



# CITY ATTORNEY DENNIS HERRERA

# NEWS RELEASE

FOR IMMEDIATE RELEASE  
WEDNESDAY, OCTOBER 28, 2009

CONTACT: MATT DORSEY  
PHONE: (415) 554-4662

## Herrera Wins Court Order Closing Violence-Plagued 'Pink Diamonds' Club

***Site of June slaying to be shuttered for one year, with operators  
ordered to pay \$688,500 in civil penalties plus costs***

SAN FRANCISCO (Oct. 28, 2009)—A San Francisco Superior Court this morning ordered the year-long closure of the Pink Diamonds nightclub, where a defiant pattern of lawlessness in the months following a stipulated injunction from earlier this year culminated in a brutal slaying on June 27, 2009. The order by Judge Peter J. Busch comes in response to City Attorney Dennis Herrera's motion last month to shutter the notorious adult entertainment venue at 220 Jones Street, which required more than 230 service calls by the San Francisco Police Department in the previous six months alone, according to the City's petition.

Illegality detailed from Herrera's investigation and in accompanying police declarations included illicit drug sales, prostitution, extended hours permit violations, illegal alcohol consumption, noise nuisance violations, and repeated episodes of violence and disturbances of the peace in the surrounding neighborhood, which includes nearby senior housing.

"I am gratified that Judge Busch clearly recognized the significant threat to public safety Pink Diamonds posed," Herrera said. "I hope this closure and penalties award sends a forceful message that no neighborhood in San Francisco needs to tolerate such callous disregard for the law and for residents. Today's court order assures that Pink Diamonds remains shut down for one year, and that its voluntary closure doesn't become a voluntary reopening in the days to come."

Recent news accounts have indicated that the embattled club recently closed its doors voluntarily, though it was under no legal obligation to do so, and it faced no legal impediment to reopening. The court order issued today assures that the club is legally prohibited from reopening for a period of one year.

In addition to the closure order, the court granted Herrera's request for significant civil penalties and sanctions under the terms of the March 29, 2009 injunction that was subsequently flouted by its signatory, Damone H. Smith. Penalties and sanctions obtained by Herrera for willful violations of the court order include \$688,500 in civil penalties under the California Unfair Competition Law; and as-yet undetermined reimbursements for attorneys' fees and costs; and for costs to the San Francisco Police Department to respond to calls for service related to the club's operation under the injunction.

The case is: *City and County of San Francisco and People of the State of California v. Damone H. Smith et al.*, San Francisco Superior Court case no. 484-055, filed Jan. 12, 2009.

COPY

1 DENNIS J. HERRERA, State Bar #139669  
City Attorney  
2 ALEX G. TSE, State Bar #152348  
Chief Attorney  
3 Neighborhood and Resident Safety Division  
JERRY THREET, State Bar #205983  
4 Deputy City Attorney  
1390 Market Street, Sixth Floor  
5 San Francisco, California 94102-5408  
Telephone: (415) 554-3914  
6 Facsimile: (415) 437-4644  
E-Mail: Jerry.Threet@sfgov.org  
7

ENDORSED  
FILED  
San Francisco Superior Court  
OCT 28 2009  
GORDON PARK-LI, Clerk  
BY JUDITH C. ROQUE  
Deputy Clerk

8 Attorneys for Plaintiffs  
9 CITY AND COUNTY OF SAN FRANCISCO AND  
PEOPLE OF THE STATE OF CALIFORNIA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO  
12 UNLIMITED JURISDICTION

13 CITY AND COUNTY OF SAN  
14 FRANCISCO, a Municipal Corporation, and  
the PEOPLE OF THE STATE OF  
15 CALIFORNIA, by and through DENNIS J.  
16 HERRERA, City Attorney for the CITY AND  
COUNTY OF SAN FRANCISCO,

(Juf)

Case No. CGC 09 484-055

~~PROPOSED~~ ORDER

GRANTING MOTION TO ENFORCE  
STIPULATED INJUNCTION

17 Plaintiffs,  
18 vs.

Hearing Date: October 28, 2009  
Hearing Judge: Hon. Peter J. Busch  
Time: 9:30 a.m.  
Place: Dept. 301

19 DAMONE H. SMITH; D.H.S. GLOBAL  
20 INVESTMENTS, LLC; ED POPE; CLUB  
PAREE, LLC; THE PINK DIAMOND; and  
DOE ONE through DOE FIFTY, inclusive,

Date Action Filed: January 12, 2009  
Trial Date: Not Yet Set

21 Defendants.  
22

23 NOW, on this 28th day of October, 2009, the motion filed by Plaintiffs CITY AND COUNTY  
24 OF SAN FRANCISCO AND PEOPLE OF THE STATE OF CALIFORNIA (Plaintiffs), for an Order  
25 to enforce the Stipulated Injunction entered by the Court on March 24, 2009 against Defendants  
26 DAMONE H. SMITH; D.H.S. GLOBAL INVESTMENTS, LLC, and THE PINK DIAMOND (the  
27 "SMITH DEFENDANTS"), came on for hearing before this Court, the Honorable Peter J. Busch,  
28 Judge presiding. Plaintiffs appeared by and through their attorney of record, Jerry Threet. Defendants

1 ~~appeared~~/did not appear [by and through their attorney, Brendon Hallinan]. No opposition was filed by  
2 the Smith Defendants to this motion.

3 Whenever the term "DEFENDANTS" is used in this Order, the term includes Defendants  
4 DAMONE H. SMITH; D.H.S. GLOBAL INVESTMENTS, LLC; and THE PINK DIAMOND as well  
5 as their agents, servants, employees, representatives, assigns, tenants, and lessees, and all persons  
6 acting in concert or participating with or on behalf of Defendants, or who have acted in concert or  
7 participated with or on behalf of Defendants, with actual or constructive notice of this Order.

8 After considering the moving papers, the file in this matter, and the argument of counsel, and  
9 good cause therefor appearing,

10 **THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:**

- 11 1. The SMITH DEFENDANTS entered into a Stipulated Injunction (the "Injunction") with  
12 PLAINTIFFS that was entered by the Court on March 24, 2009, under which they agreed  
13 that the actions of the SMITH DEFENDANTS would be governed by the Injunction.
- 14 2. The SMITH DEFENDANTS were represented by their counsel in entering into the  
15 Injunction and did so voluntarily.
- 16 3. The SMITH DEFENDANTS originally entered into an earlier version of the stipulation  
17 with PLAINTIFFS on December 31, 2008 to which they later objected when PLAINTIFFS  
18 sought to have it entered by the Court on February 17, 2009. As a result, PLAINTIFFS  
19 agreed to changes in the stipulation sought by the SMITH DEFENDANTS, which were  
20 then included in the Injunction entered by the Court on March 24, 2009.
- 21 4. In the period of time since entry of the Injunction, the SMITH DEFENDANTS have  
22 repeatedly violated the terms of the Injunction in a manner that can only be characterized as  
23 willful and intentional.
- 24 5. It appears from the evidence presented that the business model of the SMITH  
25 DEFENDANTS depend on profits from allowing or fostering multiple illegal activities at  
26 the Club they operate, including operating illegally between the hours of 2:00 a.m. and 6:00  
27 a.m. without necessary permits; causing noise so loud as to awaken and keep awake  
28 neighbors of the establishment in the middle of the night; sale and use of illegal drugs;

1 solicitation of prostitution and lewd and lascivious activities; allowing illegal consumption  
2 of alcohol on premises by patrons; allowing unsupervised consumption of alcohol and  
3 drugs on the public way in front of the establishment by patrons; and allowing crowds and  
4 patrons and others to block the public sidewalk and streets.

5 6. The above activities by the SMITH DEFENDANTS further caused the creation of a  
6 general atmosphere of mayhem where inhibitions were substantially lowered, a substantial  
7 contributing cause of ensuing violence at or near the establishment between patrons and  
8 those loitering nearby. As a result, fights, shootings and even homicide have attended the  
9 operation of the Pink Diamond by the SMITH DEFENDANTS.

10 7. The maintenance of the above activity by the SMITH DEFENDANTS created thereby a  
11 general public nuisance which in several instances also constituted a *per se* public  
12 nuisance.

13 8. The above activity also constituted a pattern and practice of unfair business activity under  
14 Cal. Business and Professions Code Sections 17200 et seq.

