

I. Parties

1. Plaintiff is the State of Texas appearing and proceeding by and through Harris County Attorney Vince Ryan's Office in accordance with Tex. Civ. Prac. & Rem. Code Ann. § 125.002 (Vernon 2011) and the Tex. Alc. Bev. Code Ann. § 101.70(b) (Vernon 2007).

2. Defendant Acapulco Night Club is owned by Ernesto Gonzalez Dominguez who may be served at 10632 FM 1960 W. Rd., Houston, Texas 77070 or 6026 Crakston St., Houston, TX 77084.

3. Defendant J PAL Properties Inc. is the owner of the Real Property Known As 10632 FM 1960 W. Rd., Houston, Texas 77070 and may be served by serving its registered agent, Rabindra S. Basra, at 10119 Golden Sunshine, Houston, Texas 77064.

4. Defendant the Real Property known as 10632 FM 1960 W. Rd., in Houston, Harris County, Texas is sued *in rem* under Tex.Civ.Prac. & Rem Code Ann. 125.002(b). It can be served by serving the owner of the Property, J PAL Properties Inc., through its registered agent, Rabindra S. Basra, at 10119 Golden Sunshine, Houston, Texas 77064.

II. Discovery Control Plan

5. Plaintiff intends for this case to be governed as a Level II Discovery Plan in accordance with Rule 190.3 of the Texas Rules of Civil Procedure.

III. Jurisdiction and Venue

6. This court has subject matter and personal jurisdiction over the cause and the parties thereto based on the Texas Civil Practice and Remedies Code Annotated § 125.002(a) for the reasons that the property made the basis of this cause is being maintained as a common nuisance as contemplated by Chapter 125 of the Civil Practice and Remedies Code.

7. Venue of this cause is proper in this court, based on Texas Civil Practice & Remedies Code Annotated § 15.016 (Vernon 2002). More particularly, Section 125.002 (a) of the Texas Civil Practice & Remedies Code and Section 101.70 of the Texas Alcoholic Beverage Code prescribes mandatory venue of an action to enjoin and abate a common nuisance in the county in which it is alleged to exist. Section 15.016 of the Texas Civil Practice & Remedies Code provides that an action for which venue is made mandatory by a statute shall be brought in the county required under the statute. The real property upon which defendants Ernesto Gonzalez Dominguez d/b/a/ Acapulco Night Club, J PAL Properties Inc. and the Real Property Known as 10632 FM 1960 W. Rd. are maintaining as a common nuisance is located in Harris County, Texas.

IV. Statutory Basis for Suit
a. common nuisance – habitual criminal activity

8. Tex. Civ. Prac. & Rem. Code Ann. §125.0015(a) states that “[a] person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.” The “purposes” that give rise to a Chapter 125 nuisance are as follows:

- (1) Discharge of a firearm in a public place as prohibited by the Penal Code;
- (2) Reckless discharge of a firearm as prohibited by the Penal Code;
- (3) Engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;
- (4) Delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481 of the Health and Safety Code;
- (5) Gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;

- (6) Prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;
- (7) Compelling prostitution as prohibited by the Penal Code;
- (8) Commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code;
- (9) Aggravated assault as described by Section 22.02 of the Penal Code;
- (10) Sexual assault as described by Section 22.011 of the Penal Code;
- (11) Aggravated sexual assault as described by Section 22.021 of the Penal Code;
- (12) Robbery as described in Section 29.02 of the Penal Code;
- (13) Aggravated robbery as described by Section 29.03 of the Penal Code;
- (14) Unlawfully carrying a weapon as described by Section 46.02 of the Penal Code;
- (15) Murder as described by Section 19.02 of the Penal Code;
- (16) Capital murder as described by Section 19.03 of the Penal Code;
- (17) Continuous sexual abuse of a young child or children as described by Section 21.02 of the Penal Code;
- (18) Massage therapy or other massage services in violation of Chapter 455 of the Occupations Code.
- (19) Employing a minor at a sexually oriented business as defined by Section 243.002, Local Government Code;
- (20) Trafficking of persons as described by Section 20A.02, Penal Code;
- (21) Sexual conduct or performance by a child as described by Section 43.25, Penal Code; or
- (22) Employment harmful to a child as described by Section 43.251, Penal Code.

