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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KARL TRAUTWEIN, DEVONDRA GILL,
and JAMES GILL,

Plaintiffs,

v.

THE CITY OF HIGHLAND, CALIFORNIA;
DALE EVERMAN, Director of the Building
Division, in his Official Capacity, and
LARRY MAINEZ, Community Development
Director for the City of Highland, in his
Official Capacity,

Defendants.

No. 5:16-CV-1491

**COMPLAINT
FOR VIOLATION OF
FEDERAL CIVIL RIGHTS
UNDER 42 U.S.C. § 1983**

**DECLARATORY AND
INJUNCTIVE RELIEF**

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INTRODUCTION

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2 1. Karl Trautwein, DeVondra Gill, and James Gill bring this complaint for
3 declaratory and injunctive relief against the City of Highland, and City employees
4 Dale Everman and Larry Mainez (Defendants). Trautwein owns rental property
5 occupied by the Gills. Defendants have used and continue to use their power to
6 grant rental licenses as a means to coerce Plaintiffs to grant a warrantless inspection
7 of Trautwein's property, in violation of the Unconstitutional Conditions Doctrine.
8 The Court has jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1331.

9 2. The City of Highland's Municipal Code requires Defendants to obtain
10 an administrative warrant if rental owners or occupants forbid the City from
11 conducting a warrantless search in connection with rental licensing. Plaintiffs have
12 refused to allow a warrantless search. But Defendants refuse to seek a warrant to
13 inspect the property, instead choosing to coerce Trautuwein and his tenants—the
14 Gills—to allow a warrantless search of the home and surrounding property.
15 Because Plaintiffs will not bend to the City's will, the City refuses to either grant or
16 deny Trautwein's application to renew his license to rent the property.

17 3. Pursuant to the City's Code, Trautwein cannot continue to rent the
18 Property without a business license, and the Gills, his long-time tenants, cannot
19 continue to occupy the Property. Thus, Plaintiffs are forced to choose between
20 surrendering their Fourth Amendment rights to be free from unreasonable searches
21 or their rights to rent and occupy the Property. By putting Plaintiffs in a lose-lose
22 situation, the City violates the Unconstitutional Conditions Doctrine in the Fourth
23 Amendment context. For that reason, Plaintiffs are entitled to equitable relief under
24 42 U.S.C. § 1983 and the Declaratory Judgment Act.

THE PARTIES

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26 4. Plaintiff, Karl Trautwein (Trautwein), co-owns and manages rental
27 properties in California. Those rental properties include a single-family home
28 located in Highland, California (Property).

FACTS

The City Municipal Code Governs Rental Properties

11. Each year, owners or property managers of residential rental property must renew their business license by filing a Residential Rental Enhancement Program Application (Rental Application) with the City building division. Highland Municipal Code, Title 15, Chapter 15.52 (Municipal Code), §§ 15.52.020, 15.52060. A true and correct copy of the Residential Rental Enhancement Program Application is attached as Exhibit 1.

12. In order for an approved rental license to issue, the City must first conduct an extensive inspection of the interior and exterior of the rental property. *Id.* § 15.52.110. A dwelling inspection checklist defines the scope of the search.

13. The checklist specifies 70 items to be inspected in the exterior and interior of the Property. The items are divided into nineteen categories to be searched. A true and correct copy of the Residential Rental Program Inspection Checklist is attached as Exhibit 2.

14. A City form entitled “Residential Rental Program FAQs” states that: “A full inspection of the interior and exterior of the Property is mandatory.” A true and correct copy of the Residential Rental Program FAQs is attached as Exhibit 3.

15. If a warrantless inspection is refused, the Code states, consistent with the Fourth Amendment, that “the inspector shall seek an inspection warrant or other appropriate court order.” Municipal Code § 15.52.110.

16. The City can impose late fees, additional administrative charges, and/or revoke rental licenses when it deems property owners to be in non-compliance with City rules and conditions. *See* Exh. 1.

17. Indeed, the City’s Code provides that a property owner will not receive a business license to “rent, let or let for occupancy or permit occupancy” of a residential rental unit subject to Chapter 15.52, without a residential unit inspection certificate. *Id.* § 15.52.090A.

