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ALAMEDA COUNTY

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7 and Real Party in Interest,
8 The City of Oakland

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**
11 **UNLIMITED JURISDICTION**

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,
14 Plaintiff, and
15 THE CITY OF OAKLAND, a municipal
16 corporation,
17 Plaintiff and Real
18 Party in Interest
19 v.
20 Hansaben Khatri, et al; and DOES 1 through
21 30, inclusive,
22 Defendants.

Case No. RG10552485

**ASSIGNED FOR ALL PURPOSES TO
JUDGE BRENDA HARBIN-FORTE
DEPARTMENT 516**

PLAINTIFFS' TRIAL BRIEF

Action Filed: December 21, 2010
Trial Date: February 17, 2012

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23 Everybody knows that prostitution occurs at the Economy Inn motel. Oakland police
24 officers know, neighbors know, nearby businesses know, and this Court knows. On
25 October 6, 2011, this Court issued a preliminary injunction against Defendants, in which
26 the Court found that nuisance in the form of prostitution related activity exists at the
Economy Inn and enjoined Defendants from maintaining a nuisance at the motel. Indeed,

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1 Defendants have indicated that they intend to stipulate that nuisance in the form of
2 prostitution related activity occurred at the Economy Inn at least from 2003 through
3 October 6, 2011. In addition, the People expect to show that Defendants have a pattern
4 and practice of operating motels, effectively, as brothels, which activity has continued for
5 decades and has only been temporarily reduced at the Economy Inn through this
6 extraordinary pressure currently being exerted against defendants.

7 The only issue left in this case is the matter of remedies. The authorizing statute,
8 California Penal Code ("CPC") section 11230, mandates a remedy of closure or, in the
9 alternative, payment equivalent to one year's gross revenue for the Economy Inn, upon a
10 finding that prostitution related nuisance is occurring at the property.

11 Defendants are expected claim that subsequent case law has established that the
12 court has broad authority and discretion to fashion an equitable remedy in this case, but
13 the defense mischaracterizes case law. In People ex rel. Van De Kamp v. American Art
14 Enterprises, Inc., the court had to balance the defendant's first amendment rights as a
15 publisher and address the fact that the property was used only to arrange but not
16 complete acts of prostitution, against the Red Light Abatement Act remedies. There is no
17 authority to suggest the court has broad discretion to craft a remedy that does not comport
18 with CPC 112230(a)(1) in cases that do not involve First Amendment issues. *People ex*
19 *rel. Van De Kamp v. American Art Enterprises, Inc.*, 142 Cal.Rptr. 338 (App. 2 Dist. 1977).
20 In any event, where the legislature mandates a particular remedy, the Defendant should
21 bear a heavy burden of showing why a lesser remedy is warranted. This Defendants
22 cannot show.

23 As a matter of law, the Court must presume that if the Economy Inn is a place
24 where prostitution occurs, then it is a nuisance and that the public is irreparably harmed.
25 *City of Bakersfield v. Miller*, 64 Cal.2d 93, 100 (1996) (Superseded by statute on other
26 grounds in *Briseno v. City of Santa Ana*, 6 Cal.App.4th 1378 (1992)). "Where the
legislature has determined that a defined condition or activity is a nuisance, it would be an
usurpation of the legislative power for a court to arbitrarily deny enforcement merely
because in its independent judgment the danger caused by a violation was not significant."
Id., at 100. The Court already found that prostitution related nuisance exists at the

1 Economy Inn in its October 6, 2011 Order for Preliminary Injunction. In this case, the
2 violations are appalling and include instances of the kidnapping, rape, and forced
3 prostitution of minors, and the open prostitution of teenage girls at the motel. Plaintiffs
4 request that if the Court is inclined to weigh the harms in this case, that the weight of the
5 girls forced into prostitution, neighbors terrorized by ongoing crime and nuisance, and the
6 drain on public resources be considered against inconvenience Defendants may face as a
7 result of abatement.

