



## City Attorney Dennis Herrera News Release

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For Immediate Release:  
February 19, 2015  
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### **Herrera sues to shutter ‘Kingston Shack,’ illicit gambling den in Bernal Heights**

*Lawsuit continues crackdown on computerized slot machine operators like NetStop and City Business Center that harbor criminal activity, create neighborhood nuisances*

SAN FRANCISCO (Feb. 19, 2015)—City Attorney Dennis Herrera today filed suit against the owners and operators of Kingston Shack, an illegal gambling operation at 3437 Mission Street in San Francisco’s Bernal Heights neighborhood that has defied multiple police citations by continuing to operate. The 10-page civil complaint filed in San Francisco Superior Court this morning alleges that the establishment flouts multiple state and local laws by soliciting patrons to play electronic slot machines for the chance to win cash payouts. If successful, Herrera’s litigation could permanently bring the illegal gambling to a halt, shutter the establishment for one year, secure penalties of \$25,000 against each of the five named defendants, and amass significant additional civil penalties of up to \$2,500 for each unlawful business act proven at trial.

“Illicit gambling dens like Kingston Shack are a terrible neighborhood nuisance,” Herrera said. “They inevitably harbor criminal activity, they diminish residents’ quality of life, and it’s no surprise that they quickly emerge as major targets of neighbors’ complaints. I hope my lawsuit today sends a clear message that we actively partner with our Police Department to shut these nuisances down, and that we will aggressively pursue maximum civil penalties to deter this kind of lawlessness. Thanks to the leadership of Police Chief Greg Suhr and the excellent work of San Francisco’s police officers, we’ve had a lot of success in closing down these illegal gambling operations previously. I’m certain that Kingston Shack’s owners and operators will come to regret that they didn’t take warnings from police more seriously.”

Herrera’s civil suit continues a string of enforcement actions targeting gambling-related neighborhood nuisances, which typically attract related criminal activity and dramatically increase calls to police from neighborhood residents. Herrera’s 2013 litigation against Net Stop Business Center in San Francisco’s Excelsior neighborhood forced the establishment’s closure nearly a year ago. That action also successfully secured a stipulated injunction from its gambling software

[MORE]

vendor, Figure 8 Technologies Inc., to cease all of its operations in the State of California for five years. Within months of the Net Stop lawsuit's filing, unlitigated enforcement actions ended similar illicit gambling operations at Cybertime and City Business Center.

Herrera currently names five defendants in his civil action involving Kingston Shack: Marlene Cruz, Norma Estrada and John Gregory Ibarra are owners or operators of the alleged illicit enterprise; and Lien Sheng Ho and Jian Rong Ma, as trustees of the Ho/Ma Family Trust, own the property where Kingston Shack operates. They are alleged to be in violation of California's "Red Light Abatement Act" (Penal Code sections 11225-11235) over their illegal gambling operation; California Penal Code section 330b and San Francisco Municipal Police Code sections 325-327 for possessing and operating illegal slot machines; and California's Unfair Competition Law for engaging in unlawful business practices.

The case is: *City and County of San Francisco and People of the State of California v. Marlene Cruz, et al.*, San Francisco Superior Court case number CGC-15-544222, filed Feb. 19, 2015.

# # #

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ENDORSED  
 FILED  
 Superior Court of California  
 County of San Francisco  
 FEB 19 2015  
 CLERK OF THE COURT  
 BY: ROSSALY DE LA VEGA  
 Deputy Clerk

8 Attorneys for Plaintiffs  
 CITY AND COUNTY OF SAN FRANCISCO  
 9 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.  
 Herrera, City Attorney for the City and County  
 16 of San Francisco,

Case No. CGC-15-544222  
 COMPLAINT FOR INJUNCTIVE AND  
 DECLARATORY RELIEF AND PENALTIES

17 Plaintiffs,

Type of Complaint [42] Other

18 vs.

