate the excavation at 151 Marietta. (Vol. 6 RT 762:18-22; RT Exh. 464.)

On each permit application O'Connor listed RV Stich Construction ("Stich") as the general contractor. (RT Exhs. 199, 464.) The permit application for 147 Marietta included a copy of Stich's CAL/OSHA Trench Excavation Permit ("Stich's trench permit") (Vol. 3 RT 353:9-11; Vol. 3 RT 354:7-11, RT Exh. 199.) DBI relied upon that copy to issue the emergency shoring permit for 147 Marietta and 151 Marietta. (Vol. 6 RT 761:12-762:10; RT Exhs. 199 and 464.)

The evidence shows that O'Connor used Stich's trench permit to obtain DBI's permission to abate the NOV 201842491 and NOV 201842501. Rocky Stich, the president of Stich Construction, met with O'Connor and McKenzie once at his office to discuss 147 Marietta. (Vol. 3 RT 368:2-5.) O'Connor and McKenzie told Mr. Stich that they had excavated nine to ten feet without shoring. (Vol. 3 RT 371:13-20.) Mr. Stich told them that the "only way to correct it is to put all the dirt back in." (Vol. 3 RT 367:5-11.) He testified that he never agreed to have his company work at 147 Marietta (Vol. 3 RT 368:6-21); that his company never worked at either site (Vol. 3 RT 365:14-20; 366:1-4); and that he never gave his consent to O'Connor to use his trench permit at either property. (Vol. 3 RT 365:21-23; 366:5-7.)

Before trial, O'Connor admitted that the work at 147 Marietta Drive required by NOV 201842491 was not performed or supervised by any person with a CAL/OSHA Trench Excavation Permit. (RT Exh. 772 [Response to RFA Nos. 29 and 41].)

Approximately one week after issuing NOV 201842491, McHugh returned to 147 Marietta with DBI engineer Chu Louie to determine the progress of the emergency shoring. (Vol. 1 RT 115:18-23.) They observed that 147 Marietta and 151 Marietta, which originally sat flush, had separated and

were moving apart. (Vol. 1 RT 115:24-117:3.) McHugh believed that the movement of the building showed the condition of the property was even more dangerous, so he ordered lateral bracing of 147 Marietta. (Vol. RT 116:18-117:3.)

The stop work order prohibited any work except for emergency shoring, but O'Connor continued excavating to create an additional floor below the structure. (RT Exh. 884 (McKenzie Depo.) at 183:11-184:22.) McKenzie was away during this excavation. (RT Exh. 884 (McKenzie Depo.) at 183:2-8.) According to McKenzie, "a foundation was done before the permit was procured in the premise [sic] of being temporary emergency shoring." (RT Exh. 884 (McKenzie Depo.) at 184:19-21.) When McKenzie returned to the job site and saw the new excavation, he told O'Connor to "put the fucking dirt back" and then quit the job after O'Connor refused. (RT Exh. 884 (McKenzie Depo.) at 183:2-22.)

In April 2018, O'Connor requested a site inspection from McHugh, which resulted in the April 27, 2018, issuance of NOV 201861191. (Vol. 1 RT 125:20-23; Vol. 1 RT 128:10-129:1; RT Exh. 237.) McHugh determined that additional excavation at 147 Marietta Drive had occurred in violation of the stop work order. (RT 128:1-15; RT 228:2-13.) The NOV cited more violations of Building Code sections 103A (work without permit) and 102A (unsafe building) and contained another stop work order. (RT Exh. 237.) The NOV was abated on July 22, 2019. (Vol. 6 RT 768:11-16.)

As a result of the work without permit, the San Francisco Planning Department issued Notice of Enforcement ("NOE") 2018-006524ENF (RT Exh. 179) on October 9, 2018. The NOE alleged that work at 147 Marietta had been performed without the benefit of a building permit. The parties stipulated to the validity of NOE 2018-006524ENF (RT Exh. 890, ¶ II.5) but Plaintiffs did not adduce a specific abatement date for the Planning Code violation beyond the abatement date for the companion NOV.

McHugh issued NOV 201975962 on August 8, 2019, for work without permit including extensive excavation, installation of new windows and new framing, and installation of new electrical work. (Vol. 1 RT 136:18-138:13; RT Exh. 427.) O'Connor presented a permit application that

encompassed the work, but that permit was not approved until April 22, 2022. (Vol 1 RT 144:12-146:9, RT Exh. 1001.)

Finally, DBI issued NOV 202291406 on October 26, 2022. (RT Exh. 241.) The NOV cited violations of Building Code sections 106A.4.7 (work beyond scope of permit) and 102A (unsafe building), related to excavation and unpermitted shoring work. At trial, the parties stipulated to the validity of the NOV and that it remains unabated. (RT Exh. 890, ¶ II.6.)

Plaintiffs also introduced O'Connor's admissions that he failed, on two separate occasions, to give notice to adjoining property owners required by Building Code section 3307 and Civil Code section 832 owners prior to doing excavation work at 147 Marietta (NOVs 201842491 and 201861191) (RT Exh. 772 (Response to RFA Nos. 27, 48.)

III. Special Inspections Fraud

A. General Requirements for Special Inspection Reports or SIRs.

Building Code section 1701 *et seq.*, sets forth the general requirements for SIRs and tests to ensure the quality, workmanship and materials used in construction conform to applicable safety and structural standards. Third-party inspectors conduct the SIRs. (Vol. 6 RT 687:1-7; Vol. 1 RT 123:2-124:3; Vol. 6 RT 733:22-734:7.) DBI required SIRs to show that the structural work at both sites had passed inspection. (See, *e.g.*, RT Exh. 18 (3/2/16 Special Inspection Final Compliance Report).) Some SIRs require laboratory testing, including those for the strength of poured concrete, while others only require observation, such as welding inspections. Property owners hire special inspectors. (Vol. 6 RT 687:1-3; Vol. 1 RT 124:4-8.)

O'Connor, as owner/builder, submitted SIRs for his renovation projects to DBI that were prepared by Peter Schurman ("Schurman"). (Vol. 9 RT 1044:4-7.) Schurman told O'Connor that he worked for BSK Associates ("BSK") but did not disclose that he had been terminated by BSK in June 2013. (RT Exh.881 (Deposition of Schurman ("Schurman Depo.") at 59:23-60:6; 64:9-12.) Schurman testified that his inspection services were available at a substantial discount and claimed that a

legitimate special inspector performing an inspection of a retaining wall might charge twice the amount of his fee. (RT Exh. 881 ("Schurman Depo.") at 102:14-21.) At one time, Schurman had been a concrete inspector, but his certifications lapsed in 2014 before he worked for O'Connor. (RT Exh. 881 (Schurman Depo.) at 109:10-23, RT Exh.4). Schurman forged SIRs because he was not an engineer. (RT Exh. 881 (Schurman Depo.) at 65:10-24.)

While furnishing the SIRs for O'Connor, Schurman testified that he prepared and produced fraudulent SIRs for multiple residential property owners from May 2015 (RT Exh. 881 (Schurman Depo.) at 35:14-38:4; RT Exh. 798) until his "activity" sometime between July and September 2019. (RT Exh. 881 (Schurman Depo.) at 37:7-18.) He explained:

> October of – of 2019 I no longer was using an alias or forging names or stealing someone else's engineering stamp to produce documents. That activity in perhaps earlier in the summer when they – some of the -- matters down the -- one of the houses on Marietta Street surfaced and the Department of Building Inspections [sic] finally figured out that what I was submitting was a fraud.