Section 125.0015(a) (1)-(22).

9. Section 125.004(a) provides that “[p]roof that an activity described by Section 125.0015 is frequently committed at the place involved or that the place is frequently used for an activity

described by Section 125.0015 is prima facie evidence that the defendant knowingly tolerated the activity.” Section 125.004(b) states that “[e]vidence that persons have been arrested for or convicted of offenses for an activity described by Section 125.0015 in the place involved is admissible to show knowledge on the part of the defendant with respect to the act that occurred.”

10. Harris County law enforcement has been called to Acapulco Night Club over one hundred and twenty times in the last two years to make arrests, break up fights and investigate shootings, stabbings, drug possession and sexual assaults on the premises.

11. On July 5, 2013, deputies from Harris County Constable Precinct Four responded to a disturbance at Acapulco Night Club. Bouncers at the club stated that they witnessed a male customer grab a female customer by the throat and push her to the ground after an argument that happened inside the club. Then, he went to his truck and pulled out a handgun which he eventually threw under his truck when officers intervened. The male customer was arrested and charged with assault, unlawful carry of a weapon and possession of a controlled substance, cocaine. Criminal activity of this nature is regular and habitual at Acapulco Night Club.

12. The general reputation of this place will also show the existence of this common nuisance per Tex. Civ. Prac. & Rem. Code § 125.004(c). It is well known that Acapulco Night Club is only open between the hours of 2am and 6am. Acapulco advertises itself on Facebook and other public websites as an “after hours” club for ages 18 and up. Bartenders employed by owner Ernesto Gonzalez Dominguez regularly sell alcoholic beverages to customers during those hours, including those who are underage. A simple Google search of “Acapulco Night Club” brings up their Facebook page, Yelp reviews, a Channel 13 news report of a shooting directly outside the front door of Acapulco on May 11, 2013 and a You Tube video of a violent group fight in front of Acapulco on March 9, 2014.

13. Defendants have knowingly tolerated this Chapter 125 nuisance and have allowed such activity to occur habitually on the Property. In light of the foregoing, as a matter of law, the Property constitutes a common nuisance within the meaning of Chapter 125.

b. Texas Alcoholic Beverage Code violations

14. Section 101.70 of the Texas Alcoholic Beverage Code states that “a room, building, boat, structure, or other place where alcoholic beverages are sold, bartered, manufactured, stored, possessed, or consumed in violation of this code or under circumstances contrary to the purposes of this code, the beverages themselves, and all property kept or used in the place, are a common nuisance.

15. Texas Alcoholic Beverage Commission agents have cited Acapulco Night Club nine times in the past two years for violations of the Texas Alcoholic Beverage Code. TABC investigators went into Acapulco undercover as recently as June 7, 2014 after 2am and agents were illegally served alcoholic beverages by bartender Juan Gil-Torres. Subsequently, bartender Gil-Torres was arrested for selling alcoholic beverages without a license or permit pursuant to TABC, Section 109.53. Acapulco Night Club was found to be operating as a mixed beverage establishment in violation of TABC, Section 11.01.

V. Request for Temporary Injunctive Relief

a. nuisance

16. The area in and around Acapulco Night Club at 10632 FM 1960 RD., Houston, Harris County, Texas is knowingly maintained as a place where aggravated assaults, fights in the parking lot, drug activity and other crimes under Chapter 125 of the Texas Civil Practice & Remedies Code are frequently committed. As such the property constitutes a common nuisance

as defined by Section 125.0015(a) of the Texas Civil Practice & Remedies Code and § 101.70 of the Texas Alcoholic Beverage Code.