19 MARLENE CRUZ, an individual, NORMA  
 ESTRADA, an individual, JOHN GREGORY  
 20 IBARRA, an individual, LIEN SHENG HO as  
 Trustee of the HO/MA FAMILY TRUST,  
 21 U.D.T., dated May 24, 2008, JIAN RONG MA  
 as Trustee of the HO/MA FAMILY TRUST,  
 22 U.D.T., dated May 24, 2008, DOE 1 through  
 DOE 50,

23 Defendants.  
 24

1 The CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, and the PEOPLE  
2 OF THE STATE OF CALIFORNIA, by and through San Francisco City Attorney DENNIS J.  
3 HERRERA (collectively "Plaintiffs"), file their Complaint against Defendants MARLENE CRUZ, an  
4 individual, NORMA ESTRADA, an individual, JOHN GREGORY IBARRA, an individual, LIEN  
5 SHENG HO as Trustee of the HO/MA FAMILY TRUST, U.D.T., dated May 24, 2008, JIAN RONG  
6 MA as Trustee of the HO/MA FAMILY TRUST, U.D.T., dated May 24, 2008, and DOE ONE  
7 through DOE FIFTY (collectively "Defendants"). PLAINTIFFS hereby allege as set forth below:

### 8 INTRODUCTION

9 1. This action arises out of an illegal gambling operation owned and maintained by  
10 DEFENDANTS at a property located at 3437 Mission Street, San Francisco, California, on the corner  
11 of Kingston and Mission Streets ("Kingston Shack"). Despite being cited for violating illegal  
12 gambling laws on several occasions by the San Francisco Police Department, DEFENDANTS  
13 continue to maintain an illegal gambling operation at the KINGSTON SHACK.

14 2. DEFENDANTS have owned and operated the KINGSTON SHACK since at least  
15 2010. Due to the illegal gambling occurring at the property, the KINGSTON SHACK has attracted  
16 criminal and nuisance activity to the surrounding community necessitating police intervention and  
17 adversely affecting the neighborhood and the health, safety, and well-being of those who live and  
18 work in the area, as well as the general public.

19 3. By allowing illegal gambling to occur at the KINGSTON SHACK, DEFENDANTS  
20 have maintained the property as a nuisance in violation of the Penal Code sections 11225-11235 ("Red  
21 Light Abatement Law").

22 4. By operating, and/or allowing the operation of, the KINGSTON SHACK in repeated  
23 violation of applicable state and local laws and as a nuisance, DEFENDANTS have also demonstrated  
24 a pattern and practice of engaging in unlawful business practices in violation of the Unfair  
25 Competition Law ("UCL"), Business and Professions Code sections 17200-17210.

26 5. California's Gambling Control Act ("GCA"), Business and Professions Code sections  
27 19800 *et seq.* was passed in 1997. Although gambling establishments have existed in California for  
28 over 100 years, prior to 1984, the legal gambling industry was almost entirely unregulated; California

1 law outlawed certain forms of gambling and left other forms free of government oversight or  
2 regulation.

3 6. With the passage of the GCA, the California Legislature recognized that “[u]nregulated  
4 gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly,  
5 no person in this state has a right to operate a gambling enterprise except as may be expressly  
6 permitted by the laws of this state and by the ordinances of local governmental bodies.” Business and  
7 Professions Code section 19801(d).

8 7. California has long recognized the adverse impact of gambling on individuals and  
9 communities and has consequently restricted legal gambling to the California Lottery, “card rooms,”  
10 casinos operated by Native American tribes, and race tracks. State law and many local ordinances  
11 make virtually all other forms of gambling expressly illegal and provide local governments both civil  
12 and criminal remedies to address the crime and nuisance created by illegal gambling operations. *See*  
13 California Penal Code Chapter 10, sections 330-337 *et seq.* and 11225-11235; San Francisco  
14 Municipal Police Code sections 325-327.

### 15 **PARTIES AND SUBJECT PROPERTY**

16 8. Plaintiff CITY AND COUNTY OF SAN FRANCISCO (the “CITY”) is a municipal  
17 corporation organized and existing under and by virtue of the laws of the State of California, and is a  
18 city and county. The CITY brings this action under the Red Light Abatement Law.

19 9. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA (the “PEOPLE”), by and  
20 through Dennis J. Herrera, City Attorney of the City and County of San Francisco, bring this action  
21 pursuant to the Red Light Abatement Law and the Unfair Competition Law.

