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14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **Bennett Montoya, Karen King,**
18 **BMGV-LLC,**

19 Plaintiffs

20 -v-

21 **City of San Francisco, CA,**
22 **SFPD Commander David Lazar,**
23 **SFPD Officer Steve Matthias**
24 **and John and Jane Does,**

25 Defendants

26 **Case number**
27 **17-cv-06534 JD**

28 **FIRST AMENDED**
COMPLAINT

42 U.S.C. § 1983 et
seq, § 1988

Jury Trial
Demanded

1
2 **INTRODUCTION**

3
4 1.This case is about racism and racist conduct by
5 the San Francisco Police Department.

6 2.Particular police officers in the San Francisco
7 Police Department (SFPD) engaged in blatantly racist
8 efforts to shut down Atmosphere, a nightclub on the busy
9 entertainment 400 block of Broadway (the club has changed
10 its name to Hue), because the club features hip-hop music
11 that attracts African-American patrons.

12 3.In the words of SFPD Captain David Lazar (he has
13 recently been promoted to Commander), who is the driving
14 force behind the racist conduct, hip-hop music that was
15 and is featured by the club "brings in the wrong crowd",
16 "a crowd we do not want". His target was and is African-
17 Americans. His words and his conduct demonstrate that he
18 set out to shut down the club in order to keep African-
19 Americans from coming to the Broadway nightclub area.

20 4.At the direction of Captain Lazar, several SFPD
21 officers under his command participated in the effort to
22 keep Black people, "the wrong crowd", from coming to
23 Broadway. Among other acts, the SFPD provided false and
24 misleading reports to the California Alcoholic Beverage
25 Control Board (ABC) and the San Francisco Entertainment
26 Commission (EC). These reports provided the basis for the
27 EC's decision to amend the club's permit to bar it as of
28 June 6, 2017, from presenting live entertainment,
including and especially popular hip-hop disc jockeys,
after midnight. In the nightclub business, such a
restriction is a death-blow to a club's survival.

1 5.The SFPD also provided false and misleading
2 reports to the ABC, which resulted in an Accusation by
3 the ABC that the club was a "disorderly house" and a law
4 enforcement problem.

5 6.Captain Lazar more than once expressed his racist
6 "wrong crowd" comments directly to Bennett Montoya,
7 plaintiff, co-owner and operator of the club, and he did
8 so on at least one occasion in the presence of another
9 person. On one particular occasion, Lazar made his "wrong
10 crowd" statements in the presence of Benjamin Horne, who
11 was at that time the director of the Top of Broadway
12 Community Benefit District (BCBD), a non-profit
13 organization that plays an active role in monitoring
14 activities in the Broadway entertainment area.

15 7.Mr. Horne provided testimony regarding Captain
16 Lazar's comments when he was called as a witness at a
17 hearing before an administrative law judge in 2015
18 regarding this matter. Mr. Horne was called as a witness
19 adverse to plaintiffs at the hearing by the ABC. He
20 nevertheless testified truthfully about statements made
21 by Captain Lazar, corroborating Plaintiff Montoya's
22 testimony before the administrative law judge who was
23 conducting the evidentiary hearing regarding the ABC's
24 inquiry into whether the club was a "disorderly house".

25 8.Captain Lazar also "recommended" to Mr. Montoya a
26 number of times to cease presenting hip-hop music at the
27 club (the club was known at that time, 2014, as
28 Atmosphere). There can be no question that the
"recommendation" of a police captain was, in fact, an
ultimatum and a threat.

9.In furtherance of his efforts to shut down the

1 club and thus keep African-Americans ("the wrong crowd")
2 from coming to Broadway, Captain Lazar directed SFPD
3 officers under his command to prepare reports to the ABC
4 that would lead the ABC to attempt to revoke the club's
5 license by finding that the club was a "disorderly
6 house". Captain Lazar also directed SFPD officers to
7 provide false and misleading reports to the EC to cause
8 the EC to revoke and/or impose limitations on the club's
9 permit and shut down the club.

10 10. The SFPD officer who drafted and provided most of
11 the reports to the ABC and to the EC was Officer Steve
12 Matthias. Nearly all the SFPD reports prepared by Officer
13 Matthias regarding the club were deceitful and/or
14 misleading. Those reports falsely attributed to the club
15 nearly all misconduct and criminal activity that took
16 place anywhere in the 400 block of Broadway, nearly all
17 of which activity was unconnected to the club.

