

FOR IMMEDIATE RELEASE: July 10, 2019

Contact: Hilary Nemchik at
hnemchik@sandiego.gov or (619) 533-6176

City Attorney Elliott Files Complaint Against Chronic Nuisance Venue

Observatory North Park was known for disturbances, public intoxication, teen drinking

City Attorney Mara W. Elliott has filed a complaint against the Observatory's operators and corporate entities, alleging they were maintaining a public nuisance and operating without the required permits.

The Observatory North Park has been a growing source of neighborhood complaints for noise, violence, teenage drinking, public intoxication, public vomiting, and the accumulation of trash, debris, and human waste. The San Diego Police Department responded to 174 calls for service to the University Avenue site between January 2015 and May 2019, resulting in more than 500 hours of out-of-service time for officers.

The defendants in the case are Thomas Courtney Dubar, Northpark SD, a limited liability company (LLC), and SD Observatory, LLC.

“For too long, Observatory North Park has been a neighborhood nuisance, a fire trap, and a health threat to its customers and the community in which it operates,” City Attorney Mara W. Elliott said. **“If its managers don’t start following the law, the party’s over. We will shut them down permanently.”**

The City Attorney's Office has worked in partnership with the San Diego Police Department, Code Enforcement, and the Fire Department to address violations at this venue.

Chief Deputy City Attorney Gabriela Brannan and Supervising Deputy City Attorney Patricia Miranda prosecuted this case on behalf of the People of the State of California and The City of San Diego.

A copy of the complaint is attached.

COPY

1 MARA W. ELLIOTT, City Attorney
JOHN C. HEMMERLING, Assistant City Attorney
2 GABRIELA BRANNAN, Chief Deputy City Attorney
PATRICIA MIRANDA, Supervising Deputy City Attorney
3 California State Bar No. 246793
Office of the City Attorney
4 Community Justice Division/Nuisance Abatement Unit
1200 Third Avenue, Suite 700
5 San Diego, California 92101-4103
Telephone: (619) 533-5500
6 Fax: (619) 533-5696
pmiranda@sandiego.gov

JUL 3 '19 PM 12:45

7 Attorneys for Plaintiffs No Fee GC § 6103

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 THE PEOPLE OF THE STATE OF
CALIFORNIA and CITY OF SAN DIEGO, a
11 municipal corporation,

Case No.

UNLIMITED JURISDICTION

12 Plaintiffs,

COMPLAINT FOR ABATEMENT OF A
PUBLIC NUISANCE, INJUNCTION, CIVIL
PENALTIES, AND OTHER EQUITABLE
RELIEF

13 v.

14 NORTH PARK SD, LLC, a California Limited
Liability Company;
15 SD OBSERVATORY, LLC, a California
Limited Liability Company;
16 THOMAS COURTNEY DUBAR, an
individual; and
17 DOES 1 through 50, inclusive,

(1) PUBLIC NUISANCE (CALIFORNIA
CIVIL CODE SECTIONS 3479 &
3480)

(2) VIOLATIONS OF THE SAN DIEGO
MUNICIPAL CODE

18 Defendants.

19
20 Plaintiffs the People of the State of California and City of San Diego, a municipal
21 corporation, appearing through their attorneys, Mara W. Elliott, City Attorney, by Gabriela
22 Brannan, Chief Deputy City Attorney, and Patricia Miranda, Supervising Deputy City Attorney,
23 allege the following based upon information and belief:

24 **JURISDICTION AND VENUE**

25 1. Plaintiffs the People of the State of California and the City of San Diego, a municipal
26 corporation (Plaintiffs), by this action and pursuant to California Code of Civil Procedure sections
27 526 and 731, and San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, seek a
28 preliminary injunction, and permanent injunction prohibiting Defendants from using or

1 maintaining a property in violation of state and local ordinance provisions and as a public
2 nuisance which is a threat to the health, safety, and welfare of the public and its occupants, and
3 also seeks to obtain civil penalties and other equitable relief.

4 2. The omission or commission of acts and violations of law by Defendants as alleged in
5 this Complaint occurred within the City of San Diego, State of California. Defendants at all times
6 mentioned in this Complaint have transacted business within the City of San Diego, State of
7 California, or are residents of San Diego County, within the State of California, or both.

8 3. The property where the acts and practices described in this Complaint were performed
9 is located in the City of San Diego.

10 **THE PARTIES**

11 4. Plaintiff People of the State of California, brings this action by and through Mara W.
12 Elliott, City Attorney for the City of San Diego.

13 5. Plaintiff City of San Diego was and is a municipal corporation and a chartered city,
14 organized and existing under the laws of the State of California.

15 6. Defendant NORTH PARK SD, LLC (NORTH PARK), is a California limited liability
16 company and at all times relevant to this action, was and is the owner of record of the property
17 located at 2891–2895 University Avenue, San Diego, California 92104 (PROPERTY) where the
18 violations alleged in this Complaint exist.

19 7. Defendant SD OBSERVATORY, LLC (SD OBSERVATORY), is a California
20 limited liability company and at all times relevant to this action was and is maintaining violations
21 of state and local ordinances at the PROPERTY.