22 10. Defendants MARLENE CRUZ (“CRUZ”), NORMA ESTRADA (“ESTRADA”), and  
23 JOHN GREGORY IBARRA (“IBARRA”) are individuals who own, manage and/or operate the  
24 KINGSTON SHACK, a commercial business located at 3437 Mission Street, in the City and County  
25 of San Francisco. The KINGSTON SHACK is an illegal gambling business, where patrons pay to  
26 play slot machines for the chance to win cash payouts. ESTRADA owns the KINGSTON SHACK  
27 and is the commercial tenant of the property where the KINGSTON SHACK is located. CRUZ and  
28 IBARRA manage and/or operate the KINGSTON SHACK along with ESTRADA. Actions taken, or

1 omissions made, by ESTRADA's employees or agents in the course of their employment or agency at  
2 the KINGSTON SHACK are considered to be actions or omissions of ESTRADA for the purposes of  
3 this Complaint.

4 11. Defendants LIEN SHENG HO and JIAN RONG MA are Trustees of the HO/MA  
5 FAMILY TRUST, U.D.T., dated May 24, 2008 ("HO/MA FAMILY TRUST"). HO/MA FAMILY  
6 TRUST owns the property where the KINGSTON SHACK is located, 3437 Mission Street, San  
7 Francisco, California, San Francisco Assessor's Block 5673, Lot 025.

8 12. Defendants DOE ONE through DOE FIFTY are sued herein under fictitious names.  
9 Plaintiffs do not at this time know the true names or capacities of said defendants, but pray that the  
10 same may be alleged herein when ascertained.

#### 11 GENERAL ALLEGATIONS

12 13. The KINGSTON SHACK is a commercial business located on the ground floor of 3437  
13 Mission Street, San Francisco, California, on a busy commercial street in the Bernal Heights district of  
14 San Francisco. CRUZ, ESTRADA and IBARRA own and/or operate the KINGSTON SHACK which  
15 has been in operation since at least 2010. ESTRADA leases the commercial space from the HO/MA  
16 FAMILY TRUST. CRUZ and IBARRA manage the KINGSTON SHACK along with ESTRADA.

17 14. The KINGSTON SHACK has no signage advertising its presence and is not open to the  
18 general public. Patrons wishing to gamble money on computerized slot machines, however, need only  
19 knock on the front door for entry. Once inside, patrons can insert cash into several slot machines for a  
20 chance to win cash payouts.

21 15. The KINGSTON SHACK has slot machines to satisfy almost any patron; the machines  
22 allow patrons to play multiple games of chance including "spinning reel" slot machine games, poker  
23 and other card games, and lotto or keno-type "pick and win" games. Patrons who insert cash into the  
24 machines obtain "points" or "credits" that they can use to play the machines. Patrons play by selecting  
25 buttons on the video displays or on the machine, and win or lose their "points" or "credits" as they  
26 play, depending on chance. The outcome of the games is unpredictable to the patrons. The machines  
27  
28

1 keep track of the patron's "wins," and patrons collect their winnings from the machines with a cashier  
2 at the KINGSTON SHACK, who pays them in cash.



11 16. The KINGSTON SHACK is illegal under Penal Code section 330b, which makes it  
12 unlawful for businesses to operate or possess, and property owners to allow the operation or  
13 possession of, slot machines, which it defines as follows:

14 [A] machine, apparatus, or device that is adapted, or may readily be  
15 converted, for use in a way that, as a result of the insertion of any piece  
16 of money or coin or other object, or by any other means, the machine or  
17 device is caused to operate or may be operated, and by reason of any  
18 element of hazard or chance or of other outcome of operation  
19 unpredictable by him or her, the user may receive or become entitled to  
20 receive any piece of money, credit, allowance, or thing of value, or  
21 additional chance or right to use the slot machine or device, or any  
22 check, slug, token, or memorandum, whether of value or otherwise,  
23 which may be exchanged for any money, credit, allowance, or thing of  
24 value, or which may be given in trade, irrespective of whether it may,  
25 apart from any element of hazard or chance or unpredictable outcome of  
26 operation, also sell, deliver, or present some merchandise, indication of  
27 weight, entertainment, or other thing of value.

