



CITY AND COUNTY OF SAN FRANCISCO
**CIVIL INSPECTION & ABATEMENT WARRANT AND
 AFFIDAVIT**

AFFIDAVIT

I, **DAVID BURKE**, swear under oath and penalty of perjury that the facts expressed by me in the attached and incorporated **STATEMENT OF CAUSE** are true, and that based thereon I have cause to believe and do believe that a public nuisance and an imminent threat to public health and safety exists at **1610 ARMSTRONG AVENUE, SAN FRANCISCO, CALIFORNIA 94124**, and request an inspection and abatement warrant pursuant to Code of Civil Procedure sections 1822.50 et seq., as indicated below. Therefore, I request that this Inspection and Abatement Warrant be issued:

SERVICE 6 P.M.-8 A.M. REQUESTED: YES NO
EXECUTION REGARDLESS OF WHETHER TENANT PRESENT REQUESTED: YES NO
FORCIBLE ENTRY REQUESTED: YES NO
CONSENT PREVIOUSLY REFUSED: YES NO
NO-NOTICE REQUESTED: YES NO

 (Signature of Affiant)

INSPECTION & ABATEMENT WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA to any San Francisco Police Officer, and any City and County of San Francisco official granted authority to conduct inspections and abatement authorized by California or San Francisco orders, laws, code and/or regulations relating to building, fire, safety, plumbing, electrical, health, labor or zoning:

Proof by affidavit under penalty of perjury having been made before me by **SAN FRANCISCO CITY ATTORNEY INVESTIGATOR DAVID BURKE** that cause for issuance of an inspection and abatement warrant exists per Code of Civil Procedure section 1822.52, as indicated below:

- reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle.
- there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle, namely violation of San Francisco's Shelter in Place Order, Order of the Health Officer No. C19-07e.

You are therefore **COMMANDED TO ENTER AND ABATE** this violation, through ensuring that the illegal nightclub operating at 1610 Armstrong Avenue, San Francisco, California 94124 ceases all activities in violation of Health Officer Order C19-07e at this location. In particular, you are commanded to enter the premises, with force if necessary, cause all staff and customers present in violation of Health Officer Order C19-07e to physically exit the business, to seize any evidence of illegal nightclub operation including but not limited to alcohol, glassware, bar equipment, tables, stools, and chairs, currency, gambling machines, pool tables, music and amplification equipment, surveillance equipment, fog machines, and metal detection devices. Once all persons have been removed, you are authorized to securely lock and secure the premises against all further entry until further Order of this Court. You are authorized to use reasonable force in execution of these commands.



CITY AND COUNTY OF SAN FRANCISCO
**CIVIL INSPECTION & ABATEMENT WARRANT AND
AFFIDAVIT**

This Inspection and Abatement Warrant shall be effective for 14 days after the date and time stated below.

This Civil Inspection & Abatement Warrant and Affidavit, and attached and incorporated Statement of Cause were sworn as true and subscribed before me on this 2nd day of July, 2020, at 8:30 A.M./P.M. PM

Wherefore, I find cause for the issuance of this Inspection and Abatement Warrant and do issue it.

REGULATIONS FOR ABATEMENT (CCP § 1822.56)

SERVICE 6 P.M.–8 A.M. APPROVED: YES NO
EXECUTION REGARDLESS OF WHETHER TENANT IS PRESENT APPROVED: YES NO
FORCIBLE ENTRY APPROVED: YES NO
CONSENT PREVIOUSLY REFUSED YES NO
NO-NOTICE APPROVED: YES NO



(Signature of Magistrate)

HON. BRADEN WOODS
Judge of the Superior Court of California
County of San Francisco, Department No. 23

STATEMENT OF CAUSE

My name is DAVID BURKE. I am currently employed as an INVESTIGATOR with the San Francisco City Attorney's Office ("CAO").

I have been employed with the CAO for eight years. Prior to being employed with the CAO, I had been employed as a victim witness investigator for five years with the San Francisco District Attorney's Office. My duties as an investigator with the CAO include all of the following: assisting Deputy City Attorneys, inspecting properties, conducting surveillance, locating and interviewing witnesses, performing database searches, and personally serving legal documents.