18 11. That fraudulent tactic was accomplished in part
19 via Captain Lazar's direction that the SFPD park a marked
20 and manned SFPD patrol car in front of or directly across
21 the street from the club. That stratagem by Captain Lazar
22 was (and still is) intended to accomplish two goals:

23 (1) producing SFPD reports that falsely identified
24 the club as the problem. That fraud was accomplished by
25 SFPD officers listing the club as the source of incidents
26 and disturbances that happened elsewhere in the 400 block
27 of Broadway based solely on the location of the police
28 vehicle that was parked at or very near the club. The
29 reports that were prepared by Officer Matthias and other
30 officers attributed negative events to the club based
31 solely on the geographic location of the police car,

1 despite the fact that nearly all of the events had taken
2 place at or near other locations on Broadway and were
3 unrelated to the club. The reports were provided by the
4 SFPD to the ABC and to the EC, both of which took action
5 against the club based primarily on the false and
6 misleading SFPD reports.

6 12. The other reason Captain Lazar directed that SFPD
7 officers park a manned marked police car in front of or
8 directly across the street from the club was to
9 intimidate African-Americans, most of whom were and are
10 acutely aware of the risks they face because of extremely
11 racist attitudes and conduct by SFPD officers against
12 African-Americans¹.

12 13. This deplorable conduct was conceived and
13 directed by Captain Lazar. It was and is an integral part
14 of the effort to shut down the club and thus keep the
15 "the wrong crowd, a crowd we don't want" off Broadway.

16 1. In October of 2016, The United States Department of Justice published a lengthy and
17 detailed Report regarding racism and racist conduct by the SFPD. The Report is scathing
18 in its criticism of the SFPD's racist attitudes and conduct. The racist practices by the
19 SFPD that are described in the Report are well-known, particularly in the Black
20 Community.

20 There was considerable publicity regarding recent revelations involving a number of
21 SFPD officers who sent appallingly racist "humorous" text messages to each other.
22 Despite the fact that these highly publicized events were whitewashed by the SFPD and
23 the City of San Francisco, the disclosure of this conduct increased awareness by the
24 public of racism by the SFPD, especially so in the Black community. These issues are
25 described in the Department of Justice Report, as are data regarding racially-motivated
26 traffic stops and other SFPD conduct targeting African-Americans. The racism of many
27 SFPD officers is notorious, and parking a marked and manned patrol car in front of
28 Atmosphere (Hue) was and is intended to intimidate African-Americans and keep them
from coming to Broadway to patronize the club. The stationing of a SFPD patrol vehicle
in front of or very near the club at the direction of Captain Lazar was clearly intended to
intimidate and discourage African-American patrons from coming to Broadway.

1 The false and misleading SFPD reports were submitted to
2 the ABC Board and to the EC by the SFPD. Based largely on
3 these reports, the EC ruled on June 6, 2017 that the club
4 could not present live entertainment after midnight. This
5 limitation has, predictably, decimated the club's
6 business and has caused disastrous financial and other
7 damage to plaintiffs.

8 14. Further, the false and misleading police reports
9 led to a formal Accusation against the club by the ABC
10 that has jeopardized the club's license. The issues that
11 have been created by the Accusation have been the subject
12 of protracted litigation. This litigation has been very
13 costly for plaintiffs, financially and otherwise. The
14 litigation continues, and the club's license is at risk
15 because of Lazar's racist crusade and the *de facto*
16 sanctioning and endorsement of those efforts by two SFPD
17 Chiefs of Police and other leadership of the SFPD.

18 15. Captain Lazar also engaged in, and directed,
19 other efforts to shut down the club. He convened meetings
20 that required Mr. Montoya and his business partner (and
21 wife), Karen King, to justify conduct that was improperly
22 attributed to the club.

23 16. Captain Lazar also created pretextual physical
24 intrusions into the club, including at least one "raid"
25 on the club that led to allegations of labor violations.
26 In fact, under Captain Lazar's direction, the police
27 invaded Atmosphere nine times in two months, December
28 13, 2014, through February 15, 2015. The SFPD also
invaded the club three times after it changed its name to
Hue. These and other acts that were directed and ordered
by Captain Lazar, with the participation of other SFPD

1 officers, were implemented for the purpose of shutting
2 down the club. No other club in San Francisco has been
3 subjected to anything approaching these kinds of actions.
4 There was, and is, selective targeting of this club
5 because it features hip-hop entertainment that attracts
6 Black patrons.