22 17. The KINGSTON SHACK also violates San Francisco Municipal Police Code section  
23 325, which provides:

24 It shall be unlawful for any person, either as owner, lessee, agent,  
25 employee, mortgagee or otherwise to operate, keep, maintain, rent, use  
26 or conduct, within the City and County of San Francisco, any clock,  
27 tape, slot or card machine, or any other machine, contrivance or device  
28 upon which money is staked or hazarded upon chance or into which  
money is paid, deposited, or played, upon chance or upon result of the

1 action of which money or any other article or thing of value is staked,  
2 bet, hazarded, won or lost upon chance.

3 18. Since the KINGSTON SHACK opened in 2010, criminal and nuisance activity has  
4 increased in the area, necessitating police intervention and adversely affecting the surrounding  
5 neighborhood. The neighborhood has experienced a rising number of thefts, assaults, drug-related  
6 offenses and arrests of KINGSTON SHACK customers wanted on outstanding warrants.  
7 DEFENDANTS' maintenance of the KINGSTON SHACK has interfered with the comfortable  
8 enjoyment of life and property in the surrounding community. Its continued operation is a nuisance  
9 that threatens the health and safety of the neighborhood and the well-being of those who live and work  
10 in the area, as well as the general public. The problems generated by customers of the KINGSTON  
11 SHACK require increased police attention, diverting valuable law enforcement resources that could be  
12 devoted to other areas.

13 **FIRST CAUSE OF ACTION**  
14 **FOR VIOLATION OF THE RED LIGHT ABATEMENT ACT BROUGHT BY PLAINTIFFS**  
15 **PEOPLE OF THE STATE OF CALIFORNIA AND THE CITY AND COUNTY OF SAN**  
16 **FRANCISCO AGAINST ALL DEFENDANTS**  
17 **(Penal Code Sections 11225 -11235)**

18 19. Plaintiffs PEOPLE OF THE STATE OF CALIFORNIA and the CITY AND COUNTY  
19 OF SAN FRANCISCO hereby incorporate by reference paragraphs 1 through 18 above, as though  
20 fully set forth herein.

21 20. From 2010 through the present, DEFENDANTS have operated, and/or permitted the  
22 operation of, an illegal gambling establishment at the KINGSTON SHACK by possessing and/or  
23 operating, or permitting the possession and operation of, "machine[s] or device[s]" that "may be  
24 operated, and by reason of . . . hazard or chance or of other outcome of operation unpredictable by [the  
25 user], the user may receive or become entitled to receive . . . [an] additional chance or right to use the  
26 slot machine or device" or a "token, or memorandum . . . which may be exchanged for any money,  
27 credit, allowance, or thing of value." Penal Code section 330b(d). By possessing and/or operating,  
28 and/or permitting the possession and/or operation of, these machines or devices, DEFENDANTS have  
violated and continue to violate Penal Code section 330b(d) and San Francisco Municipal Police Code

1 sections 325-327. This illegal gambling operation constitutes a nuisance as a matter of law under  
2 Penal Code section 11225.

3 21. Pursuant to Penal Code section 11230, PLAINTIFFS request that the Court order the  
4 closure of the KINGSTON SHACK for one year and impose civil penalties of \$25,000.00 against each  
5 Defendant to prevent DEFENDANTS from continuing to maintain or permit a nuisance at the  
6 property.

7 22. Unless said nuisance is abated, the surrounding community and neighborhood, and the  
8 residents and citizens of the City and County of San Francisco and the People of California, will suffer  
9 irreparable injury and damage, in that said conditions will continue to be dangerous to the life, safety  
10 or health of those who live and work near the KINGSTON SHACK and the general public.

11 23. PLAINTIFFS have no adequate remedy at law in that damages alone are insufficient to  
12 protect the public from the present injury and harm caused by the conduct described above.

13 **SECOND CAUSE OF ACTION**

14 **FOR UNLAWFUL BUSINESS PRACTICES BROUGHT BY PLAINTIFF PEOPLE OF THE**  
15 **STATE OF CALIFORNIA AGAINST ALL DEFENDANTS**

16 **(California Business and Professions Code Sections 17200-17210)**

17 24. Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA, hereby incorporates by  
18 reference paragraphs 1 through 23 above, as though fully set forth herein.