22 8. Defendant THOMAS COURTNEY DUBAR (DUBAR) is the sole managing partner
23 of NORTH PARK and SD OBSERVATORY.

24 9. Defendants are each a “Responsible Person” within the meaning of SDMC section
25 11.0210 for allowing and maintaining violations of the SDMC at the PROPERTY. They are also
26 each strictly liable for all code violations existing at the PROPERTY pursuant to SDMC section
27 121.0311 and applicable California law.

28

1 10. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the
2 provisions of California Code of Civil Procedure section 474, their true names and capacities are
3 unknown to Plaintiffs. Plaintiffs are informed and believe that each Defendant DOES 1 through
4 50, is either responsible, in whole or in part, for the violations and conduct alleged, or has, or
5 claims to have, an interest in the PROPERTY, the exact nature of which is unknown to the City.
6 When the true names and capacities are ascertained, Plaintiffs will seek leave of court to amend
7 this Complaint and to insert in lieu of such fictitious names the true names and capacities of the
8 fictitiously named Defendants.

9 **PROPERTY**

10 11. The legal address of the property where violations of the SDMC are being maintained
11 and the nuisance is occurring is located at 2891–2895 University Avenue, San Diego, California,
12 92104, also identified as Assessor’s Parcel Number 453-121-05-00, according to the San Diego
13 County Recorder’s Grant Deed document number 2015-0016584, recorded on January 14, 2015.

14 12. The legal description of the PROPERTY is:

15 LOTS 1 THROUGH 4 INCLUSIVE, IN BLOCK 3 OF WEST
16 END, IN THE CITY OF SAN DIEGO, COUNTY OF SAN
17 DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP
THEREOF NO. 590, FILED IN THE OFFICE OF THE COUNTY
RECORDER OF SAN DIEGO COUNTY, MAY 17, 1873.

18 13. The owner of record of the PROPERTY is “Northpark SD, LLC, a California Limited
19 Liability Company” per Grant Deed document number 2015-0016584 recorded on January 14,
20 2015, with the San Diego County Recorder’s Office.

21 14. The PROPERTY is located in a Community-Commercial 3-9 (CC-3-9) zone in the
22 neighborhood of North Park in the City of San Diego. The PROPERTY consists of one single
23 commercial building over 5,000 square feet in size that is occupied by two businesses: The West
24 Coast Tavern and the Observatory North Park. These businesses are physically and functionally
25 connected sharing restrooms, common space, and access/egress. Before the illegal maintenance of
26 a nightclub and bar use, a theater use was operating from the premises.

27
28

**HISTORY OF VIOLATIONS OF THE
SAN DIEGO MUNICIPAL CODE AT THE PROPERTY**

15. SDMC sections 131.0520 and 131.0522, and corresponding Use Table 131-05B lists the types of uses that are permitted in a CC-3-9 commercial zone. The PROPERTY is located in a CC-3-9 commercial zone. The operation or maintenance of a nightclub, bar, or theater over 5,000 square feet in size requires a Conditional Use Permit (CUP).

16. Per SDMC section 141.0102, “[u]ses that require a Conditional Use Permit are uses that may provide essential or desirable community services but could have adverse impacts on the surrounding community if not located, designated, and operated with sensitivity.”

17. On or about January 7, 2015, DUBAR on behalf of SD OBSERVATORY filed an application with the California Department of Alcoholic and Beverage Control (ABC) to transfer an existing retail alcoholic beverage license to the West Coast Tavern and the Observatory North Park. In the application, DUBAR stated that there would be live entertainment and concerts at the PROPERTY. Plans were also submitted showing that the previously existing fixed seating had been removed, substantially altering the interior of the Observatory North Park. A temporary ABC permit was issued which was valid from January 8, 2015 to May 13, 2015.

18. On or about January 14, 2015, DUBAR on behalf of SD OBSERVATORY applied for a Business Tax Certificate with the City of San Diego and listed the description of the businesses operating at the PROPERTY as that of a theater, bar, and restaurant.

19. SDMC section 33.1503 requires an Entertainment Permit for establishments that provide live entertainment that is open to the public. Theaters are exempt from obtaining a police permit. A theater is defined as a commercial establishment where regular theatrical performances are given on stage and have ascending row seating or fixed seating.

20. SDMC section 33.0309 specifies that the granting of an Entertainment Permit does not relieve the permittee from complying with all applicable local, state or federal laws, including those related to building, zoning, fire, and other public safety regulations.

21. On or about February 2015, officers from the San Diego Police Department’s Permits and Licensing Unit (SDPD Permits and Licensing) inspected the Observatory North Park and

1 observed that the previously existing fixed seating had been removed and that live entertainment
2 was being provided.

3 22. On or about February 26, 2015, SDPD Permits and Licensing officers issued a Notice
4 of Violation (NOV) to SD OBSERVATORY requiring that all entertainment cease immediately
5 at the Observatory North Park and West Coast Tavern until an Entertainment Permit was obtained
6 as required per SDMC section 33.1503. An Entertainment Permit was being required because the
7 use of the premises was no longer that of a theater but of a nightclub and bar. The NOV was
8 personally delivered to the general manager Paris Landen (LANDEN).