15 9. The above activity is unlikely to be effectively halted absent an order to close the business  
16 of the SMITH DEFENDANTS.

17 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

18 **A. JURISDICTION.** The Court issues this Order pursuant to its authority under Business  
19 and Professions Code Section 17203, Penal Code Section 11200, and Civil Code Section 3491. The  
20 Court expressly retains jurisdiction to modify this Order as the ends of justice may require. The Court  
21 may hear and decide issues regarding the scope and effect of the injunctive provisions, herein. The  
22 Court can modify any of the injunctive provisions hereof and take such further action as may be  
23 necessary or appropriate to carry into effect the injunctive provisions hereof, and for the punishment of  
24 violations of same, if any.

25 **B. APPLICATION.** This Injunction's provisions are applicable to the SMITH  
26 DEFENDANTS, their agents, servants, employees, representatives, assigns, tenants, lessees, and to all  
27 persons who are acting in concert with the SMITH DEFENDANTS or any of them, in connection with  
28 the property, the business and the structure located at 220 Jones Street, Assessor's Block 0339, Lot 012

1 in the City and County of San Francisco, State of California.

2 **IT IS FURTHER ORDERED THAT THE MOTION TO ENFORCE IS GRANTED.**

3 IT IS FURTHER ORDERED THAT the business operated at the Property by the SMITH  
4 DEFENDANTS is hereby closed for a period of one year from the date of entry of this Order.

5 IT IS FURTHER ORDERED THAT the SMITH DEFENDANTS shall pay to PLAINTIFFS  
6 civil penalties in the total amount of \$688,500 for their willful violations of the Injunction.

7 IT IS FURTHER ORDERED THAT the SMITH DEFENDANTS shall pay to PLAINTIFFS  
8 their attorneys' fees and costs in investigating and enforcing against violations of the Injunction, as  
9 provided by California Civil Code §3496(d) and by the Injunction. PLAINTIFFS shall prove such  
10 costs at a future date by motion to be heard by this Court.

11 IT IS FURTHER ORDERED THAT the SMITH DEFENDANTS shall pay to PLAINTIFFS  
12 the "full cost recovery for any police services reasonably necessary, as determined by the Court in a  
13 hearing to enforce this Injunction, to respond to calls for service at the Property," as provided for in the  
14 Injunction. PLAINTIFFS shall prove such costs at a future date by motion to be heard by this Court.

15  
16 Date: **OCT 2 8 2009**

**PETER J. BUSCH**

\_\_\_\_\_  
Honorable Peter J. Busch, Judge  
San Francisco Superior Court

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
ALEX G. TSE, State Bar #152348  
Chief Attorney  
Neighborhood and Resident Safety Division  
JERRY THREET, State Bar #205983  
Deputy City Attorney  
1390 Market Street, Sixth Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-3914  
Facsimile: (415) 437-4644  
E-Mail: jerry.threet@sfgov.org

Attorneys for Plaintiffs  
CITY AND COUNTY OF SAN FRANCISCO and  
PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL 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.

DAMONE H. SMITH; D.H.S. GLOBAL  
INVESTMENTS, LLC; ED POPE;  
CLUB PAREE, LLC; THE PINK  
DIAMOND; and DOE ONE through  
DOE FIFTY, inclusive,

Defendants.

Case No. 09-484-055

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION TO ENFORCE  
STIPULATED INJUNCTION

Hearing Date: October 28, 2009  
Hearing Judge: Hon. Peter J. Busch  
Time: 9:30 a.m.  
Place: Department 301

Date Filed: January 12, 2009  
Trial Date: N/A

## **INTRODUCTION**

On June 27, 2009, at approximately 3:00 a.m. in the morning, a man was shot and killed in front of the Pink Diamonds Club (the "Club"), the nightclub business operated by DEFENDANT DAMONE H. SMITH; D.H.S. GLOBAL INVESTMENTS, LLC; and THE PINK DIAMOND (collectively, the "Smith Defendants" or "Defendants") at 220 Jones Street, San Francisco, California (the "Property"). This killing was but one of many acts of violence and illegality that have attended the operation of the Club at the Property between the hours of 2:00 a.m. to 6:00 a.m., during which the Club lacks the required permits to operate. This homicide and scores of other illegal acts at the Club have occurred since the Smith Defendants' agreed to a Stipulated Injunction (the "Injunction"), entered by the Court on March 24, 2009, which requires them to operate legally.

The Smith Defendants' continued, flagrant disregard for the law has led them to operate a Club at the Property that allows illegal consumption of alcohol and sale and consumption of illegal drugs on the premises, promotes solicitation of prostitution by dancers employed by the Club on the premises (as well as other lewd and lascivious acts), and leads to fights, shootings, homicides, and other acts of violence by patrons and those seeking to injure patrons, all during late night hours when the Club cannot legally operate. As a result, the San Francisco Police Department has been forced to respond to over 230 calls for service related to such activity since March 24, 2009, and the peace and quiet of the surrounding neighborhood has been substantially and unreasonably disrupted. Because the Club's business practices are inherently illegal, maintain a *per se* public nuisance, and create an overwhelmingly negative impact on the surrounding residential neighborhood, the City moves this Court for an order 1) closing the business, 2) awarding civil penalties for violations of the Injunction, 3) for recovery of attorneys' fees and costs, and 4) for recovery of police costs for responding to calls for service.

## **FACTUAL AND PROCEDURAL BACKGROUND**

This action arises out of the Smith Defendants' lease, maintenance, operation, and management of the Property for nuisance and unlawful activity. Defendants use the Property as

a nightclub with adult entertainment. The Club, commonly known as "Pink Diamonds" and previously known as "Club Vixen," has operated and continues to operate without required State and local permits, including a liquor license and an Extended-Hours Permit, legal requirements intended to ensure the safety nightclub activity for patrons of the business and for neighboring residents and properties. By maintaining the Property in violation of numerous provisions of State and local law, and as a public nuisance, Defendants also have engaged in unfair and unlawful business practices in violation of Business and Professions Code §§ 17200-17210 (the "Unfair Competition Law" or "UCL"). As a result of such activity, the City filed suit against the Smith Defendants and others, seeking injunctive relief, civil penalties, attorneys' fees and costs. The City entered the Injunction with the Smith Defendants in the hopes that they would thereafter comply with its terms and end this illegality without the need for further litigation.

## **I. THE PARTIES**

Defendant Damone H. Smith personally manages and makes business decisions concerning the operation of the Club. Mr. Smith also owns and manages D.H.S. Global Investments, LLC, a business entity that has been used by Smith to obtain and hold permits, licenses and other documents necessary for the operation of the Club. The Pink Diamond is a business entity, form unknown, under which Mr. Smith and D.H.S. Global Investments, LLC do business as the Club. Mr. Smith also has publicly claimed to be the owner of the Club, both on internet sites and in public and private meetings.<sup>1</sup>

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<sup>1</sup> The other defendants in this matter are Ed Pope; Ed Pope, Inc.; and Club Patee, LLC (the "Pope Defendants"). The lease under which the club operates is held by Club Patee, LLC, a business entity for which the managing partner is Ed Pope, Inc. Ed Pope, Inc. is owned and controlled by Edward Pope. Plaintiffs are informed and believe that Mr. Pope also has personally managed and made business decisions concerning the operation of the club during the years 2008 through 2009, the time period concerned in this litigation. Mr. Pope has represented to the owners of the property that Mr. Smith is authorized to act as his business manager for Club Patee, LLC under the lease.

Plaintiffs obtained service on Club Patee, LLC on January 20, 2009 through its agent for service of process located in San Francisco. When Plaintiffs attempted to serve the agent for service of process of Ed Pope, Inc., the purported agent, a mail delivery storefront, claimed it no longer accepted mail for that company and had not done so for several years. In addition, Ed Pope never personally responded to multiple letters sent from the City to the Pink Diamond, to Mr. Pope's attorney for lease issues related to the Club Patee, LLC, or to his agent for process for Ed Pope, Inc. The City finally obtained substitute service on Ed Pope, Inc. and Ed Pope, following an extensive investigation of his location, by serving his wife at his home in North Carolina on March 28, 2009. Plaintiffs  
(continued on next page)



## **II. THE COMPLAINT AND INJUNCTION**

Prior to filing this action, Plaintiffs negotiated a Stipulated Injunction and Settlement Agreement (the "Stipulation") with the Smith Defendants. Although not explicitly included in the written Stipulation, the Smith Defendants also agreed that they would accept service through Notice and Acknowledgement of Receipt and that the Stipulation would thereafter be signed by the Court and filed by the City at an appearance before the *ex parte* calendar of the Law and Motion Department of this Court, without their opposition. After signing the Stipulation on December 31, 2008, the Smith Defendants never returned the Notice of Acknowledgment and Receipt, despite multiple promises by their counsel that they would do so. They thereafter evaded personal service, forcing substitute service of the Summons and Complaint, which was completed on February 9, 2009. See Threet Decl., ¶¶ 3-4.

