

1 BARBARA J. PARKER, City Attorney - SB #069722
DORYANNA MORENO, Chief Assistant City Attorney, SB#140976
2 RICHARD F. ILLGEN, Supervising Trial Attorney - SB #126803
GREGORY M. MINOR, Attorney - SB #286660
3 MANJIT K. SANDHU, Attorney - SB #273096
One Frank H. Ogawa Plaza, 6th Floor
4 Oakland, California 94612
Telephone: (510) 238-6512 Fax: (510) 238-6500
5 CE03616/1079273

6 REVE G. BAUTISTA, Attorney, SB #113062
100 Montgomery Street.1600
7 San Francisco, CA 94104
Telephone: (415) 956-1294

8 Attorneys for Plaintiff, The People of
9 the State of California and Plaintiff
and Real Party in Interest,
10 The City of Oakland

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**
13 **UNLIMITED JURISDICTION**

14
15 THE PEOPLE OF THE STATE OF
16 CALIFORNIA,

17 Plaintiff, and

18 CITY OF OAKLAND, a Municipal
corporation,

19 Plaintiff and Real
20 Party in Interest

21 v.

22 Hansaben Khatri, et al; and DOES 1 through
30, inclusive,

23 Defendants.
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Case No. RG10552485

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

**PLAINTIFFS' SUPPLEMENTAL
OPPOSITION TO DEFENDANTS'
PETITION TO CANCEL ORDER OF
ABATEMENT**

Action Filed: December 21, 2010
Trial Date: April 13, 2012

**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 03 2013

**CLERK OF THE SUPERIOR COURT
By Jennifer Bailey, Deputy**

1 I. INTRODUCTION

2 Plaintiffs, People of the State of California and the City of Oakland, offer this
3 supplemental response to Defendants' Petition to Cancel the Order of Abatement and
4 Reopen the Economy Inn ("Petition"). For the reasons we explain below, Plaintiffs ask
5 that the Court decline to grant the Petition at this time. Instead we ask that the Court
6 allow Plaintiffs and Defendants to work to develop a workable proposal.
7

8 Plaintiffs have taken a number of steps to evaluate the reopening proposal
9 contained in the Petition, including submitting the pro forma to City economic
10 development and real estate experts for review, having the Oakland Police Department
11 ("OPD") review the nuisance abatement proposals and make recommendations, as well
12 as organizing a community meeting to receive feedback regarding the Petition.
13

14 At the outset, Plaintiffs wish to make it clear that the City of Oakland welcomes
15 lawful businesses to and wants to do what is necessary to help businesses thrive. A the
16 same time, the City cannot tolerate the pervasive and violent nuisance activity that
17 Defendants allowed to persist at the Economy Inn for years; activity that this very Court
18 found was sufficiently egregious to necessitate closure of the business for the maximum
19 one year period permitted by state law.
20

21 Therefore, while we consider many of the steps Defendants propose to take in
22 their Petition as steps in the right direction, Defendants' current proposal is not sufficient
23 or viable to prevent recurrence of the nuisance activity that warranted this Court's
24 intervention. Accordingly, the Plaintiffs cannot endorse it. The City Attorney's Office
25 expects to meet with Defendants prior to the hearing on this matter to attempt to reach
26 an amicable resolution regarding the pending Petition.
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1 **II. SUMMARY OF THE BASIS FOR OPPOSITION**

2 California Penal Code §11232 provides the basis for a Court to permit early
3 reopening of a property closed under the Red Light Abatement Act.

4 *[T]he court, or judge thereof, may, if satisfied of the owner's good faith, order the*
5 *premises closed under the order of abatement, to be delivered to the owner, and the*
6 *order of abatement canceled so far as the order relates to the property. [emphasis*
added].