9 23. On or about February 26, 2015, ABC Supervising Agent Jennifer Hill (HILL) sent a
10 cease and desist letter to SD OBSERVATORY informing DUBAR that alcohol sales, service and
11 consumption were to stop at the Observatory North Park and West Coast Tavern immediately
12 because the premises had been substantially altered by the removal of the previously existing
13 fixed seating. ABC also advised DUBAR that the diagrams submitted with the transfer
14 application failed to identify the change in seating and that an investigation would be necessary
15 before a permit transfer could be approved.

16 24. On or about March 4, 2015, DUBAR provided HILL updated floor plans for the
17 Observatory North Park which reflected the layout of the interior of the Observatory North Park
18 when hosting events without fixed seating, with temporary seating, and for banquets. These plans
19 confirmed that the theater use had been abandoned and that the new use of the premises was that
20 of a nightclub and bar.

21 25. On or about March 9, 2015, as a nightclub and bar use was now being maintained and
22 operated at the PROPERTY, DUBAR on behalf of SD OBSERVATORY applied for an
23 Entertainment Permit with SDPD to provide live entertainment at the Observatory North Park and
24 at the West Coast Tavern.

25 26. From about March 5, 2015 through December 29, 2015, while ABC investigated the
26 change of use from a theater to that of a nightclub and bar, SD OBSERVATORY applied for and
27 SDPD issued about 73 single event Entertainment Permits allowing the hosting of live
28 entertainment single occasion events with alcohol service.

1 27. On or about March 18, 2015, DUBAR on behalf of SD OBSERVATORY submitted
2 four diagrams to ABC which confirmed that the previously existing fixed seating had been
3 removed from the premises. The diagrams depicted the layout of the interior of the Observatory
4 North Park when used to host entertainment events with temporary seats, without seats, with a
5 dance floor and portable booths, and with table seating.

6 28. On or about December 30, 2015, DUBAR on behalf of SD OBSERVATORY applied
7 for and SDPD issued an Entertainment Permit allowing live entertainment, alcohol service, and
8 dancing for 400+ patrons at the Observatory North Park and West Coast Tavern until April 30,
9 2016.

10 29. On or about March 3, 2016, DUBAR on behalf of SD OBSERVATORY applied to
11 renew their SDPD Entertainment Permit to allow live entertainment, alcohol service, and dancing
12 for 400+ patrons at the Observatory North Park and West Coast Tavern.

13 30. On or about May 1, 2016, SDPD issued an Entertainment Permit to SD
14 OBSERVATORY allowing the Observatory North Park and West Coast Tavern to provide live
15 entertainment, alcohol service, and dancing for 400+ patrons. This permit expired on April 30,
16 2017.

17 31. From November 2016 through December 2016, the Observatory North Park hosted
18 approximately 37 live entertainment events with dancing and sale and service of alcohol.

19 32. From January 2017 through December 2017, the Observatory North Park hosted
20 approximately 193 live entertainment events with dancing and sale and service of alcohol.

21 33. On or about March 21, 2017, DUBAR on behalf of SD OBSERVATORY applied for
22 a renewal of their SDPD Entertainment Permit for the Observatory North Park and West Coast
23 Tavern.

24 34. On or about May 1, 2017, SDPD renewed the Entertainment Permit for SD
25 OBSERVATORY allowing for live entertainment, the sale and service of alcohol, and dancing of
26 400+ patrons. This permit expired on April 30, 2018.

27 35. On or about July 27, 2017, an inspector with the City's Fire-Rescue Department (Fire
28 Department) conducted an inspection at the Observatory North Park and observed several fire

1 hazard violations including lack of exit lighting in the stairways, electrical extension cords being
2 used in lieu of permanent wiring, lack of illuminated exit signs, unpermitted alarm systems, lack
3 of fire extinguishers, blocked fire sprinklers, lack of fire rated doors, and unsecured gas cylinders.
4 LANDEN was present during the inspection.

5 36. On or about August 8, 2017, the Fire Department issued an NOV to SD
6 OBSERVATORY requiring correction of the fire hazard violations observed at the Observatory
7 North Park during the July 27, 2017 inspection.

8 37. On or about July 20, 2017 and July 27, 2017, investigators with the City's Code
9 Enforcement Division (CED) went to the PROPERTY to conduct an inspection in response to
10 complaints by the Fire Department that the Observatory North Park and the West Coast Tavern
11 were maintaining building and zoning violations.

