

ENDORSED
FILED
San Francisco County Superior Court
JUN 14 2011
CLERK OF THE COURT
BY: ERICKA LARNAUTI
Deputy Clerk

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 ALEX G. TSE, State Bar #152348
Chief Attorney
3 Neighborhood and Resident Safety Division
JANA J. CLARK, State Bar #136008
4 JENNIFER CHOI, State Bar #184058
Deputy City Attorneys
5 1390 Market Street, Sixth Floor
San Francisco, California 94102-5408
6 Telephone: (415) 554-3968
Facsimile: (415) 437-4644
7 E-Mail: jana.clark@sfgov.org

8
9 Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

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

14 PEOPLE OF THE STATE OF CALIFORNIA,
by and through DENNIS J. HERRERA, City
15 Attorney for the City and County of San
Francisco,

16 Plaintiff,

17 vs.

18 NABIL ALI ISMAEL, individually and d/b/a
THE PLATINUM; FULVIO MIRANDA;
19 CORINA MIRANDA; and DOE ONE through
DOE FIFTY, inclusive,

20 Defendants.
21

Case No. CGC-11-508-338

STIPULATED INJUNCTION

Date Action Filed: February 17, 2011
Trial Date: Not Yet Set

22
23 Pursuant to settlement by the parties, this Stipulated Injunction (the "Order" or "Injunction")
24 was submitted to the above-captioned Court, the Honorable Loretta Giorgi, judge presiding. Plaintiff,
25 the People of the State of California, ("Plaintiff" or the "People") was represented by their attorney,
26 Dennis J. Herrera, City Attorney, appearing through Jana Clark and Jennifer Choi, Deputy City
27
28

1 Attorneys. Defendants NABIL ALI ISMAEL, individually and d/b/a THE PLATINUM were
2 represented by their attorney, Taghi Astanehe.

3 Whenever the term "Defendants" is used in this Order, the term includes Defendants NABIL
4 ALI ISMAEL, individually and d/b/a THE PLATINUM, as well as their agents, servants, employees,
5 representatives, assigns, tenants, and lessees, and all persons acting in concert or participating with or
6 on behalf of Defendants, with actual or constructive notice of this Order.

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

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

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

14 **A. Jurisdiction**

15 The Court issues this Order pursuant to its authority under California Business and Professions
16 Code Section 17203 and Civil Code Sections 3491 and 3494. The Court expressly retains jurisdiction
17 to modify this Order as the ends of justice may require. The Court may hear and decide issues
18 regarding the scope and effect of the injunctive provisions, herein. Any party to this Order may apply
19 to the Court at any time, after making a reasonable effort to meet and confer with the other parties, for
20 further orders and directions as may be necessary or appropriate for the construction, application or
21 carrying out of the injunctive provisions, herein. The Court can modify any of the injunctive
22 provisions hereof and take such further action as may be necessary or appropriate to carry into effect
23 the injunctive provisions hereof, and for the punishment of violations of the same, if any.

24 **B. Authority**

25 Plaintiff has the authority under California law to maintain this action to protect the People of
26 the State of California concerning the conduct alleged in the Complaint.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. Application

This case arises from Defendants' ownership, maintenance, operation and/or management of The Platinum (the "Business"), a commercial business located at 5901 Mission Street, Assessor's Block 6471, Lot 1D, San Francisco, California (the "Property" or "Premises").

In the Complaint, Plaintiff alleges that Defendants own, operate, manage and/or maintain the Business in violation of state law and as a public nuisance that substantially endangers the health, welfare and safety of the neighbors and the public, in general. Specifically, Plaintiff alleges that Defendants jeopardize the health and safety of their customers, their neighbors, and the community at large, by selling, or permitting to be sold, illegal and dangerous drug paraphernalia, which is purchased and used by Defendants' customers, and which causes and contributes to an increased neighborhood presence of illicit drug users, illicit drug dealers, publicly intoxicated persons, and a panoply of general nuisance conditions related to the ingestion and consumption of illicit drugs, particularly rock base cocaine ("crack") and methamphetamine. By causing or permitting repeated violations of state and local laws at the Business, Defendants have engaged in unlawful and unfair business practices in violation of California Business and Professions Code Sections 17200-17210.