The Smith Defendants then opposed the City's attempt to obtain entry of the Stipulation at the *ex parte* calendar of Judge Busch on February 17, 2009. Although the Smith Defendants admitted that on December 30, 2008, they had signed the agreement, they still opposed its entry by the Court. In the face of this opposition, Judge Busch declined to enter the Stipulation, suggesting the City file a noticed motion to enforce the settlement agreement. Instead, Plaintiffs and the Smith Defendants renegotiated those terms to which the Smith Defendants objected and signed the new Injunction, which was entered by the Court with the agreement of the parties on March 24, 2009. See Threet Decl., ¶¶ 5-6, Exh. A.

## **III. VIOLATIONS OF THE INJUNCTION**

The City was hopeful that the Smith Defendants' agreement to settle this matter through entry of the Injunction would halt their violations of law and cause their business practices to become respectful of their residential neighbors. Unfortunately, those hopes now seem naïve and

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obtained entry of default as to Club Patee, LLC on March 12, 2009, and as to Ed Pope, Inc. and Ed Pope on June 3, 2009. A prove-up hearing for default judgment against the Pope Defendants currently is scheduled for November 19, 2009. Although the Pope Defendants have retained counsel to discuss settlement with the City, they still have not appeared in this action and no settlement has been reached.

misplaced in the face of the overwhelming evidence of the Smith Defendants' knowing, willful and ongoing violations of the Injunction.

**A. Police Code Violations**

**1. Extended Hours Permit Violations**

San Francisco Police Code § 1070 *et seq.* requires any business that provides entertainment as defined therein, and operates between the hours of 2:00 a.m. and 6:00 a.m., to obtain an extended-hours permit. An extended hours premises is defined under Police Code §1070(a) as one which "allows patrons or members to remain on the premises between the hours of 2:00 a.m. and 6:00 a.m. which serves food or beverages [ . . . ] *or* wherein entertainment as defined in subsection (b) is furnished or occurs upon the premises." [emphasis added.] Subsection (b) includes within the definition of "entertainment": "dance act, [or] any device capable of producing or reproducing sound." § 1070.1 requires that an extended-hours premise obtain a permit from the Entertainment Commission in order to operate legally. § 2.23 of the Police Code, which falls under Article I, entitled "Public Nuisances," provides that "[i]t shall be unlawful to . . . carry on the business . . . for which a license or permit is required by law or ordinance [ . . . ], unless such license or permit be first procured." Thus, running an extended-hours premises without the necessary permits is a *per se* public nuisance under the Police Code. § D.1. of the Injunction forbids the Smith Defendants from operating without the necessary permits required by § 1070 of the Police Code.

Since March 24, 2009, the San Francisco Police Department has documented at least 14 violations of the extended hours permit requirements of § 1070 of the Police Code. See September 29, 2009 Declaration of SFPD Officer Miguel Torres ("Torres Decl."), ¶¶ 15-29, Exhs. B – O. Moreover, as revealed in the exhibits to the Torres Decl., the Smith Defendants have greeted the citations issued to them by the police for permit violations with complete scorn. On one occasion when he was cited, Defendant Damone Smith stated, "This shit ain't gonna go anywhere. They're just gonna throw this shit out." Torres Decl. ¶ 21, Exh. E. This evidence reveals that Defendants have willfully violated the Injunction and maintained a *per se* public

nuisance at the Property.

## 2. Noise Nuisance Violations

§ 49 of Article I (entitled “Public Nuisances”) of the Police Code provides, in part:

[I]t shall be unlawful . . . to use, operate, maintain, or permit to be played, used or operated any . . . machine or device for the producing, reproducing or amplification of sound or human voice in such manner as to produce raucous noises or . . . to disturb the peace, quiet and comfort of persons in the neighborhood . . . . The operation of any such . . . machine or device between the hours of 10:00 p.m. and 7:00 a.m., in such a manner as to be plainly audible at a distance of 50 feet from the property line of the property from whence the sound is emitted, shall be *prima facie* evidence of a violation of this Section.

Police Code § 49. Because a violation is defined by statute as a public nuisance, it is classified as a *per se* public nuisance. § D.1 of the Injunction forbids the Smith Defendants from continuing to maintain noise nuisances at the Club in violation of Police Code §§ 49 and 2900 et seq. § E.9. of the Injunction requires that they "ensure that no noise shall be audible outside the establishment during the daytime or nighttime hours that violates the San Francisco Police Code §§ 49 or 2900 et. seq."

Since March 24, 2009, the Smith Defendants have violated these provisions on at least 16 separate occasions, as documented by complaints of excessive noise received by the Tenderloin Police Stations. Torres Decl., ¶ 30. Moreover, these complaints have almost exclusively involved excessive noise caused by the Pink Diamonds between the hours of 2:00 a.m. and 6:00 a.m., when it is likely to cause the most disturbance to the sleep of surrounding neighbors.

Witness 1<sup>2</sup> Decl., ¶¶ 4, 9; Witness 2 Decl., ¶¶ 3-6; Isabel Decl., ¶¶ 3-5; Zamora Decl. ¶¶ 3-4, 7.

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<sup>2</sup> California Evidence Code section 1041 provides in pertinent part as follows:

§1041. Privilege for identity of informer

(a) Except as provided in this section, as public entity has a privilege to refuse to disclose the identity of a person who has furnished information as provided in subdivision (b) purporting to disclose a violation of a law of the United States or of this state or of a public entity in this state, and to prevent another from disclosing such identity, if the privilege is claimed by a person authorized by the public entity to do so and:

(2) Disclosure of the identity of the informer is against the public interest because there is a *necessity for preserving the confidentiality of his identity that outweighs the necessity for disclosure in the interests of justice* . . . [emphasis added]

(continued on next page)

This evidence reveals that Defendants have violated the Injunction and maintained a *per se* public nuisance at the Property.

## **B. Red Light Abatement Act Violations**

§ 11225(a) of the California Penal Code ("Red Light Abatement Act") provides that:

Every building or place used for the purpose of . . . lewdness, assignation, or prostitution, and every building or place in or upon which [such] acts . . . are held or occur, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

§ 11227(a) of that act provides that where "the existence of a nuisance is shown . . . to the satisfaction of the court or judge thereof, . . . by . . . affidavit, the court or judge shall allow a[n] . . . injunction to abate and prevent the continuance or recurrence of the nuisance." § 11230(a)(1) further provides that once the existence of a nuisance is established, "an *order of abatement* shall be entered as a part of the judgment in the case, *directing* . . . the *effectual closing* of the building or place against its use for any purpose, and that it be kept closed for a period of one year, unless sooner released." [emphasis added.] § D.24 of the Injunction requires the Smith

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(b) This section applies only if the information is furnished in confidence by the informer to:

(2) A representative of an administrative agency charged with the administration or enforcement of the law alleged to be violated . . .

See, *People v. Ruiz* (1992) 9 Cal.App.4<sup>th</sup> 1485, 1488 ["[A] public entity has a privilege to refuse to disclose the identity of a person who has furnished information purporting to expose a violation of a . . . if disclosure is against the public interest . . . ."] "The privilege . . . protects not only the informant's name but also . . . communication . . . which would tend to reveal . . . her identity." *People v. Seibel* (1990) 219 Cal.App.3d 1279, 1289.

Here, the anonymous declarants furnished information to the City Attorney's Investigations Unit detailing conduct that constitutes a public nuisance and violates Cal. Civil Code Sections 3479 and 3480, code provisions the City Attorney is charged with enforcing. The City Attorney redacted from the anonymous declarations the declarants' names, addresses, and other identifying information in order to protect the informants' personal safety. See, *People v. Seibel, supra*, 219 Cal.App.3d at 1289. The anonymous declarants each expressed to the City Attorney a well-founded fear for their personal safety if their identity's were disclosed through the filing of their declarations. This fear was based on the declarants' relatively vulnerable status as seniors and disabled individuals, as well as their personal observations of the violence caused by patrons of the Pink Diamonds near their residences.

