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BY: [Signature]

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PEOPLE OF THE STATE OF CALIFORNIA
9

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

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

16 Plaintiff,

17 vs.

18 HANY MAHMOUD ABUELROUS;
individually and d/b/a SMOKES ETC., and
19 DOE ONE through DOE FIFTY, inclusive,

20 Defendants.
21

Case No. CGC-11-508328

COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF

Type of Case: (42) Other Complaint

23 The PEOPLE OF THE STATE OF CALIFORNIA by and through San Francisco City
24 Attorney DENNIS J. HERRERA ("Plaintiff"), files its Complaint against HANY MAHMOUD
25 ABUELROUS, individually and d/b/a SMOKES ETC., and DOE ONE through DOE FIFTY
26 (collectively "Defendants"). Plaintiff hereby alleges as set forth below:
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28

INTRODUCTION

1
2
3 1. This action arises out of Defendants' ownership, lease, use, maintenance, operation and
4 management of a retail business called SMOKES, ETC. (hereinafter, "the Store"), out of the street
5 level storefront of the building located at 3186 16th Street, San Francisco, California, in persistent
6 violation of state law and as a public nuisance that substantially endangers the health, welfare, and
7 safety of the neighbors, the residents of the City of San Francisco, and the People of the State of
8 California.

9 2. Specifically, Defendants have jeopardized the health and safety of their customers, their
10 neighbors, and the community at large, by selling illegal and dangerous drug paraphernalia, which is
11 purchased and used by Defendants' customers, and which causes and contributes to an increased
12 neighborhood presence of illicit drug users, illicit drug dealers, publicly intoxicated persons, and a
13 panoply of general nuisance conditions related to the ingestion and consumption of illicit drugs,
14 particularly crack cocaine and methamphetamine.

15 3. Since at least October 2010, Defendants' Store has been persistently operated as a place
16 where crack and methamphetamine users can easily and readily purchase the tubular clear glass pipes
17 and related paraphernalia unique to the ingestion and consumption of crack cocaine and
18 methamphetamine. Between October 2010 and December 2010, police investigated the store and
19 found illegal drug paraphernalia. Defendants have been warned to cease the illegal conduct, but as
20 recently as February 2011, Defendants are continuing to sell the illegal paraphernalia.

21 4. Defendants have maintained the Store as a public nuisance that threatens the health and
22 safety of the surrounding neighborhood in violation of state law. Defendants operate the Store in a
23 mixed commercial and residential neighborhood. The Store is situated within five blocks of four pre-
24 schools, a middle school, two Head Start programs, five community centers, two playgrounds, 16th
25 Street BART Plaza and a major MUNI hub, a day care center, a public library, and a drug and alcohol
26 recovery program.

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28 ///

1 5. By operating the Store in violation of state law and as a public nuisance, Defendants
2 have engaged, and continue to engage in unlawful and unfair business practices in violation of
3 Business and Professions Code Sections 17200 through 17210.

4 **PARTIES AND SUBJECT PROPERTY**

5 6. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through DENNIS J.
6 HERRERA, City Attorney of the City and County of San Francisco, brings this action pursuant to
7 Business and Professions Code Sections 17200-17210 (the "Unfair Competition Law"), Civil Code
8 Sections 3479, 3480, 3491, 3494, and Code of Civil Procedure Section 731.

9 7. At all times herein mentioned, Defendant HANY MAHMOUD ABUELROUS has
10 been the owner, lessee, operator, manager, and maintainer of the business commonly known as
11 SMOKES, ETC (the Store), operated out of the storefront of the building located at 3186 16th Street,
12 Block 3555, Lot 025, in the City and County of San Francisco, State of California (hereinafter, the
13 "Property"). The Property is more particularly described in Exhibit A, attached hereto and
14 incorporated as part of this Complaint.

15 8. Defendant HANY MAHMOUD ABUELROUS is sued in his capacity as the owner and
16 operator of the Store, and as the person committing the acts alleged in this Complaint or the person
17 directing or allowing others to commit the acts alleged in this Complaint.

18 9. Defendant HANY MAHMOUD ABUELROUS is also sued as d/b/a SMOKES, ETC.,
19 a business organization, form unknown.

20 10. Defendants DOE ONE through DOE FIFTY are sued herein under fictitious names. At
21 this time, Plaintiffs do not know the true names and capacities of these defendants, but pray that the
22 same may be inserted when ascertained.

23 11. At all times herein mentioned, each Defendant was an agent, servant, employee,
24 partner, franchisee, and joint venturer of the other Defendant, and at all times was acting within the
25 course and scope of the agency, service, employment, partnership, franchise, and joint venture.

26 12. Actions taken or omissions made by Defendant's employees, agents, or representatives
27 in the course of their employment, agency or representation shall be considered actions or omissions
28 of Defendant for purposes of this Complaint.

1 13. Whenever reference is made in this Complaint to any act or omission of "Defendant,"
2 such allegation shall mean that each Defendant did or authorized the act or omissions, recklessly and
3 carelessly failed and omitted to supervise, control, or direct other persons who engaged in the act or
4 omission.

5 **GENERAL ALLEGATIONS**

6 14. From approximately 1996 to the present, Defendants have continuously leased a
7 commercial space from the Property's owners.

8 15. At all times relevant to this Complaint, up to and including the present, Defendants
9 have operated, and continue to operate, SMOKES, ETC, (the Store) as a retail storefront on 16th Street,
10 between Guerrero Street and Valencia Street, in San Francisco's Mission District.

11 16. At all times relevant to this Complaint, up to and including the present, Defendants
12 have sold, and continue to sell, tobacco products pursuant to a permit issued by the San Francisco
13 Department of Public Health.

14 17. At all times relevant to this Complaint, up to and including the present, in addition to
15 the permitted tobacco products, Defendants have also displayed and sold smoking paraphernalia,
16 including a large array of pipes and devices commonly referred to as "bongs."

17 18. At all times relevant to this Complaint, up to and including the present, in addition to
18 the tobacco products and paraphernalia, Defendants have also displayed and sold illegal drug
19 paraphernalia, including tubular glass pipes used exclusively for smoking crack cocaine and
20 methamphetamine.

21 19. Defendants now are, and for a considerable period of time, including from October,
22 2010 to the present, and at all times alleged in this Complaint have been using, maintaining and or
23 permitting the use of the Store to deliver, furnish, transfer, and/or possess with intent to deliver,
24 furnish or transfer drug paraphernalia, knowing or under circumstances where one reasonably should
25 know that the paraphernalia would be used to convert, process, prepare, pack, repack, store, contain,
26 conceal, ingest, inhale or otherwise introduce into the human body a controlled substance, including
27 cocaine, cocaine base ("crack"), and methamphetamine, in violation of Health and Safety Code section
28 11364.7.

1 20. Since at least October 2010, on at least two occasions, officers of the San Francisco
2 Police Department ("SFPD") entered the Store and observed illegal drug paraphernalia, including
3 devices intended to be used to ingest crack cocaine and/or methamphetamine, in violation of Health
4 and Safety Code section 11364.7.

5 21. On October 28, 2010, during an undercover operation, a San Francisco police officer
6 entered the store, requested a "crack pipe" and was sold a tubular glass smoking device, used
7 exclusively for ingesting crack cocaine, in violation of Health & Safety Code Section 11364.7. Police
8 further noted that a significant part of the retail activity in Defendants' Store is from paraphernalia
9 used to ingest crack cocaine and methamphetamine.

10 22. On December 21, 2010, San Francisco police officers returned to the Store, and found
11 Defendants were knowingly displaying for sale illegal drug paraphernalia, including tubular glass
12 pipes used exclusively for the ingestion of methamphetamine, as well as in possession of hundreds of
13 additional pipes used exclusively for the ingestion of methamphetamine and/or crack cocaine.

14 23. Since at least October 2010, Defendants' ownership, operation and maintenance of the
15 Store and the Property has caused and/or contributed to a public nuisance by putting illegal drug
16 paraphernalia into the stream of commerce. By providing their customers with a way to ingest illegal
17 and dangerous narcotics, Defendants are creating and contributing to conditions which are injurious to
18 the health, safety and welfare of their customers, neighbors, and the community at large. Defendants'
19 conduct causes or contributes to offensive and annoying conditions, including, but not limited to:
20 illegal and dangerous trafficking of controlled substances, illegal and dangerous use and abuse of
21 controlled substances, public intoxication, and the crime and nuisance related thereto.

23 24. Defendants' ownership, operation and maintenance of the Store and the Property as a
24 public nuisance attracts people to the neighborhood for the purpose of illegal trafficking and use of
25 dangerous controlled substances, who then engage in criminal and/or nuisance conduct in the
26 neighborhood, including, but not limited to illegal drug use, public intoxication, public urination and
27 defecation, trash, noise, fights, violence, harassment, theft, and property damage. The conduct that
28

1 results from Defendant's selling illegal drug paraphernalia creates a public nuisance which is
2 annoying, vexing and disturbing to the neighborhood, and is offensive to the senses of the neighbors,
3 merchants and visitors.

4 25. Defendants' ownership, operation and maintenance of the Store and the Property as a
5 public nuisance harms the public's health, safety, and welfare, and creates a strain on police and other
6 vital but scarce city services.

7
8 **FIRST CAUSE OF ACTION FOR PUBLIC NUISANCE**
9 **BROUGHT BY PLAINTIFF AGAINST ALL DEFENDANTS**

10 **(Civil Code Section 3479, 3480, et seq.)**

11 26. Plaintiff hereby incorporates by reference paragraphs 1 through 25, and makes them a
12 part of this First Cause of Action, as though fully set forth herein.

13 27. Defendants' Store is being, and, for a considerable period of time prior to
14 commencement of this action, has been used, for the purposes of unlawfully displaying and selling
15 paraphernalia used for the purposes of ingesting dangerous and illegal narcotics, including cocaine
16 base and methamphetamine, in violation of Section 11364.7 of the California Health and Safety Code.

17 28. Defendant HANY MAHMOUD ABUELROUS, as owner and operator of the Store,
18 and his employees and agents, are, and for a considerable period of time prior to the commencement of
19 this action, has been, directly or indirectly, permitting the Property to be used for the unlawful display
20 and sale of paraphernalia used to ingest dangerous and illegal controlled substances, resulting in a
21 continuous public nuisance.

22 29. By permitting the above described injurious, illegal, annoying and disruptive activities
23 to exist at said Premises, Defendants have caused and maintained a continuing public nuisance within
24 the meaning of California Civil Code Section 3479 and 3480. These activities are injurious to health
25 and offensive to the senses so as to interfere with the comfortable enjoyment of life or property in an
26 entire community or neighborhood.

27 30. Unless Defendant is perpetually enjoined by an order of this Court Defendant will
28 continue to directly and indirectly use and maintain the Property as a public nuisance, and by such

1 conduct, continue to cause irreparable injury to the People of the State of California and the residents
2 of the City and County of San Francisco.

3 31. Plaintiff has no adequate remedy at law in that damages alone are insufficient to protect
4 the public from the present injury and harm caused by the conduct described herein.

5 32. Unless said nuisance is abated by this Court, the surrounding community and
6 neighborhood, and the residents and citizens of the City and County of San Francisco, will suffer
7 irreparable injury and damage, in that said conditions will continue to injure to the enjoyment and the
8 free use of the life and property of said citizens and residents of the City and County of San Francisco.

9 **SECOND CAUSE OF ACTION FOR UNFAIR AND UNLAWFUL**
10 **BUSINESS PRACTICES AGAINST ALL DEFENDANTS**

11 **(Business & Professions Code Sections 17200-17210)**

12 33. Plaintiff hereby incorporates by reference Paragraphs 1 through 32 and makes them a
13 part of this Second Cause of Action, as though fully set forth herein.

14 34. Plaintiff, acting to protect the public as consumers and competitors from unlawful and
15 unfair business practices, brings this cause of action in the public interest in the name of the People of
16 the State of California, pursuant to Business and Professions Code Section 17200-17210.

17 35. Defendants own a storefront retail store in the Mission District of the City and County
18 of San Francisco, State of California. The violations of law described herein have been and are being
19 carried out wholly or in part within the City and County of San Francisco.

20 36. Defendants' actions are in violation of the laws and public policies of the State of
21 California and are inimical to the rights and interest of the general public. Unless enjoined and
22 restrained by an order of this Court, Defendants will continue to engage in the unlawful and unfair acts
23 and course of conduct described herein.

24 37. Through the conduct described above, Defendants have engaged in the following
25 unlawful and unfair business practices prohibited by Business and Professions Code Sections
26 17200-17210:

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- 1 A. Violating Section 11364.7 of the California Health & Safety Code by displaying and
2 selling illegal drug paraphernalia used exclusively for the ingesting of cocaine base and
3 methamphetamine;
- 4 B. Violating Sections 3479 and 3480 of the California Civil Code by creating or
5 contributing to a public nuisance by injecting illegal drug paraphernalia into the stream
6 of commerce, providing customers with devices for the ingestion of dangerous and
7 illegal narcotics, and contributing to public intoxication and the myriad of nuisance and
8 criminal conduct related thereto, thus endangering the life, limb, health, property, safety
9 and welfare of the residents, merchants, neighbors, and the public at large;

10 38. Plaintiff is likely to have evidentiary support, after reasonable opportunity for further
11 investigation and discovery, to allege that as a direct and proximate result of the foregoing acts and
12 practices, Defendants received income, savings, capital appreciation, and/or other benefits that she
13 would not have received if they had not engaged in the violations of the Business and Professions
14 Code as described in this Complaint.

15 39. Plaintiff is likely to have evidentiary support, after a reasonable opportunity for further
16 investigation and discovery, to allege that Defendants' unlawful and unfair business practices affected
17 and have been perpetrated against one or more senior citizens or disabled persons.

18 40. The actions and conduct of Defendants in sustaining these unlawful and unfair business
19 practices has caused residents and merchants of the surrounding community and neighborhood and the
20 City and County of San Francisco, and the People of the State of California to suffer irreparable harm
21 for which this Court should award civil penalties pursuant to Business and Professions Code Section
22 17200 et seq.

23 41. Plaintiff has no adequate remedy at law in that damages are insufficient to protect the
24 public from the present danger and harm caused by the conditions described in this Complaint.
25 Defendants will continue to engage in unlawful and unfair business practices. Unless Defendants are
26 enjoined by an order of this Court from engaging in the above described unlawful and unfair business
27 practices, and ordered to pay civil penalties pursuant to Business and Professions Code Section 17200
28 et seq., said residents and merchants of the surrounding community and neighborhood and the City

1 and County of San Francisco will continue to suffer irreparable injury and damage, and will be
2 prevented from the comfortable enjoyment of life and property.