(*Id.*)

At trial, O'Connor denied hiring Schurman as his welding inspector for either property. (Vol. 4 RT 451:21–23.) According to O'Connor, "He [Schurman] was the special [concrete] inspector that was assigned by Peter McKenzie, and I hired Peter McKenzie to be his special inspector for the property that I owned, and my mother owned." [Vol. 4 RT 450:21-451:4.) His disavowal of his personal retention could not be reconciled with Plaintiffs' evidence.

Schurman worked for O'Connor, not McKenzie. Whenever Schurman sent an SIR to DBI, he included the SIR in a letter on forged BSK letterhead to O'Connor that began with the following salutation: "Dear Mr. O'Connor, at your request and authorization, we have performed special inspections and material testing services for the subject project [107 Marietta]." (RT Exh. 829, August 13, 2015, September 14, 2015, January 8, 2016, March 2, 2016, May 15, 2016.) Each report included a concrete compression test report listing O'Connor as client. Schurman's invoices were addressed to O'Connor. (Vol. 4 RT 458:11-459:19; Exhs. 24, 25, 26.) O'Connor acknowledged that he was invoiced by Schurman multiple times and that he helped facilitate payment to him. (Vol. 4 RT 455:6-

16.) The fee for such a service would be significantly discounted. This is indicia that O'Connor was Schurman's client.

Circumstantial evidence shows that Schurman and O'Connor had an understanding, whereby Schurman would forge an SIR that O'Connor would submit to DBI. O'Connor tendered nine fraudulent SIRs to DBI prepared by Schurman for 107 Marietta (Vol. 6 RT 711:8-721:21; RT Exhs. 18, 19, 20, 21, 22, 23, 112, 830, 879) and submitted seven more fraudulent SIRs created by Schurman for 147 Marietta to DBI. (Vol. 6 RT 695:11-708:15, RT Exhs. 181, 251, 252, 253, 831, 882; Vol. 4 RT 499:16-500:1, RT Exh. 261.)

O'Connor did not ask Schurman about details that would lead a reasonable person to believe that his services were to be trusted. (Vol. 4 472:1–473:5.). He claimed that McKenzie hired Schurman, but other than his testimony, there was no evidence to prove that was true. O'Connor offered no evidence of a written or oral contract between McKenzie and Schurman. Plaintiffs showed that Schurman personally invoiced his services, and that O'Connor paid him directly, sometimes in cash. (RT Exhs. 24, 25, 26, 881 (Schurman Depo) at 100:12-102:1; 104:4-21, 133:8-10; 473:22-474:3.) Yet, O'Connor remained unwilling to say that he had any contract with Schurman. O'Connor's testimony about Schurman's retention and their business association were evasive and not credible.

Plaintiffs presented additional evidence to show that their business scheme extended beyond the concrete compression testing for 107 Marietta. Subsequent email threads show that when O'Connor needed an SIR, he would contact Schurman. Correspondence between O'Connor and Schurman on April 4, 2016, show their work arrangement. (RT Exh. 64). Schurman, in response to O'Connor's question about whether we are "caught up," answers: "Our business is on track. You should have five (5) reports: one (1) retaining wall; three (3) basement walls w/footings; one (1) basement slab-on-grade. Payments are current; your account is paid-in-full." (*Id.*)

O'Connor's emails and text messages with Schurman show that he was a knowing participant in the fraud. On May 24, 2017, Schurman emailed O'Connor noting that he had "never reported on either bolts in concrete or moment frame welding" at 107 Marietta. (Vol. 4 RT 466:1-24; RT Exh.

878.) He offered to amend a report that he had already written to add inspections that he had not performed. (Vol. 4 RT 466:24-467:13.) Schurman asked O'Connor, "Do you think this will be sufficient?" (Vol. 4 RT 467:14.) In the alternative, he offered to write a separate report for the special inspections. (Vol. 4 RT 467:14-18.)

A legitimate inspector knows what "would be sufficient." No legitimate special inspector would ask his client such a question. O'Connor acknowledged that Schurman's question was unusual. (Vol. 4 RT 469:2-6.) Schurman testified that the obvious interpretation of his email was the correct one: he had "discovered that there were additional inspections required" after he had "already drafted" the SIR, that he "just added in those two" to the report, and that his comment the SIR would "retain its original date" was an indication he was altering the report to take care of the missing inspections. (RT Exh. 881 (Schurman Depo.) at 137:13-138:14.)

The offer to add a welding special inspection should have resulted in an immediate rebuke not only for the reasons mentioned above but because Schurman was not O'Connor's welding special inspector. (Vol. 4 RT 451:14-23.) O'Connor had a separate welding special inspector. (Vol. 4 RT 451:18-23.) In fact, Schurman did not have the qualifications to perform welding special inspections. (RT Exh. 881 (Schurman Depo.) at 129:6-9.)

O'Connor, willing to accept Schurman's offer, followed through with a May 30, 2017, email request to his concrete inspector, Al Giddings ("Giddings"), to provide his welder's certification number, weld locations, etc. to Schurman and to meet onsite two days later to confirm locations based on the plans. (RT Exh. 449, May 30, 2017.) Schurman testified that he never talked directly or indirectly with O'Connor during the life of the project at 107 Marietta (RT Exh. 881 (Schurman Depo.) at 99:18–11), but this was not true.

When confronted with their emails and the substance of their meeting with Giddings, neither Schurman nor O'Connor would say why they went to the office. Schurman explained that welds are inspected at the time of the welding, that it is observational, that he did not watch "any of that," and that inspections are done after the fact. (RT Exh. 881 (Schurman Dep.) at 140:5-20.) His

responsibility was "to close the job out and get it done." (RT Exh. 881 (Schurman Dep.) at 140:21-25.) O'Connor sent an email to Santos tell him that Schurman and he "went over all the weld details needed for the section inspections" and that Schurman "already has all concrete details, so I feel like we have everything needed to wrap the specials up." (RT Exh. 449.) They could not explain why they went to see Giddings, but a reasonable inference is that they went to the welder's office to help Schurman obtain the information necessary to forge the welding special inspection report.

In April 2018, O'Connor contacted McHugh for a site inspection at 147 Marietta for work that SIRs had cleared. (Vol. 1 RT 125:4-23.) McHugh testified that he was concerned that the SIRs had attested to work that had not been completed. (*Id.*) The submission of a false SIR is a violation of Building Code sections 102A; 103A and 106A.4.7. On April 27, 2018, McHugh issued NOV 201861191, which, in addition to multiple violations by O'Connor for ignoring earlier stop work orders, working without a permit, and carrying out an excavation that undermined the remaining foundations on the property, found that O'Connor had also submitted SIRs for work that had not been done. When DBI issued the NOV, McHugh told O'Connor in an April 27, 2018, email that he had learned that the SIRs were submitted despite "knowing the work was never performed." (V. 4 RT 488:19-489:19; RT Exh. 399.)

In response, O'Connor contacted Shurman, asking, "Should I just say there was a confusion?" (Vol. 4 RT 489:20-25; RT 399). O'Connor testified that he had a subsequent conversation with Shurman, but that he did not have a present recollection about what was said. (Vol. 4 RT 491:9-490:4.) O'Connor's failure to recall the conversation is not believable. O'Connor's email to McHugh on April 30, 2018, confirmed his decision to claim confusion as the reason for the fraudulently submitted SIRs. In that email, O'Connor faulted his special inspector (Schurman) for the violations but also shifted responsibility for his confusion to McHugh and the uncertainty caused by several permits. (Vol. 4 RT 494:4-497:11, RT Exh. 324.) O'Connor blind copied Schurman on his email to McHugh. (Vol. 4 RT 498:1-23.) He could not explain why he did so when he openly copied Santos and Urrutia on the same

email. (Vol. 4 RT 498:8-10.) The court infers from the evidence that O'Connor was alerting Schurman to be in accord with any subsequent communications with DBI.