12 38. At the inspection, CED Investigators observed that the Observatory North Park and
13 the West Coast Tavern are physically and functionally connected sharing bathrooms, common
14 space, and access/egress. The square footage of the establishments was determined to be over
15 5,000 square feet in size. The specific violations observed at the PROPERTY include:

16 a. Public Nuisance. The ongoing criminal and nuisance activity and arrests by police
17 creates a public nuisance as well as the human waste and junk, trash, and debris located on the
18 exterior of the building. SDMC §§ 12.0204(a) and 121.0302(b)(4);

19 b. Unpermitted use. Unlawfully operating a nightclub and bar over 5,000 square feet
20 in size in a CC-3-9 commercial zone without first obtaining a required CUP. SDMC §§ 126.0306,
21 131.0520, and 131.0522;

22 c. Improper occupancy. Improper change of occupancy from an A-1 occupancy
23 (theater) to an A-2 mixed use occupancy. SDMC § 121.0302 and California Building Code §
24 303.2;

25 d. Unpermitted building modifications. Interior building modifications were made
26 without the required building permits. SDMC § 129.0202;

27

28

1 e. Unsafe electrical wiring. Temporary electrical lighting and extension cords used
2 throughout the premises, illegal live electrical wiring, and missing electrical box covers. SDMC §
3 129.0302; and

4 f. Unpermitted plumbing modifications. Water line was installed without the
5 required permits. SDMC § 129.0402.

6 39. On or about October 27, 2017, CED staff issued a Notice of Violation and Order to
7 Abate Public Nuisance to NORTH PARK, SD OBSERVATORY, and DUBAR. The NOV
8 advised Defendants of the existence and nature of the code violations observed at the
9 PROPERTY and ordered correction of the violations and abatement of the public nuisance within
10 specified timeframes. The NOV also required Defendants to cease operating an illegal use
11 immediately until the required CUP was obtained.

12 40. On or about November 15, 2017, Defendant DUBAR and his staff, along with their
13 legal counsel attended a meeting at the San Diego City Attorney's Office to discuss the existing
14 code and fire violations, corrective measures, and compliance timeframes. City staff reviewed
15 the violations existing at the PROPERTY and Defendants again were ordered to immediately
16 cease operating a nightclub and bar as the required CUP had not been obtained in violation of
17 local zoning laws.

18 41. On or about November 30, 2017, SDPD officers went to the PROPERTY and
19 confirmed that the Observatory North Park and West Coast Tavern continued to operate in
20 violation of local zoning laws.

21 42. On or about November 17, 2017, Fire Department staff conducted a night detail
22 inspection at the Observatory North Park and observed additional fire code violations including
23 lack of required exits, lack of clear path of travel, and missing exit signs in the
24 balcony/mezzanine area. Illegal building modifications were also observed.

25 43. On or about December 1, 2017, Fire Chief Perry met LANDEN at the Observatory
26 North Park and informed her that the balcony/mezzanine area had to be closed off immediately
27 until an exit analysis plan was submitted and approved by the City, a certificate of occupancy
28 obtained, and all building code violations were corrected.

1 44. On or about December 4, 2017, Fire Chief Perry along with Fire Department staff and
2 City Attorney Investigator Norma Valverde (Investigator Valverde) returned to the PROPERTY
3 to conduct a compliance inspection. Investigator Valverde informed LANDEN that the
4 maintenance and operation of a nightclub and bar over 5,000 feet in size was not permitted at the
5 PROPERTY without first obtaining the required CUP. Additional fire and building code
6 violations were also observed.

7 45. On or about December 16, 2017, SDPD officers went to the PROPERTY and
8 confirmed that the Observatory North Park and the West Coast Tavern continued to operate in
9 violation of local zoning laws.

10 46. On or about December 20, 2017, Fire Chief Perry issued DUBAR and SD
11 OBSERVATORY a Cease and Desist Order requiring the closure of the balcony/mezzanine area
12 located inside the Observatory North Park until all required building plans were submitted and
13 approved to correct the building violations and after the required CUP was obtained. This Order
14 was also explained and personally delivered to LANDEN.

15 47. In January 2018, City staff confirmed that the Observatory North Park hosted 10 live
16 entertainment events and continued to operate as a nightclub and bar use without the required
17 CUP in violation of local zoning laws.

18 48. On or about February 16, 2018, Investigator Valverde attended a concert by the Sweet
19 & Tender Hooligans and Very Be Careful cover bands at the Observatory North Park. She
20 observed a lack of fixed seating and confirmed that a nightclub and bar use was continuing to
21 operate without the required CUP in violation of local zoning laws.

22 49. On or about February 20, 2018, LANDEN requested a meeting with City Planner
23 Chris Larson to review building permits to legalize the illegal balcony/mezzanine area located
24 inside the Observatory North Park. LANDEN was informed that building plans could not be
25 issued until a CUP was obtained to legalize the unpermitted nightclub and bar use.

26 50. In February 2018, City staff confirmed that the Observatory North Park hosted 16 live
27 entertainment events and continued to operate as a nightclub and bar or theater over 5,000 square
28 feet in size without the required CUP in violation of local zoning laws.

1 51. On or about March 15, 2018, DUBAR on behalf of SD OBSERVATORY applied to
2 renew their Entertainment Permit to allow entertainment, alcohol sales and service, and dancing
3 for 400+ patrons at the Observatory North Park and the West Coast Tavern. DUBAR
4 acknowledged being aware that the granting of an Entertainment Permit did not relieve SD
5 OBSERVATORY from complying with all applicable local, state, and federal laws, including
6 those relating to building, zoning, and fire.

7 52. On or about March 17, 2018, City staff confirmed that the Observatory North Park
8 continued to operate without a CUP in violation of local zoning laws.