8 Accordingly, Plaintiffs request the following relief set out in the conclusion section of
9 this brief.

10 MEMORANDUM OF POINTS AND AUTHORITIES

11 I. INTRODUCTION

12 The principal issue left in this case is the matter of remedies. Plaintiffs request
13 closure as authorized under California Penal Code section 11230, which mandates a
14 remedy of closure or the equivalent of one year's gross revenue upon a finding that
15 prostitution related nuisance is occurring at the property. Given the evidence of prostitution
16 at this property, if the most serious remedy available under the law is not granted in this
17 case, it is difficult to imagine the circumstances that would warrant closure. CPC 11230
18 requires closure or equivalent remedy and there is no basis for providing lesser relief to
19 the People.

20 It is true that this court granted Plaintiffs a preliminary injunction that has decreased
21 the prostitution activity at the motel. Nonetheless, the preliminary injunction is, as the
22 name implies, only a provisional remedy. While effective, *enforcement of the preliminary
23 injunction requires an unsustainable level of staff and police resources.*

24 II. LEGAL ARGUMENT

25 a. Plaintiffs are entitled to closure of the Economy Inn as 26 authorized by Penal Code section 11230(a)(1) and as a matter of equity.

Plaintiffs are entitled to closure under CPC 11230 (a) which provides that, upon a
finding that prostitution is occurring on a property the Court shall order the property closed
for one-year, or in the alternative, order that Defendants pay the City the equivalent of one
year's gross receipts for the business.

1 Defendants erroneously claim that they should be exempt from closure because the
2 prostitution activity has decreased under the pressure of the preliminary injunction issued
3 in this case. The argument fails for three reasons. First, the motel has a long history of
4 prostitution and for these operators, operating motels as brothels appears to be a
5 business plan. Second, the current abatement comes at unsustainable and ongoing cost
6 to Plaintiffs. And third, Plaintiffs do not believe this abatement, effected under tremendous
7 pressure and effort of Plaintiffs, can or will be sustained by Defendants over the long-term.

8 **b. The preliminary injunction reduced prostitution in the short-**
9 **term, but is unsustainable as a long-term remedy.**

10 "The purpose of Red Light Abatement proceedings is to abate a nuisance. Abatement
11 of nuisances is a long established and well recognized exercise of the state's police
12 power. The provision in Penal Code, section 11230 authorizing closing of the offending
13 property to all uses for a period of one year, while harsh, is constitutionally permissible.

14 **The Legislature could, and presumably did, consider the alternative of constant
15 police surveillance of the offending premises too burdensome to the community."**

16 (Internal Citations omitted) (Emphasis added) *People ex rel. Hicks v. Sarong Gals*, 42
17 Cal.App.3d 556, 563 (1974).

18 The preliminary injunctions most effective tools are its provisions requiring 24/7 live
19 video footage and ongoing cooperation and work with the Oakland Police Department.¹
20 The Oakland Police Department simply does not have the resources available to have an
21 officer monitor this 24/7 live feed on an ongoing basis. In fact, if the City monitored the
22 footage only 10 percent of the time, it would be too much to ask of Plaintiffs. It would cost
23 the City thousands of dollars to monitor the video feed for 16 hours per week.

24 It is not the obligation of the Oakland Police Department to act at the private security
25 force for the Economy Inn. It is the responsibility of the Defendants to maintain their
26 property in a nuisance free manner. If they are unable to run their business, on their own,
such that it is not a haven for pimps, prostitutes, johns and child rapists, then the business
must be closed for one year. If the business cannot be operated nuisance free, but for the

¹ It must be pointed out that many of the terms of the preliminary injunction are nearly identical to provisions of Oakland's Deemed Approved ordinance, codified at Oakland Municipal Code (OMC) section 17.157 et seq., to which Defendants have been subject for years to no effect. See OMC section 17.157.060 setting forth performance standards for motel operation; OMC section 8.03.120(A) prohibiting prostitution and nuisance activity; OMC section 5.34.030, for identification and recordkeeping requirements for motel operators; and OMC section 5.34.020, prohibiting motels from renting rooms by the hour.