Given the otherwise overwhelming independent evidence of the Smith Defendants' ongoing violations of the Injunction, and the enumerated safety concerns of the informant/declarants, the public interest in maintaining the safety of the declarants clearly outweighs the necessity for disclosure of their identify in the interests of justice. (Evidence Code §1041.)

Defendants to "otherwise comply with all requirements of local and state codes governing their operation of the business and maintenance of the Property."

The Smith Defendants have repeatedly violated these requirements of law since March 24, 2009, and therefore also have been in violation of § D.24 of the Injunction. As evidenced by the sworn statements of police officers assigned to a vice investigation of the Club, the Property has been routinely used "for the purpose of . . . lewdness, assignation, or prostitution." Erotic dancers employed by the Club have danced nude on stage, allowed patrons to fondle and orally copulate them, and have solicited acts of prostitution to take place in private areas of the Club. See August Decl., ¶ 4; Thompson Decl., ¶ 4; Obidi Decl., ¶¶ 2-5 ; Ravella Decl., ¶ 3. As one dancer described it to a police officer, it is "anything goes" with regard to sexual activity at the Club, and dancers are required to provide the Club owners and managers with a percentage of their earnings from such activity at the end of each evening. Ravella Decl., ¶ 3. The evidence amply demonstrates Defendants' willful violation of the Injunction, as well as their maintenance of a *per se* public nuisance under the Red Light Abatement Act, which requires the Court to close the business for one year.

Given the Smith Defendants agreement to a summary motion procedure to litigate their alleged violations of the Injunction, and their agreement under Section D.24 that they would "otherwise comply with all requirements of local and state codes governing their operation of the business and maintenance of the Property," they cannot now be heard to complain that they face liability for their violation of the Red Light Abatement Act. The Court therefore should order the Club closed and the Smith Defendants to vacate the premises for a period of one year.

### **C. Illegal Alcohol Abatement Violations**

§ 11200 of the California Penal Code provides that "every building or place in or upon which any . . . alcoholic liquor [is] unlawfully . . . served or given away, is a nuisance which shall be enjoined, abated and prevented, whether it is a public or private nuisance." This provision essentially establishes strict liability for the owners or lessees of such property.

§§11200-11201 provide that whenever alcohol is unlawfully . . . served on a property, a City

Attorney can institute an action "in equity to abate and prevent the nuisance and to perpetually enjoin the person or persons conducting or maintaining it, and the owner, lessee or agent of the building, or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it." § 11204 provides that if the existence of a nuisance is established, "an order of abatement shall be entered as part of the judgment in the case[.]"

In addition, § D.2 of the Injunction forbids the Smith Defendants from continuing to violate provisions of state and local law related to consumption of alcohol by members of the public at the Club, including the Illegal Alcohol Abatement Act (Penal Code §§ 11200 et seq.). Also, § E.19 of the Injunction forbids them from allowing patrons to consume alcohol on the premises.

The Smith Defendants have repeatedly violated these requirements of law since March 24, 2009, and therefore also have been in violation of § E.19 of the Injunction. As evidenced by the sworn statements of police officers, the Smith Defendants have routinely allowed alcohol to be consumed by patrons both within and in front of the Club with the full knowledge of Club security. See August Decl., ¶ 2; Thompson Decl., ¶ 3; Witness 1 Decl., ¶ 7, 12; Witness 2 Decl., ¶ 7; Isabel Decl., ¶ 3; Zamora Decl. ¶¶ 3, 5. Although allowing consumption of alcohol at the Club without possessing a liquor license clearly violates state law and the Injunction, this behavior is troubling for other reasons. As every reasonable owner and operator of a late night club understands, allowing patrons of an after-hours club to continue drinking is a practice likely to decrease their inhibitions with consequent increases in volatile behavior and violence. Given these ongoing willful violations of the law and of the Injunction, this Court should order closure of the Club.

#### **D. Drug Abatement Violations**

Health and Safety Code § 11570 provides that any property which is used for the purposes of unlawfully selling, possessing, consuming or giving away controlled substances is a public nuisance. Once the Court finds that the Property is so used, § 11587 provides that the public nuisance must be abated by "closure of the property for one year [ . . .]." § 11570

essentially creates strict liability for the owner of an interest in a property where controlled substances are sold, stored, or used. Thus, Defendants clearly are liable under this provision for maintaining a *per se* public nuisance at the Property. In addition, §D.24 of the Injunction requires the Smith Defendants to "otherwise comply with all requirements of local and state codes governing their operation of the business and maintenance of the Property."

The Smith Defendants have repeatedly violated these requirements of law since March 24, 2009, and therefore also have been in violation of § D.24 of the Injunction. As evidenced by the sworn statements of police officers, the Property has been routinely used " for the purpose of . . . unlawfully selling, possessing, consuming or giving away controlled substances." See August Decl., ¶¶ 2-3; Thompson Decl., ¶ 2-3; Lee Decl., ¶¶ 2-7; Ravella Decl., ¶ 3; Samson Decl., ¶ 2; Shavers Decl., ¶ 2. Drug dealers freely sell illegal drugs in the Club, and patrons routinely consume and possess illegal drugs on the premises. In addition, a dancer employed by the Club told officers that the Club is actually a front for a drug dealing operation, suggesting this is the way that the Smith Defendants make their most significant profits. Ravella Decl., ¶ 3.

Given the Smith Defendants agreement to a summary motion procedure to litigate their alleged violations of the Injunction, and their agreement under Section D.24 that they would "otherwise comply with all requirements of local and state codes governing their operation of the business and maintenance of the Property," they cannot now be heard to complain that they face liability for their violation of the Drug Abatement Act. The Court therefore should order the Club closed and the Smith Defendants to vacate the premises for a period of one year.

#### **E. Violence and Disturbances of the Peace**

The California Supreme Court has held that criminal activities which substantially and unreasonably interfere with the community's quiet enjoyment constitute an enjoined public nuisance under Civil Code §§ 3479 and 3480. See *People v. Acuna* (1997) 14 Cal.4<sup>th</sup> 1090, 1109. Examples of conduct the Court found to be a public nuisance in *Acuna* include blocking free passage of the public streets, public drinking, consumption of illegal drugs, loud talk, loud music, vulgarity, profanity, brutality, fist-fights and gunfire. *Acuna, supra*, 14 Cal.4<sup>th</sup> at 1120.

§ D.4 of the Injunction forbids the Smith Defendants from continuing to maintain the Property in such a manner and condition as to constitute a public nuisance as defined by Civil Code §§ 3479 and 3480. § D.5 forbids them from continuing to engage in unfair business practices. § E.14 of the Injunction requires that they employ a security company, which shall "use all reasonable means to prevent entry by an patron carrying a weapon of any kind." § E.15 requires that they shall

"install in a manner that is secure from interference by others, and then maintain in good working order at all times thereafter, a security video camera system to record the activities of patrons and members of the public outside the entrance of the establishment. The video camera system must be secure from disablement and provide observation of all entrances and exits, including the public sidewalk fronting the Property. Video recordings of all monitoring must be kept in an orderly manner and stored for at least three months in a place and manner making them readily available for inspection by the City Attorney's Office or the Police Department, and shall be immediately provided to the same for inspection upon demand.

The Smith Defendants have repeatedly violated these requirements of law since March 24, 2009, and therefore also have been in violation of the Injunction. As evidenced by the sworn statements of police officers, the Smith Defendants have maintained the Property and operated their business in such a manner as to block free passage of the public streets, cause drinking in public, allow consumption of illegal drugs, and to result in loud talk, loud music, vulgarity, profanity, brutality, fist-fights, gunfire, violence, and even homicide, all of which substantially and unreasonably interferes with the community's quiet enjoyment of their neighborhood. *Acuna, supra*, 14 Cal.4<sup>th</sup> at 1120. See Anaya Decl., ¶¶ 2-3; Shakur Decl., ¶ 2; Torres Decl., ¶¶ 11-15; Witness 1 Decl., ¶¶ 5-15; Witness 2 Decl., ¶¶ 3-9; Isabel Decl., ¶¶ 3-6; Zamora Decl. ¶¶ 3-8. In addition, Defendants have also failed to provide adequate security screening and a video security system as required by the Injunction. Torres Decl., ¶ 15. Given this evidence, the City requests that the Court order the Smith Defendants to close the Club.