9 53. In March 2018, City staff confirmed that the Observatory North Park hosted 15 live
10 entertainment events and continued to operate without the required CUP in violation of local
11 zoning laws.

12 54. On or about April 5, 2018, Investigator Valverde attended a concert by O.T. Genasis,
13 Warren G, and Snoop Dogg at the Observatory North Park. She observed a lack of fixed seating,
14 dancing in front of the stage, and the smoking of marijuana. This confirmed that a nightclub and
15 bar use continued to operate at the PROPERTY in violation of local zoning laws.

16 55. In April 2018, City staff confirmed that the Observatory North Park hosted 22 live
17 entertainment events and continued to operate without the required CUP in violation of local
18 zoning laws.

19 56. On or about May 1, 2018, SDPD issued an Entertainment Permit to SD
20 OBSERVATORY allowing entertainment, the sale and service of alcohol, and dancing for 400+
21 patrons at the Observatory North Park and the West Coast Tavern.

22 57. From May 2018 through December 2018, City staff confirmed that the Observatory
23 North Park hosted about 137 live entertainment events and continued to operate without the
24 required CUP in violation of local zoning laws.

25 58. From January 2019 to March 2019, City staff confirmed that the Observatory North
26 Park hosted 43 live entertainment events continuing to operate without the required CUP in
27 violation of local zoning laws.

28

1 **HISTORY OF NUISANCE AND CRIMINAL ACTIVITY AT THE PROPERTY**

2 59. From January 2015 to May 14, 2019, there have been approximately 174 calls for
3 service to SDPD requiring officers to expend over 500 hours of out-of-service time at the
4 PROPERTY. Most calls were for reports of suspects disturbing the peace with violence and for
5 being drunk in public.

6 60. In addition to the high frequency of police service calls, the PROPERTY has also been
7 the source of numerous citizen complaints from members of the surrounding neighborhood.
8 Community members complain that when the use illegally changed from a theater to a nightclub
9 and bar use, that the nuisance activity increased. Community members report an increase in
10 nuisance and criminal activity that includes public intoxication, marijuana use, and teenage
11 drinking. Community members are also concerned about the loud music that can be heard coming
12 from the Observatory North Park, and report that after concerts it is common for local businesses
13 to find broken bottles, empty alcohol cans, cigarette butts, vomit, and blood near their
14 establishments.

15 61. Since at least January 2015, to the present, Defendants have maintained a nuisance at
16 the PROPERTY. The following is an example of some of the arrests at the PROPERTY:

- 17 a. On or about June 12, 2015, SDPD officers responded to the Observatory North
18 Park and arrested a patron who was drunk and out of control.
- 19 b. On or about September 11, 2015, SDPD officers responded to the West Coast
20 Tavern and arrested a violent drunk patron.
- 21 c. On or about October 12, 2015, SDPD officers responded to the Observatory North
22 Park and arrested a drunk patron who was fighting with the security guards.
- 23 d. On or about May 4, 2016, SDPD officers contacted a concert patron of the
24 Observatory North Park who was urinating outside of the building. The male was visibly drunk
25 and became violent. The male was arrested for being drunk in public.
- 26 e. On or about May 17, 2016, SDPD officers responded to the Observatory North
27 Park to investigate a report of a drunk patron who refused to leave. The male was observed
28 yelling and cursing and was arrested for disorderly conduct in public.

1 f. On or about July 17, 2016, SDPD officers responded to the West Coast Tavern to
2 address a domestic violence incident. Officers contacted the drunk male aggressor who was
3 pushing his wife. Officers arrested the male for being drunk in public and resisting arrest.

4 g. On or about September 15, 2016, SDPD officers responded to a parking lot located
5 directly across from the Observatory North Park to investigate a report of two heavily intoxicated
6 females inside a vehicle. One of the females was transported to the hospital as she was
7 unresponsive and had vomit all over her body. The second female was determined to be underage
8 and was arrested for public intoxication.

9 h. On or about October 5, 2016, SDPD officers responded to the Observatory North
10 Park to investigate a vehicle crash caused by a patron leaving a concert. Officers arrested an
11 underage male for driving under the influence.

12 i. On or about November 11, 2016, SDPD officers responded to the Observatory
13 North Park to investigate a report of a battery. The victim reported being battered by a security
14 guard who told her to "get the fuck out."

15 j. On or about January 25, 2017, SDPD officers responded to the Observatory North
16 Park to investigate a report of a drunk male who was assaulting employees and refusing to leave.
17 Officers arrested the male for disorderly conduct.

18 k. On or about January 29, 2017, SDPD officers responded to the West Coast Tavern
19 to investigate a report of a drunk male who refused to pay his invoice. The male was heavily
20 intoxicated and had urinated on himself. Officers arrested the male for being drunk in public.

21 l. On or about July 1, 2017, SDPD officer responded to the Observatory North Park
22 and arrested an intoxicated male.

23 62. On or about May 21, 2016, Vice Licensing detectives conducted an inspection at the
24 Observatory North Park and determined that the security guards working at the premises were not
25 licensed by the State as required by the terms of the Entertainment Permit issued to the SD
26 OBSERVATORY. LANDEN was informed of the violation.