1 Oakland Police Departments 24/7 video surveillance of the property and other police
2 enforcement, then the business should be closed. It is not the obligation of the Oakland
3 taxpayers to fund a 24/7 security force to secure Defendant's property. The preliminary
4 injunction is only a stop-gap measure; it is not intended and is not sufficient as a long-
5 term solution to the prostitution nuisance at the Economy Inn. The preliminary injunction
6 requires a tremendous amount of City staff and police time to enforce. It is unreasonable
7 to require that the City dedicate this level of resources to help the Defendants' maintain
8 their property in a nuisance free state. The Economy Inn must be closed.

9 **c. Plaintiffs are not foreclosed from obtaining closure as a final
10 remedy merely because the Court did not grant closure as a
11 provisional remedy.**

12 Plaintiffs made an argument for closure as a provisional remedy pursuant to
13 California Penal Code section 11227, which the court refused to do. Plaintiffs are not
14 foreclosed from requesting closure as a final remedy in this case, which remedy is
15 expressly authorized under California Penal Code section 11230(a)(1). "If the existence of
16 a nuisance is established in an action as provided in this article, an order of abatement
17 shall be entered as a part of the judgment in the case, directing the removal from the
18 building or place of all fixtures . . . used in . . . maintaining . . . the nuisance. . . and that it
19 be kept closed for a period of one year...." Plaintiffs began by seeking provisional relief
20 and we will conclude this case by requesting permanent relief as entitled by law.

21 **d. Plaintiffs are Entitled to Attorneys Fees and Costs, Discovery
22 and Police and City Attorney's Investigative Costs**

23 Plaintiffs are entitled to attorney's fees and costs, and the costs of investigation and
24 police time. See California Civil Code section 3496(b), "...the Court may award costs,
25 including the costs of investigation and discovery, and reasonable attorney's fees...in any
26 case in which as governmental agency seeks to enjoin the use of a building or place for
the purpose of ...prostitution in or upon a building or place, as authorized in Article 2
(commencing with Section 11225) of Chapter 3 of Title 1 of Part 4 of the Penal Code.
Plaintiffs are the prevailing party in this case, having fought for and obtained a preliminary
injunction. Defendants did nothing to abate the prostitution nuisance at their property until
after the City brought this suit. Plaintiffs argued for every term of the preliminary injunction,

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1 and having demonstrated that a nuisance per se exists at the Economy Inn, are entitled to
2 permanent relief. Defendants benefited financially by renting rooms that were used for
3 prostitution, they should have to pay for the costs of the having permitted this nuisance
and done nothing about it for years.

4 Defendants have indicated that they intend to pursue attorney's fees in this case.
5 However, Defendants have no legal basis to support their claim. Defendant never made a
6 formal offer of settlement in conformance with Civil Code of Procedure section 998 such
7 as to be entitled to attorney's fees as a prevailing party. Cal. Code Civ. Pro. § 998. More
8 important, Defendants have not prevailed. In fact, the suggestion does not even pass the
9 straight-face test: Defendants run a motel that basically acts as a brothel. After years of
10 police enforcement and community outrage about the prostitution activity at the motel, the
11 City brings a lawsuit against them, and obtains a preliminary injunction after the court finds
12 that nuisance in the form of prostitution related activity exists at the motel and now
Defendants claim to be the prevailing party. Defendants request attorney's fees is absurd.

13 III. CONCLUSION

14 Plaintiffs are entitled to closure of the motel as a matter of law. Cal. Penal Code §
15 11230(a)(1). The current preliminary injunction is unsustainable and the Oakland Police
16 Department should not be forced to serve as Defendants unpaid round-the-clock security
17 service. The intent of the Red Light Abatement Act is to abate nuisance, the nuisance is
18 temporarily abated as a result of the extraordinary efforts exerted by the Oakland Police
19 Department and City Attorney's Office; this is not a long-term solution. We ask this court to
20 order closure of the motel, order Defendants to pay all attorney's fees, costs and costs of
21 investigation pursuant to Civil Code section 3496. We ask this court order Defendants pay
22 civil fines in the amount of \$25,000 per Defendant. Cal. Pen. Code § 12230(b). We
23 respectfully request this Court order closure to provide relief to the sexually exploited
women and children, the residents and business owners adjacent to the Economy Inn,
and the taxpayers who are all harmed by this activity.