**F. The City Has Repeatedly Demanded That The Smith Defendants Halt Their Illegal Activities And Comply With The Injunction, To No Avail.**

The City has repeatedly notified the Smith Defendants that they are in violation of both the Injunction and the law, to no avail. In multiple demand letters sent to counsel for the Smith



Defendants since March 24, 2009, the City has informed them that their continued operation of the Club after the hour of 2 a.m. without a permit from the San Francisco Entertainment Commission is illegal and a violation of the Injunction and must be halted. The City also has informed defendants that their operations continue to maintain a public nuisance due to their attraction of violent patrons, and their failure to maintain proper security, with the result that crowds get out of control, block the public way, engage in fights and other violence, and generally disturb the peace of the surrounding neighborhood (including nearby senior housing) during the early morning hours. See Threet Decl., ¶ 7.

In response, the Smith Defendants have repeatedly minimized the violations, blamed them on people other than the Club and its patrons, and promised that they would address the issues, including obtaining the necessary permits to operate after hours. Yet, the nuisance activity has continued unabated with no effective effort to address the violations noted in the City's demand letters. In fact, in the aftermath of a shooting of an individual outside the Club at 3:00 a.m., the Smith Defendants' counsel retreated from earlier promises of cooperation and insisted to news paper reporters that the Club need not obtain a permit to operate after hours, despite the clear mandate of the statute and despite previous promises by counsel that the Smith Defendants intended to obtain a permit to comply with this mandate.<sup>3</sup> See Threet Decl. ¶¶ 8-9.

It appears clear at this point that the business model of the Smith Defendants depends on operating illegally. The City therefore asks this Court to order the Club closed.

### **LEGAL ARGUMENT**

#### **I. THE COURT SHOULD ORDER ABATEMENT OF THE ONGOING PUBLIC NUISANCE BY CLOSURE OF THE ILLEGAL BUSINESS**

##### **A. The Court Has Authority To Enforce The Injunction And Order The Remedies Requested Via This Noticed Motion.**

With the agreement of the Smith Defendants, this Court entered the Injunction against

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<sup>3</sup> The Smith Defendants also have repeatedly violated provisions of the Injunction requiring that they keep the sidewalk clear of obstructions, provide a cell phone number for neighbors to contact with complaints, keep a complaint log and a monthly report of how each complaint was dealt with, and attend each monthly Tenderloin police-community meeting.

them on March 24, 2009, as an order of the Court. Plaintiffs now return to this Court seeking enforcement of the Injunction against the Smith Defendants, over whom the Court retains jurisdiction. California Code of Civil Procedure § 128(a)(4) directly empowers the court to "compel obedience to its judgments, orders and process . . . in an action or process pending therein." Moreover, "a court of equity retains inherent jurisdiction to oversee and enforce execution of its decrees." *Vanderstok v. Bank of America* (1972) 29 Cal.App.3d 731, 734.

In addition, California Code of Civil Procedure § 187 provides:

When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, **any suitable process or mode of proceeding may be adopted** which may appear most conformable to the spirit of this code (emphasis added).

See also, *Kent v Superior Court* (1951) 106 Cal.App.2d 593, 595.

Also, § F of the Injunction issued by the Court also provides that the Court specifically reserves "jurisdiction to take **such further action as may be necessary or appropriate** to carry into effect [its] provisions." [emphasis added.] Thus, the Court has jurisdiction and authority to entertain this motion, and has wide discretion to issue an appropriate order that enforces the terms of the Injunction. Finally, the Smith Defendants themselves agreed to adjudication of their continued violations of law through a summary motion procedure by entering into the Injunction to settle the lawsuit against them. They therefore cannot now complain about this procedure when facing an enforcement action through this motion.

**B. The Smith Defendants' Violations Of The Injunction Are So Pervasive And Continuing As To Justify Closure To Enforce The Injunction.**

By their behavior following entry of the Injunction, the Smith Defendants have proven themselves completely without concern for the safety of their employees, patrons, and the public, and utterly unwilling to follow the most basic requirements of the law. Their most basic business practices are founded on willful violation of the law in order to make a profit. Given this, the only effective remedy for such violations is an order requiring closure of the business.

The Smith Defendants operate between the hours of 2:00 a.m. and 6:00 a.m., knowing that such operation is illegal, attracts intoxicated patrons, and that these are the hours when most problems arise. They allow alcohol to be consumed in (and in front of) the Club by individuals who have been drinking all night at other venues, knowing that on-premise consumption is illegal, and that it will lead to extreme intoxication and a resulting loss of ability by patrons to control their emotions and reactions in disputes with others. They allow the sale and consumption of drugs in the Club, knowing that such consumption is illegal, and that it may lead to a dangerous lack of inhibition on the part of those so intoxicated. The Smith Defendants knowingly employ dancers who offer sexual favors to patrons and engage in acts of solicitation for prostitution on the premises. The result is an environment ripe for violence and mayhem, especially when the club closes and the crowd spills out onto the public streets of the surrounding residential neighborhood.

All of the above actions occurred after the Smith Defendants agreed to settle the action against them through entry of the Injunction, pledging that their future operations would comply fully with the law. Unfortunately, these promises quickly proved to be empty ones. Since entry of the Injunction, the Smith Defendants have denied all responsibility for violations of law attendant to the operation of the Club, while continuing to collect profits.

**C. The Court Should Enforce Specific Injunction Prohibitions By Closing The Business.**

On March 24, 2009, this Court issued an order which enjoined the Smith Defendants from continuing to engage in the acts of public nuisance and unfair competition that formed the basis of the City's complaint against them. The Smith Defendants have proven they have absolutely no intention of complying with the orders of this Court, as their actions have resulted in violation of virtually every significant provision of the Injunction. Further, it is clear that the Smith Defendants' basic business model requires that they operate in violation of the law. Hence, no purpose would be served by an interim court order awarding only civil penalties for the Smith Defendants' ongoing willful violations of the Injunction. Instead, the Court should exercise its wide discretion under statute and the Injunction, and order the only remedy that will effectively

enforce its Injunction: closure of the Club. See C.C.P. §§ 128(a)(4), 187; Injunction § F; see *Anderson v. Souza* (1952) 38 Cal.2d 825, 842 [closure may be appropriate remedy where otherwise lawful business "cannot be conducted without creating a nuisance and violating the rights of contiguous property owners."]; compare, *Kitsap County v. Kev, Inc.* (Wash. 1986) 106 Wash.2d 135, 144. [pervasive violations of law similar to those here justified closure as initial injunctive remedy, even without evidence of violations of previously issued injunction.]

**D. The Court Should Enforce Against *Per Se* Public Nuisance Violations By Closing The Business.**

The law clearly authorizes this Court to issue an order closing a business that constitutes a *per se* public nuisance, even without evidence of ongoing violations of a previously issued injunction. See *City of Corona v. Naulls* (2008) 166 Cal.App.4<sup>th</sup> 418, 433. As demonstrated above, the Pink Diamonds operates as a *per se* public nuisance in multiple respects so fundamental to its business model as to require their closure by this Court. The Club's pervasive violations of the Noise Ordinance, Extended Hours Permit requirements, Red Light Abatement Act, and Drug Abatement act are all examples of the *per se* public nuisance activity that make up Defendants' business practices. The Court therefore should exercise its authority both under general case law and under the specific provisions of the Drug Abatement Act and the Red Light Abatement Act to order the business closed.

**II. THE COURT SHOULD IMPOSE CIVIL PENALTIES AND SANCTIONS UNDER THE INJUNCTION**

**A. The Court Should Award Significant Civil Penalties For The Smith Defendants' Willful Violations Of The Injunction.**

The Smith Defendants have violated the Injunction and the law in the most willful manner possible. In pursuit of the profits that result from overflow crowds paying \$20 - \$30 per person, as well as a percentage of the income made from their erotic dancers, the Smith Defendants have repeatedly violated multiple provisions of the Injunction. Therefore, this Court should award maximum civil penalties under § F of the Injunction of \$2500 per violation. In addition, the Injunction provides that these penalties are "in addition to any other relief or sanctions that the Court may order as a matter of law." California Business and Professions Code

§ 17207 (the "Unfair Competition Law") provides for a maximum civil penalty of \$6,000 for an intentional violation of an injunction prohibiting unfair competition, as is the case here. Given the willful and flagrant nature of the violations here, the Court should award the maximum penalty of \$8,500 per individual violation of the Injunction.