3 42. Defendants are subject to civil penalties of up to \$2,500 per violation of the Business
4 and Professions Code for each act of unfair competition pursuant to Business and Professions Code
5 Section 17206.

6 43. Defendants are subject to additional civil penalties of up to \$2,500 per violation of the
7 Business and Professions Code for each act of unfair competition perpetrated against one or more
8 senior citizens or disabled persons pursuant to Business and Professions Code Section 17206.1.

9
10 **PRAYER**

11 WHEREFORE, plaintiff prays:

12 1. That the Property and structures located at 3186 16th Street, together with the fixtures
13 and moveable property therein and thereon, be declared a public nuisance and that Defendant HANY
14 MAHMOUD ABUELROUS, individually and d/b/a SMOKES, ETC., be ordered to preliminarily and
15 permanently abate the nuisance in accordance with Civil Code Sections 3479, 3480, and 3494, Code
16 of Civil Procedure Section 731, and Business & Professions Code Sections 17200-17210;

17 2. That this Court enjoin Defendants from delivering, furnishing, transferring, and
18 possessing with intent to deliver, furnish or transfer drug paraphernalia, knowing or under
19 circumstances where one reasonably should know that it will be used to convert, process, prepare,
20 pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human body a
21 controlled substance;

22 3. That Defendants be ordered to forfeit and immediately surrender to SFPD all remaining
23 illegal drug paraphernalia in their possession, for destruction and disposal by the police.

24 4. That Defendants, their agents, officers, managers, representatives, employees, and
25 anyone acting on their behalf, and their heirs and assignees and successors be preliminarily and
26 permanently enjoined from operating, conducting, using, occupying, or in any way permitting the use
27 of the property and structures at 3186 16th Street, as a public nuisance pursuant to Civil Code Sections
28 3479, 3480, and 3494, and Business & Professions Code Sections 17200-17210;

1 5. That, pursuant to Business and Professions Code Section 17206, Defendants be ordered
2 to pay a civil penalty of \$2,500 for each act of unfair competition in violation of Business and
3 Professions Code Section 17200, et seq;

4 6. That, pursuant to Business and Professions Code Section 17206.1, Defendants be
5 ordered to pay an additional \$2,500 for each act of unfair competition in violation of Business and
6 Professions Code Section 17200 perpetrated against or affecting a senior citizen or a disabled person;

7 7. That Plaintiff shall have such further and other relief as the court deems just.

8 Dated: February 11, 2011

9 DENNIS J. HERRERA
10 City Attorney
11 ALEX G. TSE
12 Chief Attorney
13 Neighborhood and Resident Safety Division
14 MICHAEL S. WEISS
15 Deputy City Attorney

16 By: 

17 MICHAEL S. WEISS

18 Attorneys for Plaintiffs
19 PEOPLE OF THE STATE OF CALIFORNIA
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INDEX TO EXHIBITS

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<u>Exhibit</u>	<u>Description</u>
A	Property Description for 3186 16 th Street

EXHIBIT A

Property Address:
3186 16th Street

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

COMMENCING AT A POINT ON THE NORTHERLY LINE OF 16TH STREET, DISTANT THEREON 61 FEET EASTERLY FROM THE POINT FORMED BY THE INTERSECTION OF THE SAID NORTHERN LINE OF 16TH STREET WITH THE EASTERLY LINE OF GUERRERO STREET; RUNNING THENCE EASTERLY ALONG THE SAID NORTHERLY LINE OF 16TH STREET 24 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 100 FEET; THENCE AT A RIGHT ANGLE WESTERLY 24 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 100 FEET TO THE NORTHERLY LINE OF 16TH STREET AND THE POINT OF COMMENCEMENT.

BEING A PORTION OF MISSION BLOCK NO. 36.

ASSESSOR'S BLOCK 3555, LOT 025

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8 Attorneys for Plaintiff
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED JURISDICTION

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

15 Plaintiff,

16 vs.

17 AMER ALGHAZALI, individually and d/b/a
18 TOBACCO PLAZA CENTER SMOKE &
GIFT SHOP; and DOE ONE through DOE
19 FIFTY, inclusive,

20 Defendants.
21

Case No. CGC-11-508330

COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF

Type of Case: (42) Other Complaint

22
23 The PEOPLE OF THE STATE OF CALIFORNIA by and through San Francisco City
24 Attorney DENNIS J. HERRERA ("Plaintiff"), files its Complaint against AMER ALGHAZALI,
25 individually and d/b/a TOBACCO PLAZA CENTER SMOKE & GIFT SHOP, and DOE ONE
26 through DOE FIFTY (collectively "Defendants"). Plaintiff hereby alleges as set forth below:
27
28

1 **INTRODUCTION**

2 1. This action arises out of Defendants' ownership, lease, use, maintenance, operation and
3 management of a retail business called TOBACCO PLAZA CENTER SMOKE & GIFT SHOP
4 (hereinafter, "the Store"), out of the street level storefront of the building located at 3008 16th Street,
5 San Francisco, California, in persistent violation of state law and as a public nuisance that substantially
6 endangers the health, welfare, and safety of the neighbors, the residents of the City of San Francisco,
7 and the People of the State of California.

8 2. Specifically, Defendants have jeopardized the health and safety of their customers, their
9 neighbors, and the community at large, by selling illegal and dangerous drug paraphernalia, which is
10 purchased and used by Defendants' customers, and which causes and contributes to an increased
11 neighborhood presence of illicit drug users, illicit drug dealers, publicly intoxicated persons, and a
12 panoply of general nuisance conditions related to the ingestion and consumption of illicit drugs,
13 particularly crack cocaine and methamphetamine.

14 3. Since at least October 2010, Defendants' Store has been persistently operated as a place
15 where crack and methamphetamine users can easily, readily, and inexpensively purchase the tubular
16 clear glass pipes and related paraphernalia unique to the ingestion and consumption of crack cocaine
17 and methamphetamine. Between October 2010 and December 2010, police investigated the store and
18 found illegal drug paraphernalia. Defendants were warned to cease the illegal conduct, but as recently
19 as February 2011, Defendants were continuing to display and sell the illegal paraphernalia.

20 4. Defendants have maintained the Store as a public nuisance that threatens the health and
21 safety of the surrounding neighborhood in violation of state law. Defendants operate the Store in a
22 mixed commercial and residential neighborhood. The Store is situated within five blocks of ten
23 schools, including three preschools and a high school, two Head Start programs, four community
24 centers, a senior center, a playground, 16th Street BART Plaza and a major MUNI hub, a day care
25 center, a center for homeless families with children, and a drug and alcohol recovery program.

26 5. By operating the Store in violation of state law and as a public nuisance, Defendants
27 have engaged, and continue to engage in unlawful and unfair business practices in violation of
28 Business and Professions Code Sections 17200 through 17210.

1 **PARTIES AND SUBJECT PROPERTY**

2 6. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through DENNIS J.
3 HERRERA, City Attorney of the City and County of San Francisco, brings this action pursuant to
4 Business and Professions Code Sections 17200-17210 (the "Unfair Competition Law"), Civil Code
5 Sections 3479, 3480, 3491, 3494, and Code of Civil Procedure Section 731.

6 7. At all times herein mentioned, Defendant AMER ALGHAZALI has been the owner,
7 lessee, operator, manager, and maintainer of the business commonly known as TOBACCO PLAZA
8 CENTER SMOKE & GIFT SHOP (the Store), operated out of the storefront of the building located at
9 3186 16th Street, Block 3555, Lot 025, in the City and County of San Francisco, State of California
10 (hereinafter, the "Property"). The Property is more particularly described in Exhibit A, attached
11 hereto and incorporated as part of this Complaint.

12 8. Defendant AMER ALGHAZALI is sued in his capacity as the owner and operator of
13 the Store, and as the person committing the acts alleged in this Complaint or the person directing or
14 allowing others to commit the acts alleged in this Complaint.

15 9. Defendant AMER ALGHAZALI is also sued as d/b/a TOBACCO PLAZA CENTER
16 SMOKE & GIFT SHOP, a business organization, form unknown.

17 10. Defendants DOE ONE through DOE FIFTY are sued herein under fictitious names. At
18 this time, Plaintiffs do not know the true names and capacities of these defendants, but pray that the
19 same may be inserted when ascertained.

20 11. At all times herein mentioned, each Defendant was an agent, servant, employee,
21 partner, franchisee, and joint venturer of the other Defendant, and at all times was acting within the
22 course and scope of the agency, service, employment, partnership, franchise, and joint venture.

23 12. Actions taken or omissions made by Defendants' employees, agents, or representatives
24 in the course of their employment, agency or representation shall be considered actions or omissions
25 of Defendant for purposes of this Complaint.

26 13. Whenever reference is made in this Complaint to any act or omission of "Defendant,"
27 such allegation shall mean that each Defendant did or authorized the act or omissions, recklessly and
28

1 carelessly failed and omitted to supervise, control, or direct other persons who engaged in the act or
2 omission.

3 GENERAL ALLEGATIONS

4 14. Defendants lease a commercial space from the Property's owners.

5 15. At all times relevant to this Complaint, up to and including the present, Defendants
6 have operated, and continue to operate, TOBACCO PLAZA CENTER SMOKE & GIFT SHOP, (the
7 Store) as a retail storefront on 16th Street, between Mission Street and Valencia Street, in San
8 Francisco's Mission District.

9 16. At all times relevant to this Complaint, up to and including the present, Defendants
10 have sold, and continue to sell, tobacco products pursuant to a permit issued by the San Francisco
11 Department of Public Health.

12 17. At all times relevant to this Complaint, up to and including the present, in addition to
13 the permitted tobacco products, Defendants have also displayed and sold certain smoking
14 paraphernalia, including a large array of pipes and devices commonly referred to as "bongs."

15 18. At all times relevant to this Complaint, up to and including the present, in addition to
16 the tobacco products and paraphernalia, Defendants have also displayed and sold illegal drug
17 paraphernalia, including tubular glass pipes used exclusively for smoking crack cocaine and
18 methamphetamine.

19 19. Defendants now are, and for a considerable period of time, including from October,
20 2010 to the present, and at all times alleged in this Complaint have been using, maintaining and or
21 permitting the use of the Store to deliver, furnish, transfer, and/or possess with intent to deliver,
22 furnish or transfer drug paraphernalia, knowing or under circumstances where one reasonably should
23 know that the paraphernalia would be used to convert, process, prepare, pack, repack, store, contain,
24 conceal, ingest, inhale or otherwise introduce into the human body a controlled substance, including
25 cocaine, cocaine base ("crack"), and methamphetamine, in violation of Health and Safety Code section
26 11364.7.

27 20. Since at least October 2010, on at least two occasions, officers of the San Francisco
28 Police Department ("SFPD") entered the Store and observed illegal drug paraphernalia, including

1 devices intended to be used to ingest crack cocaine and/or methamphetamine, in violation of Health
2 and Safety Code section 11364.7.

3 21. On October 28, 2010, during an undercover operation, a San Francisco police officer
4 entered the store, requested a "crack pipe" and was sold a tubular glass smoking device, used
5 exclusively for ingesting crack cocaine, in violation of Health & Safety Code Section 11364.7. In
6 addition to the smoking device, the officer asked for "brillo" which he was told, "comes with it." The
7 crack pipe and brillo were handed to the police officer in a white napkin, in exchange for \$2. Police
8 further noted that a significant part of the retail activity in Defendants' Store is from paraphernalia
9 used to ingest crack cocaine and methamphetamine.

10 22. On December 8, 2010, San Francisco police officers returned to the Store, and found
11 Defendants were displaying for sale illegal drug paraphernalia, including tubular glass pipes used
12 exclusively for the ingestion of crack cocaine and methamphetamine. Police found that Defendants
13 were in possession of hundreds of additional pipes and brillo used exclusively for the ingestion of
14 methamphetamine and/or crack cocaine. Defendants were advised that these products were illegal.

15 23. Since at least October 2010, Defendants' ownership, operation and maintenance of the
16 Store and the Property has caused and/or contributed to a public nuisance by putting illegal drug
17 paraphernalia into the stream of commerce. By providing their customers with a way to ingest illegal
18 and dangerous narcotics, Defendants are creating and contributing to conditions which are injurious to
19 the health, safety and welfare of their customers, neighbors, and the community at large. Defendants'
20 conduct causes or contributes to offensive and annoying conditions, including, but not limited to:
21 illegal and dangerous trafficking of controlled substances, illegal and dangerous use and abuse of
22 controlled substances, public intoxication, and the crime and nuisance related thereto.

24 24. Defendants' ownership, operation and maintenance of the Store and the Property as a
25 public nuisance attracts people to the neighborhood for the purpose of illegal trafficking and use of
26 dangerous controlled substances, who then engage in criminal and/or nuisance conduct in the
27 neighborhood, including, but not limited to illegal drug use, public intoxication, public urination and
28

1 defecation, trash, noise, fights, violence, harassment, theft, and property damage. The conduct that
2 results from Defendant's selling illegal drug paraphernalia creates a public nuisance which is
3 annoying, vexing and disturbing to the neighborhood, and is offensive to the senses of the neighbors,
4 merchants and visitors.

5
6 25. Defendants' ownership, operation and maintenance of the Store and the Property as a
7 public nuisance harms the public's health, safety, and welfare, and creates a strain on police and other
8 vital but scarce city services.

9
10 **FIRST CAUSE OF ACTION FOR PUBLIC NUISANCE
BROUGHT BY PLAINTIFF AGAINST ALL DEFENDANTS**

11 **(Civil Code Section 3479, 3480, et seq.)**

12 26. Plaintiff hereby incorporates by reference paragraphs 1 through 25, and makes them a
13 part of this First Cause of Action, as though fully set forth herein.

14 27. Defendants' Store is being, and, for a considerable period of time prior to
15 commencement of this action, has been, used for the purposes of unlawfully displaying and selling
16 paraphernalia used for the purposes of ingesting dangerous and illegal narcotics, including cocaine
17 base and methamphetamine, in violation of Section 11364.7 of the California Health and Safety Code.

18 28. Defendant AMER ALGHAZALI, as owner and operator of the Store, and his
19 employees and agents, are, and for a considerable period of time prior to the commencement of this
20 action, have been, directly or indirectly, maintaining or permitting the Property to be used for the
21 unlawful display and sale of paraphernalia used to ingest dangerous and illegal controlled substances,
22 resulting in a continuous public nuisance.