17. Defendants Ernesto Gonzalez Dominguez d/b/a Acapulco Night Club, J PAL Properties Inc. and the Real Property Known as 10632 FM 1960 W. Rd. have failed or refused to abate the nuisance. Defendants are likely to continue to maintain the Property as a common nuisance unless restrained by an injunctive order of the court.

18. In accordance with Tex.Civ. Prac.& Rem. Code Ann. § 125.045(a) (Vernon Supp.2012), if, after notice and hearing on a request by a petitioner for a temporary injunction, a court determines that the petitioner is likely to succeed on the merits in a suit brought under Section 125.002 (Suit to Abate Common Nuisance), the court shall require that the defendant execute a bond. The bond must be payable to the STATE OF TEXAS at Harris County; be in the amount set by the court, but no less than \$5,000 nor more than \$10,000; have sufficient sureties approved by the court; and be conditioned that the defendants will not knowingly allow a common nuisance to exist at that place.

19. Based on Section 125.002(e) of the Texas Civil Practice & Remedies Code, if the judgment is in favor of the petitioner, the court shall grant an injunction ordering defendants to abate the nuisance and be enjoined from maintaining or participating in the common nuisance existing on the property. The court may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance.

20. Because the petitioner brings this action *in rem*, the judgment shall be a judgment *in rem* against both the real property as well as against the defendants, according to Section 125.002(b) and (e) of the Texas Civil Practice & Remedies Code.

21. Pursuant to Section 125.003(a) of the Texas Civil Practice & Remedies Code, should any condition of the bond or any injunctive order by this court be violated, suit upon the bond in the name of the State of Texas should be allowed; and upon a showing of a violation of any condition of the bond or injunctive order, the whole sum of the bond should be ordered forfeited to Harris County, Texas, the originating entity. The place where the nuisance exists should be ordered closed for one year from the date of the order of bond forfeiture.

22. In accordance with Tex.Civ.Prac. & Rem. Code Ann. § 125.002(d), a person who violates a temporary or permanent injunctive order is subject to the following sentences for civil contempt:

- a. fine of not less than \$1,000 or more than \$10,000;
- b. confinement in jail for a term of not less than 10 or more than 30 days;
- c. both a fine and confinement.

23. In accordance with Tex.Civ.Prac & Rem. Code Ann. § 125.045(b) (Vernon Supp.2012), if a defendant violates the temporary or permanent injunction, the court may order a political subdivision to:

- a. discontinue the furnishing of utility services to the place at which the nuisance exists;
- b. prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;

c. revoke the certificate of occupancy of the place;

d. prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance;

e. limit the hours of operation of the place, to the extent that the hours of operation are not otherwise specified by law:

f. order a landlord to terminate a tenant's lease if:

1. the landlord and the tenant are parties to the suit; and
2. the tenant has violated a condition of the injunctive order; or

g. order any other legal remedy available under the laws of the state.

b. TABC

24. Under Section 101.70(b) of the Texas Alcoholic Beverage Code (Code), if a room, building, boat, structure or other place where alcoholic beverages are sold, bartered, manufactured, stored, possessed, or consumed in violation of the Code or under circumstances contrary to the purposes of the Code, the beverages themselves and all property kept or used in the place are a common nuisance. A person who maintains or assists in maintaining the common nuisances commits an offense.

25. The county attorney in the county where the nuisance exists may sue in the name of the state for an injunction to abate and temporarily and permanently enjoin it. Tex. Alco. Bev. Code Ann. § 101.70 (b).

26. Defendants are habitually serving alcohol without a permit and serving alcohol after 2 a.m. at Acapulco Night Club located at 10632 FM 1960 W. Rd. in violation of Texas Alcoholic Beverage Commission (TABC) rules. As such, the property constitutes a common nuisance as defined by § 101.70 of the Texas Alcoholic Beverage Code.