The evidence shows that Defendants have committed multiple violations of the Injunction on every night that they have been open since the Injunction was entered. The club is open at least 3 nights per week and it has been 27 weeks since entry of the Injunction. That amounts to 81 nights of violations. Although the City could legitimately insist on penalties for each individual type of violation of the Injunction,<sup>4</sup> it has taken a more conservative approach in calculating penalties, and counted each night of operation as a single violation of the Injunction. Therefore, the City seeks an \$8,500 penalty for each of 81 nights of operation, for total civil penalties of **\$688,500** against the Smith Defendants for their willful violations of the Injunction.

**B. The Court Should Award the City Its Attorneys' Fees And Costs In Enforcing The Injunction.**

Attorneys' fees also are appropriate for this motion to enforce the Injunction, pursuant to California Civil Code § 3496(d), which provides for recovery of all "costs, including the costs of investigation and discovery, and reasonable attorneys' fees" in any action wherein the City seeks to enjoin the use of a building or place for any acts of: 1) lewdness or prostitution; 2) illegal sale, use or storage of drugs; or 3) illegal serving or giving away of alcoholic beverages. The City seeks just such remedies in this motion. Plaintiffs attorneys' fees and costs involved in investigating and enforcing against violations of the Injunction have not yet been totaled at this time, but at the time this motion was filed, exceeded 184 hours of attorney time, 208 hours of investigator time, and 84 hours of paralegal time. The City requests that the Court award the City all "costs, including the costs of investigation and discovery, and reasonable attorneys' fees"

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<sup>4</sup> Among the many individual types of violations by the Smith Defendants have been 1) operating without an Extended-Hours Permit; 2) allowing consumption of alcohol by patrons; 3) allowing sale and consumption of illegal drugs; 4) promoting prostitution and lewd acts by dancers; 5) failing to maintain adequate security; 6) failing to maintain a compliant security camera; and 7) failing to keep the public way clear of crowds.

related to enforcement of the Injunction, subject to specific proof of reasonable amounts for such costs.

**C. The Court Should Award The City Its Police Costs In Responding To Calls For Service Related To The Club's Operation Under The Injunction.**

§ E.22 of the Injunction provides that the Smith Defendants "shall pay full cost recovery for any police services reasonably necessary, as determined by the Court in a hearing to enforce this Injunction, to respond to calls for service at the Property." The reasonable costs of such police services have not yet been tabulated by the City, but the City requests that this Court order such recovery from the Smith Defendants, subject to further motion and hearing by this Court on the issue of the reasonableness of the City's request for such costs.

**CONCLUSION**

Because the Smith Defendants' business practices are inherently illegal, maintain a *per se* public nuisance, and create an overwhelmingly negative impact on the surrounding residential neighborhood, the City respectfully request that this Court issue an order 1) closing the business, 2) awarding civil penalties for violations of the Injunction, 3) for recovery of attorneys' fees and costs, and 4) for recovery of police costs for responding to calls for service.

Dated: September 30, 2009

DENNIS J. HERRERA  
City Attorney  
ALEX TSE  
Chief Attorney  
Neighborhood & Resident Protection Division  
JERRY THREET  
Deputy City Attorney

By: \_\_\_\_\_  
JERRY THREET

Attorneys for Plaintiffs  
CITY AND COUNTY OF SAN FRANCISCO and  
PEOPLE OF THE STATE OF CALIFORNIA

1 DENNIS J. HERRERA, State Bar #139669  
City Attorney  
2 ALEX G. TSE, State Bar #152348  
Chief Attorney  
3 Neighborhood and Resident Safety Division  
JERRY THREET, State Bar #205983  
4 Deputy City Attorney  
1390 Market Street, Sixth Floor  
5 San Francisco, California 94102-5408  
Telephone: (415) 554-3914  
6 Facsimile: (415) 437-4644  
E-Mail: jerry.threet@sfgov.org

7 Attorneys for Plaintiffs  
8 CITY AND COUNTY OF SAN FRANCISCO and  
PEOPLE OF THE STATE OF CALIFORNIA  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO  
12 UNLIMITED CIVIL JURISDICTION

13 CITY AND COUNTY OF SAN  
FRANCISCO, a Municipal Corporation,  
14 and the PEOPLE OF THE STATE OF  
CALIFORNIA, by and through DENNIS  
15 J. HERRERA, City Attorney for the  
CITY AND COUNTY OF SAN  
16 FRANCISCO,

17 Plaintiffs,

18 vs.

19 DAMONE H. SMITH; D.H.S. GLOBAL  
INVESTMENTS, LLC; ED POPE;  
20 CLUB PAREE, LLC; THE PINK  
DIAMOND; and DOE ONE through  
21 DOE FIFTY, inclusive,

22 Defendants.

Case No. 09-484-055

PLAINTIFFS' NOTICE OF MOTION AND  
MOTION TO ENFORCE STIPULATED  
INJUNCTION

Hearing Date: October 28, 2009  
Hearing Judge: Hon. Peter J. Busch  
Time: 9:30 a.m.  
Place: Department 301

Date Filed: January 12, 2009  
Trial Date: N/A

23 TO DEFENDANT DAMONE H. SMITH; D.H.S. GLOBAL INVESTMENTS, LLC; and  
24 THE PINK DIAMOND (collectively, the "Smith Defendants"); and their attorneys of record:  
25 NOTICE IS HEREBY GIVEN that on October 28, 2009, at 9:30 a.m., in Department 301 of the  
26 Superior Court of California, County of San Francisco, 400 McAllister Street, San Francisco, CA  
27 94102, Plaintiffs the City and County of San Francisco and the People of the State of California  
28 ("Plaintiffs" or the "City") will, and hereby do, move the Court to enforce the Stipulated

1 Injunction and Settlement Agreement ("Injunction") entered by the Court on March 24, 2009 in  
2 this action against the Smith Defendants for their ongoing violations of the Injunction.

3 Plaintiffs will request through their motion that the Court order the following: 1) the  
4 complete closure of the nightclub business operating at 220 Jones Street, San Francisco,  
5 California (the "Property"); 2) civil penalties for violations of law and the Injunction; 3) recovery  
6 of the City's costs of investigation and enforcement, including attorneys fees; and 4) recovery of  
7 the costs of police responses to calls for service necessitated by the Smith Defendants' nuisance  
8 activities. The City makes the request for complete closure of the business at the Property due  
9 the Smith Defendants' continued, willful maintenance of an extremely dangerous public nuisance  
10 in violation of law and the Injunction, because the evidence suggests the nuisance activity  
11 constitutes a *per se* public nuisance that is inherent to the business being operated at the  
12 Property, and because this nuisance will be effectively abated only through closure of the  
13 business.

14 Plaintiffs base their motion on this notice of motion and motion; the memorandum of  
15 points and authorities submitted herewith; the supporting declarations of Deputy City Attorney  
16 Jerry Threet, San Francisco Police Department Officers Miguel Torres, Edwin Anaya, Charles  
17 August, Brandon Thompson, Joseph Obidi, Steven Ravella, Michael Shavers, Orit Sampson,  
18 Carla Lee, and Imran Shakur, and of four neighbors of the business; the complete case file; the  
19 arguments of counsel; and such other evidence as may be brought to the Court's attention prior  
20 to or at the hearing on this motion.

21 Dated: September 30, 2009

22 DENNIS J. HERRERA  
23 City Attorney  
24 ALEX G. TSE  
25 Chief Attorney  
26 YVONNE R. MERÉ  
27 JERRY THREET  
28 Deputy City Attorneys

By: \_\_\_\_\_  
JERRY THREET  
Attorneys for Plaintiffs  
CITY AND COUNTY OF SAN FRANCISCO and  
PEOPLE OF THE STATE OF CALIFORNIA



1 **PROOF OF SERVICE**

2 I, SECTY NAME, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the  
4 above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza  
Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

5 On September 30, 2009, I served the following document(s):

6 **NAME OF DOCUMENT**

7 on the following persons at the locations specified:

8 PARTY BEING SERVED

PARTY BEING SERVED

9 in the manner indicated below:

10  **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct  
11 copies of the above documents in addressed envelope(s) and placed them at my workplace for collection  
12 and mailing with the United States Postal Service. I am readily familiar with the practices of the San  
Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the  
sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States  
Postal Service that same day.