Defendants dispute Plaintiff's allegations and claims. Nevertheless, in an effort to come to a negotiated resolution of all of the claims that have arisen in this action, Defendants have agreed to be bound by a Stipulated Injunction and Stipulated Judgment. By reaching a settlement and agreeing to injunctive terms and payment of civil penalties, Defendants are not admitting any wrongdoing or making any admission of liability.

This Injunction's provisions are applicable to Defendants in connection with their ownership, operation, management, and/or maintenance of the Business or any business in the City and County of San Francisco engaged in the retail sale of tobacco products subject to the permit requirements under San Francisco Health Code sections 1009.52-1009.53.

///

///

///

///

1 INJUNCTION

2 **D. General Provisions**

3 IT IS HEREBY ORDERED that Defendants and any person who is acting in concert or in
4 participation with them, with actual or constructive notice of this Injunction, are hereby permanently
5 enjoined and restrained from:

6 1. maintaining the Business, or any business owned, operated, managed or maintained by
7 Defendants in the City and County of San Francisco engaged in the retail sale of tobacco products
8 subject to the permit requirements under San Francisco Health Code sections 1009.52-1009.53, in
9 violation of California Health and Safety Code section 11364.7 (delivering, furnishing, transferring,
10 possessing or manufacture with intent to deliver, furnish, transfer or manufacture drug paraphernalia).
11 In enforcing section 11364.7 in this Injunction, the term "controlled substance" as used in Health and
12 Safety Code section 11364.7 shall not include marijuana used for medical purposes as provided for in
13 Health and Safety Code section 11362.5. In addition, the term "drug paraphernalia" as used in Health
14 and Safety Code section 11364.7 shall not include devices or products intended to be used to plant,
15 propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack,
16 repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body
17 marijuana for medical purposes as provided for in Health and Safety Code section 11362.5.

18 2. maintaining the Business, or any business owned, operated, managed or maintained by
19 Defendants in the City and County of San Francisco engaged in the retail sale of tobacco products
20 subject to the permit requirements under San Francisco Health Code sections 1009.52-1009.53, in
21 violation of California Health and Safety Code section 11364.5 (exclusion of minors from place of
22 business dealing in drug paraphernalia). In enforcing section 11364.5 in this Injunction, "drug
23 paraphernalia" shall include all of the items listed in section 11364.5, including devices or products
24 intended to be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process,
25 prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise
26 introduce into the human body marijuana, including marijuana for medical purposes as provided for in
27 Health and Safety Code section 11362.5.

1 3. maintaining the Business, or any business owned, operated, managed or maintained by
2 Defendants in the City and County of San Francisco engaged in the retail sale of tobacco products
3 subject to the permit requirements under San Francisco Health Code sections 1009.52-1009.53, in
4 violation of California Penal Code section 12020 (manufacture, import, sale, supply or possession of
5 certain weapons and explosives);

6 4. maintaining the Business, or any business owned, operated, managed or maintained by
7 Defendants in the City and County of San Francisco engaged in the retail sale of tobacco products
8 subject to the permit requirements under San Francisco Health Code sections 1009.52-1009.53, in
9 violation of California Penal Code section 381c (selling, furnishing, administering, distributing, giving
10 nitrous oxide to minors);

11 5. maintaining the Business, or any business owned, operated, managed or maintained by
12 Defendants in the City and County of San Francisco engaged in the retail sale of tobacco products
13 subject to the permit requirements under San Francisco Health Code sections 1009.52-1009.53, in
14 such a manner and condition as to constitute a public nuisance as defined by California Civil Code
15 sections 3479 and 3480;

16 6. maintaining the Business, or any business owned, operated, managed or maintained by
17 Defendants in the City and County of San Francisco engaged in the retail sale of tobacco products
18 subject to the permit requirements under San Francisco Health Code sections 1009.52-1009.53, in
19 such a manner and condition as to violate California Business and Professions Code sections 17200-
20 17210.