7 Plaintiffs' inability to support Defendants' Petition in its current form is based on material
8 deficiencies in Defendants' reopening proposal that go the heart of whether Defendants
9 are truly acting in good faith. First, Defendants' proposal does not pencil out, thus
10 jeopardizing Defendants' proposed abatement and management plans, and increasing
11 the likelihood that the nuisance will return. Second, many of the agreements necessary
12 to implement the reopening are merely proposals or contingent agreements, or could be
13 readily terminated. Third, additional measures proposed by Plaintiffs and the OPD are
14 necessary to better assure nuisance abatement. Fourth, the plan lacks the means to
15 ensure compliance with what the Court ultimately may require. Fifth, based on the
16 Defendants' history and the Petition, Plaintiffs and those in the surrounding community
17 are not convinced that Defendants are acting in good faith and committed to abating the
18 nuisance.
19
20

21 For the foregoing reasons, in the absence of significant changes to Defendants'
22 Petition, Plaintiffs believe that the best interests of Oakland and the community
23 surrounding the Economy Inn will be served by continuing closure of the Economy Inn
24 through the full year to further divorce it from the nuisance activity and provide more time
25 for Defendants to develop a viable business plan that will rely upon lawful activity.
26 Nonetheless, Plaintiffs are willing to continue discussions about reopening the Economy
27 Inn before the end of the full year and, stand ready to work with Defendants on
28

1 reopening if they propose an effective plan.

2 **III. DEFENDANTS' ECONOMIC ANALYSIS FOR REOPENING IS DEFICIENT AND**
3 **MIGHT LEAD TO A CONTINUATION OF THE NUISANCE ACTIVITY**

4 Defendants' pro forma analysis for reopening does not present a viable economic
5 financial plan. The plan omits or understates motel operating costs and overstates the
6 potential income. The result is likely a negative cash flow, which would jeopardize
7 Defendants' ability to pay for and maintain key elements of the management and
8 abatement plan. This could lead to a return to nuisance activity. Specifically, the City's
9 economic development staff's review discovered significant cost omissions and incorrect
10 revenue assumptions. Declaration of Gregory Hunter. For example:

- 12 • Defendants tout that the City will receive \$100,000 in transfer taxes (actually \$79,136
13 calculated according to their income estimates (\$719,415 times the 11% hotel tax);
14 however, this cost does not show up on the pro forma.¹ Hunter Dec. Exh. C-2.
- 15 • Defendants present a loan proposal from Open Bank to borrow \$822,000 at a
16 monthly cost of \$4,805.33—annualized to \$57,664. The pro forma includes annual
17 debt service at less than half of this amount – \$26,280—leaving a gap of \$31,384.
18 Hunter Dec. Exh. C-3.
- 19 • The pro forma's income projections are based on 73 rooms. However, Defendants'
20 plan calls for four rooms to be unavailable for occupancy – three for storage, one for
21 police. This reduces Defendants' revenue projections of \$719,415 by 5.5% or
22 \$39,568, leaving \$679,847 of revenue. Hunter Dec. Paragraph 5.

23
24 Together these three adjustments alone increase costs/reduce income by \$150,088,
25 resulting in a \$35,931 negative cash flow to investors rather than the \$114,157 the pro
26

27 _____
28 ¹ If we use the reduced income amount of \$679,847 as discussed in this section, this amount is \$74,783 (a difference of \$4,353).

1 forma projects. Hunter Dec. Paragraph 6.

2 But the City's review identified even more questions. Examples:

- 3 • Security guard cost: Defendants' plan includes 12 hour nightly security guards. We
4 cannot tell from the pro forma if this cost is included, though it appears it is not.²
- 5 • Mattress Costs: Defendants plan on replacing mattresses, but these costs do not
6 appear in the quote from Frank and Ron Hotel-Motel Supply, Inc. In addition, the
7 projections from America's Best Value Inn have only 25% of mattresses and some
8 other items are to be replaced each year, these costs should appear in future year
9 projections in the pro forma, but apparently do not.³
- 10 • Future taxes: Future property taxes may be understated because the additional
11 improvements to the motel may increase the assessed valuation.
- 12 • Additional expenses: The CPTED analysis requires more capital expenditures. See
13 *infra* Section IV). These have not been budgeted and could add significantly to the
14 costs of improvements, the loan amount, and, hence the amount of the debt service.⁴

15 If the Economy Inn does not produce sufficient cash flow, it is not certain that
16 Defendants will be able to maintain the costs associated with the plan; Defendants have
17 not shown that they have additional resources to make up any deficits or how they would
18 be addressed. (Hunter Dec. Paragraph 7). This places in jeopardy proposed security
19 services, management fees, adequate employees, and the nature of the clientele.
20 Consequently, the motel might return to being a hotbed of prostitution activity.