23 29. By permitting the above described injurious, illegal, annoying and disruptive activities
24 to exist at said Premises, Defendants have caused and maintained a continuing public nuisance within
25 the meaning of California Civil Code Section 3479 and 3480. These activities are injurious to health
26 and offensive to the senses so as to interfere with the comfortable enjoyment of life or property in an
27 entire community or neighborhood.
28

1 30. Unless Defendants are perpetually enjoined by an order of this Court, Defendants will
2 continue to directly and indirectly use and maintain the Property as a public nuisance, and by such
3 conduct, continue to cause irreparable injury to the People of the State of California and the residents
4 of the City and County of San Francisco.

5 31. Plaintiff has no adequate remedy at law in that damages alone are insufficient to protect
6 the public from the present injury and harm caused by the conduct described herein.

7 32. Unless said nuisance is abated by this Court, the surrounding community and
8 neighborhood, and the residents and citizens of the City and County of San Francisco, will suffer
9 irreparable injury and damage, in that said conditions will continue to injure to the enjoyment and the
10 free use of the life and property of said citizens and residents of the City and County of San Francisco.

11 **SECOND CAUSE OF ACTION FOR UNFAIR AND UNLAWFUL**
12 **BUSINESS PRACTICES AGAINST ALL DEFENDANTS**

13 **(Business & Professions Code Sections 17200-17210)**

14 33. Plaintiff hereby incorporates by reference Paragraphs 1 through 32 and makes them a
15 part of this Second Cause of Action, as though fully set forth herein.

16 34. Plaintiff, acting to protect the public as consumers and competitors from unlawful and
17 unfair business practices, brings this cause of action in the public interest in the name of the People of
18 the State of California, pursuant to Business and Professions Code Section 17200-17210.

19 35. Defendants operate a storefront retail store in the Mission District of the City and
20 County of San Francisco, State of California. The violations of law described herein have been and
21 are being carried out wholly or in part within the City and County of San Francisco.

22 36. Defendants' actions are in violation of the laws and public policies of the State of
23 California and are inimical to the rights and interest of the general public. Unless enjoined and
24 restrained by an order of this Court, Defendants will continue to engage in the unlawful and unfair acts
25 and course of conduct described herein.

26 37. Through the conduct described above, Defendants have engaged in the following
27 unlawful and unfair business practices prohibited by Business and Professions Code Sections 17200-
28 17210:

1 A. Violating Section 11364.7 of the California Health & Safety Code by displaying and
2 selling illegal drug paraphernalia used exclusively for the ingesting of cocaine base and
3 methamphetamine;

4 B. Violating Sections 3479 and 3480 of the California Civil Code by creating or
5 contributing to a public nuisance by injecting illegal drug paraphernalia into the stream
6 of commerce, providing customers with devices for the ingestion of dangerous and
7 illegal narcotics, and contributing to public intoxication and the myriad of nuisance and
8 criminal conduct related thereto, thus endangering the life, limb, health, property, safety
9 and welfare of the residents, merchants, neighbors, and the public at large;

10 38. Plaintiff is likely to have evidentiary support, after reasonable opportunity for further
11 investigation and discovery, to allege that as a direct and proximate result of the foregoing acts and
12 practices, Defendants received income, savings, capital appreciation, and/or other benefits that she
13 would not have received if they had not engaged in the violations of the Business and Professions
14 Code as described in this Complaint.

15 39. Plaintiff is likely to have evidentiary support, after a reasonable opportunity for further
16 investigation and discovery, to allege that Defendants' unlawful and unfair business practices affected
17 and have been perpetrated against one or more senior citizens or disabled persons.

18 40. The actions and conduct of Defendants in sustaining these unlawful and unfair business
19 practices has caused residents and merchants of the surrounding community and neighborhood and the
20 City and County of San Francisco, and the People of the State of California to suffer irreparable harm
21 for which this Court should award civil penalties pursuant to Business and Professions Code Section
22 17200 et seq.

23 41. Plaintiff has no adequate remedy at law in that damages are insufficient to protect the
24 public from the present danger and harm caused by the conditions described in this Complaint.
25 Defendants will continue to engage in unlawful and unfair business practices. Unless Defendants are
26 enjoined by an order of this Court from engaging in the above described unlawful and unfair business
27 practices, and ordered to pay civil penalties pursuant to Business and Professions Code Section 17200
28 et seq., said residents and merchants of the surrounding community and neighborhood and the City

1 and County of San Francisco will continue to suffer irreparable injury and damage, and will be
2 prevented from the comfortable enjoyment of life and property.

3 42. Defendants are subject to civil penalties of up to \$2,500 per violation of the Business
4 and Professions Code for each act of unfair competition pursuant to Business and Professions Code
5 Section 17206.

6 43. Defendants are subject to additional civil penalties of up to \$2,500 per violation of the
7 Business and Professions Code for each act of unfair competition perpetrated against one or more
8 senior citizens or disabled persons pursuant to Business and Professions Code Section 17206.1.

9
10 **PRAYER**

11 WHEREFORE, Plaintiff prays:

12 1. That the Property and structures located at 3008 16th Street, together with the fixtures
13 and moveable property therein and thereon, be declared a public nuisance and that Defendants AMER
14 ALGHAZALI, individually and d/b/a TOBACCO PLAZA CENTER SMOKE & GIFT SHOP, be
15 ordered to preliminarily and permanently abate the nuisance in accordance with Civil Code Sections
16 3479, 3480, and 3494, Code of Civil Procedure Section 731, and Business & Professions Code
17 Sections 17200-17210;

18 2. That this Court enjoin Defendants from delivering, furnishing, transferring, and
19 possessing with intent to deliver, furnish or transfer drug paraphernalia, knowing or under
20 circumstances where one reasonably should know that it will be used to convert, process, prepare,
21 pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human body a
22 controlled substance;

23 3. That Defendants be ordered to forfeit and immediately surrender to SFPD all remaining
24 illegal drug paraphernalia in their possession, for destruction and disposal by the police.

25 4. That Defendants, their agents, officers, managers, representatives, employees, and
26 anyone acting on their behalf, and their heirs and assignees and successors be preliminarily and
27 permanently enjoined from operating, conducting, using, occupying, or in any way permitting the use
28

1 of the property and structures at 3008 16th Street, as a public nuisance pursuant to Civil Code Sections
2 3479, 3480, and 3494, and Business & Professions Code Sections 17200-17210;

3 5. That, pursuant to Business and Professions Code Section 17206, Defendants be ordered
4 to pay a civil penalty of \$2,500 for each act of unfair competition in violation of Business and
5 Professions Code Section 17200, et seq;

6 6. That, pursuant to Business and Professions Code Section 17206.1, Defendants be
7 ordered to pay an additional \$2,500 for each act of unfair competition in violation of Business and
8 Professions Code Section 17200 perpetrated against or affecting a senior citizen or a disabled person;

9 7. That Plaintiff shall have such further and other relief as the court deems just.
10

11 Dated: February 11, 2011

12 DENNIS J. HERRERA
13 City Attorney
14 ALEX G. TSE
15 Chief Attorney
16 Neighborhood and Resident Safety Division
17 MICHAEL S. WEISS
18 Deputy City Attorney

19 By: 
20

21 MICHAEL S. WEISS

22 Attorneys for Plaintiffs
23 PEOPLE OF THE STATE OF CALIFORNIA
24
25
26
27
28

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Property Description for 3008 - 16 th Street

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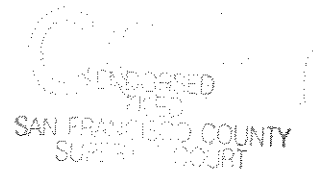
EXHIBIT A

Property Address:
3008 16th Street

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

**BEGINNING AT THE POINT OF INTERSECTION OF THE
NORTHERLY LINE OF 16TH STREET AND WESTERLY LINE OF
MISSION STREET; RUNNING THENCE NORTHERLY ALONG SAID
LINE OF MISSION STREET 60 FEET; THENCE AT A RIGHT ANGLE
WESTERLY 60 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 60
FEET TO THE NORTHERLY LINE OF 16TH STREET; THENCE AT A
RIGHT ANGLE EASTERLY ALONG SAID LINE OF 16TH STREET 60
FEET TO THE POINT OF BEGINNING.**

Being a portion of Mission Block No. 35
Assessor's Block 3554, Lot 7



2011 FEB 17 AM 1:07

CLERK OF COURT
BY: [Signature]

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
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8 Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED JURISDICTION

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

15 Plaintiff,

16 vs.

17 YOUSEF ARIN, individually and d/b/a ROCK
18 ON; JAHANGIR RAMEZANBEIGI; MINA
RAMEZANBEIGI; and DOE ONE through
19 DOE FIFTY, inclusive,

20 Defendants.

Case No. CGC-11-508333

COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF

Type of Case: (42) Other Complaint

23 The PEOPLE OF THE STATE OF CALIFORNIA by and through San Francisco City
24 Attorney DENNIS J. HERRERA ("Plaintiff"), file their Complaint against Defendants YOUSEF
25 ARIN, an individual and d/b/a ROCK ON, JAHANGIR RAMEZANBEIGI, MINA
26 RAMEZANBEIGI, and DOE ONE through DOE FIFTY (collectively "Defendants"). Plaintiff hereby
27 alleges as set forth below:
28

INTRODUCTION

1
2
3 1. This action arises out of Defendants' ownership, lease, use, maintenance, operation and
4 management of a commercial business operated at the property located at 4447 Mission Street,
5 Assessor's Block 6013, Lot 23, San Francisco, California, (the "Property" or the "Premises"), in
6 violation of state law and as a public nuisance that substantially endangers the health, welfare, and
7 safety of the neighbors, residents of the City of San Francisco and the People of the State of
8 California.. The Property is more particularly described in Exhibit A, attached hereto and incorporated
9 herein by reference. The business at the Property is a retail store commonly known as ROCK ON
10 ("ROCK ON" or "the Store"), located in a street level commercial space at the Property.

11 2. Specifically, Defendants have jeopardized the health and safety of their customers, their
12 neighbors, and the community at large, by selling or permitting to be sold illegal and dangerous drug
13 paraphernalia, which is purchased and used by Defendants' customers, and which causes and
14 contributes to an increased neighborhood presence of illicit drug users, illicit drug dealers, publicly
15 intoxicated persons, and a panoply of general nuisance conditions related to the ingestion and
16 consumption of illicit drugs, particularly rock base cocaine ("crack") and methamphetamine.

17 3. Since at least July 2010, the Store has been persistently operated as a place where crack
18 and methamphetamine users can easily and readily purchase the tubular clear glass pipes and related
19 paraphernalia unique to the ingestion and consumption of crack and methamphetamine. Between July
20 2010 and December 2010, police investigated the store and found illegal drug paraphernalia.

21 4. ROCK ON is located in a mixed commercial and residential neighborhood directly
22 facing a community center and public library, within one block of a major transit hub heavily
23 frequented by school aged children, and within a few blocks of two preschools, a daycare, three
24 elementary schools, a Boys and Girls Club, a community health center, and a senior center.

25 5. Defendants have caused or permitted multiple violations of criminal law at ROCK ON,
26 including trafficking in illegal drug paraphernalia, resulting in a public nuisance.

27 6. Defendants have maintained ROCK ON as a public nuisance that threatens the health
28 and safety of the surrounding neighborhood in violation of state and local laws.

1 7. By causing or permitting repeated violations of state and local laws at ROCK ON,
2 Defendants have engaged in unlawful business practices in violation of Business and Professions Code
3 Sections 17200-17210.

4 **PARTIES AND SUBJECT PROPERTY**

5 8. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J.
6 Herrera, City Attorney of the City and County of San Francisco, brings this action pursuant to
7 California Business and Professions Code Sections 17200-17210 (the "Unfair Competition Law"),
8 California Civil Code Sections 3479, 3480, 3491, 3494, and California Code of Civil Procedure
9 Section 731.

10 9. ROCK ON is a business organization, form unknown. The Store is an approximately
11 50 by 50 feet shop, with clear glass encasement counters along the north and south side of the shop
12 and multiple shelves behind the glass encasement counters. In plain view, illegal and legal drug
13 paraphernalia are displayed and offered for sale in these encasement counters and on these shelves.

14 10. From at least July 2010 through December 2010, and for an undetermined amount of
15 time previously that will be determined after a reasonable opportunity for further investigation and
16 discovery, Defendant ARIN, an individual, acted as the owner, and operator of the Store.

17 11. From at least July 2010 through December 2010, and for an undetermined amount of
18 time previously that will be determined after a reasonable opportunity for further investigation and
19 discovery, Defendants JAHANGIR RAMEZANBEIGI and, MINA RAMEZANBEIGI have been the
20 legal owners, operators, managers, and maintainers of the Property,

21 12. Defendants DOE ONE through DOE FIFTY are sued herein under fictitious names.
22 Plaintiff does not at this time know the true names or capacities of said defendants, but allege that the
23 same may be inserted herein when ascertained.

24 13. At all times herein mentioned, each defendant was an agent, servant, employee, partner,
25 franchisee and joint venturer of each other defendant and at all times was acting within the course and
26 scope of said agency, service, employment, partnership, franchise and joint venture.

1 14. Actions taken or omissions made by Defendants' employees, agents, or representatives
2 in the course of their employment, agency or representation shall be considered actions or omissions
3 of Defendants for purposes of this Complaint.
4

5
6 **GENERAL ALLEGATIONS**

7 15. From at least July 2010 through December 2010, and for an undetermined amount of
8 time previously and since that will be determined after a reasonable opportunity for further
9 investigation and discovery, Defendant ARIN has leased a commercial space from Defendants
10 JAHANGIR RAMEZANBEIGI and MINA RAMEZANBEIGI, located at the Property, and in that
11 space operated ROCK ON as a retail storefront displaying, storing, and offering for sale illegal and
12 legal drug paraphernalia.

13 16. Defendants now are, and for a considerable period of time, including from July 2010
14 through December 2010, and at all times mentioned in this Complaint have been, using, maintaining
15 and or permitting the use of ROCK ON to deliver, furnish, transfer, and/or possess with intent to
16 deliver, furnish or transfer drug paraphernalia, knowing or under circumstances where one reasonably
17 should know that it will be used to convert, process, prepare, pack, repack, store, contain, conceal,
18 ingest, inhale or otherwise introduce into the human body a controlled substance, including cocaine,
19 rock base cocaine ("crack"), and methamphetamine, in violation of Health and Safety Code Section
20 11364.7. These acts occurred and continue to occur on and in the immediate vicinity of the Property.

21 17. On at least two occasions from at least July 2010 through December 2010, officers of
22 the San Francisco Police Department ("SFPD") entered ROCK ON and observed displayed and
23 offered for sale illegal drug paraphernalia, including devices intended to be used to ingest cocaine,
24 crack, and/or methamphetamine, in violation of Health and Safety Code Section 11364.7, and
25 observed further that this accounted for a significant part of the retail activity in the Store.