21 **E. Management**

22 IT IS FURTHER ORDERED THAT Defendants shall maintain and operate the Business, or
23 any other business owned, operated, managed or maintained by Defendants in the City and County of
24 San Francisco engaged in the retail sale of tobacco products subject to the permit requirements under
25 San Francisco Health Code sections 1009.52-1009.53, as follows:

26 1. No more than twenty (20) percent of the square footage of the windows and clear doors
27 facing the street shall bear any advertising, signage or product display. Any advertising, signage or
28 product display shall be placed and maintained in a manner that ensures that law enforcement

1 personnel have a clear and unobstructed view of the interior, including the area in which any cash
2 register is maintained, from the exterior public sidewalk or entrance.

3 2. Any portion in which drug paraphernalia is kept, displayed or offered in any manner,
4 shall be completely and wholly kept, displayed or offered within a separate room or enclosure to
5 which persons under the age of 18 years not accompanied by a parent or legal guardian are excluded,
6 as mandated by Health and Safety Code section 11364.5. Each entrance to such a room or enclosure
7 shall be signposted in reasonably visible and legible words to the effect that drug paraphernalia is kept,
8 displayed or offered in such room or enclosure and that minors, unless accompanied by a parent or
9 legal guardian, are excluded, as mandated by Health and Safety Code section 11364.5. In enforcing
10 section 11364.5 in this Injunction, "drug paraphernalia" shall include all of the items listed in section
11 11364.5, including devices or products intended to be used to plant, propagate, cultivate, grow,
12 harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain,
13 conceal, inject, ingest, inhale, or otherwise introduce into the human body marijuana, including
14 marijuana for medical purposes as provided for in Health and Safety Code section 11362.5.

15 3. This Injunction shall be posted such that it is in the plain view of any person operating
16 the cash register and within twelve (12) inches of any posted license or permit issued by the City and
17 County of San Francisco or by the State of California.

18 **F. Disposal Of Illegal Drug Paraphernalia**

19 IT IS FURTHER ORDERED that within twenty-four (24) hours of the signing of this Order,
20 Defendants shall surrender to the San Francisco Police Department any drug paraphernalia (as defined
21 in Subsection D, paragraph 1 of this Injunction) at the Business, or any other business owned,
22 operated, managed or maintained by Defendants in the City and County of San Francisco engaged in
23 the retail sale of tobacco products subject to the permit requirements under San Francisco Health Code
24 sections 1009.52-1009.53, the display or sale of which would constitute a violation of this Injunction

25 **G. Inspection**

26 1. Defendants shall consent to unannounced and warrantless inspections by the San
27 Francisco Department of Public Health ("DPH"), the San Francisco Police Department ("SFPD"),
28 and/or the San Francisco City Attorney's Office ("CAO") of any portion of the Business, or any other

1 business owned, operated, managed or maintained by Defendants in the City and County of San
2 Francisco engaged in the retail sale of tobacco products subject to the permit requirements under San
3 Francisco Health Code sections 1009.52-1009.53, to determine compliance with all applicable laws.
4 Members of the SFPD, DPH, and CAO are authorized to search any and all parts of the Business, or
5 any other business owned, operated, managed or maintained by Defendants in the City and County of
6 San Francisco engaged in the retail sale of tobacco products subject to the permit requirements under
7 San Francisco Health Code sections 1009.52-1009.53, in which drug paraphernalia (as defined in
8 Subsection D, paragraph 1 of this Injunction) can be stored. This includes, but is not limited to,
9 drawers, cabinets, closets, storage bins, ATM machines, or any other type of container in which drug
10 paraphernalia can be stored. This also includes areas and containers not accessible or open to the
11 public. If any of the items subject to search are locked or inaccessible, Defendants shall unlock the
12 items or otherwise make them accessible upon demand. Any and all drug paraphernalia discovered
13 during an inspection shall be seized by the inspecting agency and destroyed. Defendants' failure to
14 allow such inspection to occur shall constitute a violation of this Injunction.