1 **The City Schedules a Warrantless Inspection**

2 18. On or about April 1, 2015, Trautwein submitted a Rental Application
3 for the single-family home located in Highland, California, which has been rented
4 to DeVondra and James Gill since 2011. Trautwein paid the \$161 application fee
5 required by the City. *See* Exh. 1.

6 19. Trautwein wrote on his Rental Application that he would not allow a
7 warrantless inspection of the Property. *See* Exh. 1.

8 20. Ignoring Trautwein’s refusal of an inspection, Defendants responded
9 that: “A full inspection of the rental property is required. Failure to comply with
10 the inspection requirement may result in an administrative citation.” A true and
11 correct copy of the letter from the City, dated May 14, 2015, is attached as Exhibit 4.

12 21. Defendants scheduled an inspection of Trautwein’s property for
13 August 25, 2015. *Id.*

14 22. Sometime after May 14, 2015, an inspector attempted to conduct an
15 inspection of the Property. The City Inspector spoke to James Gill who, on behalf
16 of himself and his wife, DeVondra Gill, refused to allow a warrantless inspection
17 of the house or the surrounding property, and told the inspector to obtain a warrant.

18 23. The inspector suggested that the landlord would “get in trouble.”

19 24. On September 15, 2015, Trautwein received a second letter entitled
20 “INSPECTION MISSED” at “Rental Property” At the bottom of the letter, a city
21 employee scribbled “Tenant refused inspection” in red ink, and underlined it twice.
22 Exh. 5.

23 25. The September 15th letter explained that after two inspections have
24 been missed, a \$40 reinspection fee will be charged, and Trautwein “may also be
25 subject to receiving an administrative citation.” A new inspection date was set for
26 November 18, 2015. *Id.*

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1 26. On September 23, Trautwein sent a letter to the Senior Code
2 Enforcement Officer reiterating his position that neither he nor the tenants would
3 allow a warrantless search. Exh. 6.

4 **The Consequences of Declining a Warrantless Search**

5 27. The City of Highland responded to Trautwein by letter dated
6 November 23, 2015, explaining that:

7 (1) because Trautwein and his tenants “have missed the last two
8 inspection dates,” “[a] re-inspection fee of \$40 is now due.” (emphasis in the
9 original);

10 (2) if Trautwein does not pay the re-inspection fee, his “rental license
11 will remain in a pending status and [he] will be subject to administrative citations”;

12 (3) after “payment is received,” Trautwein will be “notified by mail of
13 [the] new inspection date.” A true and correct copy of the letter is attached as
14 Exhibit 7.

15 28. Because Trautwein has not and will not consent to a warrantless
16 inspection, he has not paid the \$40 re-inspection fee demanded by the City.

17 29. Due to Plaintiffs’ refusal to allow and pay for a warrantless inspection,
18 the City refuses to process Trautwein’s rental license application.

19 **DECLARATORY RELIEF ALLEGATIONS**

20 30. The Fourth Amendment to the United States Constitution provides as
21 follows: “[t]he right of the people to be secure in their persons, houses, papers, and
22 effects, against unreasonable searches and seizures, shall not be violated, and no
23 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and
24 particularly describing the place to be searched, and the persons or things to be
25 seized.” U.S. Const. amend. IV, cl. 1.

26 31. Like the Fourth Amendment, the City’s Code, Section 15.52.110,
27 requires that City officials seek an inspection warrant when a person refuses to
28 permit a warrantless inspection of rental property.

1 32. Plaintiffs have refused at least two attempts by Defendants to conduct
2 a warrantless inspection of the Property.

3 33. Defendants, who are charged with enforcing the Municipal Code,
4 refuse to seek a warrant to search the Property, and instead have repeatedly
5 attempted to coerce Plaintiffs' consent to a warrantless search, including by refusing
6 to process Trautwein's application.

7 34. The requirement that Plaintiffs consent to a warrantless search in
8 exchange for a business license constitutes an unconstitutional condition on the
9 ability to continue renting and occupying the Property.