O'Connor continued to use Schurman's services. (Vol. 4 RT 498:25-499:2.) DBI's red flags and warnings were insufficient to have O'Connor abide by the rules and properly address the NOVs. O'Connor's handling of another fraudulent report by Schurman is inexplicable. In August 2018, several text messages show that Shurman had prepared a report "completed, stamped and signed." (Vol. 4 RT 501:4-6; RT Exh. 455 [August 10, 2018, at 10:46 a.m. text].) Schurman told O'Connor that the report could be postdated to August 30, 2018, to account for the required curing time for concrete. (Vol. 4 RT: 501:19-25; RT Exh. 455 [August 14, 2018, at 12:33 a.m. text].) Schurman was notifying O'Connor that the SIR was fraudulent; the SIR was stamped and signed even though the concrete to be crushed for the inspection had not dried. O'Connor, knowing that the concrete had not yet cured, submitted the August 30, 2018, SIR, prepared on BSK letterhead to DBI. (Vol. 4 RT 499:16-500:1; RT Exh. 261.)

On September 6, 2018, McHugh emailed O'Connor that DBI had discovered signs of fraud in the August 30, 2018, SIR. (Vol. 1 RT 133:2-17; Vol. 4 RT 503:21-505:9; RT Exh. 213.) McHugh noted that the two permit application numbers listed on the SIR were both incorrect. (Vol. 4 RT 504:14-18.) He admonished O'Connor for not replying to his April 27, 2018, email with an explanation as to why SIRs had been submitted for work that had not been done. (Vol. 4 RT 504:19-23.) McHugh told him that DBI had voided those special inspections "as they were fraudulent." (Vol. 4 RT 504:25-505:9.)

O'Connor forwarded the email to Schurman and noted in a September 6, 2018, text message to Schurman, that it "doesn't sound good." (Vol. 4 RT 505:19-506:5; RT Exh. 455 at p.4.) Schurman responded by telling O'Connor that he was worried and by asking "why did he call it fraudulent." (Vol. 4 RT 506:22-507:4; RT Exh. 455 at p.4.) O'Connor then suggested that he could lie to the DBI. He could represent he "hired a special inspection guy who had a guy on site for the pours" who was confused by the number of permits (Vol. 4 RT 507:8-12; RT Exh. 455 at p.4.) but O'Connor conceded

that this was not true and that there was only one special inspector, Schurman. (Vol. 4 RT 507:21-508:1.) O'Connor realized his explanations were running thin with DBI.

On September 7, 2018, O'Connor texted Schurman: "If they called the firm on the letterhead, would they know to cover for you?" (Vol. 4 RT 509:17-20; RT Exh. 455 at p.5.) O'Connor explained what he meant by "cover for you." He knew that Schurman had made a mistake and that he "just wanted to make sure that his mistake would be okay by the people he works with on the letterhead." (Vol. 4 RT 509:17-510:2.) He elaborated that he was asking Schurman if BSK would "cover it and make it right." (Vol. 9 RT 1113:4-24.) O'Connor's explanations about the meaning of "would they know to cover for you" is not credible. They are inconsistent with the text message he sent immediately afterwards, "I fear there's already an investigation." (Vol. 4 RT 510:13-16) He knew that Schurman did not work for BSK and that his scheme with Schurman was about to be revealed.

O'Connor last maneuver was to insist again that "everything was a product of confusion." (Vol. 4 RT 511:23-512:24.) He sent a text message to McHugh stating that he "[w]as not sure what to do." (RT Exh. 238) and then faulted his inspector(s) for report typos and mistakes. In the end, he acknowledged that fraud is not as simple as fixing typos. (*Id.*)

To summarize, Plaintiffs presented evidence that would have place a reasonable person on notice that Schurman was not a legitimate special inspector, and that O'Connor knew that to be true. Schurman used personal email rather than a business or corporate email. (Vol. 4 RT 475:18-22; RT Exh. 881 (Schurman Depo.) at 104:4-24.) Schurman charged less than half the price of legitimate special inspectors. (RT Exh. 881 (Schurman Depo.) at 60:4-61:13.) He was available to O'Connor at all hours. He was at O'Connor's beck and call, including meeting with O'Connor at the offices of Santos & Urrutia, at DBI's offices and at the welder's business. (Vol. 4 RT 475:1-17.) He wrote SIRs for welding special inspections even though O'Connor had a different welding special inspector and was not hired to work on welding inspections. (Vol. 4 RT 451:18-23.) He accepted payment in cash (Vol. 4 RT 473:22-474:3; RT Exh. 455 [August 14, 2018, at 8:37 a.m. text message]), something Schurman admitted no legitimate special inspector would do. (RT Exh. 881 (Schurman Depo.) at

150:17-151:2.) Schurman willingly negotiated the fee for an SIR. (Vol. 4 RT 474:4-12; RT Exh. 455 [August 14, 2018, at 8:37, 8:41 text messages].)

None of Shurman's unprofessional business practices mattered to O'Connor. Nor did he express any surprise or outrage at Schurman's admissions of fraud and attempts to continue fraud on DBI. The evidence shows that they knowingly colluded to avoid the Building Code's special inspection requirements.

DEFENDANT'S CASE

I. Testimony of O'Connor

O'Connor testified as an adverse witness in Plaintiffs' case and was recalled for further testimony in his case. O'Connor was evasive. He gave non-responsive answers to straightforward questions that required the court to admonish him that volunteering non-responsive information undermined his credibility. (Vol. 4 RT 456:13-20.) Every material assertion that he advanced in his testimony was either impeached by his words or contradicted by credible evidence. The evidence shows his proclivity for deceit and opportunity, even under oath. In one instance, he provided false information in a letter to a federal judge and subsequently gave testimony consistent with that correspondence at former codefendant Rodrigo Santos' ("Santos") criminal sentencing hearing. (Vol. 9 RT 1098:12-1100:4; RT Exh. 893.) He admitted that he offered to trade testimony favorable to Santos, former codefendant Albert Urrutia, and former codefendant Santos & Urrutia if they waived engineering services worth $10,000. (Vol. 9 RT 1104:2-1106:20, RT Exhs. 158, 159, 894.) O'Connor was not a credible witness.

A. 107 Marietta

O'Connor testified that 107 Marietta was his mother's home. (Vol. 2 RT 231:4-13.) He did not manage the construction project there; his mother did. (Vol. 2 RT 235:21-236:4.) His mother hired McKenzie to be the general contractor. (Vol. 2 RT 270:17-271:18.) O'Connor claimed McKenzie was a licensed contractor when he first began working on 107 Marietta. (Vol. 8 RT 937:17-22.) Only later did he learn McKenzie's license had been suspended. (Vol. 8 RT 938:5-11.)

McKenzie worked with Santos to obtain permits. (Vol. 8 RT 945:9-11.) McKenzie hired Schurman to do the special inspections. (Vol. 8 RT 951:17-952:2.)

O'Connor thought there was a permit to build the retaining wall. (Vol. 2 RT 247:2-7.) He learned there was no permit only after he received NOV 201552801. (Vol. 8 RT 950:17-951: 5.) He filed for a permit to abate the NOV. (Vol. 8 RT 941:9-13.)