27

28

1 63. On or about June 15, 2016, SDPD Vice Licensing detectives issued SD
2 OBSERVATORY an NOV for failure to maintain licensed security guards as required per the
3 terms of their Entertainment Permit.

4 64. On or about July 28, 2016, SDPD Vice Licensing detectives conducted an inspection
5 at the Observatory North Park during a concert event and determined that unlicensed security
6 guards continued to be employed in violation of the Entertainment Permit. When the concert
7 ended, officers observed patrons running out of the building yelling that someone had a gun.
8 Patrons were observed fighting outside of the Observatory North Park and the security guards
9 were unable to control the crowd. Forty SDPD officers responded to the scene to control the
10 crowd resulting in officers spending 34.8 hours of police out of service time quelling the
11 disturbance.

12 65. On or about August 3, 2016, SDPD Vice Licensing detectives issued another NOV to
13 SD OBSERVATORY for failing to employ licensed security personnel to patrol the interior and
14 exterior of the premises to address criminal and nuisance activity and for failure to require all
15 security guard personnel to be licensed by the State.

16 66. On or about September 1, 2016, twenty-five officers responded to the Observatory
17 North Park to help disperse a large aggressive crowd that had exited a concert. An unresponsive
18 drunk male was transported to the hospital and several other patrons were arrested for being
19 drunk in public. Approximately 28.24 hours of police out of service time were expended to quell
20 this disturbance.

21 67. On or about September 3, 2016, SDPD Vice Licensing detectives conducted an
22 inspection at the Observatory North Park to investigate complaints of bartenders over serving
23 alcohol. Detectives observed about 10 patrons each carrying three or more alcoholic beverages.
24 They also observed a security guard carrying an intoxicated female patron out of the venue. The
25 drunk female was unable to stand without assistance and was transported to the hospital. Another
26 female was arrested for drinking in public. LANDEN was again warned about the violations.

27 68. On or about November 3, 2016, SDPD Vice licensing detectives along with ABC
28 agents conducted an inspection at the Observatory North Park. ABC agents contacted a 20-year-

1 old male who was drinking alcohol inside the venue. The male was cited and ejected from the
2 premises. The agents also observed a security guard escorting a drunk male from the venue. The
3 male was stumbling and had difficulty walking. The male was determined to be so intoxicated
4 that he could not take care of himself so he was arrested. Employees did not attempt to contact a
5 taxi service for the intoxicated patron in violation of their Entertainment Permit terms.

6 69. On or about November 8, 2016, SDPD Vice Licensing detectives issued another NOV
7 to SD OBSERVATORY for failing to contact a taxi service for an intoxicated patron and because
8 security personnel failed to patrol the interior and exterior of the premises to alleviate police
9 problems as required per their Entertainment Permit.

10 70. On or about May 14, 2017, SDPD officers responded to the Observatory North Park to
11 investigate a report of a female threatening suicide. The female was heavily intoxicated and was
12 ultimately transported to a hospital.

13 71. On or about June 7, 2017, the Observatory North Park hosted a rap artist. During the
14 show, a group of males rushed the stage and punched the performer in the head, knocking him
15 unconscious. A large fight ensued, suspects brandished handguns, and a male was stabbed. The
16 crowd spilled out of the venue shutting down the street. A total of 89 officers responded to the
17 scene along with SDPD's ABLE police helicopter. The crowd threw water bottles and objects at
18 the officers. It took about one hour to clear the crowd resulting in officers spending 93.71 hours
19 of out of service time.

20 72. On or about August 1, 2017, SDPD issued a Notice of Revocation to SD
21 OBSERVATORY and DUBAR revoking the issued Entertainment Permit due to the ongoing
22 criminal and nuisance activity occurring at the premises, as well as the frequent violations of the
23 terms of the permit as specified above. Defendants admitted the violations and agreed to a two-
24 week suspension of their Entertainment Permit.

25 73. On or about On October 16, 2017, ABC filed an administrative accusation against SD
26 OBSERVATORY for violations of the terms of their ABC alcohol sales permit, for using an
27 amplifying system inside the premises causing noise to be heard beyond the interior of the
28

1 premises. SD OBSERVATORY admitted the violations and paid a \$3,000 fine in lieu of their
2 permit being suspended.

3 74. Prior to the filing of this lawsuit, Defendants had ample opportunity to voluntarily
4 comply with the law. Defendants have known since at least February 26, 2015, that a nightclub
5 and bar use over 5,000 square feet in size is not permitted in the zone where the PROPERTY is
6 located without first obtaining a CUP and yet they continue to violate the law. Clearly, the City
7 has exhausted its efforts and demands compliance.

8 75. Unless Defendants are restrained by the order of this Court, they will continue to use,
9 occupy, maintain, and permit the continuance of a nuisance at the PROPERTY which will result
10 in irreparable injury to the health, safety, and welfare of the People of the State of California and
11 in violation of the laws of the State of California.

12 76. Plaintiffs have no adequate remedy at law other than this action. Defendants are
13 blatantly and willfully in violation of the San Diego Municipal Code and continue to maintain a
14 public nuisance. Defendants will continue to maintain the unlawful code violations and nuisance
15 in the future unless the Court enjoins and prohibits such conduct.