The facts set forth in this Affidavit come from my personal observations, training, and experience, and from information obtained from other sources including government officials, government and business records, and/or witnesses.

Cause for abatement exists because there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, or premises, namely an unpermitted, illegal nightclub operated at 1610 Armstrong Avenue, San Francisco, California 94124. Specifically, this unpermitted, illegal nightclub business is hosting parties, events and social gatherings in violation of San Francisco's Shelter in Place Order, Order of the Health Officer No. C19-07e (hereinafter, "SIP Order") issued and designed to protect the health and safety of the public from the COVID-19 pandemic.

Relevant Proclamations, Health Officer Orders, Statutes and Ordinances

On February 25, 2020, San Francisco Mayor London Breed issued a Proclamation by the Mayor Declaring the Existence of a Local Emergency under sections 8550, *et seq.* of the Government Code, Section 3.100(13) of the San Francisco Charter, and Chapter 7 of the San Francisco Administrative Code, establishing the existence of an emergency within the City and County of San Francisco due to the ongoing spread of COVID-19. On March 4, 2020, California Governor Gavin Newsom issued a Proclamation of a State of Emergency under section 8625 of the California Government Code and the California Emergency Services Act, establishing the existence of a state of emergency throughout California due to COVID-19. On March 16, 2020, the Health Officer of the City and County of San Francisco ("Health Officer") issued a Shelter in Place Order requiring all individuals in the county to shelter at their place of residence except to

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provide or receive certain essential services and directing all businesses to cease non-essential operations at physical locations in the county. The March 16, 2020, Shelter in Place Order has been amended, updated and extended several times, and the version currently in effect is Health Officer Order No. C19-07e dated June 11, 2020. A true and correct copy of the June 11, 2020 Shelter in Place Order (“SIP Order”) is attached hereto as **Exhibit A**.

The Health Officer issued the SIP Order under the authority granted to the Health Officer under California Health and Safety Code sections 101040, 101085, and 120175. Section 101040 provides that “[t]he local health officer may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any ... ‘state of emergency.’” It further provides that “[e]ach health officer knowing or having reason to believe that any case of the diseases made reportable by regulation of the department, or any other contagious, infectious or communicable disease exists, or has recently existed, within the territory under his or her jurisdiction, shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.” (Health & Safety Code §101040.)

Violations of the SIP Order are a public nuisance subject to abatement by warrant. California Government Code section 38771 provides that “... the city legislative body may declare what constitutes a nuisance.” (Govt. Code § 38771.) Under the San Francisco Health Code, “no person shall have upon any premises or real property owned, occupied or controlled by him, or her, or it, any public nuisance.” (SF Health Code § 581(a).) A public nuisance includes “anything else the Director deems a threat to public health and safety.” (*Id.* at 581(b)(17).) The SIP Order states that failure to comply with the provisions of the Order “constitutes an imminent threat and menace to public health [and] constitutes a public nuisance.” (SIP Order §17.) California Civil Code section 3491 provides for abatement as a proper remedy for a public nuisance. (Civ. Code section 3491.) Abatement proceedings for a public nuisance are thus authorized by state law and are within the police powers of the state. (*Scott v. City of Del Mar* (1997) 58 Cal. App. 4th 1296, 1305; *City of Costa Mesa v. Soffer* (1992) 11 Cal. App. 4th 378, 383.) The same statutorily-authorized procedure for issuing an inspection warrant under California Code of Civil Procedure sections 1822.50 through to 1822.59 may be used for the Court to issue a warrant to abate violations. (*Flahive v. City of Dana Point* (1999) 72 Cal. App. 4th 241, 246; *Conner v. City of Santa Ana* (1990) 897 F.2d 1487, 1490 (9th Cir.)) [“California

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courts have rejected, for purposes of the warrant requirement, any distinction between inspection and abatement of a declared public nuisance.”].