O'Connor claimed that there was an existing cavity under 107 Marietta and that any excavation was minor. (Vol. 2 RT 238:7-25.)

His mother sold 107 Marietta. (Vol. 8 RT 974:1-2.)

O'Connor acknowledged that DBI required a CAL/OSHA permitted contractor to perform the excavation under his permit to remodel, PA 201511243483. (Vol. 2 RT 287:25-289:12, RT Exh. 3.) He testified that Associated Trucking's permit appeared unlike the rest of the document and was not actually associated with his permit application. (Vol. 2 RT 291:13-25.)

Plaintiffs disproved each of his claims.

1. Ownership of 107 Marietta

Plaintiffs introduced a grant deed showing the transfer of the property to O'Connor on June 1, 2015. (Vol. 2 RT 231:22-233:2; RT Exh. 134.) O'Connor listed himself as the owner and the owner-builder on multiple permit applications related to the construction at 107 Marietta. (Vol. 2 RT 213:1-22; RT Exh. 153; Vol. 2 RT 288:2-18; RT Exh. 3; Vol. 9 RT 1080:18-1081:11, RT Exh. 65.) He owned 107 Marietta during all relevant times described in this decision.

2. Management of the Construction

Plaintiffs presented evidence that O'Connor managed the construction and saw it as his project. For example, O'Connor handled the special inspections, emailed Schurman about the inspections, received the invoices for the inspections, and paid Schurman. (RT Exh. 881 (Schurman Depo.) at 100:12-102:1; 104:4-21.) O'Connor spoke of the construction as his project. (Vol. 2 RT 242:9-244:11; RT Exh. 154 ["We got a little eager" and "we moved" a significant amount of dirt]; RT 255:16-256:9;

Vol. 2 RT 257:17-258:9 ["we were opening up the hole"].) O'Connor listed himself as the owner-builder on three permit applications at 107 Marietta.

Other than O'Connor's testimony, there was no evidence that O'Connor's mother had any role in the management of the construction.

3. Knowledge that McKenzie was an Unlicensed Contractor

O'Connor knew that McKenzie was unlicensed when he hired McKenzie to work on 107 Marietta. (Vol. 2 RT 281:25-283:15.) O'Connor's deposition testimony indicated that he hired McKenzie because he knew that McKenzie had lost his license and needed work. (Vol. 2 RT 281:25-282:22.) Plaintiffs impeached O'Connor twice on the same point. In his case-in-chief he renewed his claim that he thought McKenzie was licensed. (Vol. 9 RT 1088:17-1090:23.)

4. Excavation

The evidence showed the excavation was significant. Plaintiffs introduced photographs of excavation activity and cribbing under the structure of 107 Marietta. (Vol. 2 RT 261:6-13; Vol. 2 RT 259:17-260:8; RT Exh. 144 at KO5858, 5867.) O'Connor acknowledged that a photograph of a large mound of dirt was the product of the excavation from underneath 107 Marietta. (Vol. 2 RT 260:9-261:5, Exh.144 at KO5865.) The dirt from the excavation was used to construct the unpermitted retaining wall. (RT Exh. 884 (McKenzie Depo.) at 92:1-14.) McKenzie began the excavation before the permit was issued. (Vol. 8 RT 946:14-16.)

5. Associated Trucking's CAL/OSHA Permit

DBI Code Enforcement Section Chief Mauricio Hernandez testified that Associated Trucking's permit was part of the permit file for PA 201511243483. (Vol. 6 RT 760:24-761:11.)

6. Schurman Worked for McKenzie

According to McHugh, the property owner is responsible for hiring a special inspector. (Vol. 1 RT 124:4-8.) Schurman did not work for McKenzie. Schurman addressed the SIRs to O'Connor and stated in each report that the inspections had been done at O'Connor's request. The special inspection test result forms listed O'Connor as Schurman's client. (Vol. 4 RT 452:3-455:5; RT Exh. 829.)

Schurman invoiced O'Connor directly. (Vol. 4 RT 458:11-459:15; RT Exhs. 24, 25, 26.) O'Connor paid all Schurman's fees. (Vol. 9 RT 1077:9-22.) O'Connor told Schurman when his services were needed, and he provided information requested by Schurman. (Vol. 4 RT 460:16-463:13.) O'Connor did not introduce any evidence besides his testimony that Schurman worked for McKenzie.

7. Retaining Wall

O'Connor knew he did not have a permit to build the retaining wall. On July 7, 2015, O'Connor's friend Craig Lipton emailed O'Connor stating that a DBI inspector had been to the property and noted the unpermitted retaining wall at 107 Marietta. (Vol. 2 RT 242:9-243:9; RT Exh. 154.) In response, O'Connor wrote, "We got a little eager and started before the permit was complete and it turned out to be a little more tricky to get do [sic] a needed grade analysis as result of the significant amount of dirt we moved." (Vol. 2 RT 243:18-25; RT Exh, 154.)

8. Sale of 107 Marietta

O'Connor sold 107 Marietta on June 14, 2017. (Vol. 2 RT 279:9-13; RT Exh. 96; Vol. 9 RT 1094:7-21.) Plaintiffs introduced the Final Seller's Statement listing the seller as "Kevin O'Connor, Trustee of the 2012 O'Connor Family Trust." (Vol. 2 RT 279:21-280:2; RT Exh. 96.) O'Connor admitted that he was the beneficiary of the trust. (Vol. 2 RT 233:3-7; Vol. 9 RT 1094:17-21.) The sale netted $1,279,945.32 for O'Connor. (Vol. 2 RT 280:6-11; RT Exh. 96.)

B. 147 Marietta

O'Connor denied managing the construction at 147 Marietta. (Vol. 2 RT 206:25-207:8.) He hired McKenzie to be his general contractor. (Vol. 2 RT 210:7-10.) He thought the excavation was authorized by one of the permits that had been obtained. (Vol. 2 RT 302:19-304:12.)

O'Connor contested NOV 201650611, which cited him for constructing retaining walls over four feet high without a permit. (RT Exh. 873.) O'Connor claimed that he had not yet constructed a wall at the time that the NOV was issued, and that the form boards that had been set up to pour the wall were not indicative of the wall's ultimate height. (Vol. 8 RT 984:19-985:3.)

O'Connor implied that the use of Stich's CAL/OSHA permit and to list Stich on PA 201802201756 was appropriate. O'Connor testified that Stich had taken the job under consideration and that he had emailed Stich's CAL/OSHA permit to DBI because McKenzie had provided it to him via Mr. Stich if he would do the work. (Vol. 3 RT 359:23-361:2; RT Exh. 3.)

O'Connor testified that the excavation at 147 Marietta was properly shored. (Vol. 9 RT 1028:19-1029:20.)

Despite stipulating to the validity of NOV 201975962, which cited him for working outside of the scope of the emergency shoring permit, O'Connor testified that this NOV was a function of conflicting instructions from DBI Inspector Cyril Yu ("Yu") and McHugh. O'Connor claimed Yu had called for the installation of a grade beam which required an excavation that violated McHugh's stop work order. (Vol. 9 RT 1019:11-1020:19; Vol. 9 RT 1034:14-10352.)

O'Connor faulted McKenzie, Schurman, and former codefendant Rodrigo Santos and others for his NOV.

O'Connor claimed that he had no knowledge of Schurman's fraudulent special inspection reports but concedes that he submitted them to DBI. (Vol. 9 RT 1044:4-10.)

As discussed below, Plaintiffs disproved these assertions.

1. Management of Construction

In his response to RFA No. 1, O'Connor admitted that he managed the construction at 147 Marietta. (RT Exh. 772 [Response to RFA No. 1].) His admission to an RFA is preclusive. (Code of Civil Procedure § 2033.410.)