26 18. On at least one occasion since at least July 20, 2010, SFPD personally notified
27 Defendant ARIN that ROCK ON is unlawfully displaying, keeping and offering for sale drug
28

1 paraphernalia, including devices intended to be used to ingest crack and/or methamphetamine, in
2 violation of Health and Safety Code Section 11364.7.

3 19. On at least one occasion since at least July 2010, Defendant ARIN acknowledged that
4 ROCK ON is unlawfully displaying, keeping and offering for sale drug paraphernalia, including
5 devices intended to be used to ingest crack and/or methamphetamine, in violation of Health and Safety
6 Code Section 11364.7.

7 20. On at least two separate occasions since at least July 2010, Plaintiff notified Defendants
8 JAHANGIR RAMEZANBEIGI and MINA RAMEZANBEIGI that ROCK ON is unlawfully
9 displaying, keeping and offering for sale drug paraphernalia, including devices intended to be used to
10 ingest crack and/or methamphetamine, in violation of Health and Safety Code Section 11364.7.

11 21. Since at least July 2010 through December 2010, Defendants' ownership, operation,
12 and maintenance of the Store and Property has been the subject of numerous complaints from tenants
13 and neighbors regarding illegal, injurious, offensive, annoying and disruptive activities, including but
14 not limited to: illegal and dangerous trafficking of illegal drug paraphernalia and dangerous use and
15 abuse of controlled substances and other disturbances of the peace.

16 22. Defendants' ownership, operation and maintenance of the Store and the Property as a
17 public nuisance has attracted persons for the purposes of illegal trafficking and use of dangerous
18 controlled substances, and other disturbances of the peace. This conduct is annoying and disturbing to
19 the neighborhood and is offensive to the senses of the neighbors, merchants and visitors.

20 23. Defendants' ownership, operation and maintenance of the Store and the Property as a
21 public nuisance have caused harm to the public health, safety, and welfare, and have been a
22 tremendous strain on police and other city services. Repeatedly responding to calls for service for
23 illegal and other nuisance activities prevents the police from adequately policing other parts of the
24 district.

25 24. To date, Plaintiff is informed and believes that ROCK ON and the Property are a public
26 nuisance.

**FIRST CAUSE OF ACTION FOR PUBLIC NUISANCE BROUGHT BY PLAINTIFF
AGAINST ALL DEFENDANTS**

(Civil Code Section 3479 et seq.)

25. Plaintiff hereby incorporates by reference paragraphs 1 through 24 as though fully set forth herein.

26. Plaintiff brings this action pursuant to Code of Civil Procedure Section 731 and Civil Code Section 3494.

27. By permitting the above described injurious, illegal, annoying and disruptive activities to exist at said Premises, Defendants have caused and maintained a continuing public nuisance within the meaning of California Civil Code Section 3479 and 3480. These activities are injurious to health and offensive to the senses so as to interfere with the comfortable enjoyment of life or property in an entire community or neighborhood.

28. At all times herein mentioned, Defendants had notice and knowledge that said Premises constituted a public nuisance as aforesaid.

29. Plaintiff has no adequate remedy at law in that damages are insufficient to protect the public from the present danger and harm caused by the conditions described above.

30. Plaintiffs are informed and believe that Defendants will continue to maintain the Premises in the above-described condition as a public nuisance.

31. Unless said nuisance is abated by this Court, the surrounding community and neighborhood, and the residents and citizens of the City and County of San Francisco, will suffer irreparable injury and damage, in that said conditions will continue to be injurious to the enjoyment and the free use of the life and property of said citizens and residents of the City and County of San Francisco.

32. To date, Plaintiff is informed and believes that ROCK ON and the Property are a public nuisance.

**SECOND CAUSE OF ACTION FOR UNFAIR AND UNLAWFUL, BUSINESS PRACTICES
AGAINST DEFENDANT ARIN**

(Business and Professions Code Sections 17200, et seq.)

1 33. Plaintiff hereby incorporates by reference paragraphs 1 through 32 as though fully set
2 forth herein.

3 34. Plaintiff brings this cause of action in the public interest in the name of the People of
4 the State of California, pursuant to Business and Professions Code Section 17200, et seq., in order to
5 protect the residents and owners of properties adjoining of the Property, as consumers and competitors
6 of the services provided by Defendant ARIN, from the unlawful and unfair business practices
7 committed by Defendant ARIN in the operation of the Premises as a retail store within the City and
8 County of San Francisco, State of California.

9 35. California Business and Professions Code Section 17200 prohibits any "unlawful,
10 unfair or fraudulent business act or practices." Defendant ARIN has engaged in unlawful, unfair and
11 deceptive business acts and practices in violation of section 17200. Such acts and practices include
12 but are not limited to the following:

- 13 • maintaining ROCK ON in violation of state nuisance laws as stated in the First Cause
14 of Action; and
- 15 • maintaining and operating ROCK ON in violation Health & Safety Code Section
16 11364.7 by delivering, furnishing, transferring, and possessing with intent to deliver, furnish or
17 transfer drug paraphernalia, knowing or under circumstances where one reasonably should know that
18 it will be used to convert, process, prepare, pack, repack, store, contain, conceal, ingest, inhale or
19 otherwise introduce into the human body a controlled substance, including devices intended to be used
20 to ingest cocaine, crack, and methamphetamine.

21 36. Upon information and belief, Plaintiff alleges that Defendant ARIN is engaged in a
22 pattern and practice of conduct constituting an unlawful and unfair business practice and unfair
23 competition in violation of Business and Professions Code Sections 17200, et seq.

24 37. The actions and conduct of Defendant ARIN in sustaining this unlawful and unfair
25 business practice violates the laws and public policies of the City and County of San Francisco and the
26 State of California, and are inimical to the rights, interest and general welfare of the public.

1 38. Defendant ARIN'S unlawful and unfair business practice subjects Defendants to civil
2 penalties in the amount of \$2,500 per violation as authorized by Business and Professions Code
3 Section 17206.

4 39. Unless this Court awards the payment of such penalties, said residents and merchants of
5 the surrounding community and neighborhood and of the City and County of San Francisco, will
6 continue to suffer irreparable injury and damage, and will be prevented from the comfortable
7 enjoyment of life and property.

8 40. Unless Defendant ARIN is restrained by an order from this Court, he will continue to
9 use, occupy, maintain, allow the use, occupation and maintenance of the Premises for the unlawful and
10 annoying activities alleged in the complaint and in violation of the Business and Professions Code
11 Section 17200, et. seq.

12 **THIRD CAUSE OF ACTION FOR UNLAWFUL AND UNFAIR BUSINESS PRACTICES**
13 **AGAINST DEFENDANT JAHANGIR RAMEZANBEIGI AND MINA RAMEZANBEIGI**

14 (Business and Professions Code Section 17200, et seq.)

15 41. Plaintiff hereby incorporates by reference paragraphs 1 through 40 as though fully set
16 forth herein.

17 42. Plaintiff brings this cause of action in the public interest in the name of the People of
18 the State of California, pursuant to Business and Professions Code Section 17200, et seq., in order to
19 protect the residents and owners of properties adjoining of the Property, as consumers and competitors
20 of the services provided by Defendants JAHANGIR RAMEZANBEIGI and, MINA
21 RAMEZANBEIGI from the unlawful and unfair business practices committed by Defendants
22 JAHANGIR RAMEZANBEIGI and MINA RAMEZANBEIGI in knowingly leasing the Premises for
23 the operation of a retail store within the City and County of San Francisco, State of California in
24 violation of Health and Safety Code Section 11364.7.

25 43. California Business and Professions Code Section 17200 prohibits any "unlawful,
26 unfair or fraudulent business act or practices." Defendants JAHANGIR RAMEZANBEIGI and MINA
27 RAMEZANBEIGI have engaged in unlawful, unfair and deceptive business acts and practices in
28 violation of section 17200. Such acts and practices include but are not limited to:

1 • leasing the Property for the maintenance and operation of ROCK ON in violation of
2 state nuisance laws as stated in the First Cause of Action;

3 • leasing the Property for the maintenance and operation of ROCK ON in violation
4 Health & Safety Code Section 11364.7 by delivering, furnishing, transferring, and possessing with
5 intent to deliver, furnish or transfer drug paraphernalia, knowing or under circumstances where one
6 reasonably should know that it will be used to convert, process, prepare, pack, repack, store, contain,
7 conceal, ingest, inhale or otherwise introduce into the human body a controlled substance, including
8 devices intended to be used to ingest cocaine, crack, and methamphetamine.

9 44. Defendants JAHANGIR RAMEZANBEIGI and MINA RAMEZANBEIGI. have
10 knowingly permitted the Property to be operated in violation of state nuisance laws as stated in the
11 First Cause of Action. Defendants JAHANGIR RAMEZANBEIGI and MINA RAMEZANBEIGI
12 have knowingly permitted the Property to be operated in violation of Health & Safety Code Section
13 11364.7 as stated in the Second Cause of Action. Upon information and belief, Plaintiff alleges that
14 Defendants JAHANGIR RAMEZANBEIGI and MINA RAMEZANBEIGI are engaged in a pattern
15 and practice of conduct constituting an unlawful business practice and unfair competition in violation
16 of Business and Professions Code Sections 17200, et seq.

17 45. The actions and conduct of Defendants JAHANGIR RAMEZANBEIGI and MINA
18 RAMEZANBEIGI in sustaining this unlawful business and unfair practice violates the laws and public
19 policies of the City and County of San Francisco and the State of California, and are inimical to the
20 rights, interest and general welfare of the public.

21 46. Defendants JAHANGIR RAMEZANBEIGI and MINA RAMEZANBEIGI's unlawful
22 and unfair business practice subjects Defendants to civil penalties in the amount of \$2,500 per
23 violation as authorized by Business and Professions Code Section 17206.

24 47. Unless this Court awards the payment of such penalties, said residents and merchants of
25 the surrounding community and neighborhood and of the City and County of San Francisco will
26 continue to suffer irreparable injury and damage, and will be prevented from the comfortable
27 enjoyment of life and property.

1 48. Unless Defendants JAHANGIR RAMEZANBEIGI and MINA RAMEZANBEIGI are
2 restrained by an order from this Court, they will continue to allow the use, occupation and
3 maintenance of the Premises for the unlawful and annoying activities alleged in the complaint and in
4 violation of the Business and Professions Code Section 17200, *et seq.*

5
6 **PRAYER**

7 WHEREFORE, Plaintiff prays:

8 1. that the property and structures located at 4447 Mission Street, and specifically ROCK
9 ON, together with the fixtures and moveable property therein and thereon, be declared a public
10 nuisance and that they be preliminarily and permanently abated in accordance with Civil Code Section
11 3480 et seq., and Code of Civil Procedure Section 731;

12 2. that Defendants and their servants, agents, officers, managers, representatives,
13 employees, and anyone acting on their behalf, and their heirs, successors, and assignees be enjoined
14 from operating, conducting, using, occupying, or in any way permitting the use of the Property as a
15 public nuisance in accordance with Civil Code sections 3479, 3480, 3491, 3494, Code of Civil
16 Procedure section 731, and the Unfair Competition Law;

17 3. that Defendant ARIN be declared to have violated Health and Safety Code Section
18 11364.7;

19 4. that this Court permanently enjoin Defendants, their agents, officers, managers,
20 representatives, employees, and anyone acting on their behalf from operating, conducting, using,
21 occupying, or in anyway permitting the use of the Property in violation of Health and Safety Code
22 Section 11364.7 and Business and Professions Code Sections 17200-17210;

23 5. that this Court enjoin Defendants from delivering, furnishing, transferring, and
24 possessing with intent to deliver, furnish or transfer drug paraphernalia, knowing or under
25 circumstances where one reasonably should know that it will be used to convert, process, prepare,
26 pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human body a
27 controlled substance;
28

1 6. that this Court order that Defendant ARIN lawfully destroy and dispose of any drug
2 paraphernalia used to convert, process, prepare, pack, repack, store, contain, conceal, ingest, inhale or
3 otherwise introduce into the human body a controlled substance in violation of Health and Safety Code
4 Section 11364.7 and show proof of such destruction and disposal;

5 7. that this Court order that Defendants pay \$2,500.00 in civil penalties for each violation
6 of Business and Professions Code Section 17200, including but not limited to violations occurring at
7 the Property and/or Store;

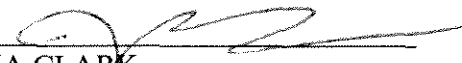
8 8. that Plaintiff shall have a lien upon said Premises in the amount expended pursuant to
9 said authority and to have judgment in said amount against said Defendants, their successors and
10 assigns;

11 9. that recordation of an abstract of judgment in this case constitutes a prior lien over any
12 lien that may be held on the property by any Defendant to this action.

13 10. that Plaintiff shall have such further and other relief as the court deems just.

14 Dated: February 16, 2011

15 DENNIS J. HERRERA
16 City Attorney
17 ALEX G. TSE
18 Chief Attorney
19 Neighborhood and Resident Safety Division
20 JANA CLARK
21 Deputy City Attorney

22 By: 
23 JANA CLARK

24 Attorneys for Plaintiffs
25 CITY AND COUNTY OF SAN FRANCISCO AND
26 PEOPLE OF THE STATE OF CALIFORNIA

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Property Description for 4447 Mission Street, San Francisco, California

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EXHIBIT A

Property Address:

4447 Mission Street

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

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF
MISSION STREET, DISTANT THEREON 300 FEET NORTHEASTERLY
FROM THE NORTHEASTERLY LINE OF EXCELSIOR AVENUE,
RUNNING THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY
LINE OF MISSION STREET 25 FEET; THENCE AT A RIGHT ANGLE
SOUTHEASTERLY 83 FEET 6 INCHES; THENCE AT A RIGHT ANGLE
SOUTHWESTERLY 25 FEET; THENCE AT A RIGHT ANGLE
NORTHWESTERLY 83 FEET 6 INCHES TO THE SOUTHEASTERLY
LINE OF MISSION STREET AND THE POINT OF COMMENCEMENT.

BEING A PORTION OF BLOCK 1, EXCELSIOR HOMESTEAD
ASSOCIATION.

Assessor's Block 6013, Lot 23

EMPOWERED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2011 FEB 17 AM 1:07

CLL COURT
BY: TERESA CASERK

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 Deputy City Attorney
1390 Market Street, Sixth Floor
5 San Francisco, California 94102-5408
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6 Facsimile: (415) 437-4644
E-Mail: jana.clark@sfgov.org
7

8 Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED JURISDICTION

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

15 Plaintiff,

16 vs.