16 **I**

17 **FIRST CAUSE OF ACTION**

18 **MAINTENANCE OF A PUBLIC NUISANCE IN VIOLATION**
19 **OF CALIFORNIA CIVIL CODE SECTIONS 3479 AND 3480**
20 **ALLEGED BY PLAINTIFF THE PEOPLE OF THE STATE**
21 **OF CALIFORNIA AGAINST ALL DEFENDANTS**

22 77. Plaintiff the People of the State of California incorporates by reference all allegations
23 in paragraphs 1 through 76 of this Complaint as though fully set forth here in their entirety.

24 78. California Civil Code sections 3479 and 3480 provide that:

25 Anything which is injurious to health, including, but not limited to,
26 the illegal sale of controlled substances, or is indecent or offensive
27 to the senses, or an obstruction to the free use of property, so as to
28 interfere with the comfortable enjoyment of life or property . . . is a
nuisance. A public nuisance is one which affects an entire
community or neighborhood.

1 79. California Civil Code section 3491 provides for the methods by which public
2 nuisances such as those alleged in this case may be abated. California Civil Code section 3491
3 indicates that the remedies against a public nuisance are indictment or information, a civil action,
4 or abatement. California Civil Code section 3494 states that a public nuisance may be abated by
5 any public body or officer authorized thereto by law.

6 80. California Code of Civil Procedure section 731 authorizes a city attorney to bring an
7 action to enjoin or abate a public nuisance. It provides in relevant part “[a] civil action may be
8 brought in the name of people of the State of California to abate a public nuisance . . . by the city
9 attorney of any town or city in which such nuisance exists.”

10 81. Defendants were issued several Notices of Violation by City departments including
11 SDPD, CED, and the Fire Department. They also received Notices of Violation from the
12 Department of Alcoholic Beverage Control.

13 82. Defendants have had ample time to comply with the City’s Notices and yet they have
14 failed to do so within a reasonable time.

15 83. Beginning on an exact date unknown to Plaintiff, but since at least February 26, 2015,
16 and continuing to the present, Defendants have caused or maintained a continuing public nuisance
17 at the PROPERTY within the meaning of California Civil Code sections 3479 and 3480.

18 84. The number of arrests and calls for service to the police department to address
19 criminal and disorderly conduct at the PROPERTY constitutes a continuing public nuisance.
20 Despite Defendants’ knowledge of the criminal activity at the PROPERTY they have refused to
21 address the issues, thus the public nuisance continues.

22 85. Defendants’ maintenance of the PROPERTY in the condition described above
23 constitutes a continuing public nuisance as defined by California Civil Code sections 3479 and
24 3480. Defendants’ PROPERTY adversely affects the entire community and neighborhood. The
25 PROPERTY as it currently exists, is injurious to the health, safety, and welfare of the residents
26 and families who live in the community and interferes with the comfortable use and enjoyment of
27 life and property. Such conditions are objectionable to the neighborhood and community as a
28 whole.

1 86. Plaintiffs have no plain, speedy, or adequate remedy at law. Therefore, unless
2 restrained by this Court, Plaintiffs are informed and believe that Defendants will continue to
3 maintain this nuisance and thereby cause irreparable injury and harm to the public's health,
4 safety, and welfare.

5 **II**

6 **SECOND CAUSE OF ACTION**

7 **VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE**
8 **ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST**
9 **ALL DEFENDANTS**

10 87. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1
11 through 86 of this Complaint as though fully set forth here in their entirety.

12 88. SDMC section 121.0302(a) states: "It is unlawful for any person to maintain or use
13 any premises in violation of any of the provisions of the Land Development Code¹, without a
14 required permit, contrary to permit conditions, or without a required variance."

15 89. The PROPERTY is located in a CC-3-9 commercial zone. SDMC sections 131.0520
16 and 131.0522, and corresponding Use Table 131-05B lists the types of uses that are permitted in a
17 CC-3-9 commercial zone. The operation or maintenance of a nightclub, bar, or theater over 5,000
18 square feet in size requires a CUP.

19 90. Beginning on an exact date unknown to Plaintiff City of San Diego but since at least
20 February 26, 2015, and continuing to the present, Defendants have maintained and used the
21 PROPERTY for a nightclub and bar use over 5,000 square feet in size without the required CUP,
22 in direct violation of SDMC sections 121.0302(a) and 131.0520(a).

23 91. SDMC section 126.0306 states: "It is unlawful for any person to maintain, use, or
24 develop any premises without a Conditional Use Permit if such a permit is required for that use.
25 .."

26 92. Beginning on an exact date unknown to Plaintiff City of San Diego but since at least
27 February 26, 2015, and continuing to the present, Defendants have maintained and used the

28 ¹ SDMC § 111.0101(a) states that Chapters 11 through 15 of the San Diego Municipal Code shall be known collectively, and may be referred to, as the Land Development Code.

1 PROPERTY for a nightclub and bar use over 5,000 square feet in size without the required CUP,
2 in direct violation of SDMC sections 121.0302(a) and 126.0306.