2. Excavation was Authorized

O'Connor could not identify any permit issued prior to his deep cuts at 147 Marietta that allowed him to begin excavation. (Vol. 2 RT 304:13-15.) McKenzie testified that O'Connor knew that he was excavating while the permit application was pending. (RT Exh. 884 (McKenzie Depo.) at 147:7-15; 148:1-12.) O'Connor's emails corroborate McKenzie's understanding. In an email to Matt

Lowe[8] dated October 25, 2016, O'Connor wrote: "I can't afford to wait for him. Guys are starting to work next week and these Nieghbor [sic] are brutal." (Vol. 2 RT 314:10-315:23; RT Exh. 875.) Other emails between O'Connor and Matt Lowe indicate that O'Connor knew he was working without a permit. (Vol. 2 RT 304:20-307:21; RT Exh.397 ["I urgently need to get some sort of permit before I get in trouble" and "I went down and pulled an OTC[9] owner remodel permit just to look legit."].) O'Connor conceded on cross-examination that he might have begun the excavation without the foundation permit. (Vol. 2 RT 307:17-21.)

3. Retaining Wall

A retaining wall requires a permit if it exceeds four feet in height. (Vol. 1 RT 77:23-78:1.) McHugh testified that O'Connor had incorrectly measured the height of the wall. (Vol. 1 RT 78:25-80:19; RT Exh. 290 at 4.) McHugh stated that the correct measurement must be taken from the bottom of the footing, not from the ground. (Vol. 1 RT 78:21-24.) After O'Connor disputed the validity of NOV 201650611, McHugh measured the retaining wall at the site. (Vol. 1 RT 80:20-81:4.) McHugh measured the height as over four feet. (Vol. 1 RT 78:16-20; Vol. 1 RT 80:20-81:17.) The retaining wall was near completion as the rebar had been assembled inside the form boards. (Vol. 1 RT 201:8-21.) The intent to build a non-compliant wall was clear, and the NOV was validly issued. (Vol. 1 RT 201:22-25; Vol. 1 RT 203:18-22.) McHugh explained that it was to the property owner's benefit to inspect the form boards before pouring concrete for a retaining wall to prevent more work by the contractor and additional engineering review pending the issuance of an NOV. (Vol. 1 RT 93:12-25-94:3.)

McHugh's testimony regarding the proper way to measure a retaining wall and the propriety of issuing an NOV prior to the completion of the retaining wall is persuasive. His remarks are supported by his lengthy experience and expertise as a senior building inspector. (Vol. 1 RT 46:15-19; Vol. 1 RT

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[8] A general contractor with whom O'Connor consulted regarding the conversion of a basement to a habitable space at 147 Marietta. (See generally, Vol. 2 RT 293:20-294:16, 9 RT 1039:13-16,)

[9] An "over the counter" permit does not require plans and can be issued the same day. (Vol. 6 RT 752:5-10.) Projects involving structural and foundation work require submission of structural plans as well as plan check review, and take longer to process. (Vol. 6 RT 753:17-754:25.)

54:19-23.) O'Connor did not present any evidence other than his testimony to contradict McHugh's testimony.

4. Stich's CAL/OSHA Permit

Mr. Stich impeached O'Connor on all material matters. He stated that there was only one meeting, that he would not work on 147 Marietta, and that he never wavered on his refusal. (Vol. 3 RT 368:6-21.) O'Connor conceded that "Mr. Stich's memory is probably better than mine." (Vol. 3 RT 358:13-14.) There is no reason for Mr. Stich to tell a lie. O'Connor did not offer any evidence to show that he did.

5. Compliance with CAL/OSHA

In O'Connor's Response to RFA No. 29, he admitted that the "work at 147 MARIETTA DRIVE required by DBI NOV 201842491 was not performed or supervised by any person with a CAL/OSHA Trench Excavation Permit." The response to the RFA is preclusive. (RT Exh. 772 [Response to Request for Admission ("RFA") No. 29].)

6. Shoring at 147 Marietta

Rollo testified as an expert on geotechnical engineering. Rollo's testimony about his observations about the excavations at the site, the lack of temporary shoring, and the specific safety risked posed to the workers at the site was credible. (Vol. 5 RT 572:23-573:11; 582:1-4; 588:24 – 590:11.) O'Connor's testimony that shoring existed at the site was not credible. His testimony was impeached by Stich's testimony that O'Connor and McKenzie told him at their meeting that they had dug down vertically 10 feet and had not done any shoring. (3 RT 366:23 – 367:20, 371:13-20.)

7. NOV 202291406

NOV 202291406 cited O'Connor for working beyond the scope of the permit. O'Connor did not cross-examine McHugh regarding any conflict between instructions given by him and those given by Yu. O'Connor did not call Yu as a witness.

8. Knowledge of Schurman's Fraud

O'Connor pivots his responsibility for hiring Schurman to McKenzie. Nothing in the evidence shows that McKenzie retained or collaborated with Schurman on either project. The evidence shows that O'Connor willingly participated in Schurman's fraudulent scheme.

C. UCL

O'Connor testified that he was not in the business of buying and selling real estate and that he had never purchased a property with the intent to sell it. Plaintiffs impeached his testimony as to 107 Marietta. O'Connor told McKenzie that the plan for 107 Marietta was to "turn it and burn it." (RT Exh. 884 (McKenzie Depo.) 71:17.) 107 Marietta was a "speculative" property that O'Connor remodeled for the purpose of sale. (RT Exh. 884 (McKenzie Depo.) at 71:12-21.) O'Connor chose to act as property owner-builder at each property, allowing him to manage construction and to employ workers

D. Expert Witness Philip Whiteside

O'Connor called Whiteside as an expert in structural engineering. (Vol. 8 RT 854:16-855:4.) Whiteside had no opinion of any work at 147 Marietta performed prior to 2022. His opinion was that the work in 2022 was performed "in a workmanlike manner" and according to the structural plans. (Vol. 8 RT 872:3-8.) All relevant events, except for the issuance of NOV 202291406 on October 26, 2022, took place before 2022. O'Connor stipulated to the validity of NOV 202291406. Whiteside did not offer any opinion as to the validity of that NOV. Whiteside's testimony is irrelevant to the court's determination of any of the issues in this case.

HOLDINGS

I. O'Connor Violated the San Francisco Building Code and San Francisco Planning Code

O'Connor violated the Building Code. O'Connor stipulated to seven NOVs issued by DBI. He contested the validity of NOV 20165061, which relates to the retaining wall at 147 Marietta. The court finds that Plaintiffs have proven the violation of NOV 20165061 by a preponderance of the evidence. DBI is not required to wait for an unpermitted retaining wall to be fully constructed before issuing an

NOV. The court is persuaded that the measurement for a retaining wall must start at the bottom of the footing and not at grade.

O'Connor also took issue with NOV 201975962, which involves a claim that he was confused by a McHugh stop work order that conflicted with Yu's instructions. O'Connor's defense is not credible. He did not cross-examine McHugh on this matter. He did not call Yu in his defense. The evidence shows that his regular practice and pattern was to work beyond the scope of his permit and to violate stop work orders. Plaintiffs have proven the violation of NOV 201975962 by a preponderance of the evidence.

O'Connor admitted to other violations of the Building Code. He submitted false information in violation of Building Code section 103A on several permits, including the CAL/OSHA permits he misappropriated from Associated Trucking and Stich Construction. He listed Stich as the general contractor on PA 201802201756 when he knew Stich refused to do the work at 147 Marietta. He submitted false SIRs in violation of Building Code sections 1701 *et seq*. He violated the SPA by excavating at 147 Marietta without complying with the requirements of heightened review, soils reports, and proper shoring prior to excavation.