Peace officers are empowered to enforce the SIP Order. Under the Health and Safety Code, both the Sheriff, and “[e]very peace officer” within the City and County “may enforce within the area subject to his or her jurisdiction all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease.” (Health & Safety Code § 101029.) Similarly, the Government Code provides for the Sheriff to execute “all orders of the local health officer for the purpose of preventing the spread of any contagious or communicable disease.” (Govt. Code § 26602.) A very similar provision applies to police departments. (*See* Govt. Code § 41601.) Further, Penal Code Section 409.5 allows a local Health Officer, as well as the Police, Sheriff, and certain other designated officials, to close an area where a calamity has created an immediate menace to public health. (Penal Code §409.5.) The SIP Order determines that the continued operation of businesses other than those permitted to operate under the SIP Order creates “an immediate threat and menace to public health” due to the COVID-19 pandemic. (SIP Order §17.)

The Subject Business Is Violating the SIP Order

Section 7 of the SIP Order provides that “[a]ll public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. (SIP Order §7.)

Section 5 of the SIP Order mandates that all businesses except Essential Businesses, Outdoor Businesses, and Additional Businesses, as defined in Section 15 of the SIP Order, cease activities. (SIP Order §5.) The nightclub operating at 1610 Armstrong Avenue is not authorized under any of these provisions.

“Essential Businesses” include businesses such as healthcare operations, grocery stores businesses that ship or deliver groceries or other goods to residences or businesses, food cultivation, shelters, construction activities, media, gas stations, bicycle repair, banks, service providers that enable real estate transactions, hardware stores, plumbers, electricians, exterminators, mailing and shipping services, educational institutions and childcare establishments, subject to certain restrictions and limitations, laundromats and dry cleaners,

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restaurants providing take-out and delivery, funeral homes, mortuaries, cemeteries, and crematoriums, businesses that supply support or supplies necessary for essential businesses and outdoor businesses to operate, transportation companies providing transportation for essential activities, home-based care and residential facilities, professional services, such as legal, notary, and accounting, to assist in compliance with non-elective, legally-required activities or in relation to death or incapacity, employment services for essential businesses, moving services. (SIP Order §13(f).)

“Outdoor Business” include businesses that normally operated primarily outdoors prior to March 16, 2020 and where there is the ability to fully maintain social distancing of at least six feet between all persons, including businesses such as plant nurseries, agricultural operations, and garden centers, gardening and landscaping services, and environmental site remediation services. Outdoor businesses do not include outdoor restaurants, cafes, or bars. Except as provided by Appendix C to the SIP Order, Outdoor Businesses also do not include businesses that promote large, coordinated, and prolonged gatherings, such as outdoor concert venues and amusement parks. (SIP Order §13(l).)

“Additional Businesses” are defined by Appendix C-1 to the SIP Order to include retail stores for goods and for low contact retail services, such as dog grooming, shoe and electronic repair (but excluding hair and nail salons and tattoo and piercing parlors), manufacturing, warehousing, and logistical support businesses, childcare programs and summer camps, outdoor activity equipment rental businesses, outdoor dining at restaurants and bars that serve food (alcohol service is permitted only with an ABC-issued license and where the alcoholic beverage is served to a seated customer consuming a bona fide meal), outdoor fitness classes, indoor household services, such as house cleaners and cooks, and individuals working at offices for non-essential businesses where telecommuting is not feasible, all subject to certain restrictions and limitations. (SIP Order Appendix C-1.) “Additional Businesses” also include professional sports team practices, games, and tournaments without in-person spectators and with an approved plan for operations, and entertainment venues that live stream or broadcast events without in-person audiences and with a health and safety plan reviewed and approved by the Health Officer. (SIP Order Appendix C-1.)

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All other businesses, including bars (other than outdoor seated dining at ABC-licensed bars that serve bona fide meals), nightclubs, and entertainment venues with in-person audiences, are required to cease all activities except for Minimum Basic Operations, defined as the “minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or business; and related functions” and “the minimum necessary activities to facilitate owners, personnel, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.” (SIP Order §§5, 15(g).) The description of Minimum Basic Operations does not authorize social gatherings, which are “public and private gatherings of any number of people occurring outside a single household or living unit,” which is “prohibited” under the SIP Order. (SIP Order §7.)