21 The City's analysis also points to several other factors that can affect the future

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26 ² Plaintiffs do not concede that the security guard plan proposed by Defendants is
sufficient to address and deter nuisance activity.

27 ³ Replacement of all of the mattresses before reopening would seem to be necessary in
order to provide sanitary accommodations and the revenue projections in the Petition.
Some customers may not come back if mattresses are not clean. Hunter Dec.

28 ⁴We understand Defendants did not have this report prior to making their projections.

1 success of the Economy Inn. (Hunter Dec. Paragraph 5). Among those are:

- 2 • Lack of an elevator for a three-story complex, which would likely discourage business
3 travelers from frequenting the Economy Inn.
- 4 • Phasing in of many key improvements, such as new mattresses. This also would
5 likely discourage repeat customers.
- 6 • Potential need for other improvements, such as revamping an old electrical system.
- 7

8 **IV. THE PROPOSED AGREEMENTS ARE NOT FULL COMMITMENTS**

9 Defendants propose new management, new branding, and new financing; however,
10 none of these are finalized commitments. Rather, the Petition appears a house of cards.

- 11 • Financing from Open Bank. (Petition, Exh. D). The Open Bank financing by its own
12 terms is only a *proposal* to finance \$822,000 and not a commitment. It is contingent
13 upon loan committee approval and SBA approval. It is not clear what other conditions
14 would need to be met before obtaining those approvals.
- 15
- 16 • America's Best Value Inn. (Petition, Exh. A). This agreement is contingent upon
17 submitting a work plan, obtaining approval for plans, and completing all
18 improvements within 90 days. Without the financing the improvements may not be
19 possible.
- 20
- 21 • The Chandler Hospitality Group. The Chandler agreement is dependent upon
22 approval of Defendants' proposal by America's Best Value Inn. The Chandler
23 agreement is also terminable on 30 days if its payment is not made (which could be
24 in jeopardy if there is not adequate cash flow).

25 If any one of these proposed agreements does not materialize, the entire plan
26 collapses. Without firm commitments, the Economy Inn could readily revert back to the
27 control of Defendants and return to its old unlawful patterns.

28

1 **V. ADDITIONAL IMPROVEMENTS ARE NEEDED FOR NUISANCE ABATEMENT**

2 At Plaintiffs' request, the OPD performed a "Crime Prevention Through
3 Environmental Design" ("CPTED") analysis. Declaration of Jennifer Sena, Exhibit B. A
4 CPTED analysis looks to design and other changes that can assist in reducing the
5 likelihood of nuisance and criminal activity at a property. OPD has experts trained in
6 CPTED analysis and Officer Sena, one such expert, performed this analysis on the
7 Economy Inn. (Sena Dec. Paragraph9). The standard operating procedures that
8 Defendants propose are generally only applicable to properties that have not had the
9 pervasive and violent nuisance activity that has been going on at the Economy Inn for
10 many years. For the Economy Inn, with its history of pervasive prostitution nuisance and
11 violence, standard operating procedures are only a starting point.
12

13 Officer Sena concluded that additional measures are needed at the Economy Inn.
14 Included in those recommendations are:
15

- 16 • Electronic gate arms to limit vehicle access.
17 • A booth occupied by an employee at the front entrance.
18 • Additional lighting changes.
19 • More open walkways.
20

21 The improvements set out in Officer Sena's report are essential to any reopening
22 plan that hopes to avoid recurrence of the pervasive nuisance activity. Therefore, they
23 must be incorporated into the reopening plan.⁵

24 In past agreements with nuisance operations where there has been substantial police
25 activity at the location the City has required that the business provide a bond to cover
26 the cost of any police costs relating any future nuisance activity at the location. We
27

28 ⁵ Although Defendants and OPD make recommendations as to anti-nuisance measures, Plaintiffs, through the City Attorney make the decision as to what Plaintiffs will accept.

1 believe that is appropriate for the Economy Inn. Accordingly, Plaintiffs' request that a
2 bond of \$250,000, which is an amount we requested for other businesses.