6 17. Captain Lazar and other officers also engaged in
7 other activities to target and harass the club and people
8 associated with it. For example, an employee of the club,
9 Samantha Bigueur, left the club after work late one night
10 to learn that her car had apparently been hit by a driver
11 who had left the scene. Ms. Bigueur went to the officers
12 who were seated in the patrol car that was parked across
13 the street from the club to ask the officers to file a
14 report about the incident. Instead of doing so, they told
15 her that she would have to go to the police station to
16 file a report. When she protested at having to make her
17 way unescorted to the police station several blocks away
18 at 2 AM, the officers laughed in her face and told
19 her, "We know where you work".

18 18. There can be no question that the SFPD chose to
19 target this club and everyone associated with it. In
20 fact, the ABC found in 2016 after an evidentiary hearing
21 that plaintiffs had a "very strong case" that [the club]
22 and its management are the targets of selective
23 enforcement (emphasis added). (The ABC did not rule on
24 the issue at that time because it chose to make its
25 determination of contested issues on narrower grounds).
26 The issue of selective enforcement is currently the
27 subject of inquiry by the ABC Appeals Board which has
28 been directed by the California Court of Appeals to make

1 a finding regarding that issue.

2 19.As a result of Captain Lazar's intentional
3 racially-motivated efforts to target and shut down the
4 club, and thus keep African-Americans from participating
5 in the Broadway entertainment scene, the EC decided on
6 June 6, 2017, as noted above, to modify the club's permit
7 to bar the club from presenting live entertainment
8 (including popular disc jockeys) after 12 midnight. This
9 decision by the EC was largely based on the false and
10 misleading reports that were provided to the EC by SFPD
11 officers.

12 20.The midnight limitation has been devastating to
13 the club and to the plaintiffs. It has decimated the
14 income and destroyed the viability of the club and caused
15 a range of very significant pecuniary and other damages
16 to the club and to plaintiffs. Yet again, African-
17 Americans are the targets of racism by the SFPD and the
18 City of San Francisco. As a result, the plaintiffs have
19 suffered, and continue to suffer, significant damages.

20 21.The damages include:

21 *loss of business income every night the club is open,
22 Thursday through Sunday. That loss of income continues to
23 this day;

24 *loss of private rentals of the club (especially in the
25 holiday season when corporate entities rent clubs such as
26 Hue for holiday events). A number of corporate rentals of
27 the club have been lost in 2017 since the EC barred the
28 club from presenting live entertainment after midnight;

*substantial attorney fees, including fees for ABC
counsel, labor attorneys, and present counsel;

*drastic reduction in the value of the business;

1 damage to plaintiffs' personal and business reputation;
2 negative impact on plaintiffs' credit standing;
3 draining of plaintiffs' financial and personal
4 resources;
5 extreme disruption of and damage to plaintiffs' personal
6 lives as a result of having to focus on the problems
7 created by the racist conduct of the SFPD, including
8 limitation of available time for plaintiffs to devote to
9 their young daughter, as well as the immense stresses
10 that now plague their lives, including emotional pain and
11 suffering.

12 22.The negative effects of the conduct by Captain
13 Lazar and other SFPD personnel, including acquiescence in
14 and *de facto* sanctioning of this racially-motivated
15 misconduct by two SFPD Chiefs of Police and other
16 supervisory SFPD officials, are ongoing. Damages increase
17 every day the midnight limitation imposed by the EC is in
18 effect.

19 23.Beyond the impact on plaintiffs and on the club
20 that is addressed in the instant Complaint, a further
21 tragedy is the fact that this blatant racism is taking
22 place in the truly magnificent and progressive city of
23 San Francisco.

24 **JURISDICTION**

25 24.This Court has jurisdiction pursuant to the Civil
26 Rights Act, 42 U.S.C.1983 *et seq* and 1988, United States
27 Judicial Code 1331 and 1343.

28 **VENUE**

1 25.Venue in the Northern District of California is
2 proper because Plaintiffs and Defendants reside therein,
3 and the relevant events took place therein.

4
5 **PARTIES**

6 **Plaintiffs:**

7 26.Bennett Montoya and Karen King, owners and operators
8 of Hue, a nightclub.
9 BMGV-LLC, the corporate entity that owns Hue.

10 **Defendants:**

11 27.The City of San Francisco, California, a municipal
12 corporation that operates and controls the San Francisco
13 Police Department.
14 SFPD Commander (formerly Captain) David Lazar,
15 SFPD Officer Steve Matthias.