17 ABDELHALIM MAHMOUD FADLI,
18 individually and d/b/a HOUSE OF
CIGARETTES; and DOE ONE through DOE
19 FIFTY, inclusive,

20 Defendants.
21

Case No. CGC-11-508335

COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF

Type of Case: (42) Other Complaint

23 The PEOPLE OF THE STATE OF CALIFORNIA by and through San Francisco City
24 Attorney DENNIS J. HERRERA ("Plaintiff"), file its Complaint against Defendants ABDELHALIM
25 MAHMOUD FADLI, individually and d/b/a HOUSE OF CIGARETTES, and DOE ONE through
26 DOE FIFTY (collectively "Defendants"). Plaintiff hereby alleges as set forth below:
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INTRODUCTION

1. This action arises out of Defendants' ownership, lease, use, maintenance, operation and management of a commercial business commonly known as HOUSE OF CIGARETTES ("HOUSE OF CIGARETTES" or the "Store") and located at 912 Geneva Avenue, Assessor's Block 6411, Lot 37, San Francisco, California (the "Property" or the "Premises"), in violation of state law and as a public nuisance that substantially endangers the health, welfare, and safety of the neighbors, residents of the City of San Francisco and the People of the State of California. The Property is more particularly described in Exhibit A, attached hereto and incorporated herein by reference. HOUSE OF CIGARETTES is a retail store located in a street level commercial space at the Property.

2. Specifically, Defendants have jeopardized the health and safety of their customers, their neighbors, and the community at large, by selling 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 crack cocaine and methamphetamine.

3. Since at least October 2010, the Store has been persistently operated as a place where crack and methamphetamine users can easily and readily purchase the tubular clear glass pipes and related paraphernalia unique to the ingestion and consumption of crack cocaine and methamphetamine. Between October 2010 and December 2010, police investigated the store and found illegal drug paraphernalia.

4. HOUSE OF CIGARETTES is located in a mixed commercial and residential neighborhood one half block from a major transit hub heavily used by middle and high school aged students attending nearby James Denham Middle School and Balboa High School, within a few doors of a Karate school catering to children ages 4-16, and within a few blocks of a park and an elementary school.

1 5. Defendants have caused or permitted multiple violations of criminal law at HOUSE OF
2 CIGARETTES, including trafficking in illegal drug paraphernalia and failing to exclude minors from
3 a business offering drug paraphernalia for sale, resulting in a public nuisance.

4 6. Defendants have maintained HOUSE OF CIGARETTES as a public nuisance that
5 threatens the health and safety of the surrounding neighborhood in violation of state and local laws.

6 7. By causing or permitting repeated violations of state and local law at HOUSE OF
7 CIGARETTES, Defendants have engaged in unlawful and unfair business practices in violation of
8 Business and Professions Code Sections 17200-17210.

9 **PARTIES AND SUBJECT PROPERTY**

10 8. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J.
11 Herrera, City Attorney of the City and County of San Francisco, brings this action pursuant to
12 California Business and Professions Code Sections 17200-17210 (the "Unfair Competition Law"),
13 California Civil Code Sections 3479, 3480, 3491, 3494, and California Code of Civil Procedure
14 Section 731.

15 9. HOUSE OF CIGARETTES is a business organization, form unknown. The Store is at
16 street level and is an approximately 10 by 30 feet shop, with clear glass encasement counters, behind
17 which are multiple rows of shelves. In plain view, illegal and legal drug paraphernalia is displayed
18 and offered for sale in these encasement counters and on these shelves.

19 10. From at least October 2010 to the present, and for an undetermined amount of time
20 previously that will be determined after a reasonable opportunity for further investigation and
21 discovery, Defendant FADLI, an individual, acted as the owner, and operator of the Store.

22 11. Defendants DOE ONE through DOE FIFTY are sued herein under fictitious names.
23 Plaintiff does not at this time know the true names or capacities of said defendants, but alleges that the
24 same may be inserted herein when ascertained.

25 12. At all times herein mentioned, each Defendant was an agent, servant, employee,
26 partner, franchisee and joint venturer of each other defendant and at all times was acting within the
27 course and scope of said agency, service, employment, partnership, franchise and joint venture.
28

1 13. Actions taken or omissions made by Defendant's employees, agents, or representatives
2 in the course of their employment, agency or representation shall be considered actions or omissions
3 of Defendants for purposes of this Complaint.
4

5 GENERAL ALLEGATIONS

6 14. From at least October 2010 through December 2010, and for an undetermined amount
7 of time previously and since that will be determined after a reasonable opportunity for further
8 investigation and discovery, Defendant FADLI has operated HOUSE OF CIGARETTES as a retail
9 store displaying and offering for sale legal and illegal drug paraphernalia in plain view of anyone
10 entering the store, including minors.

11 15. Defendant FADLI is now, and for a considerable period of time, including from
12 October 2010 through December 2010, and at all times mentioned in this Complaint has been, using,
13 maintaining and or permitting the use of HOUSE OF CIGARETTES to deliver, furnish, transfer,
14 and/or possess with intent to deliver, furnish or transfer drug paraphernalia, knowing or under
15 circumstances where one reasonably should know that it will be used to convert, process, prepare,
16 pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human body a
17 controlled substance, including cocaine, rock base cocaine ("crack"), and/or methamphetamine, in
18 violation of Health and Safety Code Section 11364.7. These acts occurred on and in the immediate
19 vicinity of the Property and continue to occur.

20 16. On at least two occasions since at least October 2010, officers of the San Francisco
21 Police Department ("SFPD") entered HOUSE OF CIGARETTES and observed displayed and offered
22 for sale illegal drug paraphernalia, including devices intended to be used to ingest cocaine, crack,
23 and/or methamphetamine, in violation of Health and Safety Code Section 11364.7, and further
24 observed that this accounted for a significant part of the retail activity in the Store.

25 17. On at least one occasion since October 2010, an undercover SFPD officer entered the
26 Store, requested a "crack pipe" and was sold a glass pipe used exclusively for ingesting crack.

27 18. On at least one occasion since at least October 2010, SFPD notified Defendant FADLI
28 that HOUSE OF CIGARETTES is unlawfully displaying, keeping, and offering for sale drug

1 paraphernalia, including devices intended to be used to ingest crack, and/or methamphetamine, in
2 violation of Health and Safety Code Section 11364.7.

3 19. Defendant is now, and for a considerable period of time, including from October 2010
4 through December 2010, and at all times mentioned in this Complaint, has been, using, maintaining
5 and or permitting the use of HOUSE OF CIGARETTES to keep, display, offer, sell, furnish, and
6 transfer drug paraphernalia without keeping, displaying and offering that drug paraphernalia in a
7 separate room or enclosure from which persons under the age of 18 years not accompanied by a parent
8 are excluded in violation of Health and Safety Code Section 11364.5. These acts occurred on and in
9 the immediate vicinity of the Store and continue to occur.

10 20. On at least one occasion since at least October 2010, SFPD entered HOUSE OF
11 CIGARETTES and observed that drug paraphernalia was not displayed, kept or offered for sale in a
12 separate room or enclosure from which minors were excluded in violation of Health and Safety Code
13 Section 11364.5.

14 21. Since at least October 2010 through December 2010, Defendants' ownership, operation
15 and maintenance of the Store has been the subject of numerous complaints from tenants and neighbors
16 regarding illegal, injurious, offensive, annoying and disruptive activities, including, but not limited to:
17 illegal and dangerous trafficking of illegal drug paraphernalia, illegal and dangerous use and abuse of
18 controlled substances, and other disturbances of the peace.

19 22. Defendants' ownership, operation and maintenance of the Store as a public nuisance has
20 attracted persons for the purposes of illegal trafficking and use of dangerous controlled substances, and
21 other disturbances of the peace. This conduct is annoying and disturbing to the neighborhood and is
22 offensive to the senses of the neighbors, merchants and visitors.

23 23. Defendants' ownership, operation and maintenance of the Store as a public nuisance
24 have caused harm to the public health, safety, and welfare, and have been a tremendous strain on
25 police and other city services. Repeatedly responding to calls for service for illegal and other nuisance
26 activities prevents the police from adequately policing other parts of the district.

27 24. To date, the People are informed and believe that HOUSE OF CIGARETTES and the
28 Property are a public nuisance.

**FIRST CAUSE OF ACTION FOR PUBLIC NUISANCE BROUGHT BY PLAINTIFF
AGAINST ALL DEFENDANTS**

(Civil Code Section 3479 *et seq.*)

25. Plaintiff hereby incorporates by reference paragraphs 1 through 24 as though fully set forth herein.

26. Plaintiff brings this action pursuant to Code of Civil Procedure Section 731 and Civil Code Section 3494.

27. By permitting the above described injurious, illegal, annoying and disruptive activities to exist at said Premises, Defendants have caused and maintained a continuing public nuisance within the meaning of California Civil Code Section 3479 and 3480. These activities are injurious to health and offensive to the senses so as to interfere with the comfortable enjoyment of life or property in an entire community or neighborhood.

28. At all times herein mentioned, Defendants had notice and knowledge that said Premises constituted a public nuisance as aforesaid.

29. Plaintiff has no adequate remedy at law in that damages are insufficient to protect the public from the present danger and harm caused by the conditions described above.

30. Plaintiff is informed and believes that Defendants will continue to maintain the Premises in the above-described condition as a public nuisance.

31. Unless said nuisance is abated by this Court, the surrounding community and neighborhood, and the residents and citizens of the City and County of San Francisco will suffer irreparable injury and damage, in that said conditions will continue to be injurious to the enjoyment and the free use of the life and property of said citizens and residents of the City and County of San Francisco.

**SECOND CAUSE OF ACTION FOR UNLAWFUL AND UNFAIR BUSINESS PRACTICES
AGAINST DEFENDANT FADLI**

(Business and Professions Code Sections 17200, *et seq.*)

32. Plaintiff hereby incorporates by reference paragraphs 1 through 31 as though fully set forth herein.

1 33. Plaintiff brings this cause of action in the public interest in the name of the People of
2 the State of California, pursuant to Business and Professions Code Section 17200, *et seq.*, in order to
3 protect the residents and owners of properties adjoining of the Property, as consumers and competitors
4 of the services provided by Defendant FADLI, from the unlawful and unfair business practices
5 committed by Defendant FADLI in the operation of HOUSE OF CIGARETTES as a retail store
6 within the City and County of San Francisco, State of California.

7 34. California Business and Professions Code Section 17200 prohibits any "unlawful,
8 unfair or fraudulent business acts or practices." Defendant FADLI has engaged in unlawful, unfair
9 and deceptive business acts and practices in violation of Section 17200. Such acts and practices
10 include but are not limited to the following:

- 11 • maintaining HOUSE OF CIGARETTES in violation of state public nuisance laws as
12 stated in the First Cause of Action;
- 13 • maintaining and operating HOUSE OF CIGARETTES in violation of Health & Safety
14 Code Section 11364.5, by failing to exclude minors from the portions of HOUSE OF CIGARETTES
15 where drug paraphernalia is kept, displayed, offered, sold, furnished, and transferred; and
- 16 • maintaining and operating HOUSE OF CIGARETTES in violation Health & Safety
17 Code Section 11364.7 by delivering, furnishing, transferring, and possessing with intent to deliver,
18 furnish or transfer drug paraphernalia, knowing or under circumstances where one reasonably should
19 know that it will be used to convert, process, prepare, pack, repack, store, contain, conceal, ingest,
20 inhale or otherwise introduce into the human body a controlled substance, including devices intended
21 to be used to ingest cocaine, crack, and methamphetamine.

22 35. Upon information and belief, Plaintiff alleges that Defendant FADLI is engaged in a
23 pattern and practice of conduct constituting an unfair business practice and unfair competition in
24 violation of Business and Professions Code Sections 17200, *et seq.*

25 36. The actions and conduct of Defendant FADLI in sustaining this unlawful and unfair
26 business practice violates the laws and public policies of the City and County of San Francisco and the
27 State of California, and are inimical to the rights, interest and general welfare of the public.
28

1 37. Defendant FADLI'S unlawful and unfair business practice subjects Defendants to civil
2 penalties in the amount of \$2,500 per violation as authorized by Business and Professions Code
3 Section 17206.

4 38. Unless this Court awards the payment of such penalties, said residents and merchants of
5 the surrounding community and neighborhood and of the City and County of San Francisco, will
6 continue to suffer irreparable injury and damage, and will be prevented from the comfortable
7 enjoyment of life and property.

8 39. Unless Defendant FADLI is restrained by an order from this Court, he will continue to
9 use, occupy, maintain, allow the use, occupation and maintenance of the Premises for the unlawful and
10 annoying activities alleged in the complaint and in violation of the Business and Professions Code
11 Section 17200, *et seq.*

12 **PRAYER**

13
14 WHEREFORE, Plaintiff prays:

15 1. that the property and structures located at 912 Geneva, and specifically HOUSE OF
16 CIGARETTES, together with the fixtures and moveable property therein and thereon, be declared a
17 public nuisance and that they be preliminarily and permanently abated in accordance with Civil Code
18 Section 3480 *et seq.*, and Code of Civil Procedure Section 731;

19 2. that Defendants and their servants, agents, officers, managers, representatives,
20 employees, and anyone acting on their behalf, and their heirs, successors, and assignees be enjoined
21 from operating, conducting, using, occupying, or in any way permitting the use of the Property as a
22 public nuisance in accordance with Civil Code Sections 3479, 3480, 3491, 3494, Code of Civil
23 Procedure Section 731, and the Unfair Competition Law;

24 3. that Defendant FADLI be declared to have violated Health and Safety Code Sections
25 11364.5 and 11364.7;

26 4. that this Court permanently enjoin Defendants, their agents, officers, managers,
27 representatives, employees, and anyone acting on their behalf from operating, conducting, using,
28

1 occupying, or in anyway permitting the use of the Property in violation of Health and Safety Code
2 Sections 11364.5 and 11364.7 and Business and Professions Code Sections 17200-17210;

3 5. that this Court enjoin Defendants from delivering, furnishing, transferring, and
4 possessing with intent to deliver, furnish or transfer drug paraphernalia, knowing or under
5 circumstances where one reasonably should know that it will be used to convert, process, prepare,
6 pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human body a
7 controlled substance;

8 6. that this Court order that Defendant FADLI lawfully destroy and dispose of any drug
9 paraphernalia used to convert, process, prepare, pack, repack, store, contain, conceal, ingest, inhale or
10 otherwise introduce into the human body a controlled substance in violation of Health and Safety Code
11 Section 11364.7 and show proof of such destruction and disposal;

12 7. that this Court order Defendants to exclude minors from the portions of the Store where
13 drug paraphernalia is kept, displayed, offered, sold, furnished, and transferred by constructing a
14 wholly separate enclosure or room for the display, storage or offer for sale of drug paraphernalia from
15 which minors are excluded, and by signposting that minors, unless accompanied by an adult, are
16 excluded from said separate room or enclosure where drug paraphernalia is kept, displayed, offered,
17 sold, furnished, and transferred;

18 8. that this Court order that Defendants pay \$2,500.00 in civil penalties for each violation
19 of Business and Professions Code section 17200, including but not limited to violations occurring at
20 the Property and/or Store;

21 9. that Plaintiff shall have a lien upon said Premises in the amount expended pursuant to
22 said authority and to have judgment in said amount against said Defendants, their successors and
23 assigns;

24 10. that recordation of an abstract of judgment in this case constitutes a prior lien over any
25 lien that may be held on the property by any Defendant to this action.