Certain “Additional Activities” are allowed under the SIP Order, and these are described in Appendix C-2 of the SIP Order. None of these “Additional Activities” authorize indoor social gatherings. The only social gatherings allowed under the SIP Order of people who are not in the same household are small outdoor gatherings which cannot exceed 12 people under any circumstance, and the individuals involved must wear face coverings and remain socially distanced, and the host of such an organized gathering must adopt various safety procedures. (SIP Order Appendix C-2.) All indoor social gatherings remain prohibited.

The unpermitted, illegal nightclub business operating at 1610 Armstrong Avenue, and the attendant indoor social gathering at the illegal business, violates the SIP Order, and thus “constitutes an imminent threat and menace to public health” and “constitutes a public menace.” (SIP Order §17.) There is continued significant community transmission of COVID-19 within the County and the SIP Order was issued based on scientific evidence and best practices regarding the most effective approach to slow the transmission of COVID-19, thereby decreasing the risk for serious health complications, including death, from COVID-19. (SIP Order §§9, 12.)

On June 23, 2020, Deputy City Attorney Peter Keith (“DCA Keith”) requested an investigator be assigned to assist with the investigation of complaints of an illegal nightclub operating at an industrial warehouse located at 1610 Armstrong Avenue, after the San Francisco Police Department (“SFPD”) received over 15 complaints, from June 5, 2020 through June 22,

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2020, related to noise, parties and a live band playing at the building. On that same day, Deputy City Attorney Michael Weiss ("DCA Weiss") provided me with additional documents including SFPD CAD reports of the complaints from June 5, 2020 through June 22, 2020.

On Friday, June 26, 2020, at approximately 10:00 p.m., I responded to 1610 Armstrong Avenue. While there, I observed the following:

At approximately 10:00 p.m., I parked my car on Armstrong Avenue, close to Third Street, and approached the subject property on foot. 1610 Armstrong Avenue is a grey industrial building located on Armstrong Avenue, past Third Street and near the intersection with Keith Street. There are no signs or markings of any kind on the building. There appears to be an automobile service shop at 1600 Armstrong Avenue, at the corner of Armstrong Avenue and Keith Street and immediately adjacent to 1610 Armstrong Avenue. As I approached 1610 Armstrong Avenue, I could hear loud music being played inside the building. I could also hear several voices of men and women speaking loudly.

I returned to my car and observed the building. Between 10:00-10:45 p.m., I watched 4 separate cars arrive at 1610 Armstrong Avenue. At least 13 individuals, both men and women, exited the cars and entered the building.

At approximately 10:46 p.m., I interviewed a security guard working for Treeline Security. The security guard told me that he had been hired to provide round-the-clock security of the San Francisco Department of Public Health's COVID-19 testing site on the now-closed off 1500 block of Armstrong Avenue. He further informed me that he has worked the Friday night security shift, 5:00 p.m. to 12:00 a.m. since early April. The security guard informed me that he sees between 30-40 people entering 1610 Armstrong Avenue every Friday night. The security guard further told me that it is well known around the neighborhood that an illegal nightclub is operating at the building and that he and the other Treeline Security guards talk about it all the time. According to the security guard, earlier that same night, he observed a neighbor bang on the door of 1610 Armstrong at about 8:00 p.m., shouting, "I know what you're doing in there." The security guard had two chairs set up near the intersection of Armstrong Avenue and Keith Street. Because the chairs afforded me a much better and closer vantage point to observe 1610

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Armstrong Avenue, I asked his permission to sit there. The security guard granted me permission.

Between 11:00 and 11:30 p.m., while sitting in the chair at the intersection of Armstrong Avenue and Keith Street, I observed 5 additional cars arrive and drop off 10-11 more individuals, mostly women. All the individuals were dressed as if they were going to a nightclub. All individuals entered 1610 Armstrong Avenue.