16 **STATEMENT OF FACTS**

17
18 28.Plaintiffs Bennett Montoya and his wife and
19 business partner, Karen King, own and operate a nightclub
20 on the busy 400 block of Broadway in San Francisco,
21 California. They opened the club in 2008. It was known at
22 that time as Atmosphere. It is now known as Hue. The
23 corporate entity is BMGV-LLC. There are approximately
24 ten other nightclubs on the block, and Hue is the largest
25 one. Plaintiffs have managed the club very efficiently
26 and professionally. The fact that the club has been
27 operating for nine years is noteworthy because most
28 nightclubs close after a few years. Mr. Montoya is

1 regarded as an excellent and responsible manager.

2 29. All the SFPD officers who have interacted with
3 Mr. Montoya other than Captain Lazar hold him in high
4 regard. They describe him as "co-operative", "a very nice
5 individual", "a gentleman", "very cordial",
6 "responsible". They have testified at an evidentiary
7 hearing to that effect and in those words. They have
8 "never had a bad experience" with him. The officers have
9 also stated that he and his security team have actively
10 assisted SFPD officers in dealing with troublesome
11 individuals on the street, and that Mr. Montoya has
12 implemented measures to encourage and maintain peaceful
13 behavior on the street, such as toning down music and
14 adjusting lighting at closing time. He has done
15 everything possible to minimize noise problems, including
16 making costly renovations. He has employed professional
17 and responsible security personnel. His employees have
18 undergone training to assist them in addressing problems
19 that are related to managing intoxicated patrons. He has
20 fully co-operated with all SFPD protocols regarding the
21 management of unruly and intoxicated people in the area
22 of the club.

23 30. As to the issue of party busses (which often
24 bring intoxicated people to many of the clubs on Broadway
25 and elsewhere) Mr. Montoya agreed long ago to decline the
26 lucrative income that is generated by party busses.

27 31. From the outset in 2008, Mr. Montoya developed
28 and maintained an excellent relationship with all four
successive captains who headed SFPD's Central Station.
But in May of 2014, Captain David Lazar took the helm at
Central Station and everything changed for the worse.

1 Until Captain Lazar took over the leadership of Central
2 Station, the club had never had any major problems. It
3 had never received any warnings or violations of any kind
4 from the Alcohol Beverage Control Board (ABC) that
5 supervises nightclubs, or from the SF Entertainment
6 Commission (EC) that issues and supervises permits to
7 nightclubs in San Francisco.

8 32.The objective and uncontradicted evidence
9 demonstrates that Captain Lazar (who has been promoted to
10 Commander) determined that he would destroy the club when
11 he took over the leadership of the Central Station in May
12 of 2014. His actions and his statements demonstrate that
13 he decided that he was going to close the club, and that
14 his decision to do so was motivated by his desire to
15 eliminate or minimize the presence of African-Americans
16 on Broadway.

17 33.The club frequently features hip-hop music that
18 attracts an African-American clientele. As expressed in
19 his own words, Captain Lazar stated that the club's hip-
20 hop entertainment was "attracting the wrong crowd, a
21 crowd we don't want". More than once, he "recommended" to
22 Mr. Montoya that he stop presenting hip-hop entertainment
23 (well-known disc jockeys who are very popular in the hip-
24 hop community).

25 34.When, in the opinion of Captain Lazar, Mr.
26 Montoya did not comply with his "recommendations" that he
27 terminate hip-hop entertainment, Captain Lazar and SFPD
28 officers under his command undertook measures to destroy
the club and to put it out of business.

35.Lazar instituted and directed a number of actions
to accomplish his goal of eliminating "the wrong crowd"

1 from the Broadway entertainment scene. One of his tactics
2 was directing SFPD officers under his command to park a
3 manned marked police car in front of, or directly across
4 the street from, the club. The purpose of this tactic was
5 twofold:

6 One of Captain Lazar's goals was to intimidate
7 African-Americans by the mere presence of SFPD officers.
8 It was, and is, well-known in the Black community that
9 the SFPD is regarded as extremely racist against African-
10 Americans. The factual basis of this understanding is
11 embodied in a scathing Report issued by the United States
12 Department of Justice in October of 2016.

13 36. That Report found, *inter alia*, the following,
14 verbatim:

15 Re Use of force by the SFPD:

- 16 • The majority of deadly use of force incidents by the
17 SFPD involved persons of color.
- 18 • The SFPD does not adequately investigate officer use of
19 force.
- 20 • The SFPD does not maintain complete and consistent
21 officer-involved shooting files.