13  **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed  
14 envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional  
messenger service. **A declaration from the messenger who made the delivery**  **is attached** or   
15 **will be filed separately with the court.**

16  **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in  
17 addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier  
18 service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending  
overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection  
would be collected by a courier the same day.

19  **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted  
20 true and correct copies of the above document(s) via a facsimile machine at telephone number Fax #' to the  
21 persons and the fax numbers listed above. The fax transmission was reported as complete and without  
error. The transmission report was properly issued by the transmitting facsimile machine, and **a copy of  
the transmission report**  **is attached** or  **will be filed separately with the court.**

22 I declare under penalty of perjury pursuant to the laws of the State of California that the  
23 foregoing is true and correct.

24 Executed September 30, 2009, at San Francisco, California.

25 \_\_\_\_\_  
26 SECTY NAME

COPY

1 DENNIS J. HERRERA, State Bar #139669  
 City Attorney  
 2 ALEX G. TSE, State Bar #152348  
 Chief Attorney  
 3 Neighborhood and Resident Safety Division  
 JERRY THREET, State Bar #205983  
 4 Deputy City Attorney  
 Fox Plaza  
 5 1390 Market Street, 7<sup>TH</sup> Floor  
 San Francisco, California 94102-5408  
 6 Telephone: (415) 554-3914  
 Facsimile: (415) 437-4644  
 7 E-Mail: jerry.threet@sfgov.org

ENDORSED  
 FILED  
 San Francisco County Superior Court

MAR 24 2009

GORDON PARKILL, Clerk  
 BY: JULIE FOGUE  
 Deputy Clerk

8 Attorneys for Plaintiffs  
 9 CITY AND COUNTY OF SAN FRANCISCO and  
 10 PEOPLE OF THE STATE OF CALIFORNIA

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 12 COUNTY OF SAN FRANCISCO  
 13 UNLIMITED JURISDICTION

14 CITY AND COUNTY OF SAN  
 15 FRANCISCO, a Municipal Corporation,  
 and the PEOPLE OF THE STATE OF  
 16 CALIFORNIA, by and through DENNIS  
 17 J. HERRERA, City Attorney for the CITY  
 AND COUNTY OF SAN FRANCISCO,

Case No. 09-484-055

STIPULATED INJUNCTION AND SETTLEMENT AGREEMENT

Date Action Filed: January 12, 2009

18 Plaintiff(s),

19 vs.

20 DAMONE H. SMITH; D.H.S. GLOBAL  
 INVESTMENTS, LLC; ED POPE; CLUB  
 21 PAREE, LLC; THE PINK DIAMOND;  
 and DOE ONE through DOE FIFTY,  
 22 inclusive,

23 Defendant(s).

24 Pursuant to settlement by the parties, this Stipulated Injunction (the "Order") was presented  
 25 before the above-captioned Court, the Honorable PETER J. BUSCH, judge presiding. Plaintiffs,  
 26 the City and County of San Francisco, a municipal corporation, and the People of the State of  
 27 California, ("Plaintiffs" or the "City") were represented by their attorney, DENNIS J. HERRERA,  
 28 City Attorney, appearing through JERRY THREET, Deputy City Attorney. Defendants DAMONE

1 H. SMITH; D.H.S. GLOBAL INVESTMENTS, LLC; and THE PINK DIAMOND were  
 2 represented by their attorney, TERRANCE HALLINAN.

3 Whenever the term "DEFENDANTS" is used in this Order, the term includes Defendants  
 4 DAMONE H. SMITH; D.H.S. GLOBAL INVESTMENTS, LLC; and THE PINK DIAMOND as  
 5 well as their agents, servants, employees, representatives, assigns, tenants, and lessees, and all  
 6 persons acting in concert or participating with or on behalf of Defendants, with actual or  
 7 constructive notice of this Order.

8 Plaintiffs and Defendants (the "Parties") agree and consent to entry of this Order by the  
 9 Court without a noticed motion, hearing, or trial. The Parties further agree that this Order shall be  
 10 entered by appearance of Plaintiffs before the *ex parte* calendar of the Law and Motion Department  
 11 of this Court without objection by Defendants.

12 The Parties, having stipulated to the provisions set forth herein, the Court having reviewed  
 13 the provisions, the Parties having agreed to the issuance of this Order, and good cause appearing  
 14 therefore,

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

16 **A. JURISDICTION.** The Court issues this Order pursuant to its authority under  
 17 Business and Professions Code Section 17203, Penal Code Section 11200, and Civil Code Section  
 18 3491. The Court expressly retains jurisdiction to modify this Order as the ends of justice may  
 19 require. The Court may hear and decide issues regarding the scope and effect of the injunctive  
 20 provisions, herein. Any party to this Order may apply to the Court at any time, after making a  
 21 reasonable effort to meet and confer with the other parties, for further orders and directions as may  
 22 be necessary or appropriate for the construction, application or carrying out of the injunctive  
 23 provisions, herein. The Court can modify any of the injunctive provisions hereof and take such  
 24 further action as may be necessary or appropriate to carry into effect the injunctive provisions  
 25 hereof, and for the punishment of violations of same, if any.

26 **B. AUTHORITY.** Plaintiffs have the authority under California law to maintain this  
 27 action to protect the People of the State of California concerning the conduct alleged in the  
 28 Complaint.



1 1. There shall be well-lit and prominently displayed notices at all entrances to and exits  
2 from the establishment urging patrons to enter and leave the establishment and  
3 neighborhood in a quiet, peaceful, and orderly fashion and to please not loiter, litter, block  
4 driveways, vomit or urinate in public, park illegally, drive while intoxicated, or otherwise  
5 behave in a reckless, disrespectful or illegal manner while in the neighborhood;

6 2. DEFENDANTS shall post employees at all the entrances and exits to the  
7 establishment during the period from 30 minutes prior to opening, to such time past closing  
8 that all patrons have left the premises. These employees shall insure that patrons waiting to  
9 enter the establishment and those exiting the premises are urged to respect the quiet and  
10 cleanliness of the neighborhood as they walk to their parked vehicle or otherwise leave the  
11 area. Employees shall advise any patron disturbing the peace of otherwise failing to respect  
12 the neighborhood to immediately leave the vicinity. Employees shall immediately report to  
13 the San Francisco Police Department any patron who is disturbing the peace and fails to  
14 heed the employees advice to leave the vicinity;

15 3. DEFENDANTS shall require employees of the establishment to walk a 100-foot  
16 radius from the premises sometime between 30 minutes after closing time and 6:00 a.m. the  
17 following morning, and shall pick up and dispose of any discarded beverage containers and  
18 other trash left in front of the premises. These employees shall also clean up any vomit,  
19 urine, or similar nuisance found within that 100-foot radius prior to leaving the premises. An  
20 inspection shall also be made for graffiti placed on the building and any graffiti placed on  
21 the building shall be noted and removed within 48 hours;

22 4. DEFENDANTS shall provide sufficient toilet facilities accessible to patrons within  
23 the premises, and toilet facilities also shall be made accessible to prospective patrons who  
24 may be waiting to enter the establishment;

25 5. DEFENDANTS shall provide outside lighting in a manner than would illuminate  
26 outside street and sidewalk areas and any adjacent parking, as appropriate;

27 6. DEFENDANTS shall post employees at entrances and exits to the establishment who  
28 shall actively encourage patrons to legally park in spaces provided by the establishment.