O'Connor's defense strategy shifts fault and accountability to others. He claims that he relied on others who, without his knowledge, committed the misconduct that led to the NOVs and false permit submissions. By contrast, he concedes that the individuals he blames for the misconduct, his unlicensed contractor, his structural engineer, and his special inspector, were his agents. (Vol. 3 RT 352:11-18.) O'Connor is liable for their actions. (Civil Code § 2338; see, e.g., *Johnston v. Long* (1947) 30 Cal.2d 54, 61.)

The evidence shows that O'Connor was aware of his agents' wrongdoing. Under Civil Code section 2339, O'Connor is liable for any misconduct by an agent that he authorized or ratified. The evidence shows, among other things, that O'Connor knew that the retaining wall at 107 Marietta had been built without a permit, was aware that McKenzie's work at 147 Marietta was done without a

permit, understood that Schurman's SIRs were fraudulent, and that he made efforts to conceal Shurman's fraud from DBI.

O'Connor testified that Santos misappropriated his blank checks for financial gain but offered no evidence of Santos' responsibility for any other misconduct attributed to him as property owner-builder by Plaintiffs. After closing arguments, Santos and Santos & Urrutia Associates made a motion for nonsuit against O'Connor's Cross-Complaint. The court granted the motion. The court will not reiterate its reasons for granting the non-suit motion. O'Connor brought a motion for reconsideration of the court's order. After considering the record, the written papers and the parties' oral arguments, the court denied O'Connor's motion for reconsideration. O'Connor seeks to have the court again reconsider its earlier rulings, but the record has been made, and the ruling is that his request is DENIED.

O'Connor violated the Building Code at 107 Marietta. DBI issued two NOVs under Building Permit No. 201604185029 for work at 107 Marietta that required that an SIR for each violation. The evidence shows that O'Connor submitted two forged SIRs dated May 16, 2016, in support of Permit Applications 201604185029 and 201506239633 for 107 Marietta to DBI.[10] DBI required these SIRs and relied on them in completing the permits for 107 Marietta. Vol. 6, 709:10-712:22; Vol. 6, 713:5-22, 716:9-717:20; Exhs. 888, 889.) The two NOVs were abated on May 9, 2017, and June 9, 2017, outside the statute of limitations. The abatement of each NOV required that the work pass special inspections. Permit Application 201604185029 was initially completed on June 9, 2017 (Ex. 888) and Permit Application 201506239633 was initially completed on April 6, 2017 (Ex. 889; Vol. 6, 717:4-17.) DBI did not discover the fraudulent SIRS until June 18, 2019. (Trial Exhs. 888, 889; Vol. 6, 709:4-19, 711:3-7, 712:10-713:1, 713:5-14, 717:4-20.) When the fraud was discovered, DBI rescinded the final inspections. (Vol. 6, 716:9-717:20.)

[10] Exhibits 23 and 830. There is no evidence of the precise date O'Connor submitted these SIRs to DBI.

The discovery rule applies to these violations. *See Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797.) Plaintiffs filed their complaint on September 20, 2018. Civil penalties have a one-year statute of limitations under Code of Civil Procedure section 340, subd. (a). O'Connor remained in violation of the NOVs at 107 Marietta from September 20, 2017, until the final approval of the permits required to abate those violations on July 5, 2019, or **654 days**. Building Code section 103A imposes daily penalties.[11]

Based on the stipulations, it is undisputed that O'Connor was also in violation of the Building Code at 147 Marietta. An unabated NOV at 147 Marietta for a violation of Building Code section 102 remains outstanding and runs within the one-year of limitations from September 20, 2017, through the last day of trial, June 17, 2025, for **2,826** days. He is liable for the daily violations at 151 Marietta for **521** days, from February 16, 2018, through July 22, 2019. Violations of the Building Code for 147 Marietta and 151 Marietta total 3,347 days.

O'Connor did not dispute the validity of the Planning Notice of Enforcement ("NOE") 2018-006524 ENF. (3 RT 346:11-347:6, Exh. 179.) Planning Code section 176 imposes daily penalties.[12] Plaintiffs contend that O'Connor's liability extends from the date of the NOE, October 9, 2018, until July 2, 2019, which is the abatement date of DBI NOV 201861191 for a total of 287 days. The stipulation (Exh. 179, ¶ 5.) does not state the Planning Code NOE abatement date nor could the court find it in the record. In the absence of such proof, the court awards no penalties under the Planning Code.

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[11] It states in pertinent part, "Any person, the owner or the owner's authorized agent, who violates, disobeys, omits, neglects, or refuses to comply with, or resists or opposes the execution of any of the provisions of this code, shall be liable for a civil penalty, not to exceed $500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco by the City Attorney in any court of competent jurisdiction. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the City Treasurer and credited to the Department's Special Fund.

[12] Under the title, "Administrative Penalties," section 176 states in pertinent part: "(c)(1)(A) General Violations. The Zoning Administrator, by issuance of the NOV, may assess upon the Responsible Party an administrative penalty for each violation in an amount up to $1,000 for each day the violation continues unabated."

II. O'Connor Created Public Nuisances

Violations of the Building Code and Planning Code are per se public nuisances. (See, San Francisco Building Code section 102A; San Francisco Planning Code section 176.) 107 Marietta was a public nuisance. 147 Marietta remains a public nuisance because outstanding Building Code violations remain unabated. The court grants Plaintiffs' request for injunctive relief requiring abatement of these open NOVs under Building Code section 102A, , Civil Code sections 3491 and 3494, and Code of Civil Procedure section 731.

III. Defendant Violated the State Housing Law.

O'Connor received five NOVs for "unsafe building" under Building Code section 102A for both 107 Marietta and 147 Marietta. These Building Code violations were dangerous to the life, health, and property of his neighbors.

CAL/OSHA expert Turner testified that the excavation at 107 Marietta was unsafe. DBI Inspector McHugh described the foundation at 147 Marietta as having been completely undermined by the excavation. He believed the site to be "very hazardous" and that the unsupported building was subject to collapse. Rollo offered an expert opinion that because of soil composition, the unsupported 10' vertical cut could collapse without warning, and could injure or kill any workers in the excavation.

O'Connor testified that the construction at both properties was safe because no workers were injured at either site. His lay opinion is not sufficient to support his defense. O'Connor is not a licensed general contractor, engineer or architect. More importantly, he failed to offer an expert construction, structural engineering, or architectural opinion that might establish an appropriate standard of care to support of his conclusion. None of Whiteside's testimony concerned whether the work at 147 Marietta met applicable safety standards prior to 2022. O'Connor's opinion fails because it is unsupported by any evidence.

Health & Safety Code section 17920.3, which is part of the State Housing Law, deems a building substandard when any of the conditions enumerated in the law exist to the extent that they "endanger[] the life, limb, health, property, safety, or welfare of the public or the occupants thereof."

Under section 17920.3, subd. (b)(1), a structural hazard includes a deteriorated or inadequate foundation. The evidence shows that the cuts at both sites resulted in dangerous working conditions to the laborers. Plaintiffs have shown that the excavations were public nuisances under section 17920.3, subd. (c). The court grants Plaintiffs' request for declaratory relief and declares the properties were substandard buildings in violation of the State Housing Law.