3 Defendants also propose that one motel unit be set aside as a police substation.
4 OPD does not have the resources to staff or maintain a substation at the Economy Inn.
5 Declaration of Richard Illgen. They further suggest videos from their camera system be
6 available to OPD. While the cameras may be a deterrent and helpful for looking a
7 incidents after-the-fact, as OPD testimony at trial showed, OPD does not have the
8 resources to view the videos, unless there is an incident under investigation. (Illgen Dec.
9 Paragraph 12).

10
11 **VI. A REOPENING PLAN MUST HAVE ADEQUATE MEANS OF OVERSIGHT AND**
12 **ENFORCEMENT**

13 Defendants' Petition asks this Court to authorize reopening of the Economy Inn
14 and to cancel the order of abatement. Yet Defendants provide no ready means for
15 Plaintiffs to enforce the operating or nuisance abatement plan should they not be
16 followed or nuisance activity recur. For this reason, Plaintiffs ask that if the Economy Inn
17 is reopened, the abatement order should not be canceled, but rather modified to include
18 the following:
19

- 20 • The Court continue its jurisdiction over this matter for three years, with periodic status
21 conferences with the parties.
22 • If nuisance activity recurs, Plaintiffs be permitted to come directly to this Court within
23 that three-year period without having to refile an action against Defendants.
24 • That Defendants agree to modify their conditional use permit with the City of Oakland
25 to include operating restrictions.
26 • Defendants be required to meet with the City, including OPD, and community
27
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1 members semi-annually to review the Economy Inn's operations.

2 **VII. PLAINTIFFS AND THE COMMUNITY DO NOT BELIEVE THAT DEFENDANTS**
3 **ARE TRULY COMMITTED TO ABATING THE NUISANCE**

4 Plaintiffs and those in the community surrounding the Economy Inn have little faith
5 that Defendants can change their stripes and wholly abate the nuisance they allowed to
6 permeate their motel operations for many years. This lack of faith is based on the flaws
7 identified in Defendants' Petition and Defendants' operations in the past that allowed
8 prostitution nuisance and violence to thrive at the Economy Inn.

9 **A. Comments From the Community Meeting.**

10 To obtain the input of members of the community surrounding the Economy Inn,
11 the City sponsored a community meeting and posted Defendants' Petition on the
12 Oakland City Attorney's website. The meeting was held on December 17, 2012.
13 Defendants were invited to attend and came with their attorneys and a representative of
14 the Chandler Hotel group.
15

16 At the meeting community members affected by the Economy Inn greeted
17 Defendants' Petition with strong skepticism. (Declaration of Patricia Kernighan,
18 Paragraph 7-9). This skepticism was based on several factors: the lack of significant
19 changes, uncertainty regarding implementation, insufficient monitoring, the motel's poor
20 location, exaggerated community benefits, and the owners' history of operating the
21 Economy Inn unlawfully. For example, community members were surprised to learn
22 Defendants are not proposing any reforms to the exterior of the motel and only plan on
23 monitoring the premises remotely a few hours a week. Others raised questions about
24 the longevity of Chandler's management role. Educators, law enforcement and students
25 emphasized the Economy Inn's proximity to schools, including Dewey High School,
26 which has enabled pimps and johns to harass children in the past. Declaration of Robin
27
28

1 Glover. Other community members noted the Petition lacks any local hiring or
2 purchasing provisions and suggested the community ought to monitor aspects of
3 Defendants' proposal. (Kernighan Dec., Paragraph 9). Finally, several community
4 members expressed their anger of having lived through years of nuisance activity at the
5 Economy Inn while it was under the Defendants' control. (Kernighan Dec. Paragraph 8).
6 All of these insufficiencies identified by community members reinforce the conclusion
7 that Defendants' proposal to re-open is premature.
8

9 **B. Defendants' Past History**

10 This skepticism is well deserved based on Defendants' past history as motel
11 operators and how they failed to address the nuisance activity of the Economy Inn. As
12 Plaintiffs proved at trial, Defendants were notified in 2005 at their property was
13 considered a nuisance and made no changes. Plaintiffs brought suit against them for
14 maintaining a nuisance in 2010, but nothing changed until the court issued its injunction.
15 In addition, there was evidence that Defendant R Kahtri was previously associated with a
16 hotel in Redwood City that was also closed under the Red Light Abatement Act.
17