From approximately 11:30 p.m., to 11:45 p.m., I canvassed Yosemite Street, which is one block over and parallel to Armstrong, in an attempt to identify the address for the irate neighbor described to me by the security guard. At approximately 11:45 p.m., I departed.

On Saturday, June 27, 2020, at approximately 3:28 a.m., I received a telephone call from a male neighbor who lives on Yosemite Avenue, behind 1610 Armstrong Avenue. I returned his call at approximately 9:45 a.m. and spoke to both him and his wife. For the neighbors' safety and security, I have not identified them in this Statement of Cause. The neighbors informed me that they received my telephone number from the Treeline security guard whom I had spoken to earlier in the night. The neighbors told me that they live directly behind 1610 Armstrong and that the building hosts an illegal nightclub every weekend and sometimes during the weeknights as well. The neighbors further told me that the music emanating from the nightclub is so loud that it shakes their residence. According to the neighbors, illegal nightclub activity had been going on at the property for more than 8 years. The male neighbor informed me that he regularly approaches 1610 Armstrong Avenue and bangs on the door to get the nightclub operators to quiet down. He further informed me that he has heard dogs inside the building at various times. At one point, he also saw three large German Shepherds tied up just inside the then open door to the nightclub. The neighbors also told me that a large amount of lumber has been brought to the building since March 2020 and they have heard construction noise, including hammering and the sound of circular saws, coming from the building since that time.

On June 27, 2020, I reviewed the San Francisco Department of Building Inspection (DBI) online permitting history for 1610 Armstrong Avenue, and I noted that the last building permit issued for construction at the building was for reroofing in 1990.

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On Saturday, June 27, 2020, at approximately 10:00 p.m., I responded to 1610 Armstrong Avenue. While there, I observed the following:

At approximately 10:00 p.m., I visited the complaining neighbors' residence behind 1610 Armstrong Avenue and heard muffled loud music emanating from the back of 1610 Armstrong Avenue.

At approximately 10:05 p.m., I walked to 1610 Armstrong Avenue where I heard loud music coming from the building.

At approximately 10:10 p.m., I observed 3 women being dropped off by a Honda. I watched as they entered 1610 Armstrong Avenue.

At approximately 10:16 p.m., I observed 3 men exit the building and speak outside the building. As they exited the building, I heard loud music coming from inside. I also observed a man in an upstairs window looking out. One of the men who exited the building got in a car located at the corner of Keith Street and Armstrong Avenue. He then exited the car and stood on the street corner directly across the street from me.

At approximately 10:32 p.m., I observed 2 well-dressed couples arrive and enter the building.

At approximately 10:34 p.m., I observed 3 women and 2 men arrive in a red sedan and enter the building. I could hear the individuals speaking. They were all dressed as if they were going to a nightclub.

At approximately 10:35 p.m., I conversed with 2 security guards from Treeline. The security guards informed me that they have worked Saturdays and some Fridays from 5:00 p.m. until 12:00 a.m., since late March 2020. They further informed me that on a typical Friday or Saturday evening, they observe about 75 people coming and going from 1610 Armstrong Avenue.

At approximately 10:39 p.m., I observed 4 males arrive in a red car, double park in front of the building, and enter it.

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At 10:42 p.m., I observed 2 more cars arrive. The man standing on the corner across from me handed both drivers something.

At 10:46 p.m., I observed 4 cars arrive and 7-8 individual emerge from the cars and enter the building.

During my surveillance on both nights, I observed that many of the individuals wore red clothing and arrived in red cars, which is consistent with the gang colors worn and claimed by members of the Norteño criminal street gang. At 11:03 p.m., after being stared at and partially approached by the man on the corner, I made a decision to leave the area for my safety.

According to San Francisco Assessor Records, 1610 Armstrong Avenue is owned by the Won Joe and Jung O. Kim Revocable Living Trust.