10 35. There is a justiciable controversy as to whether Defendants' actions, as
11 applied to Plaintiffs, place unconstitutional conditions on Plaintiffs' lawful rights
12 to rent and occupy the Property.

13 36. A declaratory judgment as to whether Defendants' actions place
14 unconstitutional conditions on Plaintiffs will clarify the legal relations between
15 Plaintiffs and Defendants with respect to those actions.

16 37. A declaratory judgment as to the constitutionality of Defendants'
17 actions will give the parties relief from the uncertainty and insecurity giving rise to
18 this controversy.

19 **INJUNCTIVE RELIEF ALLEGATIONS**

20 38. Plaintiffs have no adequate remedy at law to address the
21 unconstitutional conditions, which were imposed by Defendants under color of state
22 law.

23 39. There is a substantial likelihood that Plaintiffs will succeed on the
24 merits of their claim that Defendants placed unconstitutional conditions on a
25 business license that enables Plaintiffs to continue renting and occupying the
26 Property.

27 40. Trautwein will suffer irreparable injury absent a permanent injunction
28 restraining Defendants from withholding approval of a business license until he

1 consents to a warrantless inspection of the Property, because the Municipal Code
2 requires that Trautwein obtain a business license in order to continue renting the
3 Property.

4 41. Trautwein will suffer irreparable injury absent a permanent injunction
5 restraining Defendants from imposing late fees, administrative actions, and/or
6 failing to approve a business license until he consents to a warrantless inspection of
7 the Property, or forces the tenants to do so.

8 42. DeVondra and James Gill will suffer irreparable injury absent a
9 permanent injunction restraining Defendants from withholding approval for
10 Trautwein's business license until the Gills consent to warrantless inspections of the
11 Property. The City's Municipal Code provides that it is unlawful for the Gills to
12 reside at the Property if Trautwein's business license is not approved.

13 43. Defendants would suffer no injury if they were enjoined from imposing
14 fines, threatening administrative action, and withholding approval of the business
15 license, and are required to seek a warrant to search the Property.

16 44. Plaintiffs' injuries outweigh any harm an injunction may cause
17 Defendants.

18 45. An injunction restraining Defendants from continuing to coerce
19 Plaintiffs to allow a warrantless search of the Property will enhance the public
20 interest.

21 LEGAL CLAIMS

22 FIRST CLAIM AGAINST ALL DEFENDANTS 23 —UNCONSTITUTIONAL CONDITIONS ON A 24 BUSINESS LICENSE—AS APPLIED CLAIM UNDER 25 42 U.S.C. § 1983, PLAINTIFF KARL TRAUTWEIN

26 46. Plaintiffs hereby re-allege each and every allegation contained in the
27 preceding paragraphs as though fully set forth herein.

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1 47. Defendants' actions condition the approval of a business license on the
2 waiver of Trautwein's Fourth Amendment right to insist that the City's
3 administrative search of his Property be supported by a warrant.

4 48. The Fourth Amendment applies in the civil context.

5 49. Trautwein exercised his Fourth Amendment right to deny the City's
6 attempts to conduct a warrantless search of the Property.

7 50. The unconstitutional conditions doctrine forbids government from
8 denying a benefit to a person because he exercises a constitutional right.

9 51. As the Supreme Court has observed, the unconstitutional conditions
10 doctrine "vindicates the Constitution's enumerated rights by preventing the
11 government from coercing people into giving them up." *Koontz v. St. Johns River*
12 *Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

13 52. Defendants' actions are intended to coerce Trautwein into forfeiting his
14 Fourth Amendment right to refuse a warrantless search by:

15 (1) withholding approval of his business license to rent the Property,
16 without which the Property cannot be rented or occupied;

17 (2) forcing him to pay for attempts to conduct a warrantless inspection;

18 (3) threatening additional administrative action; and

19 (4) threatening to revoke his business license.

20 53. Defendants are attempting to force Trautwein to consent to a
21 warrantless search, or suffer the deprivation of any economic benefit from his rental
22 property.

23 54. For the reasons stated in the preceding paragraphs, Defendants' actions
24 violate Trautwein's clearly established rights.