18 Over the years, the Economy Inn was noted in online reviews as being a horrible
19 place to stay and was at the bottom of 31 hotels reviewed in Oakland according to one
20 of the websites. (Illgen Dec., Paragraph 4). These bad reviews continued for years
21 without any change by Defendants. *Id.*, Paragraphs 3-6.
22

23 Now defendants would have the Court believe aligning with Americas Best Value
24 Inn and bringing in new managers will erase the previously existing problems. However,
25 Defendants were previously part of a national hotel chain, the Magnuson Group, yet the
26 nuisance continued. (Illgen Dec., Paragraph, 3, 6). Moreover, reviews of nearby
27 Hayward America's Best Value Inn are hardly much better than those of the Economy
28

1 Inn. (Illgen Dec. Paragraph 8-10). For the above reasons, Plaintiffs have a healthy
2 degree of skepticism in of Defendants' ability to completely change their operations and
3 maintain a nuisance-free motel in the future.

4 **VIII. CONCLUSION**

5 For all the above reasons, the Plaintiffs believe that the Economy Inn should not
6 be permitted to reopen until issues raised above have been addressed. Without these
7 issues being addressed, Plaintiffs believe the Court cannot conclude Defendants'
8 proposal represents the good faith required for an early reopening. The City Attorney's
9 Office will be meeting with representatives of Defendants prior to the hearing on this
10 matter and perhaps will move closer to resolution.

11 In sum, we ask that the Court not grant early reopening until the following are
12 addressed:

- 13
- 14 • A viable business plan.
 - 15 • Firm agreements with the principal entities.
 - 16 • Incorporation of the CPTED analysis and a bond.
 - 17 • Monitoring program.

18 In addition, the Court should not cancel the order of abatement, but continue it into the
19 future until the Court has assurances that the nuisance is abated, irrespective of whether
20 it is reopened now or at the end of the year.

21 Dated: January 3, 2013

22
23 BARBARA J. PARKER, City Attorney
24 DORYANA MORENO, Chief Asst. City Attorney
25 RICHARD ILLGEN, Supervising Deputy City Attorney
26 MEENHA SANDHU, Attorney
27 GREGORY M. MINOR,

28 By: 

Attorneys for The People of the State of California
and the City of Oakland

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PROOF OF SERVICE

**City of Oakland, et al. vs. Khatri, et al.
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' SUPPLEMENTAL OPPOSITION TO DEFENDANTS' PETITION TO CANCEL ABATEMENT ORDER AND REOPEN THE ECONOMY INN

DECLARATION OF ANDREW R. NELSEN RE: PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO DEFENDANTS' PETITION TO CANCEL ABATEMENT ORDER AND REOPEN THE ECONOMY INN

DECLARATION OF HON. PATRICIA KERNIGAN RE: PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO DEFENDANTS' PETITION TO CANCEL ABATEMENT ORDER AND REOPEN THE ECONOMY INN

DECLARATION OF ROBIN GLOVER RE: PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO DEFENDANTS' PETITION TO CANCEL ABATEMENT ORDER AND REOPEN THE ECONOMY INN

DECLARATION OF GREGORY HUNTER RE: PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO DEFENDANTS' PETITION TO CANCEL ABATEMENT ORDER AND REOPEN THE ECONOMY INN

DECLARATION OF JENNIFER SENA RE: PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO DEFENDANTS' PETITION TO CANCEL ABATEMENT ORDER AND REOPEN THE ECONOMY INN

DECLARATION OF AMY MARSHALL RE: PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO DEFENDANTS' PETITION TO CANCEL ABATEMENT ORDER AND REOPEN THE ECONOMY INN

DECLARATION OF HON. PATRICIA KERNIGAN RE: PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO DEFENDANTS' PETITION TO CANCEL ABATEMENT ORDER AND REOPEN THE ECONOMY INN

DECLARATION OF RICHARD ILLGEN RE: PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO DEFENDANTS' PETITION TO CANCEL ABATEMENT ORDER AND REOPEN THE ECONOMY INN

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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.

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.

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

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.

Laureen A. Bethards, Esq. (Hand Delivered)
823 Marina Vista Ave.
Martinez, CA 94553

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 **JANUARY 3, 2012** at Oakland, California.


CRYSTAL ROZA