19 25. The PEOPLE bring this cause of action in the public interest in the name of the  
20 PEOPLE OF THE STATE OF CALIFORNIA, pursuant to Business and Professions Code sections  
21 17200 through 17210, in order to protect the residents and owners of properties adjoining the  
22 KINGSTON SHACK from the unlawful business practices committed by DEFENDANTS in the  
23 operation of the KINGSTON SHACK within the City and County of San Francisco, State of  
24 California.

25 26. The violations of law described herein have been, and are being, carried out wholly or  
26 in part within the City and County of San Francisco. The actions of DEFENDANTS are in violation  
27 of the laws and public policies of the City and County of San Francisco and the State of California,  
28 and are inimical to the rights and interest of the general public.



1           2.       DEFENDANTS be declared to have engaged in unlawful business acts and practices in  
2 violation of Business and Professions Code sections 17200-17210;

3           **Injunctive Relief**

4           3.       The nuisance be preliminarily and permanently abated in accordance with Penal Code  
5 sections 11225-11235;

6           4.       All movable property used in the maintenance of the nuisance at the KINGSTON  
7 SHACK be removed and sold, pursuant to Penal Code section 11230;

8           5.       The KINGSTON SHACK be closed for one year, pursuant to Penal Code section  
9 11230;

10          6.       In the event the Court decides that any vacancy resulting from closure will be harmful  
11 to the community, in lieu of closing the KINGSTON SHACK, each Defendant be ordered to pay  
12 damages in an amount equal to the fair market rental value of the commercial space occupied by the  
13 KINGSTON SHACK for one year, pursuant to Penal Code section 11230;

14          7.       In the event that the Court does not order the KINGSTON SHACK closed, all  
15 DEFENDANTS, their agents, officers, lessees, managers, representatives, employees, and anyone  
16 acting on their behalf, and their heirs and assignees be preliminarily and permanently enjoined from  
17 operating, conducting, using, occupying, or in any way permitting the use of the KINGSTON SHACK  
18 as a nuisance pursuant to Penal Code sections 11225-11235;

19          8.       DEFENDANTS be enjoined and restrained from occupying or operating, and/or  
20 allowing the occupation or operation of, the KINGSTON SHACK while the conditions described in  
21 this Complaint exist and until all of the violations at the KINGSTON SHACK have been abated;

22          9.       DEFENDANTS be ordered to cause the KINGSTON SHACK to conform to law, and  
23 maintain such structures and all parts thereof in accordance with law;

24          10.       Pursuant to California Business and Professions Code sections 17203-17204,  
25 DEFENDANTS, their agents, officers, lessees, managers, representatives, employees, and anyone  
26 acting on their behalf, and their heirs, successors, and assignees be enjoined from operating,  
27 conducting, using, occupying, or in any way permitting the use of the KINGSTON SHACK in the  
28 unlawful business practices described in this Complaint;

1 11. DEFENDANTS, and each of them, inclusive, be enjoined from spending, transferring,  
2 encumbering, or removing from California any money received from the KINGSTON SHACK or in  
3 payment for the unlawful acts alleged in the Complaint;

4 **Penalties**

5 12. The Court impose civil penalties of \$25,000.00 against each Defendant to prevent them  
6 from continuing to maintain, and/or to allow the maintenance of, a nuisance at the KINGSTON  
7 SHACK, pursuant to Penal Code section 11230;

8 13. DEFENDANTS be ordered to each pay a civil penalty of \$2,500.00 for each act of  
9 unlawful competition, pursuant to Business and Professions Code section 17206;

10 **Fees and Costs**

11 14. DEFENDANTS be ordered to pay PLAINTIFFS ' reasonable attorney's fees and costs,  
12 including the cost of investigation and discovery, pursuant to Civil Code section 3496(b).

13 15. PLAINTIFFS be awarded their costs incurred herein pursuant to Code of Civil  
14 Procedure section 1032; and

15 16. The Court grant such other and further relief as this Court should find just and proper.

16 Dated: 2/19/15

17 DENNIS J. HERRERA  
18 City Attorney  
19 YVONNE MERÉ  
20 Chief Attorney  
21 JENNIFER E. CHOI  
22 VICTORIA L. WEATHERFORD  
23 Deputy City Attorneys

24 By:   
25 JENNIFER E. CHOI

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