25 55. Plaintiff need not exhaust administrative remedies prior to bringing this
26 claim.

27 56. The violation of Trautwein's constitutional rights is occurring under
28 color of state law and violates 42 U.S.C. § 1983.

**SECOND CLAIM AGAINST ALL
DEFENDANTS—UNCONSTITUTIONAL
CONDITIONS ON THE BUSINESS LICENSE —
AS APPLIED CLAIM UNDER 42 U.S.C. § 1983,
PLAINTIFFS DEVONDRA AND JAMES GILL**

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4 57. Plaintiffs hereby re-allege each and every allegation contained in the
5 preceding paragraphs as though fully set forth herein.

6 58. Plaintiffs DeVondra and James Gill have rented and lived at the
7 Property since May 26, 2011.

8 59. The Gills exercised their Fourth Amendment right to refuse a
9 warrantless search that would be so extensive as to be unreasonable without a valid
10 search warrant.

11 60. Denial of the City's requests to conduct a warrantless search of the
12 inside of the residence and the surrounding property resulted in the refusal of the
13 City to approve Trautwein's business license. And without a business license, the
14 Property cannot continue to be rented to the Gills or anyone else. *See* Highland
15 Municipal Code, Section 15.52.090A.

16 61. The City's inspection also creates a significant intrusion upon the Gills'
17 privacy interests protected by the Fourth Amendment.

18 62. The City proposes to inspect items inside the house, which items fall
19 within eight general categories: General, Kitchens, Smoke Alarms, Bedrooms,
20 Bathrooms, Electrical System Requirements, Plumbing and Mechanical
21 Requirements, and Mold and Vector.

22 63. The proposed exterior and common areas inspection applies to items
23 that fall within eleven general categories: Building, Doors and Locks, Landscaping,
24 Fire Extinguisher(s) for multi-unit complexes, Exiting, Garbage/Recycling
25 Materials, Fences and Gates, Laundry Rooms; Swimming Pools/Spas, and
26 Parking/Garages.

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1 64. Defendants are attempting to force the Gills to consent to this intrusive
2 warrantless search, or suffer the deprivation of the right to remain at the Property,
3 amounts to an unconstitutional condition.

4 65. Defendants' actions threaten to coerce the Gills into forfeiting their
5 Fourth Amendment rights by withholding approval of the business license, an action
6 that makes it illegal for the Gills to continue residing at the Property.

7 66. Defendants' actions violate DeVondra and James Gill's clearly
8 established rights.

9 67. Plaintiffs need not exhaust administrative remedies prior to bringing
10 this claim.

11 68. The violation of the Gills' constitutional rights is occurring under color
12 of state law and violates 42 U.S.C. § 1983.

13 **RELIEF SOUGHT**

14 WHEREFORE, Plaintiffs pray for judgment from this Court as follows:

15 1. A declaratory judgment that Defendants' attempts to coerce Plaintiffs'
16 consent to a warrantless search are unconstitutional conditions on the approval of
17 a business license, and are therefore invalid and unenforceable against all Plaintiffs;

18 2. A declaratory judgment that Defendants' attempts to coerce Plaintiffs'
19 consent to a warrantless search violates the Fourth Amendment prohibition against
20 unreasonable searches;

21 3. An order enjoining Defendants from imposing late fees and additional
22 administrative charges on Karl Trautwein or DeVondra and James Gill for their
23 refusal to consent to a warrantless inspection of the Property;

24 4. An order enjoining Defendants from refusing to renew Trautwein's
25 business license to rent the Property due to Plaintiffs' refusal to allow a warrantless
26 inspection;

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5. An award to Plaintiffs of reasonable attorneys’ fees and expert fees for bringing and maintaining this action, including under 42 U.S.C. § 1988;

6. An award to Plaintiffs of costs of suit pursuant to Federal Rule of Civil Procedure 54(d); and

7. An award to Plaintiffs of any other and further relief that the Court deems just and proper under the circumstances of this case.

DATED: July 8, 2016.

Respectfully submitted,
MERIEM L. HUBBARD
WENCONG FA

By /s/ Wencong Fa
WENCONG FA

Counsel for Plaintiffs