26 ///

27 ///

28 ///

1 11. that Plaintiff shall have such further and other relief as the court deems just.

2 Dated: February 16, 2011

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

10 By: 

11 JANA CLARK

12 Attorneys for Plaintiffs
13 CITY AND COUNTY OF SAN FRANCISCO AND
14 PEOPLE OF THE STATE OF CALIFORNIA
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<u>Exhibit</u>	<u>Description</u>
A	Property Description for 912 Geneva Avenue a/k/a 5151-5157 Mission Street, San Francisco, California

EXHIBIT A

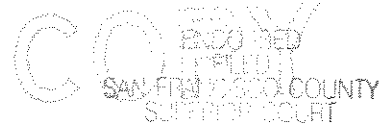
Property Address:

912 Geneva Avenue and 5151-5157 Mission Street

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

Lots number four and five in block numbered three as the same are designated and delineated on that certain map entitled "Crocker Amazon Tract" which was filed for record on October 23, 1912 and was recorded in book "G" of maps at pages 84 and 85 in the Office Of The County Recorder of said city and county of San Francisco.

Assessor's Lot 37, Block 6411



2011 FEB 17 AM 1:07

CLERK OF COURT
BY: JANA CLARK
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
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7

8 Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED JURISDICTION

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

15 Plaintiff,

16 vs.

17 SALIH ANNAS ALKANAWI, individually
18 and d/b/a MISSION GIFTS & TOBACCO;
KAILATH FAMILY PARTNERS L.P.; and
19 DOE ONE through DOE FIFTY, inclusive,

20 Defendants.
21

Case No. CGC-11-508337

COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF

Type of Case: (42) Other Complaint

23 The PEOPLE OF THE STATE OF CALIFORNIA by and through San Francisco City
24 Attorney DENNIS J. HERRERA ("Plaintiff"), files its Complaint against Defendants SALIH ANNAS
25 ALKANAWI, an individual and d/b/a MISSION GIFTS & TOBACCO, KAILATH FAMILY
26 PARTNERS L.P., and DOE ONE through DOE FIFTY (collectively "Defendants"). Plaintiff hereby
27 alleges as set forth below:
28

INTRODUCTION

1
2
3 1. This action arises out of Defendants' ownership, lease, use, maintenance, operation and
4 rmanagement of a commercial business operated at the property located at 4784 Mission Street,
5 Assessor's Block 6956, Lot 36, San Francisco, California, (the "Property" or the "Premises"), in
6 violation of state law and as a public nuisance that substantially endangers the health, welfare, and
7 safety of the neighbors, residents of the City of San Francisco and the People of the State of
8 California. The Property is more particularly described in Exhibit A, attached hereto and incorporated
9 herein by reference. The business at the Property is a retail store commonly known as MISSION
10 GIFTS TOBACCO & MAGAZINE ("MISSION GIFTS" or "the Store"), located in a street level
11 commercial space at the Property.

12 2. Specifically, Defendants have jeopardized the health and safety of their customers, their
13 neighbors, and the community at large, by selling or permitting to be sold illegal and dangerous drug
14 paraphernalia, which is purchased and used by Defendants' customers, and which causes and
15 contributes to an increased neighborhood presence of illicit drug users, illicit drug dealers, publicly
16 intoxicated persons, and a panoply of general nuisance conditions related to the ingestion and
17 consumption of illicit drugs, particularly rock base cocaine ("crack") and methamphetamine.

18 3. Since at least April 2010, the Store has been persistently operated as a place where
19 crack and methamphetamine users can easily and readily purchase the tubular clear glass pipes and
20 related paraphernalia unique to the ingestion and consumption of crack and methamphetamine.
21 Between April 2010 and December 2010, police investigated the store and found illegal drug
22 paraphernalia.

23 4. MISSION GIFTS is located in a mixed commercial and residential neighborhood and is
24 within one block of a child care center, within four blocks of Balboa High School, within two blocks
25 of James Denham Middle School, within 15 feet of a bus stop heavily used by high school and middle
26 school aged students, and within one block of two community centers.

1 5. Defendants have caused or permitted multiple violations of criminal law at MISSION
2 GIFTS, including trafficking in illegal drug paraphernalia and failing to exclude minors from a
3 business offering drug paraphernalia for sale, resulting in a public nuisance.

4 6. Defendants have maintained MISSION GIFTS as a public nuisance that threatens the
5 health and safety of the surrounding neighborhood in violation of state and local laws.

6 7. By causing or permitting repeated violations of state and local laws at MISSION
7 GIFTS, Defendants have engaged in unlawful and unfair business practices in violation of Business
8 and Professions Code Sections 17200-17210.

9 **PARTIES AND SUBJECT PROPERTY**

10 8. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J.
11 Herrera, City Attorney of the City and County of San Francisco, brings this action pursuant to
12 California Business and Professions Code Sections 17200-17210 (the "Unfair Competition Law"),
13 California Civil Code Sections 3479, 3480, 3491, 3494, and California Code of Civil Procedure
14 Section 731.

15 9. MISSION GIFTS is a business organization, form unknown. The Store is an
16 approximately 10 by 30 feet shop, with clear glass encasement counters along the south and west side
17 of the shop, behind which are multiple rows of shelves. The north side of the shop has multiple rows
18 of shelves along the wall. The east side of the shop contains the front door and shop front. In plain
19 view, illegal and legal drug paraphernalia is displayed and offered for sale in these encasement
20 counters and on these shelves. The shop is divided approximately in the middle by a beaded curtain,
21 but items on either side of the curtain, including drug paraphernalia, are easily visible through the
22 beaded curtain by anyone entering the store. The cash register, along with tobacco products, is located
23 at the front of the shop.

24 10. From at least April 2010 through December 2010, and for an undetermined amount of
25 time previously that will be determined after a reasonable opportunity for further investigation and
26 discovery, Defendant ALKANAWI, an individual, acted as the owner, and operator of the Store.

27 11. From at least April 2010 through December 2010, and for an undetermined amount of
28 time previously that will be determined after a reasonable opportunity for further investigation and

1 discovery, Defendant KAILATH FAMILY PARTNERS LP has been the legal owner, operator,
2 manager, and maintainer of the Property,

3 12. Defendants DOE ONE through DOE FIFTY are sued herein under fictitious names.
4 Plaintiff does not at this time know the true names or capacities of said defendants, but alleges that the
5 same may be inserted herein when ascertained.

6 13. At all times herein mentioned, each Defendant was an agent, servant, employee,
7 partner, franchisee and joint venturer of each other defendant and at all times was acting within the
8 course and scope of said agency, service, employment, partnership, franchise and joint venture.

9 14. Actions taken or omissions made by Defendants' employees, agents, or representatives
10 in the course of their employment, agency or representation shall be considered actions or omissions
11 of Defendants for purposes of this Complaint.

12 **GENERAL ALLEGATIONS**

13
14 15. From at least April 2010 through December 2010, and for an undetermined amount of
15 time previously and since that will be determined after a reasonable opportunity for further
16 investigation and discovery, Defendant ALKANAWI has leased a commercial space from Defendant
17 KAILATH FAMILY PARTNERS L.P., located at the Property, and in that space operated MISSION
18 GIFTS as a retail storefront displaying, storing, and offering for sale legal and illegal drug
19 paraphernalia therein in plain view of anyone entering the store, including minors.

20 16. Defendants now are, and for a considerable period of time, including from April 2010
21 through December 2010, and at all times alleged in this Complaint have been, using, maintaining and
22 or permitting the use of MISSION GIFTS to deliver, furnish, transfer, and/or possess with intent to
23 deliver, furnish or transfer drug paraphernalia, knowing or under circumstances where one reasonably
24 should know that it will be used to convert, process, prepare, pack, repack, store, contain, conceal,
25 ingest, inhale or otherwise introduce into the human body a controlled substance, including cocaine,
26 rock base cocaine ("crack"), and methamphetamine, in violation of Health and Safety Code Section
27 11364.7. These acts occurred and continue to occur on and in the immediate vicinity of the Property.
28

1 17. On at least two occasions from at least April 2010, officers of the San Francisco Police
2 Department ("SFPD") entered MISSION GIFTS and observed displayed and offered for sale illegal
3 drug paraphernalia, including devices intended to be used to ingest cocaine, crack, and/or
4 methamphetamine, in violation of Health and Safety Code Section 11364.7, and further observed that
5 this accounted for a significant part of the retail activity in the Store.

6 18. On at least one occasion since April 2010, an undercover SFPD officer entered the
7 Store, requested a "crack pipe" and was sold a glass pipe used exclusively for ingesting crack.

8 19. On at least two occasions from at least April 2010, SFPD personally notified Defendant
9 ALKANAWI that MISSION GIFTS is unlawfully displaying, keeping, and offering for sale drug
10 paraphernalia, including devices intended to be used to ingest crack, and/or methamphetamine, in
11 violation of Health and Safety Code Section 11364.7.

12 20. Defendant ALAKANAWI is now, and for a considerable period of time, including
13 from April 2010 through December 2010, and at all times mentioned in this Complaint, has been,
14 using, maintaining and or permitting the use of MISSION GIFTS to keep, display, offer, sell, furnish,
15 and transfer legal drug paraphernalia, without excluding minors from the Store, and has not confined
16 the storage, display, or offer for sale of legal drug paraphernalia to a separate room or enclosure from
17 which persons under the age of 18 years not accompanied by a parent are excluded, in violation of
18 Health and Safety Code Section 11364.5. These acts occurred and continue to occur on and in the
19 immediate vicinity of the Property.

20 21. On at least two occasions from at least April 2010, SFPD entered MISSION GIFTS and
21 observed that drug paraphernalia was displayed, stored, and offered for sale to anyone entering the
22 store, that minors were not excluded from the Store, and that drug paraphernalia displayed, stored and
23 offered for sale was not confined to a separate room or enclosure from which minors were excluded, in
24 violation of Health and Safety Code Section 11364.5.

25 22. On December 7, 2010, SFPD entered MISSION GIFTS and observed a minor at the
26 counter of the Premises and that multiple items of drug paraphernalia were displayed and offered for
27 sale within the plain view of this minor in violation of Health and Safety Code Section 11364.5.
28

1 23. On at least two occasions from at least June 2010, Plaintiff notified Defendant
2 KAILATH FAMILY PARTNERS LP that MISSION GIFTS was being operated in violation of state
3 and local law as alleged in this Complaint.

4 24. Since at least April 2010 through December 2010, Defendants' ownership, operation
5 and maintenance of the Store and the Property has been the subject of numerous complaints from
6 tenants and neighbors regarding illegal, injurious, offensive, annoying and disruptive activities,
7 including, but not limited to: illegal and dangerous trafficking of illegal drug paraphernalia, illegal and
8 dangerous use and abuse of controlled substances, and other disturbances of the peace.

9 25. Defendants' ownership, operation and maintenance of the Store and the Property as a
10 public nuisance has attracted persons for the purposes of illegal trafficking and use of dangerous
11 controlled substances, and other disturbances of the peace. This conduct is annoying and disturbing to
12 the neighborhood and is offensive to the senses of the neighbors, merchants and visitors.

13 26. Defendants' ownership, operation and maintenance of the Store and the Property as a
14 public nuisance have caused harm to the public health, safety, and welfare, and have been a
15 tremendous strain on police and other city services. Repeatedly responding to calls for service for
16 illegal and other nuisance activities prevents the police from adequately policing other parts of the
17 district.

18 27. To date, the People are informed and believe that MISSION GIFTS and the Property
19 are a public nuisance.

20 **FIRST CAUSE OF ACTION FOR PUBLIC NUISANCE BROUGHT BY PLAINTIFF**
21 **AGAINST ALL DEFENDANTS**

22 (Civil Code Section 3479 *et seq.*)

23 28. Plaintiff hereby incorporates by reference paragraphs 1 through 27 as though fully set
24 forth herein.

25 29. Plaintiff brings this action pursuant to Code of Civil Procedure Section 731 and Civil
26 Code Section 3494.

27 30. By permitting the above described injurious, illegal, annoying and disruptive activities
28 to exist at said Premises, Defendants have caused and maintained a continuing public nuisance within

1 the meaning of California Civil Code Section 3479 and 3480. These activities are injurious to health
2 and offensive to the senses so as to interfere with the comfortable enjoyment of life or property in an
3 entire community or neighborhood.

4 31. At all times herein alleged, Defendants had notice and knowledge that said Premises
5 constituted a public nuisance as aforesaid.

6 32. Plaintiff has no adequate remedy at law in that damages are insufficient to protect the
7 public from the present danger and harm caused by the conditions described above.

8 33. Plaintiff is informed and believes that Defendants will continue to maintain the
9 Premises in the above-described condition as a public nuisance unless enjoined from doing so.

10 34. Unless said nuisance is abated by this Court, the surrounding community and
11 neighborhood, and the residents and citizens of the City and County of San Francisco, will suffer
12 irreparable injury and damage, in that said conditions will continue to injure to the enjoyment and the
13 free use of the life and property of said citizens and residents of the City and County of San Francisco.

14 **SECOND CAUSE OF ACTION FOR UNFAIR AND UNLAWFUL AND UNFAIR BUSINESS
15 PRACTICES AGAINST DEFENDANT ALKANAWI**

16 (Business and Professions Code Sections 17200, *et seq.*)

17 35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 as though fully set
18 forth herein.

19 36. Plaintiff brings this cause of action in the public interest in the name of the People of
20 the State of California, pursuant to Business and Professions Code Section 17200, *et seq.*, in order to
21 protect the residents and owners of properties adjoining the Property, as consumers and competitors of
22 the services provided by Defendant ALKANAWI, from the unlawful and unfair business practices
23 committed by Defendant ALKANAWI in the operation of the Premises as a retail store within the City
24 and County of San Francisco, State of California.