1 Those same employees shall actively discourage illegal parking or moving violations by  
2 patrons and shall report such violations to the San Francisco Police Department immediately  
3 upon a patron's failure to heed their warning;

4 7. DEFENDANTS shall provide adequate ventilation within the structures of the  
5 establishment such that doors and/or windows are not left open for such purposes resulting  
6 in noise emission from the premises;

7 8. DEFENDANTS shall keep all entrance and exit doors of the establishment unlocked  
8 during operating hours;

9 9. DEFENDANTS shall ensure that no noise shall be audible outside the establishment  
10 during the daytime or nighttime hours that violates the San Francisco Police Code Sections  
11 49 or 2900 et. seq.;

12 10. DEFENDANTS shall implement other conditions and/or management practices  
13 necessary to insure that management and/or patrons of the establishments maintain the quiet,  
14 safety, and cleanliness of the premises and the vicinity of the use, and do not block  
15 driveways of neighboring residents or businesses;

16 11. DEFENDANTS shall make every effort to prevent patrons and non-patrons from  
17 gathering and loitering outside the establishment on the public sidewalk and streets, either  
18 during or after operating hours, including using security personnel to encourage crowds to  
19 disperse and reporting such loitering to the local police department when it occurs;

20 12. DEFENDANTS shall take all reasonable measures to insure the sidewalks adjacent  
21 to the premises are not blocked or unnecessarily affected by patrons or employees due to the  
22 operations of the premises and shall provide security whenever patrons gather outdoors;

23 13. DEFENDANTS shall provide receptacles for disposal of litter, trash, and cigarette  
24 butts at or near the entrances to the establishment during hours of operation;

25 14. DEFENDANTS shall employ a reputable and professional, licensed and bonded  
26 security guard company to supply uniformed guards to provide security at the premises from  
27 at least opening time until the last patron has departed the vicinity after closing. The security  
28 company shall provide a minimum of one (1) security guard for every fifty (50) patrons, as

1 well as one (1) security guard to be present on the exterior of the premises and assist in  
 2 gaining the cooperation of patrons in obeying these rules. The security company shall use all  
 3 reasonable means to prevent entry by an patron carrying a weapon of any kind. Any patron  
 4 found carrying a weapon shall be requested to leave the premises and if they refuse, the  
 5 owners shall immediate notify the San Francisco Police Department. Within 48 hours of  
 6 contracting with the security company, DEFENDANTS shall send written verification to the  
 7 City Attorney's Office that they have employed a qualified security guard company for the  
 8 listed services and provide the name of and contact information for the company;

9 15. Within 15 days of the entry of this Order, DEFENDANTS shall install in a manner  
 10 that is secure from interference by others, and then maintain in good working order at all  
 11 times thereafter, a security video camera system to record the activities of patrons and  
 12 members of the public outside the entrance of the establishment. The video camera system  
 13 must be secure from disablement and provide observation of all entrances and exits,  
 14 including the public sidewalk fronting the Property. Video recordings of all monitoring must  
 15 be kept in an orderly manner and stored for at least three months in a place and manner  
 16 making them readily available for inspection by the City Attorney's Office or the Police  
 17 Department, and shall be immediately provided to the same for inspection upon demand;

18 16. DEFENDANTS shall provide a cell phone number to all interested neighbors that  
 19 will be answered at all times by a manager or other responsible person who has the authority  
 20 to adjust volume and respond to other complaints. Owners shall keep a monthly log of all  
 21 such complaints, including when received and how handled, and shall provide the same to  
 22 the San Francisco Police Department and/or the Office of the City Attorney, upon demand;

23 17. DEFENDANTS shall create a monthly report explaining how all complaints  
 24 contained in the monthly log were handled. This report shall be provide to any neighbor who  
 25 resides or does business within 100 feet of the Property upon request;

26 18. A representative of DEFENDANTS shall attend the monthly Tenderloin Police  
 27 Station community meeting to hear issues concerning the Property. DEFENDANTS shall  
 28 provide attendees of such neighborhood meeting copies of the monthly report required in

1 section 17, above;

2 19. DEFENDANTS and their employees shall not serve alcohol to any patron, nor allow  
3 alcohol to be furnished to any patron of the establishment or allow any patron to consume  
4 alcohol on the premises;

5 20. DEFENDANTS shall keep a copy of these operating standards available during  
6 normal business hours for viewing upon request of any member of the public;

7 21. DEFENDANTS and their employees shall strictly comply with limitations on  
8 occupancy, as determined by the San Francisco Fire Department;

9 22. DEFENDANTS shall pay full cost recovery for any police services reasonably  
10 necessary, as determined by the Court in a hearing to enforce this Injunction, to respond to  
11 calls for service at the Property;

12 23. DEFENDANTS shall allow inspection of the Property upon demand by City  
13 inspectors or police officers who believe they have a reasonable suspicion that the terms of  
14 this Order or of some provision of state or local law are being violated at the Property; and

15 24. DEFENDANTS shall otherwise comply with all requirements of local and state  
16 codes governing their operation of the business and maintenance of the Property.

17 **F. ENFORCEMENT.** Violation of this Order constitutes contempt of Court. The  
18 terms of this Order may be enforced through a contempt proceeding, a motion to enforce, or any  
19 other proceeding recognized by the Court for enforcement of an Injunction. In the event that  
20 Defendants are found by the Court to have violated any of the terms of this Order, Plaintiffs shall  
21 recover their attorney fees and costs incurred in enforcing this Order, in addition to any other  
22 remedies to which Plaintiffs are entitled as a matter of law, as determined by the Court after notice  
23 and hearing. Defendants shall also be liable for civil penalties of up to \$2500 for each violation of  
24 this Order, pursuant to Business and Professions Code Section 17207, as determined by the Court  
25 after notice and hearing. Any fines or penalties specified in this paragraph shall be in addition to  
26 any other relief or sanctions that the Court may order as a matter of law. The Court expressly  
27 reserves jurisdiction to take such further action as may be necessary or appropriate to carry into  
28 effect the provisions of this Order. Defendants further agree to the hearing of any action for



1 contempt of this Order by a Commissioner of the Court.

2 **G. EFFECTIVE DATE AND TERM OF INJUNCTION.** Unless otherwise stated,  
3 Defendants shall comply with the terms of this Injunction upon entry by the Court. The terms of  
4 this Injunction shall be in effect for twelve (12) months from the date of entry by the Court. If the  
5 Court finds that Defendant failed to comply with the terms of this Injunction during the period when  
6 it is in effect, then its twelve (12) month term shall be renewed starting on the date that the Court so  
7 finds a violation of this Injunction.

8 **H. NO WAIVER OF RIGHT TO ENFORCE.** The failure of Plaintiffs to enforce any  
9 provision of this Stipulated Injunction shall in no way be deemed a waiver of such provision or in  
10 any way affect the validity of either the Injunction or the Judgment. The failure of Plaintiffs to  
11 enforce any such provision shall not preclude Plaintiffs from later enforcing the same or any other  
12 provision of their the Injunction or the Judgment. No oral advice, guidance, suggestion or  
13 comments by Plaintiffs' employees or officials regarding matters covered in the Injunction or the  
14 Judgment shall be construed to relieve Defendants of their obligations.

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1 I. RECORDATION. This Injunction shall be filed with this Court and recorded at the  
2 San Francisco Recorder's Office.

3 SO STIPULATED:

4 Dated: *March 19, 2009*

DENNIS J. HERRERA  
City Attorney  
ALEX G. TSE  
Chief Attorney, Neighborhood and Resident Safety Division  
JERRY THREET  
Deputy City Attorney

7 By: *Jerry Threet*

8 JERRY THREET  
Attorneys for Plaintiffs  
9 CITY AND COUNTY OF SAN FRANCISCO and  
10 PEOPLE OF THE STATE OF CALIFORNIA

11 Dated: *3/18/09*

*Damone H. Smith*  
12 DAMONE H. SMITH, Individually and on behalf of  
13 D.H.S. GLOBAL INVESTMENTS, LLC and THE PINK  
14 DIAMOND

15 APPROVED AS TO FORM:

16 Dated: *01/18/09*

*Terrance Hallinan*  
17 TERRANCE HALLINAN, Attorney for Defendants  
18 DAMONE H. SMITH, D.H.S. GLOBAL INVESTMENTS,  
19 LLC, and THE PINK DIAMOND

20 SO ORDERED:

PETER J. BUSCH

21 Dated: **MAR 24 2009**

JUDGE OF THE SUPERIOR COURT

22 *CCSF, et al. v. SMITH, et al., SF Sup. Ct. No. 09-484-055*  
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<u>Exhibit</u>	<u>Description</u>
A	Property Description for 220 Jones Street, San Francisco, California

**EXHIBIT A**

Property Address:  
220 Jones Street

All that property in the City and County of San Francisco, State of California, described as follows:

BEGINNING at a point on the easterly line of Jones Street, distant thereon 80 feet northerly from the northerly line of Turk Street; running thence northerly along said line of Jones Street 27 feet and 6 inches; thence at a right angle easterly 107 feet and 6 inches; thence at a right angle southerly 27 feet and 6 inches; thence at a right angle westerly 107 feet and 6 inches to the point of beginning.

BEING a portion of 50 Vara Block No. 227.

Assessor's Lot 012; Block 339