22 Re bias:

- 23 • The weight of the evidence indicates that
24 African-American drivers were disproportionately stopped
25 compared to their representation in the driving
26 population.
- 27 • African-American and Hispanic drivers were
28 disproportionately searched and arrested compared to
29 white drivers.

1 • Not only are African-American and Hispanic drivers
2 disproportionately searched following traffic stops but
3 they are also less likely to be found with contraband
4 than White drivers.

5 • The SFPD did not conduct a comprehensive audit of
6 official electronic communications, including
7 department-issued e-mails, communications on mobile data
8 terminals, and text messages on department-issued phones
9 following the texting incidents.

10 • The SFPD's failure to fully and adequately address
11 incidents of biased misconduct contributed to a
12 perception of institutional bias in the department.

13 Re accountability:

14 • The SFPD is not transparent around officer discipline
15 practices.

16 • Evaluation of employee performance is not an
17 institutionalized practice in the SFPD.

18 Re race and force:

19 Community members' race and ethnicity are not
20 "significantly associated with the severity of force"
21 used by officers, although the "majority of deadly use of
22 force incidents by the SFPD involved persons of color."

23 Re racist texts:

24 In light of two racist texting scandals, the Police
25 Department should regularly audit officers' electronic
26 communication devices to determine whether they are being
27 used to send biased messages

1 37.As developed in an evidentiary hearing that took
2 place in this matter in 2015 before an administrative law
3 judge, although the African-American population of San
4 Francisco is only six percent (a figure derived from
5 census data), 42% of people arrested by the SFPD in the
6 relevant time period were African-Americans, and an
7 astounding 58% of the people arrested in the Broadway
8 area were African-Americans. These data are published on
9 the SFPD website.

10 38.Scaring off and intimidating Black people was one
11 reason Captain Lazar directed his officers to park a
12 manned marked police vehicle in front of or directly
13 across the street from the club.

14 39.The other reason Captain Lazar directed SFPD
15 officers to park a manned and marked SFPD vehicle in
16 front of or directly across the street from the club was
17 and is central to Captain Lazar's strategy. Broadway,
18 with its many clubs, is a very heavily-trafficked street,
19 especially on weekends. Much of that traffic involves
20 people who have been drinking alcohol. As a result, there
21 are significant problems involving rowdy and unlawful
22 behavior. Many of these kinds of events require active
23 involvement by police officers.

24 40.Under the direction of Captain Lazar, the police
25 officers who were involved in responding to incidents
26 that took place *anywhere* on the 400 block of Broadway
27 indicated in their reports that the incidents involved
28 Atmosphere (now known as Hue) based solely on the
location of the parked SFPD police car at or across the
street from the club. The geographic location of the
parked police car was designated in the SFPD reports as

1 the location of the incident no matter where in the 400
2 block of Broadway the incident had taken place. The
3 reports painted a false and totally misleading picture by
4 their reference to the geographic location of the police
5 vehicle as the locus of the disturbances. The reports
6 supported the false conclusion that plaintiffs' club was
7 at the center of, and the cause of, disturbances that had
8 taken place anywhere in the 400 block of Broadway.

9 41.As directed by Captain Lazar, SFPD Officer Steve
10 Matthias submitted these reports to the EC and to the ABC
11 that characterized the club as a "disorderly house" and
12 as a law enforcement problem. Based on these reports, the
13 EC amended the club's permit on June 6, 2017, to bar
14 presentation of live entertainment after midnight.
15 (Plaintiffs have been in full compliance with the
16 direction of the EC).

17 42.Further, the ABC sought to revoke the club's
18 license by filing an Accusation that was intended to shut
19 down the club as a "disorderly house" (those issues are
20 still pending in ABC litigation). This effort by the ABC
21 was based on the distorted and misleading reports filed
22 by SFPD officers, as directed by Captain Lazar.