IV. Defendant Violated the Unfair Competition Law

O'Connor argued that he was not in the business of buying and selling real estate and therefore, did not violate the UCL by his conduct. O'Connor is incorrect. The broad scope of the UCL covers O'Connor's misconduct in the construction of 107 Marietta and 147 Marietta. O'Connor chose to act as an owner-builder and to serve as an employer engaged in construction. To obtain his owner-builder permits, he executed the Property Owner's Package, which states, in pertinent part, "I understand if I employ or otherwise engage any persons, other than California licensed Contractors, and the total value of my construction is at least five hundred dollars ($500), including labor and materials, I may be considered an 'employer' under state and federal law." (See, e.g., RT Exh. 77 at pp.3-4.)

"The 'unlawful' practices prohibited by Business and Professions Code section 17200 are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory or regulatory, or court-made." (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-39.) "Unfair" conduct prohibited by the UCL includes conduct that violates "public policy" embodied in "specific constitutional, statutory, or regulatory provisions." (*Gregory v. Albertson's, Inc.* (2002) 104 Cal.App.4th 845, 854.) "The UCL's scope includes 'anything that can properly be called a business practice and that at the same time is forbidden by law.'" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143 [quoting *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180].)

A single act can be the basis for a UCL claim; the statute does not require a pattern of misconduct. (*United Farm Workers of America, AFL-CIO v. Dutra Farms* (2000) 83 Cal.App.4th 1146, 1163.)

O'Connor engaged in many unlawful business practices. O'Connor employed workers at both sites to excavate. The failure to use a CAL/OSHA permitted contractor to oversee the excavation endangered his workers and constituted an unlawful and unfair business practice. (See *Davis v. Farmers Insurance Exchange* (2016) 245 Cal.App.4th 1302, as modified on denial of reh'g (Apr. 21, 2016) [employer's business practices concerning employee such as failure to pay wages due are within scope of UCL]; *Solus Industrial Innovations, LLC v. Superior Court* (2018) 4 Cal.5th 316 [UCL action for violations of workplace safety standards under Labor Code section 6428].) His submission of misappropriated CAL/OSHA permits to DBI was unlawful and a fraudulent business practice. O'Connor's collusion with Schurman to submit fraudulent SIRs and to conceal their scheme is an unlawful business practice. (See, *e.g.*, *People v. E.W.A.P., Inc.* (1980) 106 Cal.App.3d 315, 319 [corporation's criminal distribution of obscene material was unlawful business practice].)

O'Connor unfairly saved money by using an unlicensed contractor instead of a licensed and CAL/OSHA permitted contractor for his excavations. He saved time and money by using Schurman to forge SIRs rather than paying for proper special inspections. At 107 Marietta, these unfair business practices allowed O'Connor to sell his property more quickly and at a greater profit than law abiding home sellers.

V. Significant Civil Penalties are Warranted.

Although the civil penalties under the San Francisco municipal codes and the Unfair Competition Law have a punitive or deterrent aspect, "their primary purpose is to secure obedience to statutes and regulations imposed to assure important public policy objectives." (*Kizer v. County of San Francisco* (1991) 53 Cal.3d 139, 147-148.) The focus of a civil penalty is preventative. (Id.) The following factors guide the imposition of penalties:

a. The nature and seriousness of the violations;

b. The willfulness of defendants' misconduct;

c. The number of violations;

d. The persistence and length of time over which the misconduct occurred;

e. Defendants' financial gain or opportunity for gain; and

f. Defendants' assets, liabilities, and net worth.

San Francisco Planning Code section 176; San Francisco Building Code section 103A; Business & Professions Code section 17206.) These factors warrant serious penalties against O'Connor.

a. Nature and seriousness of violations

O'Connor committed serious misconduct. He was no stranger to evasion when he and his agents found a convenient way to save time and money. The Building Code is intended to establish the minimum requirements for safeguarding the community's health, safety and general welfare. As owner/builder, he violated these protections by moving forward with work without a permit or beyond the scope of a permit. Excavations require a CAL/OSHA permitted contractor that knows how to shore a straight cut or trench after five feet, "before something go[es]wrong on the job site." (2 RT 173:15-24.) He proceeded with unshored excavations of his properties that were viewed as problematic with regulatory requirements or viewed as plainly dangerous.

At 107 Marietta, he received an NOV and a stop-work order but continued without regard to the government's attempt to secure compliance intended to maintain the safety of excavations. 147 Marietta's excavation work is more consequential. The vertical cut was ten feet deep and unshored. The excavation was unsafe to workers. An NOV was issued not only for work without a permit and an unsafe building, but DBI noted that the excavation undermined the shared foundation of 147 Marietta and 151 Marietta. O'Connor did not cease work at the site. He asked Todd Greenberg to bring day laborers to the site and had them work that weekend. There was no shoring, no permit, no CAL/OSHA license and no emergency shoring permit. After that weekend, he and McKenzie met with Stich, who refused to help on the project. O'Connor submitted Stich's license as part of his emergency shoring application to DBI. He purportedly retained Lao Construction, a contractor who does not carry a CAL/OSHA permit, to respond to the NOVs.

Although O'Connor contests the viability of two NOVs concerning the height of a retaining wall, he concedes the validity of all other NOVs presented to the court. The evidence he offered to show his reliance on McKenzie and Santos is not persuasive. His appropriation of a CAL/OSHA permit without the consent of its owners and his submission of each fraudulent application to DBI compounds the wrongfulness of his conduct. His working arrangement with Schurman to submit forged SIRs to DBI dispels any uncertainty about his willingness to defy the law and risk the safety of others.

b. Willfulness

O'Connor, except for some disputes pertaining to 107 Marietta's retaining wall, accepts the validity of the violations issued against him as the owner/builder for each property. The gravamen of O'Connor's defense is his reliance and faith in McKenzie, Schurman, Santos, and others who misled him down the wrong professional path on multiple occasions. His proof, which includes his testimony, does not support his defense. The evidence shows that his conduct was knowing and willful.

O'Connor maintains that he promptly responded and cooperated with DBI. He obtained and finalized corrective permits within reasonable time frames. There was an absence of public harm or hazard and a lack of willful intent.

The court is not persuaded. O'Connor drove the misconduct. He hired McKenzie knowing that he was an unlicensed contractor. He knew and endorsed McKenzie's work without permits at each property. He circumvented Building Code requirements. He forged DBI applications with misappropriated CAL/OSHA permits and knew Schurman's SIRs were fraudulent. He attempted to persuade McHugh that the SIRs stemmed from confusion. He failed to show how Santos' conduct fell below any applicable standard of care. O'Connor engaged in a pattern and practice of ignoring the law. The court rejects his claim of ignorance. His testimony was not believable. The evidence shows willful conduct that reflects calculation and deliberation.

c. Number of violations

The Building and Planning Codes count each day as a separate violation: there were 4,001 violations of the Building Code and 286 violations of the Planning Code as of the last day of trial. The court finds each violation to be separate and independent of the other.

Under the UCL, the court determines the number of violations on a case-by-case basis. (*People v. Johnson & Johnson* (2022) 77 Cal.App.5th 295, 352, as modified on denial of reh'g (Apr. 27, 2022).)

The court finds that O'Connor's submission of 16 fraudulent SIRs violated the UCL. The court counts each SIR as a separate violation as authorized under *People ex rel. Kennedy v. Beaumont Investment, Ltd.* (*Beaumont*) (2003) 111 Cal.App.4th 102, 129, as modified on denial of reh'g (Sept. 9, 2003).)