On Monday, June 29, 2020, I spoke to owner Won Joe Kim on the telephone. He confirmed that he owned 1610 Armstrong, but was unaware of any noise complaints. Mr. Kim informed me that he leased the property to a cleaning company. Later that same day, I spoke on the telephone with Sun Kim, who identified herself as the owner's daughter-in-law. Ms. Kim stated that her in-laws had just leased 1610 Armstrong Avenue to a new tenant, beginning on June 1, 2020. Ms. Kim and her in-laws were informed by the tenant that he would be operating a cleaning company at the premises. Ms. Kim promised me that she would provide me the contact information for the tenant. On June 29, 2020, at approximately 6:54 p.m., Ms. Kim emailed me and informed me that the tenant at 1610 Armstrong Avenue is Mariano Pena and that his cleaning company's name is Bay Area Pinnacle Cleaning LLC.

I am familiar with Mariano Pena, as well as his daughter Yeinny Martinez. I am aware that prior to renting 1610 Armstrong Avenue, Mariano Pena rented 2266 Shafter Avenue, in San Francisco, another industrial building that, in violation of the SIP Order in effect at the time, was being run as an illegal nightclub. In connection with the City's investigation of the illegal nightclub at 2266 Shafter Avenue, the owner of the property provided the City with a copy of the lease for the property. I reviewed the lease and noted that Mariano Pena Lezama, d/b/a Bay Area Pinnacle Cleaning LLC was the tenant. Also in connection with the City's investigation of 2266 Shafter illegal nightclub, I was provided a copy of an eviction lawsuit filed in San Francisco Superior Court by the owner against his tenant, alleging that the tenant had falsely represented to

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the owner that he was leasing the space for storage of material for his janitorial company, but in fact was operating an illegal and dangerous underground nightclub.

In April 8, 2020, I conducted surveillance at 2266 Shafter Avenue and observed numerous individuals coming and going from the illegal nightclub. I also heard loud music coming from the nightclub. On April 9, 2020, I interviewed a private investigator hired by the owner of 2266 Shafter. The private investigator informed me that she surveilled 2266 Shafter Avenue over two nights in mid-March 2020 and observed more than 100 people enter and exit the building each night. She also heard loud music emanating from the building, and observed strobe lights within the building during periods when the door was open. Similar to my observations at 1610 Armstrong Avenue, during her surveillance, the private investigator observed that many of the individuals entering and exiting 2266 Shafter wore red clothing, including red shoelaces. She told me that she observed many people exit the building at 2266 Shafter Avenue in what appeared to be an intoxicated and inebriated condition - stumbling to their cars. She also witnessed several fights on both nights of her surveillance. These fights involved both men and women.

Following my surveillance of 2266 Shafter and my interview with the private investigator hired by its owner, I signed a Statement of Cause in support of an Inspection and Abatement Warrant for 2266 Shafter Avenue. The Inspection and Abatement Warrant was signed on April 10, 2020 by the Honorable Newton Lam and was executed by the SFPD on April 11, 2020. I have reviewed the SFPD Incident Report detailing the execution of the warrant. According to the report, during the execution of the warrant, the SFPD seized numerous items indicating that a nightclub was being operated out of the property, including pool tables, gambling machines, stools, garbage cans containing beer and liquor, cases of beer, fog machines, a DJ mixer, an amplifier, ceiling lights, speakers, speaker stands, and \$670 in U.S. currency.

Following SFPD's execution of the warrant at 2266 Shafter, on or about June 19, 2020, I was provided a copy of an email sent on June 19, 2020, to DCA Michael Weiss from Yeinny Martinez. In the email, Ms. Martinez informed DCA Weiss that her father Mariano Pena was the leaseholder of 2266 Shafter Avenue. She further informed DCA Weiss that the SFPD entered the property in April and "took all the stuff. because we a afterparty (*sic*).” In the email, Ms. Martinez further inquired as to how she could obtain the items seized by the police.