23 43.The midnight limitation imposed by the EC was set
24 in motion by actions directed by Captain Lazar.
25 Predictably, it has devastated the club's business. It
26 has facilitated Captain Lazar's plan to eliminate "the
27 wrong crowd, a crowd we do not want" from Broadway and
28 thus drive the club out of business. The midnight
29 limitation has caused multiple negative consequences to
30 plaintiffs:

31 -Nightly and weekly business of the club has decreased

1 dramatically;

2 Corporate bookings for parties (one-night rentals) have
3 drastically diminished. This has been particularly
4 devastating in this 2017 season of corporate holiday
5 parties. The income from these one-night rentals
6 typically ranges from \$30,000 to \$50,000. Nearly all
7 corporations that have rented the club in previous years
8 have chosen not to rent in 2017 because of the midnight
9 limitation;

10 Plaintiffs have paid, and are paying, substantial fees
11 to attorneys to represent their interests at protracted
12 hearings before the ABC Board and the state Court of
13 Appeals. They are also paying attorney fees to present
14 counsel. Further, as a result of a "raid" on the club by
15 the SFPD that was ordered by Captain Lazar on December
16 13, 2014, plaintiffs have also had to retain labor
17 lawyers to protect their interests;

18 The value of the club itself has markedly decreased as a
19 result of the midnight limitation imposed by the EC and
20 the litigation before the ABC Board;

21 Plaintiff Montoya's personal reputation has been
22 dramatically reduced as a club manager, entrepreneur, and
23 businessman.

24 Mr. Montoya has lost business opportunities as a result
25 of the racially-motivated actions of the SFPD;

26 His credit rating has been severely damaged as well, and
27 management of his finances has been a significant
28 problem;

29 Plaintiffs have seen their assets greatly reduced;

30 Plaintiffs have been immersed every day in fighting the
31 consequences of the actions of the SFPD. These efforts

32

33

1 have caused considerable pain and suffering to them and
2 have impacted their personal lives, including reduction
3 of time available to spend with their young daughter and
4 otherwise live a peaceful, normal and productive life.

5 44. From the time Captain Lazar's assault on the club
6 and the plaintiffs began, supervising SFPD authorities,
7 including Commanders and two Chiefs of Police, have
8 acquiesced in, endorsed, enabled, ratified, authorized
9 and effectively approved of the conduct and goals of
10 Captain Lazar.

11 45. The relevant procedural chronology that has taken
12 place is as follows:

13 -On February 13, 2015, pursuant to the false and
14 misleading SFPD Reports, the ABC filed an Accusation
15 against the club, citing some 52 alleged "subcounts"
16 (violations). The 52 subcounts were based on false and
17 misleading reports generated by the SFPD. ABC's claim was
18 that the club was a "disorderly house", and that its
19 license should be revoked.

20 -Evidentiary hearings were conducted before an
21 Administrative Law Judge in 2015.

22 -On January 19, 2016, the administrative law judge
23 issued an Order in which he dismissed 39.5 of the 52
24 claims as unsubstantiated, finding that only 11.5 claims
25 were sustained. He rejected plaintiffs' claim of
26 selective enforcement. He determined that the sanction
27 should be a 45-day suspension, 15 days of which would be
28 stayed.

-Plaintiffs appealed to the ABC Appeals Board.

-On October 17, 2016, the ABC Appeals Board decided
that:

1 -Only 4.5 of the original 52 subcounts could be
2 sustained, and that 47.5 of the claims (*more than 90%*)
3 should be dismissed;

4 -The club was NOT a "disorderly house";

5 -No penalty of any kind was warranted;

6 -The ABC Appeals Board found that the attorneys
7 for the club had made a strong case for selective
8 enforcement, but declined to reach that question because
9 it determined the issues on narrower grounds.

10 -The ABC appealed the determination of the ABC
11 Appeals Board to the California Court of Appeals.

12 -The Court of Appeals decided on August 28, 2017
13 that suspension of the license was permissible, but the
14 Court remanded the matter to the ABC Appeals Board with
15 instructions that the Appeals Board determine two issues:
16 (1) Selective enforcement, and (2) whether the discipline
17 was grossly disproportionate to the alleged offenses.

18 -Those issues have been briefed and a determination
19 of those issues is pending before the ABC Appeals Board.