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DEMAND FOR RELIEF

WHEREFORE, PLAINTIFFS REQUEST THAT THIS COURT ORDER, ADJUDGE AND DECREE AS FOLLOWS:

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I. That the Economy Inn, located at 122 E. 12th Street in Oakland, California (the "Property") is declared a public nuisance pursuant to California Penal Code section 11225(a).

II. That Defendants are ordered to immediately abate all conditions that cause or maintain the nuisance at the Property, pursuant to California Penal Code section 11225 et seq.

III. That Defendants are permanently enjoined from permitting or maintaining the Property as a public nuisance, pursuant to California Penal Code section 11225 et seq.

IV. That the City recovers costs, including the costs incurred from discovery and Oakland Police Department's investigations, as well as reasonable attorneys' fees, from each of the Defendants pursuant to California Civil Code section 3496(b).

V. That Defendants each pay damages pursuant to California Penal Code section 11225(a).

VI. That Defendants each pay a civil penalty in the amount of \$25,000.00 pursuant to California Penal Code section 11230(b).

VII. That an order of abatement is entered as part of the judgment in this case pursuant to California Penal Code section 11230(a)(1), and that it directs the following:

- a. All fixtures, musical instruments and moveable property used in conducting, maintaining, aiding, or abetting the nuisance be removed from the buildings at the Property and sold in the manner provided for the sale of chattels under execution.

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b. That the building at the Property shall be closed against its use for any purpose, and kept closed for a period of one year. In lieu of closing, if the Court finds that any vacancy resulting from closure may create a nuisance or that closure is otherwise harmful to the community, the Court shall order Defendants to each pay damages in an amount equal to the fair market rental value of the buildings on the premises for one year to the City.

VIII. That Defendants each pay the City all fees and costs incurred due to the removal and sale of the items described in Paragraph 7(a) above pursuant to California Penal Code section 11230(a)(3).

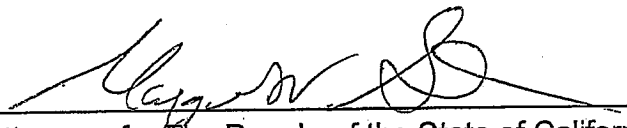
IX. That Defendants each pay the City all costs incurred in closing and keeping closed the Property pursuant to California Penal Code sections 11230(a)(4) and 11231(3).

X. That a receiver is appointed pursuant to California Code of Civil Procedure section 564.

XI. That the City has such further and other relief as the Court deems proper.

DATED: February 9, 2012

BARBARA J. PARKER, City Attorney
DORYANA MORENO, Chief Assistant City Attorney
RICHARD F. ILLGEN, Supervising Deputy City Attorney
MAGGIE W. STERN, Attorney

By: 
Attorneys for the People of the State of California and
the City of Oakland

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City of Oakland vs. Khatri
Case No. RG10552485

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One City Hall Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

PLAINTIFFS' TRIAL BRIEF

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.

by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.

X **by causing such envelope to be sent by Federal Express/Express Mail**

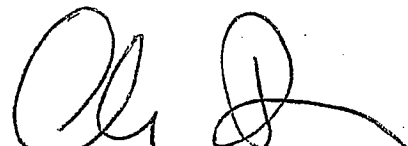
VIA ELECTRONIC MAIL: I attached a true and correct copy thereof in PDF format to an electronic mail message transmitted to the electronic mail address indicated below.

Daniel Horowitz, Esq.
Law Office of Daniel Horowitz
P.O. Box 1547
Lafayette, CA 94549

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on 2/9/12 at Oakland, California.



CRYSTAL ROZA