25 37. California Business and Professions Code Section 17200 prohibits any "unlawful,
26 unfair or fraudulent business acts or practices." Defendant ALKANAWI has engaged in unlawful,
27 unfair and deceptive business acts and practices in violation of Section 17200. Such acts and practices
28 include but are not limited to the following:

- 1 • maintaining MISSION GIFTS in violation of state public nuisance laws as stated in the
2 First Cause of Action;
- 3 • maintaining and operating MISSION GIFTS in violation of Health & Safety Code
4 Section 11364.5, by failing to exclude minors from the portions of MISSION GIFTS
5 where drug paraphernalia is kept, displayed, offered, sold, furnished, and transferred;
6 and
- 7 • maintaining and operating MISSION GIFTS in violation of Health & Safety Code
8 Section 11364.7 by delivering, furnishing, transferring, and possessing with intent to
9 deliver, furnish or transfer drug paraphernalia, knowing or under circumstances where
10 one reasonably should know that it will be used to convert, process, prepare, pack,
11 repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human
12 body a controlled substance, including devices intended to be used to ingest cocaine,
13 crack, and methamphetamine.

14 38. Upon information and belief, Plaintiff alleges that Defendant ALKANAWI is engaged
15 in a pattern and practice of conduct constituting an unlawful and unfair business practice and unfair
16 competition in violation of Business and Professions Code Sections 17200, *et seq.*

17 39. The actions and conduct of Defendant ALKANAWI in sustaining this unlawful and
18 unfair business practice violates the laws and public policies of the City and County of San Francisco
19 and the State of California, and are inimical to the rights, interest and general welfare of the public.

20 40. Defendant ALKANAWI'S unlawful and unfair business practices subject defendants to
21 civil penalties in the amount of \$2,500 per violation as authorized by Business and Professions Code
22 Section 17206.

23 41. Unless this Court awards the payment of such penalties, said residents and merchants of
24 the surrounding community and neighborhood and of the City and County of San Francisco will
25 continue to suffer irreparable injury and damage, and will be prevented from the comfortable
26 enjoyment of life and property.

27 42. Unless Defendant ALKANAWI is restrained by an order from this Court, he will
28 continue to use, occupy, maintain, allow the use, occupation and maintenance of the Premises for the

1 unlawful and annoying activities alleged in the complaint and in violation of the Business and
2 Professions Code Section 17200, et. seq.

3 **THIRD CAUSE OF ACTION FOR UNFAIR AND UNLAWFUL BUSINESS PRACTICES**
4 **AGAINST DEFENDANT KAILATH FAMILY PARTNERS L.P.**

5 (Business and Professions Code Section 17200, et seq.)

6 43. Plaintiff hereby incorporates by reference paragraphs 1 through 42 as though fully set
7 forth herein.

8 44. Plaintiff brings this cause of action in the public interest in the name of the People of
9 the State of California, pursuant to Business and Professions Code Section 17200, et seq., in order to
10 protect the residents and owners of properties adjoining the Property, as consumers and competitors of
11 the services provided by Defendant KAILATH FAMILY PARTNERS L.P. from the unlawful and
12 unfair business practices committed by Defendant KAILATH FAMILY PARTNERS L.P. in
13 knowingly leasing the Premises for the operation of a retail store within the City and County of San
14 Francisco, State of California in violation of Health and Safety Code Sections 11364.5 and 11364.7.

15 45. California Business and Professions Code Section 17200 prohibits any "unlawful,
16 unfair or fraudulent business act or practices." Defendant KAILATH FAMILY PARTNERS L.P. has
17 engaged in unlawful, unfair and deceptive business acts and practices in violation of section 17200.
18 Such acts and practices include but are not limited to the following:

- 19 • leasing the Property for the display, storage and offer for sale of illegal drug
20 paraphernalia, including devices intended to be used to ingest cocaine, crack, and methamphetamine,
21 in violation of Health and Safety Code Section 11364.7; and
- 22 • leasing the Property for the display, storage and offer for sale of drug paraphernalia to
23 minors in violation of Health and Safety Code Section 11364.5.

24 46. Defendant KAILATH FAMILY PARTNERS L.P. has permitted the Property to be
25 operated in violation of state nuisance laws as stated in the First Cause of Action. Defendant
26 KAILATH FAMILY PARTNERS L.P. has knowingly permitted the Property to be operated in
27 violation of Health & Safety Code Sections 11364.5 and 11364.7 as stated in the Second Cause of
28 Action. Upon information and belief, Plaintiff alleges that Defendant KAILATH FAMILY

1 PARTNERS L.P. is engaged in a pattern and practice of conduct constituting an unlawful and unfair
2 business practice and unfair competition in violation of Business and Professions Code Sections
3 17200, *et seq.*

4 47. The actions and conduct of Defendant KAILATH FAMILY PARTNERS L.P. in
5 sustaining this unlawful and unfair business practice violates the laws and public policies of the City
6 and County of San Francisco and the State of California, and are inimical to the rights, interest and
7 general welfare of the public.

8 48. Defendant KAILATH FAMILY PARTNERS L.P.'s unlawful and unfair business
9 practices subject Defendants to civil penalties in the amount of \$2,500 per violation as authorized by
10 Business and Professions Code Section 17206.

11 49. Unless this Court awards the payment of such penalties, said residents and merchants of
12 the surrounding community and neighborhood and of the City and County of San Francisco will
13 continue to suffer irreparable injury and damage, and will be prevented from the comfortable
14 enjoyment of life and property.

15 50. Unless Defendant KAILATH FAMILY PARTNERS L.P. is restrained by an order
16 from this Court, he will continue to allow the use, occupation and maintenance of the Premises for the
17 unlawful and annoying activities alleged in the complaint and in violation of the Business and
18 Professions Code Section 17200, *et seq.*

19
20 **PRAYER**

21 WHEREFORE, Plaintiff prays:

22 1. that the property and structures located at 4784 Mission Street, and specifically
23 MISSION GIFTS, together with the fixtures and moveable property therein and thereon, be declared a
24 public nuisance and that they be preliminarily and permanently abated in accordance with Civil Code
25 Section 3480 *et seq.*, and Code of Civil Procedure Section 731;

26 2. that Defendants and their servants, agents, officers, managers, representatives,
27 employees, and anyone acting on their behalf, and their heirs, successors, and assignees be enjoined
28 from operating, conducting, using, occupying, or in any way permitting the use of the Property as a

1 public nuisance in accordance with Civil Code sections 3479, 3480, 3491, 3494, Code of Civil
2 Procedure section 731, and the Unfair Competition Law;

3 3. that Defendant ALKANAWI be declared to have violated Health and Safety Code
4 Sections 11364.5 and 11364.7;

5 4. that this Court permanently enjoin Defendants, their agents, officers, managers,
6 representatives, employees, and anyone acting on their behalf from operating, conducting, using,
7 occupying, or in anyway permitting the use of the Property in violation of Health and Safety Code
8 Sections 11364.5 and 11364.7 and Business and Professions Code Sections 17200-17210;

9 5. that this Court enjoin Defendants from delivering, furnishing, transferring, and
10 possessing with intent to deliver, furnish or transfer drug paraphernalia, knowing or under
11 circumstances where one reasonably should know that it will be used to convert, process, prepare,
12 pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human body a
13 controlled substance;

14 6. that this Court order that Defendant ALKANAWI lawfully destroy and dispose of any
15 drug paraphernalia used to convert, process, prepare, pack, repack, store, contain, conceal, ingest,
16 inhale or otherwise introduce into the human body a controlled substance in violation of Health and
17 Safety Code Section 11364.7 and show proof of such destruction and disposal;

18 7. that this Court order Defendants to exclude minors from the portions of the Store where
19 drug paraphernalia is kept, displayed, offered, sold, furnished, and transferred by constructing a
20 wholly separate enclosure or room for the display, storage or offer for sale of drug paraphernalia from
21 which minors are excluded, and by signposting that minors, unless accompanied by an adult, are
22 excluded from said separate room or enclosure where drug paraphernalia is kept, displayed, offered,
23 sold, furnished, and transferred;

24 8. that this Court order that Defendants pay \$2,500.00 in civil penalties for each violation
25 of Business and Professions Code section 17200, including but not limited to violations occurring at
26 the Property and/or Store;

1 9. that Plaintiff shall have a lien upon said Premises in the amount expended pursuant to
2 said authority and to have judgment in said amount against said Defendants, their successors and
3 assigns;

4 10. that recordation of an abstract of judgment in this case constitutes a prior lien over any
5 lien that may be held on the property by any Defendant to this action.

6 11. that Plaintiff shall have such further and other relief as the court deems just.

7 Dated: February 16, 2011

8 DENNIS J. HERRERA
9 City Attorney
10 ALEX G. TSE
11 Chief Attorney
12 Neighborhood and Resident Safety Division
13 JANA CLARK
14 Deputy City Attorney

13 By: 
14 JANA CLARK

15 Attorneys for Plaintiffs
16 CITY AND COUNTY OF SAN FRANCISCO AND
17 PEOPLE OF THE STATE OF CALIFORNIA
18
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INDEX TO EXHIBITS

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<u>Exhibit</u>	<u>Description</u>
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A	Property Description for 4784 Mission Street, San Francisco, California
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EXHIBIT A

Property Address:

4782 Mission Street

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

LOT 36, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL
MAP OF A PORTION OF ASSESSOR'S BLOCK 6956 SAN FRANCISCO,
CALIFORNIA", WHICH MAP WAS FILED FOR RECORD ON JANUARY
29, 1987 IN BOOK 34 OF PARCEL MAPS AT PAGE 74, OFFICIAL
RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO,
CALIFORNIA.

Assessor's Block 6956, Lot 36

2011 FEB 17 AM 1:07

CLERK OF COURT

BY: _____

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
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7

8 Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED JURISDICTION

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

15 Plaintiff,

16 vs.

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

20 Defendants.
21

Case No. CGC-11-508338

COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF

Type of Case: (42) Other Complaint

22
23 The PEOPLE OF THE STATE OF CALIFORNIA by and through San Francisco City
24 Attorney DENNIS J. HERRERA ("Plaintiff"), file its Complaint against Defendants NABIL AL
25 ISMAEL, an individual and d/b/a THE PLATINUM, FULVIO MIRANDA, CORINA MIRANDA,
26 and DOE ONE through DOE FIFTY (collectively "Defendants"). Plaintiff hereby alleges as set forth
27 below:
28

INTRODUCTION

1
2
3 1. This action arises out of Defendants' ownership, lease, use, maintenance, operation and
4 management of a commercial business operated at the property located at 5901 Mission Street,
5 Assessor's Block 6471, Lot 1D, San Francisco, California, (the "Property" or the "Premises") in
6 violation of state law and as a public nuisance that substantially endangers the health, welfare, and
7 safety of the neighbors, residents of the City of San Francisco and the People of the State of
8 California. The Property is more particularly described in Exhibit A, attached hereto and incorporated
9 herein by reference. The business at the Property is a retail store commonly known as THE
10 PLATINUM ("PLATINUM" or "the Store"), located in a street level commercial space at the
11 Property.

12 2. Specifically, Defendants have jeopardized the health and safety of their customers, their
13 neighbors, and the community at large, by selling or permitting to be sold illegal and dangerous drug
14 paraphernalia, which is purchased and used by Defendants' customers, and which causes and
15 contributes to an increased neighborhood presence of illicit drug users, illicit drug dealers, publicly
16 intoxicated persons, and a panoply of general nuisance conditions related to the ingestion and
17 consumption of illicit drugs, particularly rock base cocaine ("crack") and methamphetamine.

18 3. Since at least May 2010, the Store has been persistently operated as a place where crack
19 and methamphetamine users can easily and readily purchase the tubular clear glass pipes and related
20 paraphernalia unique to the ingestion and consumption of crack and methamphetamine. Between May
21 2010 and December 2010, police investigated the store and found illegal drug paraphernalia.

22 4. PLATINUM is located in a mixed commercial and residential neighborhood and is
23 within one block of a community center, a park, and a transit hub heavily used by school children, and
24 within a few blocks of two elementary schools, a park, and a children's playground.

25 5. Defendants have caused or permitted multiple violations of criminal law at
26 PLATINUM, including trafficking in illegal drug paraphernalia and failing to exclude minors from the
27 display of drug paraphernalia for sale, resulting in a public nuisance.

1 13. At all times herein mentioned, each defendant was an agent, servant, employee, partner,
2 franchisee and joint venturer of each other defendant and at all times was acting within the course and
3 scope of said agency, service, employment, partnership, franchise and joint venture.

4 14. Actions taken or omissions made by Defendants' employees, agents, or representatives
5 in the course of their employment, agency or representation shall be considered actions or omissions
6 of Defendants for purposes of this Complaint.

7 **GENERAL ALLEGATIONS**

8
9 15. From at least May 2010 through December 2010, and for an undetermined amount of
10 time previously and since that will be determined after a reasonable opportunity for further
11 investigation and discovery, Defendant ISMAEL has leased a commercial space from Defendants
12 FULVIO MIRANDA and CORINA MIRANDA, located at the Property, and in that space operated
13 PLATINUM as a retail storefront displaying and offering for sale legal and illegal drug paraphernalia
14 in plain view of anyone entering the store, including minors.

15 16. Defendants now are, and for a considerable period of time, including from May 2010
16 through December 2010, and at all times mentioned in this Complaint have been, using, maintaining
17 and or permitting the use of PLATINUM to deliver, furnish, transfer, and/or possess with intent to
18 deliver, furnish or transfer drug paraphernalia, knowing or under circumstances where one reasonably
19 should know that it will be used to convert, process, prepare, pack, repack, store, contain, conceal,
20 ingest, inhale or otherwise introduce into the human body a controlled substance, including cocaine,
21 rock base cocaine ("crack"), and methamphetamine, in violation of Health and Safety Code Section
22 11364.7. These acts occurred and continue to occur on and in the immediate vicinity of the Property.

23 17. On at least two occasions since at least May 2010, officers of the San Francisco Police
24 Department ("SFPD") entered PLATINUM and observed displayed and offered for sale illegal drug
25 paraphernalia, including devices intended to be used to ingest cocaine, crack, and/or
26 methamphetamine, in violation of Health and Safety Code Section 11364.7, and further observed that
27 this accounted for a significant amount of the retail activity in the store.

1 18. On at least two occasions since at least May 2010, SFPD personally notified Defendant
2 ISMAEL that PLATINUM is unlawfully displaying, keeping and offering for sale drug paraphernalia,
3 including devices intended to be used to ingest crack and/or methamphetamine, in violation of Health
4 and Safety Code Section 11364.7.