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Prior to running the illegal nightclub at 2266 Shafter, I am aware that Ms. Martinez was associated with at least three other suspected illegal nightclubs in San Francisco. On July 1, 2020, I spoke on the telephone to former Deputy City Attorney Nicholas Colla (“former DCA Colla.”) He informed me that Ms. Martinez was suspected of running illegal nightclubs at warehouses at 55 Waterloo Street, and at a property that he believed was on the 5300 block of 3rd Street (which I later identified as 5945 3rd Street). In both cases, the purported businesses being operated out of the properties were janitorial in nature. At both properties, former DCA Colla told me that he gave advanced notice of intended City inspections and prior to the each scheduled inspection, the properties were cleared of indicia of illegal nightclub activity. On July 1, 2020, I spoke to City Attorney Investigator Dwight Moore, who was present at the inspections. Investigator Moore informed me that the 55 Waterloo inspection took place in February 2017, and the inspection of 5945 3rd Street took place in March 2018. Investigator Moore informed me that he also took part in a City Attorney’s Office inspection of 2110 Palou, in San Francisco in September 2019. Investigator Moore informed me that, like the other properties, a suspected nightclub was being run by Ms. Martinez. Like the other parties, the building was cleared prior to the noticed inspection. In summary, Ms. Martinez and her associates have a custom and practice of removing the equipment used for their illegal nightclubs when they receive notice of an inspection. For this reason as well as the serious health risks posed by these large private social gatherings, as discussed in greater detail below, it is respectfully requested that the Court exercise its authority to allow this warrant to be served without notice. (Code Civ. Proc. § 1822.56.)

On Tuesday, June 30, 2020, I again spoke to Sun Kim on the telephone. She told me that she had texted Yeinny Martinez regarding the City’s complaint and Ms. Martinez claimed ignorance of an illegal nightclub operating out of 1610 Armstrong. I informed Ms. Kim that Mr. Pena and Ms. Martinez had run an illegal nightclub at 2266 Shafter Avenue prior to renting 1610 Armstrong. I also informed Ms. Kim that, like at 2266 Shafter Avenue, the City would move quickly to stop the dangerous and illegal activity at 1610 Armstrong Avenue. Ms. Kim offered to provide the City with a copy of the keys to 1610 Armstrong. She also informed me that the property owners would file paperwork next week to begin eviction proceedings against Mr. Pena. Before ending our telephone call, I asked Ms. Kim if she would provide me a copy of the

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lease with Mr. Pena, as well as the screenshots of the texts with Ms. Martinez. Later that day, Ms. Kim provided me with both. I reviewed the lease and noted that the tenant is listed as Mariano Pena, with the lease term beginning on June 1, 2020. The stated use of the premises, as indicated in the lease, is for janitorial services for Bay Area Pinnacle Cleaning LLC. I also reviewed the screenshots of the texts between Ms. Kim and Ms. Martinez, which begin on June 13th and end on June 29th. On June 13th, Ms. Kim texted Ms. Martinez, who is identified as "Jasmin" in the texts, and informs her of a neighbor complaint regarding a party at 1610 Armstrong Avenue. Ms. Martinez responds that "my dad has a carne asada w the fam and friend. But that weird I don't see any neighbors." In the June 29th, text exchange, Ms. Kim texts "Jasmin" to inform her that the City Attorney's Office had complained about loud partying at 1610 Armstrong Avenue. Ms. Kim asked "Jasmin" if parties were occurring at 1610 Armstrong Avenue. In response, "Jasmin" replies: "Hi thats (*sic*) weird its probably from last time they called you about having a party. But if the city attorney wants to check the place out then you can just let me know 24 hour before." After reviewing these texts, I confirmed with Ms. Kim the telephone number for "Jasmin." The telephone number provided by Ms. Kim is the same telephone number that Yeinny Martinez provided to the City Attorney's Office when she was attempting to retrieve the property the police seized from 2266 Shafter Avenue following execution of the warrant there.

On July 1, 2020, I spoke to SFPD Bayview Station Sgt. Mark Fraize. Sgt. Fraize told me that he contacted Ms. Kim on July 1, 2020, and informed her that the City would be seeking a warrant for 1610 Armstrong Avenue. Ms. Kim told Sgt. Fraize that she would provide the SFPD with keys to the property. She also agreed to have a locksmith available during the execution of the warrant in case the tenant had changed the locks. Sgt. Fraize told me that shortly after his call with Ms. Kim, the property owner, Won J. Kim arrived at the Bayview Station and gave the keys to 1610 Armstrong Avenue to Sgt. Fraize.