3 93. SDMC sections 121.0302 and 12.0204(a) make it unlawful to maintain a public
4 nuisance. Beginning on an exact date unknown to Plaintiff City of San Diego but since at least
5 February 26, 2015, and continuing to the present, Defendants have maintained and used the
6 PROPERTY as a public nuisance in direct violation of SDMC sections 12.0204(a), 121.0302(a)
7 and 121.0302(b)(4).

8 94. SDMC section 129.0202(a) states no structure regulated by the Land Development
9 Code shall be erected, constructed, enlarged, altered, repaired, improved, converted, permanently
10 relocated or partially demolished unless a Building Permit has first been obtained from the
11 Building official. Beginning on an exact date unknown to Plaintiff, but since at least February 26,
12 2015, and continuing to the present, Defendants have maintained and used the PROPERTY in
13 violation of the SDMC by failing to obtain a building permit for structural work in violation of
14 SDMC sections 121.0302(a) and 129.0202(a).

15 95. SDMC section 129.0302 provides that no electrical wiring, device, appliance, or
16 equipment shall be installed within or on any structure or premises nor shall any alteration,
17 addition, or replacement be made in any existing wiring device, appliance, or equipment unless an
18 electrical Permit has been obtained for the work. Beginning on an exact date unknown to
19 Plaintiff, but since at least February 26, 2015, and continuing to the present, Defendants have
20 installed and maintained electrical modifications at the PROPERTY without the required
21 electrical permits in violation of SDMC sections 121.0302(a) and 129.0302.

22 96. SDMC section 129.0402(a) states that no plumbing system, or portion of a plumbing
23 system, shall be installed within or on any structure or premises, nor shall any alteration, addition,
24 or replacement be made in any existing plumbing system unless a plumbing/mechanical permit
25 has been obtained for the work. Beginning on an exact date unknown to Plaintiff, but since at
26 least February 26, 2015, and continuing to the present, Defendants have installed and maintained
27 a plumbing/mechanical system at the PROPERTY without obtaining a plumbing/mechanical
28 permit in violation of SDMC sections 121.0302(a) and 129.0402(a).

1 97. Plaintiff City of San Diego has no adequate remedy at law, and unless Defendants are
2 enjoined and restrained by an order of this Court, Defendants will continue to violate the SDMC,
3 thereby causing irreparable injury and harm to the public's health, safety, and general welfare.

4 **PRAYER**

5 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, and each of them, as
6 follows:

7 **AS TO THE FIRST CAUSE OF ACTION**

8 **Public Nuisance**

9 1. That the PROPERTY, together with the fixtures and moveable property, be declared a
10 continuing public nuisance as defined by California Civil Code sections 3479 and 3480.

11 2. That pursuant to California Code of Civil Procedure sections 526 and 731, the Court
12 grant a preliminary injunction and permanent injunction, enjoining and restraining Defendants,
13 their agents, heirs, successors, officers, employees and anyone acting on their behalf from
14 maintaining the PROPERTY as a public nuisance as defined per California Civil Code sections
15 3479 and 3480.

16 **AS TO THE SECOND CAUSE OF ACTION**

17 **Violations of the SDMC**

18 3. That the Court declare the PROPERTY to be in violation of:

19 **San Diego Municipal Code sections**

20 121.0302(a) 12.0204(a)
21 126.0306 131.0520
22 131.0522 129.0202
23 129.0302 129.0402

24 4. That, pursuant to SDMC sections 12.0202 and 121.0311, Code of Civil Procedure
25 section 526, and the Court's inherent equity powers, the Court grant a preliminary injunction and
26 permanent injunction, enjoining and restraining Defendants, their agents, officers, employees and
27 anyone acting on their behalf, from engaging in any of the following acts:

28 a. Maintaining, operating, or allowing the operation of a nightclub and bar over 5,000
square feet in size at the PROPERTY without first obtaining a CUP; and

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

b. Violating any provisions of the SDMC at the PROPERTY.

5. That immediately from the date of entry of judgment, Defendants cease maintaining a nightclub and bar at the PROPERTY and remove all signs advertising the business.

6. That Defendants allow personnel from the City of San Diego access to the PROPERTY to inspect and monitor for compliance upon 24-hour verbal or written notice. Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m.

7. That, pursuant to SDMC section 12.0202(b), Defendants be assessed a civil penalty of \$2,500 per day for each and every SDMC violation maintained at the PROPERTY.

AS TO ALL CAUSES OF ACTION

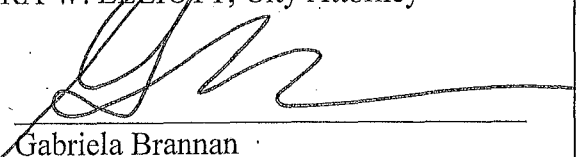
8. That Plaintiffs recover all costs incurred by Plaintiffs, including the costs of investigation and any fees authorized by law from all Defendants.

9. That Plaintiffs be granted such other and further relief as the nature of the case may require and the Court deems appropriate.

Dated: 7/3/19

MARA W. ELLIOTT, City Attorney

By



Gabriela Brannan
Chief Deputy City Attorney



Patricia Miranda
Supervising Deputy City Attorney

Attorneys for Plaintiffs