5 19. On at least one occasion since May 2010, Defendant ISMAEL acknowledged that
6 PLATINUM is unlawfully displaying, keeping and offering for sale drug paraphernalia, including
7 devices intended to be used to ingest crack and/or methamphetamine, in violation of Health and Safety
8 Code Section 11364.7.

9 20. Defendant ISMAEL is now, and for a considerable period of time, including from May
10 2010 through December 2010, and at all times mentioned in this Complaint, has been, using,
11 maintaining and or permitting the use of PLATINUM to keep, display, offer, sell, furnish, and transfer
12 legal drug paraphernalia without keeping, displaying and offering that drug paraphernalia in a separate
13 room or enclosure from which persons under the age of 18 years not accompanied by a parent are
14 excluded in violation of Health and Safety Code Section 11364.5. These acts occurred on and in the
15 immediate vicinity of the Property and continue to occur.

16 21. On at least one occasion since at least May 2010, SFPD entered PLATINUM and
17 observed that drug paraphernalia was displayed, stored, and offered for sale to anyone entering the
18 store, that minors were not excluded from the Store, and that drug paraphernalia displayed, stored and
19 offered for sale was not confined to a separate room or enclosure from which minors were excluded, in
20 violation of Health and Safety Code Section 11364.5.

21 22. On at least one occasion since at least June 14, 2010, Plaintiff notified Defendants
22 FULVIO MIRANDA and CORINA MIRANDA that PLATINUM was being operated in violation of
23 state and local law as alleged in this Complaint.

24 23. Since at least May 2010 through December 2010, Defendants' ownership, operation and
25 maintenance of the Store and the Property have been the subject of numerous complaints from tenants
26 and neighbors regarding illegal, injurious, offensive, annoying and disruptive activities, including, but
27 not limited to: illegal and dangerous trafficking of drug paraphernalia, illegal and dangerous use and
28 abuse of controlled substances, and other disturbances of the peace.

1 24. Defendants' ownership, operation and maintenance of the Store and the Property as a
2 public nuisance has attracted persons for the purposes of illegal trafficking and use of controlled
3 substances, and other disturbances of the peace. This conduct is annoying and disturbing to the
4 neighborhood and is offensive to the senses of the neighbors, merchants and visitors.

5 25. Defendants' ownership, operation and maintenance of the Store and the Property as a
6 public nuisance have caused harm to the public health, safety, and welfare, and have been a
7 tremendous strain on police and other city services. Repeatedly responding to calls for service for
8 illegal and other nuisance activities prevents the police from adequately policing other parts of the
9 district.

10 26. To date, the People are informed and believe that PLATINUM and the Property are a
11 public nuisance.

12 **FIRST CAUSE OF ACTION FOR PUBLIC NUISANCE BROUGHT BY PLAINTIFF**
13 **AGAINST ALL DEFENDANTS**

14 (Civil Code Section 3479 *et seq.*)

15 27. Plaintiff hereby incorporates by reference paragraphs 1 through 26 as though fully set
16 forth herein.

17 28. Plaintiff brings this action pursuant to Code of Civil Procedure Section 731 and Civil
18 Code Section 3494.

19 29. By permitting the above described injurious, illegal, annoying and disruptive activities
20 to exist at said Premises, Defendants have caused and maintained a continuing public nuisance within
21 the meaning of California Civil Code Section 3479 and 3480. These activities are injurious to health
22 and offensive to the senses so as to interfere with the comfortable enjoyment of life or property in an
23 entire community or neighborhood.

24 30. At all times herein mentioned, Defendants had notice and knowledge that said Premises
25 constituted a public nuisance as aforesaid.

26 31. Plaintiff has no adequate remedy at law in that damages are insufficient to protect the
27 public from the present danger and harm caused by the conditions described above.
28

1 32. Plaintiffs are informed and believe that Defendants will continue to maintain the
2 Premises in the above-described condition as a public nuisance.

3 33. Unless said nuisance is abated by this Court, the surrounding community and
4 neighborhood, and the residents and citizens of the City and County of San Francisco, will suffer
5 irreparable injury and damage, in that said conditions will continue to be injurious to the enjoyment
6 and the free use of the life and property of said citizens and residents of the City and County of San
7 Francisco.

8 **SECOND CAUSE OF ACTION FOR UNLAWFUL AND UNFAIR BUSINESS PRACTICES**
9 **AGAINST DEFENDANT ISMAEL**

10 (Business and Professions Code Sections 17200, *et seq.*)

11 34. Plaintiff hereby incorporates by reference paragraphs 1 through 33 as though fully set
12 forth herein.

13 35. Plaintiff brings this cause of action in the public interest in the name of the People of
14 the State of California, pursuant to Business and Professions Code Section 17200, *et seq.*, in order to
15 protect the residents and owners of properties adjoining the Property, as consumers and competitors of
16 the services provided by Defendant ISMAEL, from the unlawful and unfair business practices
17 committed by Defendant ISMAEL in the operation of the Premises as a retail store within the City and
18 County of San Francisco, State of California.

19 36. California Business and Professions Code Section 17200 prohibits any "unlawful,
20 unfair or fraudulent business act or practices." Defendant ISMAEL has engaged in unlawful, unfair
21 and deceptive business acts and practices in violation of section 17200. Such acts and practices include
22 but are not limited to the following:

- 23 • maintaining PLATINUM in violation of state public nuisance laws as stated in the First
24 Cause of Action;
- 25 • maintaining and operating PLATINUM in violation of Health & Safety Code Section
26 11364.5, by failing to exclude minors from the portions of PLATINUM where drug paraphernalia is
27 kept, displayed, offered, sold, furnished, and transferred; and

1 • maintaining and operating PLATINUM in violation of Health & Safety Code Section
2 11364.7 by delivering, furnishing, transferring, and possessing with intent to deliver, furnish or
3 transfer drug paraphernalia, knowing or under circumstances where one reasonably should know that
4 it will be used to convert, process, prepare, pack, repack, store, contain, conceal, ingest, inhale or
5 otherwise introduce into the human body a controlled substance, including devices intended to be used
6 to ingest cocaine, crack, and methamphetamine.

7 37. Upon information and belief, Plaintiff alleges that Defendant ISMAEL is engaged in a
8 pattern and practice of conduct constituting an unlawful and unfair business practice and unfair
9 competition in violation of Business and Professions Code Sections 17200, *et seq.*

10 38. The actions and conduct of Defendant ISMAEL in sustaining this unlawful business
11 practice violates the laws and public policies of the City and County of San Francisco and the State of
12 California, and are inimical to the rights, interest and general welfare of the public.

13 39. Defendant ISMAEL'S unlawful and unfair business practices subject Defendants to
14 civil penalties in the amount of \$2,500 per violation as authorized by Business and Professions Code
15 Section 17206.

16 40. Unless this Court awards the payment of such penalties, said residents and merchants of
17 the surrounding community and neighborhood and of the City and County of San Francisco, will
18 continue to suffer irreparable injury and damage, and will be prevented from the comfortable
19 enjoyment of life and property.

20 41. Unless Defendant ISMAEL is restrained by an order from this Court, he will continue
21 to use, occupy, maintain, allow the use, occupation and maintenance of the Premises for the unlawful
22 and annoying activities alleged in the complaint and in violation of the Business and Professions Code
23 Section 17200, *et. seq.*

24 **THIRD CAUSE OF ACTION FOR UNLAWFUL AND UNFAIR BUSINESS PRACTICES**
25 **AGAINST DEFENDANTS FULVIO MIRANDA AND CORINA MIRANDA**

26 (Business and Professions Code Section 17200, *et seq.*)

27 42. Plaintiff hereby incorporates by reference paragraphs 1 through 41 as though fully set
28 forth herein.

1 43. Plaintiff brings this cause of action in the public interest in the name of the People of
2 the State of California, pursuant to Business and Professions Code Section 17200, *et seq.*, in order to
3 protect the residents and owners of properties adjoining the Property, as consumers and competitors of
4 the services provided by Defendants FULVIO MIRANDA and CORINA MIRANDA from the
5 unlawful and unfair business practices committed by Defendants FULVIO MIRANDA and CORINA
6 MIRANDA in knowingly leasing the Premises for the operation of a retail store within the City and
7 County of San Francisco, State of California in violation of Health and Safety Code Sections 11364.5
8 and 11364.7.

9 44. California Business and Professions Code Section 17200 prohibits any "unlawful,
10 unfair or fraudulent business act or practices." Defendants FULVIO MIRANDA and CORINA
11 MIRANDA have engaged in unlawful, unfair and deceptive business acts and practices in violation of
12 section 17200. Such acts and practices include but are not limited to the following:

13 • leasing the Property for the display, storage and offer for sale of illegal drug
14 paraphernalia, including devices intended to be used to ingest cocaine, crack, and methamphetamine,
15 in violation of Health and Safety Code Section 11364.7; and

16 • leasing the Property for the display, storage and offer for sale of drug paraphernalia to
17 minors in violation of Health and Safety Code Section 11364.5.

18 45. Defendants FULVIO MIRANDA and CORINA MIRANDA have permitted the
19 Property to be operated in violation of state nuisance laws as stated in the First Cause of Action.
20 Defendants FULVIO MIRANDA and CORINA MIRANDA have knowingly permitted the Property to
21 be operated in violation of Health & Safety Code Section 11364.5 and 11364.7 as stated in the Second
22 Cause of Action. Upon information and belief, Plaintiff alleges that Defendants FULVIO MIRANDA
23 and CORINA MIRANDA are engaged in a pattern and practice of conduct constituting an unlawful
24 business practice and unfair competition in violation of Business and Professions Code Sections
25 17200, *et seq.*

26 46. The actions and conduct of Defendants FULVIO MIRANDA and CORINA
27 MIRANDA in sustaining this unlawful business practice violate the laws and public policies of the
28

1 City and County of San Francisco and the State of California, and are inimical to the rights, interest
2 and general welfare of the public.

3 47. Defendants FULVIO MIRANDA and CORINA MIRANDA's unlawful and unfair
4 business practices subject Defendants to civil penalties in the amount of \$2,500 per violation as
5 authorized by Business and Professions Code Section 17206.

6 48. Unless this Court awards the payment of such penalties, said residents and merchants of
7 the surrounding community and neighborhood and of the City and County of San Francisco, will
8 continue to suffer irreparable injury and damage, and will be prevented from the comfortable
9 enjoyment of life and property.

10 49. Unless Defendants FULVIO MIRANDA and CORINA MIRANDA are restrained by
11 an order from this Court, they will continue to allow the use, occupation and maintenance of the
12 Premises for the unlawful and annoying activities alleged in the complaint and in violation of the
13 Business and Professions Code Section 17200, *et seq.*

14
15 **PRAYER**

16 WHEREFORE, plaintiff prays:

17 1. that that the property and structures located at 5901 Mission Street, and specifically
18 PLATINUM, together with the fixtures and moveable property therein and thereon, be declared a
19 public nuisance and that they be preliminarily and permanently abated in accordance with Civil Code
20 Section 3480 *et seq.*, and Code of Civil Procedure Section 731;

21 2. that Defendants and their servants, agents, officers, managers, representatives,
22 employees, and anyone acting on their behalf, and their heirs, successors, and assignees be enjoined
23 from operating, conducting, using, occupying, or in any way permitting the use of the Property as a
24 public nuisance in accordance with Civil Code sections 3479, 3480, 3491, 3494, Code of Civil
25 Procedure section 731, and the Unfair Competition Law;

26 3. that Defendant ISMAEL be declared to have violated Health and Safety Code Sections
27 11364.5 and 11364.7;

1 4. that this Court permanently enjoin Defendants, their agents, officers, managers,
2 representatives, employees, and anyone acting on their behalf from operating, conducting, using,
3 occupying, or in anyway permitting the use of the Property in violation of Health and Safety Code
4 Sections 11364.5 and 11364.7 and Business and Professions Code Sections 17200-17210;

5 5. that this Court enjoin Defendants from delivering, furnishing, transferring, and
6 possessing with intent to deliver, furnish or transfer drug paraphernalia, knowing or under
7 circumstances where one reasonably should know that it will be used to convert, process, prepare,
8 pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human body a
9 controlled substance;

10 6. that this Court order that Defendant ISMAEL lawfully destroy and dispose of any drug
11 paraphernalia used to convert, process, prepare, pack, repack, store, contain, conceal, ingest, inhale or
12 otherwise introduce into the human body a controlled substance in violation of Health and Safety Code
13 Section 11364.7 and show proof of such destruction and disposal;

14 7. that this Court order Defendants to exclude minors from the portions of the Store where
15 drug paraphernalia is kept, displayed, offered, sold, furnished, and transferred by constructing a
16 wholly separate enclosure or room for the display, storage or offer for sale of drug paraphernalia from
17 which minors are excluded, and by signposting that minors, unless accompanied by an adult, are
18 excluded from said separate room or enclosure where drug paraphernalia is kept, displayed, offered,
19 sold, furnished, and transferred;

20 8. that this Court order that Defendants pay \$2,500.00 in civil penalties for each violation
21 of Business and Professions Code section 17200, including but not limited to violations occurring at
22 the Property and/or Store;

23 9. that Plaintiff shall have a lien upon said Premises in the amount expended pursuant to
24 said authority and to have judgment in said amount against said Defendants, their successors and
25 assigns;

26 10. that recordation of an abstract of judgment in this case constitutes a prior lien over any
27 lien that may be held on the property by any Defendant to this action.


28 ///

1 11. that Plaintiff shall have such further and other relief as the court deems just.

2 Dated: February 16, 2011

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

10 By: _____

11 JANA CLARK 

12 Attorneys for Plaintiffs
13 CITY AND COUNTY OF SAN FRANCISCO AND
14 PEOPLE OF THE STATE OF CALIFORNIA
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INDEX TO EXHIBITS

Exhibit Description

A Property Description for 5901 Mission Street, San Francisco, California

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EXHIBIT A

Property Address:

5901 Mission Street

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

BEGINNING at the point of intersection of the Southeasterly line of Mission Street and the Southwesterly line of Acton (formerly Henrietta) Street; running thence along said line of Mission Street 32 feet; thence at a right angle Southeasterly 80 feet; thence at a right angle Northeasterly 32 feet to the Southwesterly line of Acton Street; running thence Northwesterly along said line of Acton Street 80 feet to the point of beginning.

BEING portion of Lot 10 of West End Homestead Association, as per map thereof filed March 26, 1863, in Book "C" and "D" of Maps 63, in the office of the Recorder of the City and County of San Francisco, State of California.

Assessor's Block 6471, Lot 1D