The record shows there were at least 29 workers between the two job sites: five workers hired by McKenzie for the work at 107 Marietta, five workers used by McKenzie for the initial work at 147 Marietta, 18 workers procured by Greenberg between February 17, 2018, and February 19, 2018 for the emergency shoring. The court finds a "per victim" test appropriate to calculate the number of UCL violations for this misconduct. (*See People ex rel. Bill Lockyer v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 528.)

O'Connor misappropriated CAL/OSHA permits on three occasions, including 151 Marietta, and therefore there were three UCL violations on this basis.

The court finds 48 violations of the UCL.

d. Persistence and length of time of misconduct

O'Connor's misconduct has not been completely abated and persists to this day. He repeatedly engaged in work without permit, dangerous excavations, and fraud at both properties.

e. Opportunity for financial gain

O'Connor claims that 107 Marietta was not profitable notwithstanding the fact that he collected $1,279,945.32 from the sale and that 147 Marietta was his personal residence. Other than his

testimony, no other evidence supports his claim that no net profits were made on 107 Marietta. O'Connor contends that the court should consider as relevant to determining his penalties his failure to profit on his projects. The availability or number of penalties is neither nor dependent upon the profitability of the misconduct. (*People v. Morse* (1993) 21 Cal.App.4th 259, 272 [penalty award upheld despite absence of evidence of net profit or defendant's financial condition].) The issue here is not about his net profit. It is about his opportunity for financial gain. The evidence shows that at every stage of either project, he sought to minimize his time and money by evading the law.

f. Net worth and ability to pay

A defendant's inability to pay is a mitigating factor and is O'Connor's burden to prove. (*People v. First Federal Credit Corp.* (2002) 104 Cal.App.4th 721, 731.) The evidence showed O'Connor has substantial assets. He sold 107 Marietta for $2,350,000, netting a profit of $1,279,945.32. (Vol. 2 RT 279:14-280:11; RT Exh. 96.) When he testified at trial, he was finalizing a sale of his 18th Avenue property, which had been listed at $1,975,000. (Vol. 2 RT 230:1-9.) He valued 147 Marietta at $2,000,000. (Vol. 2 RT 230:19-21.)

O'Connor suggests that he demonstrated financial hardship. He claims to have spent approximately $1,600,000 on 107 Marietta and $2,500,000 on 147 Marietta. (Vol. 8 RT 935:7-9; Vol. 9 RT 1008:8-19.) He did not provide corroborating evidence to prove that he incurred these expenses. The evidence shows that O'Connor uses manipulation and false pretenses to gain personal advantage in his business affairs. His testimony is insufficient to support his purported expenses. The court rejects his testimony. (*See People ex rel. Harris v. Aguayo* (2017) 11 Cal.App.5th 1150, 1176 [court properly rejected testimony regarding appellants' net worth given court's overall assessment of appellant Aguayo's testimony.] O'Connor failed to provide a credible accounting of his financial status.

VI. Penalty award

All the aforementioned factors support the imposition of substantial penalties in this matter. The court rejects O'Connor's proposed reduced rate of a $25.00 per day for daily violation.

As to the 654 days of individual Building Code violations at 107 Marietta, the court awards the amount of $200.00 per day for the sum of $130,800.00. The maximum sum of $500.00 per day for a total of $327,000.00 as requested by Plaintiffs is too onerous to justify even if he acted with impunity and without regard to the safety of others.

As to the unabated NOV at 147 Marietta for 2,826 days, the court awards the amount of $200.00 per day for the sum of $565,200.00. The maximum sum of $500.00 per day for a total of $1,413,000.00 as requested by Plaintiffs is too onerous to justify even if he acted with impunity and without regard to the safety of others.

As to the 521 days of individual Building Code violations at 151 Marietta, the court awards the maximum amount of $500.00 per day for the sum of $260,500.00 because he acted with impunity, without regard to the safety of others, and recklessly endangered his neighbors.

As to the Planning Code violations, Plaintiffs did not demonstrate the abatement date of the violation and therefore awards no penalties under the Planning Code.

As to the 48 violations of the UCL, the court awards the maximum amount of $2,500 per violation for the sum of $120,000.00.

The court exercises its discretion to award maximum penalties under the Building Code and the UCL because these violations are reasonably related to the disturbing and flagrant harms caused by O'Connor's misconduct. The unabated NOV at 147 Marietta relates to similar conduct at 107 Marietta and 151 Marietta, but the amount of the proposed fine is exorbitant and beyond what is reasonable considering the purpose and intent of the Building Code. Maximum penalties for the other sites have been imposed to deter egregious misconduct and to secure obedience to code requirements. The court notes the obvious harms of exposing workers to dangerous conditions and of his repeated refusal to comply with government permitting scheme and enforcement efforts. O'Connor submitted permits with false information, including misappropriated CAL/OSHA permits. He continued to work without permits despite receiving NOVs and stop work orders. He submitted fraudulent SIRs and tried to conceal the fraudulent SIR scheme from DBI. O'Connor's conduct defied the rule of law.

O'Connor is ultimately responsible for the size of the penalty award. In *City and County of San Francisco v. Sainez*, the court noted:

> [D]efendants cannot complain [about daily penalties that accumulated over two years] when they had control over this time period yet allowed the penalties to accumulate. One case has noted, in upholding an award of $100 a day under former section 789.3 for each of 73 violations: 'While the fines total over $9.5 million, the amount is large only because [defendants] violated the Coastal Act 73 times and refused to remedy the violations.' The amount was found 'proportional to the number of violations' and the 'flagrant disregard' of the violations. Here likewise, and despite warning and extensions of the correction or abatement periods, defendants delayed, failed to respond and had made only partial progress even by the time of trial. Judge Munson impliedly found that defendants had their own intransigence to blame for the $663,000 in accumulated penalties. Defendants had it within their control first to prevent and then to stop the accumulation of penalties.

(*City and County of San Francisco v. Sainez* (2000) 77 Cal. App. 4th 1302, [internal citations omitted] [quoting *Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 CAl.App.4th 373, 398]; see also *People v. Braum* (2020) 49 Cal.App.5th 342, 362 [because it was within appellant's power to timely comply with enforcement efforts and thereby mitigate penalties, appellant's "own conduct dictated that the amount of penalties necessary to achieve the City's legitimate enforcement goals would be substantial"].) The same holds true here.

CONCLUSION

The court finds in favor of Plaintiffs City and County of San Francisco and People of the State of California against defendant Kevin O'Connor. Judgment shall be entered against defendant Kevin O'Connor and in favor of Plaintiffs City and County of San Francisco and People of the State of California in the amount of $1,076,500.00.

The court grants Plaintiffs City and County of San Francisco and People of the State of California's request for declaratory relief, finding that the properties were public nuisances.

The court finds that defendant Kevin O'Connor violated the State Housing Law.

The court grants Plaintiffs City and County of San Francisco and People of the State of California's request for injunctive relief under the Building Code, the California Civil Code, and the California Code of Civil Procedure because violations at 147 Marietta Drive remain unabated.

The court finds that Plaintiffs City and County of San Francisco and People of the State of California are the prevailing parties and shall recover costs as a matter of right under Code of Civil Procedure sections 1032, 1033.5 *et seq.* and CRC 3.1700 *et seq.*

Plaintiffs shall prepare a proposed judgment and injunction after trial.

IT IS SO ORDERED.

Dated: October 21, 2025

GARRETT L. WONG
JUDGE OF THE SUPERIOR COURT

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Danial Lemire, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On October 21, 2025, I electronically served the attached STATEMENT OF DECISION via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: October 21, 2025

Brandon Riley, Clerk

By: _____
Danial Lemire, Deputy Clerk