Execution of this inspection and abatement warrant outside the presence of the owner or occupant should be authorized. Because the illicit business is a nightclub, facilitating social gatherings of numerous people in violation of the SIP Order, it is causing an imminent health hazard to the public. Execution of this inspection and abatement warrant should not depend on the presence of the owner or occupant. Execution of the warrant outside the presence of the

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owner or occupant is authorized where it is “reasonably necessary to effectuate the purpose of the regulation being enforced.” (Code Civ. Proc. § 1822.56.) In this case, time is of the essence. Per the SIP Order, COVID-19 is easily transmitted, especially in group settings and can be extremely serious. The mere gathering of any number of individuals in public or in private in violation of the SIP Order constitutes an imminent health hazard and public nuisance. (SIP Order §§15(a)(iv), 17.) The illicit nightclub must be immediately and forcibly closed. This is not an Essential Business, Outdoor Business, or Additional Business and is facilitating social gatherings which violate the SIP Order. The business “constitutes an imminent threat and menace to public health [and] constitutes a public nuisance” and is thwarting the City’s efforts to “slow [COVID-19] transmission to help (a) protect the most vulnerable; (b) to prevent the health care system from being overwhelmed; (c) prevent long-term chronic health conditions, such as cardiovascular, kidney, and respiratory damage and loss of limbs from blood clotting; and (d) prevent deaths.” (SIP Order §§12, 17.) The City must be allowed to enter, vacate and do all that it can to effectively shutter the business even if the owner or occupant is not present.

Forcible entry should be authorized pursuant to California Code of Civil Procedure section 1822.56, which allows forcible entry where the violation poses an “immediate threat to health or safety.” (Code Civ. Proc. § 1822.56.) For the same reasons stated elsewhere herein, and because time is of the essence, the City must be allowed to enter the premises, forcibly if necessary, vacate and shutter the business even if the owner or tenant attempt to refuse the City entrance.

The requirement of 24-hours’ advance notice should not apply here. Although Yeinny Martinez, also known as Jasmin, appears to have consented to the inspection, but only with 24-hour advanced notice, the 24-hour notice requirement may be excused where “the judge finds that immediate execution is reasonably necessary in the circumstances shown.” (Code Civ. Proc. § 1822.56.) The notice requirement should be excused here because Ms. Martinez, while agreeing to an inspection, has not agreed to abatement of the nuisance, which this order seeks. Moreover, providing Ms. Martinez 24-hour notice of an inspection will impede the immediate abatement of the nuisance, which is critical for public health and safety. Ms. Martinez and Mr. Pena have committed this same ruse -- pretending to operate a janitorial service but in reality operating an illegal nightclub at other properties in San Francisco. In addition, at three other

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properties where Ms. Martinez is suspected of running additional illegal nightclubs, when advance notice was provided, the properties were cleared of any evidence of illegal activity prior to the inspections. If Ms. Martinez and Mr. Pena are provided 24-hour advance notice of an inspection at 1610 Armstrong Avenue, it is probable that they will remove evidence of nightclub activity in advance of the inspection and resume such activity after the inspection. Immediate execution of the warrant against these repeat offenders and without the advanced notice that would permit them to hide the evidence, is reasonably necessary under the circumstances to abate this serious threat to health and safety. Each day, the spread of COVID-19 threatens the lives of San Franciscans and threatens to overwhelm our hospitals. COVID-19 is a pandemic and “the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19.” (SIP Order §9.) Moreover, further evidence established that “others, including younger and otherwise healthy people are also at risk for serious outcomes” from COVID-19. (SIP Order §9.) “Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health.” (SIP Order §17.) Here, time is of the essence to shut down the illegal business and remove the illegal nightclub equipment and 24-hours’ notice to the operators is not reasonable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on July 2, 2020, in San Francisco, California.

A handwritten signature in blue ink, appearing to read 'David Burke', is written over a horizontal line.

David Burke, City Attorney Investigator