15 2. Upon request by the CAO, DPH, and/or the SFPD, Defendants shall provide copies of
16 any and all records relating to Defendants' compliance with this Order within five business days of the
17 request. Plaintiff shall have the option to conduct an examination under oath of any Defendant once
18 during any twelve (12) month period to question him or her about such records, upon notice in
19 accordance with the California Code of Civil Procedure. Defendants' failure to provide the
20 information requested shall constitute a violation of this Injunction.

21 **H. Other Provisions**

22 IT IS FURTHER ORDERED that Defendants shall otherwise comply with all requirements of
23 local and state codes governing their operation and maintenance of the Business or any other business
24 owned, operated, managed or maintained by Defendants in the City and County of San Francisco.

25 **I. Penalties**

26 The Parties have executed a Stipulation for Entry of Judgment, filed concurrently herewith,
27 wherein Defendants agree to pay the City \$5,000.00 in civil penalties to settle this Action. Defendants
28 shall pay to the City, the full amount by August 1, 2011. Should Defendants fail to pay the civil

1 penalties by the due dates provided in the Stipulation for Entry of Judgment, Defendants then consent
2 to the entry of a Stipulated Judgment for Monetary Penalties ("Judgment") for the amount of unpaid
3 civil penalties against them. The civil penalties will accumulate interest at the rate of 10% per annum
4 from the date of entry of the Judgment until the entire sum is paid. Failure to pay in the amount or
5 manner described in the Stipulation for Entry of Judgment shall also be deemed a violation of this
6 Injunction, subject to the penalties described herein. Payment shall be delivered to the City Attorney's
7 Office, 1390 Market Street, Seventh Floor, San Francisco, CA 94102, attention: Jana Clark, Deputy
8 City Attorney. The payment shall be by cashier's check or money order made payable to: "City and
9 County of San Francisco."

10 J. Enforcement

11 1. A violation of this Order constitutes contempt of Court, as defined by California Code
12 of Civil Procedure Section 1209 and *Conn v. Superior Court of Los Angeles Court* (1987) 196
13 Cal.App.3d 774, 784. The terms of this Order may be enforced through a contempt proceeding, a
14 motion to enforce, or any other proceeding recognized by the Court for enforcement of an Injunction.
15 Defendants shall be liable for civil penalties of up to \$6,000 for each violation of this Order, pursuant
16 to Business and Professions Code Section 17207, as determined by the Court after notice and hearing.
17 Each and every item of illegal drug paraphernalia (as defined in Subsection D, paragraph 1 of this
18 Injunction) found at the Business, or any other business owned, operated, managed or maintained by
19 Defendants in the City and County of San Francisco engaged in the retail sale of tobacco products
20 subject to the permit requirements under San Francisco Health Code sections 1009.52-1009.53, during
21 the duration of the Injunction, shall constitute a separate violation of this Order.

22 2. Any fines, penalties or other monetary relief specified in this paragraph shall be in
23 addition to any other relief, penalties, fees, fines, costs or sanctions that the Plaintiff is entitled to and
24 that the Court may Order as a matter of law or equity.

25 3. The Court expressly reserves jurisdiction to take such further action as may be
26 necessary or appropriate to carry into effect the provisions of this Order. Defendants further agree to
27 the hearing of any action for contempt of this Order by a Commissioner of the Court.
28

1 4. Plaintiff shall be entitled to recover all attorneys' fees and costs incurred in enforcement
2 of this Order and/or monitoring Defendants' compliance herewith.

3 **K. Notice To Subsequent Interest Holders**

4 Should Defendants sell, transfer, or assign all or part of the Business, or any other business
5 owned, operated, managed or maintained by Defendants in the City and County of San Francisco
6 engaged in the retail sale of tobacco products subject to the permit requirements under San Francisco
7 Health Code sections 1009.52-1009.53, Defendants shall:

8 1. Prior to the execution of the sale, transfer or assignment, give notice and provide a copy
9 of this Order to the potential new owner, transferee or assignee;

10 2. Require the new owner, transferee or assignee, as a condition of the sale, transfer or
11 assignment, to sign an Addendum to this Order and agree to be bound by it for the duration of the
12 Order. A copy of the Addendum is attached as Exhibit A to this Order.