20 46. In the evidentiary hearings that took place in
21 2015, the evidence revealed a number of facts, including
22 other actions taken by the SFPD beyond the false and
23 misleading SFPD Reports that were submitted to the EC and
24 the ABC. The testimony and other evidence presented at
25 the hearing (reports, various documents, and videotapes)
26 demonstrated the following:

27 - The ABC called Benjamin Horne as one of its own
28 witnesses. Mr. Horne was the director of a non-profit
organization known as the Top of Broadway Community
Benefit District (BCBD). A key function of that

1 organization, whose membership includes the property
2 owners and nightclub operators in the Broadway corridor,
3 is to maintain order in the often chaotic Broadway
4 nightclub area. Mr. Horne testified that Captain Lazar
5 discussed with him and Mr. Montoya the issue of
6 Atmosphere attracting "the wrong crowd, a crowd we don't
7 want". He testified that, at a meeting in August of 2014
8 that had been called by Captain Lazar, the issue of hip-
9 hop music and "the wrong crowd, a crowd we don't want",
10 was discussed. Mr. Horne, a witness who was called by the
11 ABC, as noted above, thus confirmed in his testimony that
12 Captain Lazar made clear that his intent was to shut down
13 the club in order to keep "the wrong crowd" off Broadway.

14 47. Captain Lazar also directed other actions against
15 the club intended to drive the club out of business. For
16 example, Captain Lazar arranged for the SFPD to conduct a
17 "raid" of the club on December 13, 2014. The officers
18 determined that plaintiffs could not satisfactorily
19 demonstrate that all employees of the club were properly
20 covered by Workers Compensation, and they shut down the
21 club. Captain Lazar did not direct any such raid at any
22 other venue. He and his SFPD officers selectively
23 targeted Atmosphere. That raid resulted in allegations of
24 labor law violations, and required plaintiffs to shut
25 down and retain a labor lawyer to protect their
26 interests.

27 48. Between December 14, 2014 and February 15, 2015,
28 SFPD officers, at the direction of Captain Lazar entered
(literally invaded) the club nine times to harass
plaintiffs and discourage people from patronizing the
club. The police continued their practice of invading the

1 club, which they did at least three times after the club
2 changed its name to Hue.

3 49. On December 15, 2014, the SFPD invaded the club,
4 disrupting a private party by the Genentech Corporation.
5 The SFPD did so for no reason other than to discourage
6 private corporate rentals of the club.

7 50. On October 31, 2014, Captain Lazar and other
8 officers were the street and they claim to have heard
9 either one gunshot or a number of gunshots (Captain Lazar
10 testified both ways at the evidentiary hearing). In fact,
11 gunfire had taken place in a parking lot on the block and
12 it was not associated with the club. But the SFPD Report
13 of the event claimed that the gunshot/gunshots were
14 connected to Atmosphere.

15 51. On January 10, 2015, there was a private birthday
16 party at the club for Mr. Montoya's cousin. Captain Lazar
17 directed that the officers under his command invade that
18 private party. There was no justification for that
19 invasion other than harassment of plaintiffs.

20 52. On one occasion, an employee of the club,
21 Samantha Bigueur, left the club after work late one night
22 to learn that her car had apparently been hit by a driver
23 who had left the scene. Ms. Bigueur went to the officers
24 who were seated in the patrol car that was parked across
25 the street from the club to ask the officers to file a
26 report about the incident. Instead of doing so, they told
27 her that she would have to go to the police station to
28 file a report. When she protested at having to make her
way unescorted to the police station several blocks away
at 2 AM, the officers laughed in her face and told
her, "We know where you work".

1 53. Considerable evidence at the evidentiary 2015
2 hearing demonstrated that Captain Lazar and SFPD officers
3 under his command targeted plaintiffs' club in an effort
4 to shut down the club and thus keep African-American
5 people, the crowd that Lazar did not want, off Broadway.
6 His appallingly racist actions have done great damage to
7 plaintiffs.

8 54. The conduct by Captain Lazar and other SFPD
9 officers set in motion the negative consequences and
10 resultant damages that have befallen plaintiffs. This
11 conduct is the proximate cause of plaintiffs' damages.
12 The SFPD acted under color of state law to deprive
13 plaintiffs of their constitutional rights to equal
14 protection and to property.

15 55. The rights of plaintiffs that are protected by
16 the United States Constitution have been violated by the
17 SFPD and the City of San Francisco, a great city that
18 suffers from the racism that pervades the SFPD.

19 **FIRST CAUSE OF ACTION**

20 56. Plaintiffs incorporate by reference all
21 paragraphs herein as if fully set forth herein again.

22 57. Pursuant to 42 U.S.C 1983 *et seq* and 1988,
23 plaintiffs allege that the defendants jointly and
24 severally deprived plaintiffs of the constitutional
25 rights to which they are entitled pursuant to the
26 Fourteenth Amendment to the United States Constitution in
27 that the defendants herein jointly and severally deprived
28 Plaintiffs of their property without due process of law
and failed to provide equal protection of the law.