13 **L. Effective Date And Term Of Injunction**

14 Unless otherwise stated, Defendants shall comply with the terms of this Injunction upon entry
15 by the Court. The terms of this Injunction shall be in effect for sixty (60) months from the date of
16 entry by the Court. If the Court finds that Defendants failed to comply with the terms of this
17 Injunction during the period when it is in effect, then the sixty month term shall be renewed starting on
18 the date that the Court so finds a violation of this Injunction.

19 **M. No Waiver Of Rights To Enforce**

20 The failure of Plaintiff to enforce any provision of this Injunction shall in no way be deemed a
21 waiver of such provision or in any way affect the validity of either the Injunction or the Judgment.
22 The failure of Plaintiff to enforce any such provision shall not preclude Plaintiff from later enforcing
23 the same or any other provision of the Injunction or the Judgment. No oral advice, guidance,
24 suggestion or comments by Plaintiff's employees or officials regarding matters covered in the
25 Injunction or the Judgment shall be construed to relieve Defendants of their obligations.

26 ///

27 ///

28 ///

1 IT IS SO STIPULATED:

2 Dated: 6/10/11

3 DENNIS J. HERRERA
4 City Attorney
5 ALEX G. TSE
6 Chief Attorney
7 Neighborhood and Resident Safety Division
8 JANA CLARK
9 JENNIFER CHOI
10 Deputy City Attorneys

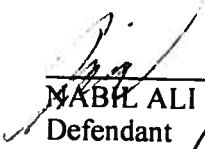
11 By: 

12 JANA CLARK
13 JENNIFER CHOI
14 Attorneys for Plaintiff
15 PEOPLE OF THE STATE OF CALIFORNIA

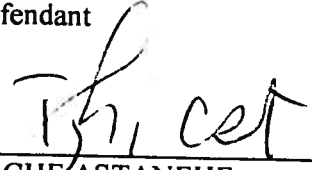
16 Dated: 5-21-2011

17 
18 NABIL ALI ISMAEL
19 Defendant

20 Dated: 5-21-11

21 
22 NABIL ALI ISMAEL d/b/a THE PLATINUM
23 Defendant

24 Dated: 5/21/11

25 
26 TAGHE ASTANEHE
27 Attorney for Defendant

28 IT IS SO ORDERED:

Dated: JUN 14 2011

ERNEST H. GOLDSMITH
JUDGE OF THE SUPERIOR COURT

People v. Ismael, et al.,

San Francisco Superior Court No. CGC 11 508-338

1 **ADDENDUM TO STIPULATED INJUNCTION**
2 **AGREEMENT OF SUCCESSORS IN INTEREST**
3 **TO BE BOUND BY THE TERMS OF THE INJUNCTION**

4 _____ (NAME of successor in interest) is a successor, agent, employee, or
5 assignee of The Platinum (the "Business"), a commercial business located at 5901 Mission Street,
6 Assessor's Block 6471, Lot 1D in the City and County of San Francisco, State of California.

7 _____ (NAME of successor in interest) has received a copy of the Stipulated
8 Injunction between Plaintiff People of the State of California and Defendants NABIL ALI ISMAEL,
9 individually and d/b/a THE PLATINUM, issued by the Court on _____ and filed on
10 _____ and has read its contents. _____ (NAME of successor in interest)

11 agrees to be bound without limitation by the terms of the Stipulated Injunction and agrees to perform
12 any and all obligations of Defendants NABIL ALI ISMAEL, individually and d/b/a THE
13 PLATINUM, that may be required under the terms of the Stipulated Injunction or under such Court
14 order as may be necessary or appropriate to enforce the provisions thereof. _____

15 (NAME of successor in interest) further agrees that the Court shall have jurisdiction over

16 _____ (NAME of successor in interest) to enforce the terms of this Injunction
17 and to issue such orders as may be necessary or appropriate to enforce the provisions thereof.

18 DATED:
19 _____
20 _____
21
22
23
24
25
26
27
28