58. Plaintiffs seek relief and judgment against all

1 defendants herein, all of whom were acting within the
2 course and scope of their duties and who undertook their
3 actions under color of state law.

4 59. Defendants are jointly and severally liable for
5 the damages. The City of San Francisco acquiesced in and
6 ratified the conduct of the police officers in its
7 employ.

8 **SECOND CAUSE OF ACTION**

9 60. Plaintiffs incorporate by reference all
10 paragraphs herein as if fully set forth herein again.

11 61. Pursuant to 42 U.S.C 1983 *et seq* and 1988,
12 plaintiffs allege that the defendants jointly and
13 severally deprived plaintiffs of the constitutional
14 rights to which they are entitled pursuant to the Fifth
15 Amendment to the United States Constitution in that the
16 defendants herein jointly and severally deprived
17 plaintiffs of their property without due process of law
18 and deprived Plaintiffs equal protection of the law.

19 **THIRD CAUSE OF ACTION**

20 62. Plaintiffs incorporate by reference all
21 paragraphs herein as if fully set forth herein again.

22 63. Pursuant to 42 U.S.C 1983 *et seq* and 1988,
23 plaintiffs allege that the defendants jointly and
24 severally deprived plaintiffs of the constitutional
25 rights to which they are entitled pursuant to the
26 Constitution of the State of California, including, but
27 not limited to, Article One thereof, sections 1, 7, 13,
28 24, and 31, in that the defendants herein jointly and
severally deprived Plaintiffs of their property without

1 due process of law and failed to provide equal protection
2 of the law. Plaintiffs respectfully request that this
3 Court exercise supplementary jurisdiction over any and
4 all state causes of action and misconduct related to
5 Plaintiffs' federal claims.

6 64. As to all Causes of Action herein, the
7 individual police officer defendants acted within and
8 pursuant to their duties of employment with Defendant
9 City of San Francisco, and the City of San Francisco is
10 thus responsible for the injuries and damages to
11 Plaintiffs as a result of the violations of Plaintiffs'
12 rights.

13 65. Defendant City of San Francisco acted with
14 deliberate indifference to the unlawful actions of
15 defendant police officers in its employ. The principles
16 of *respondiat superior* and related legal authority
17 imposes liability upon the City of San Francisco.

18 66. Defendant City of San Francisco failed to put in
19 place a structure for containment of risk, and thus
20 ratified the unlawful misconduct by defendant police
21 officers.

22 67. Defendant City of San Francisco failed to put in
23 place a viable and reasonable process by which to
24 supervise and evaluate the conduct of its employee police
25 officers.

26 68. Defendant City of San Francisco functioned in a
27 manner that created risk to the public, including
28 Plaintiffs herein.

69. All defendants herein engaged in intentional
acts that caused damage to Plaintiffs herein.

1 70. All defendants herein acted with malice.

2 71. All defendants herein failed to provide equal
3 protection of the law as to the Plaintiffs.

4 72. Defendants herein are sued herein in both their
5 individual capacities and their official capacities.

6 73. The actions, and the failures to act, by the
7 City of San Francisco were undertaken with reckless
8 disregard of the rights of the Plaintiffs herein.

9 74. As to all Causes of Action, the actions and
10 failures to act to prevent its police employees from
11 violating the rights of Plaintiffs herein demonstrate
12 improper *de facto* practices and policies of defendant
13 City of San Francisco.

14 75. As to all Causes of Acton herein, Defendant City
15 of San Francisco failed to properly supervise and failed
16 to educate defendant police officers, ratified their
17 improper conduct, hired the officers without appropriate
18 investigation of their character, and in general and
19 specifically demonstrated deliberate indifference to the
20 improper conduct by the officers that took place over an
21 extended period of time.

22 **PRAYER**

23 76. WHEREFORE, plaintiffs, and each of them, seek and
24 demand:

25 (1) monetary relief and judgment against defendants, jointly
26 and severally, including nominal, presumed,
27 compensatory, and punitive damages, in such amounts as
28 shall be determined by a Jury;

(2) Attorneys Fees under 42 U.S.C. § 1988;

(3) costs of litigation; and

1 (4) other and further relief as is just and appropriate in
2 the premises of this Civil Rights case.

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4 **JURY DEMAND**

5 77.Plaintiffs demand that this case be tried by a jury.

6 January 22, 2018

7 Respectfully submitted,

8 /s/ Robert Bloom

9 Attorney for Plaintiffs
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