27. Defendants have failed or refused to abate the nuisance. Defendants are likely to continue to maintain the Property as a common nuisance unless restrained by an injunctive order of the court.

VI. Request for Permanent Injunctive Relief

a. Chapter 125 nuisance

29. As alleged above, Acapulco Night Club is knowingly maintained as a place to which persons go after hours to drink alcoholic beverages and engage in drug activity, aggravated assaults and other crimes under the Texas Civil Practice & Remedies Code are committed. And, as such, the Property constitutes a common nuisance under Section 125.0015 of the Texas Civil Practice & Remedies Code.

30. Defendants have failed or refused to abate the nuisance. Defendants are likely to continue to maintain and use and be party to the maintenance and use of Acapulco Night Club and Acapulco Club Inc. and the Real Property Known as 10632 FM 1960 W. Rd as a common nuisance unless restrained by an injunctive order of this Court.

31. Based on Section 125.002(e) of the Texas Civil Practice & Remedies Code, when the petitioner brings an action *in rem* and the judgment is in favor of the petitioner, the court must order that Acapulco Night Club at 10632 FM 1960 W. Rd. be closed for one year after the date of the judgment.

32. Because the petitioner brings this action *in rem*, the judgment shall be a judgment *in rem* against the property as well as against defendants, according to Section 125.002(b) and (e) of the Texas Civil Practice & Remedies Code.

b. TABC

33. Under Tex. Alco. Bev. Code Ann. § 101.70c, the final judgment is a judgment *in rem* against the property and a judgment against the defendants. If the court finds against the defendants on final judgment it shall order that the place where the nuisance exists be closed for one year or less and until the owner, lessee, tenant, or occupant gives bond with sufficient surety as approved by the court in the sum of at least \$1,000. The bond must be payable to the state and conditioned:

- a) that the Texas Alcoholic Beverage Code will not be violated;
- b) that no person will be permitted to resort to the place to drink alcoholic beverages in violation of the Texas Alcoholic Beverage Code; and
- c) that the defendants will pay all fines, costs and damages assessed against them for any violation of the Texas Alcoholic Beverage Code.

VII. Attorney's Fees

34. In order to litigate this case, it was necessary to secure the services of the Harris County Attorney's office. Pursuant to Tex. Civ. Prac. & Rem. Code Ann. §125.003, the County requests that defendants be adjudged jointly and severally liable for the County's reasonable attorneys' fees, investigative costs, witness fees, court costs, and any other reasonable expenses incurred in bringing this lawsuit.

VIII. Bond

35. Pursuant to Section 101.70 (c) of the Texas Alcoholic Beverage Code, there is no bond required of the plaintiff in bringing this suit. Additionally, pursuant to Section 125.002 of the Texas Civil Practice & Remedies Code, the plaintiff is not required to verify the allegations set forth in this petition, nor show any proof of personal injury by the acts complained herein.

IX. Request for Disclosure and Request for Production

36. Under Texas Rule of Civil Procedure 194, plaintiff requests that defendants disclose, within 50 days of service of this request, the information or material described in Rule 194.2 and Rule 196.

X. Prayer

WHEREFORE, PREMISES CONSIDERED, plaintiff respectfully requests that:

37. After notice and a hearing on a request for a temporary injunction, the court order defendants Ernesto Gonzalez Dominguez d/b/a Acapulco Night Club, J PAL Properties Inc. and the Real Property Known as 10632 FM 1960 W. Rd, Houston, Harris County, Texas 77070 or any other person with an interest in the Property to execute a bond payable to the STATE OF TEXAS at Harris County; be in the amount set by the court, but not less than \$5,000, nor more than \$10,000; have sufficient sureties approved by the court; and be conditioned that the defendants will not knowingly maintain a common nuisance to exist at that place;

38. If the court determines that defendants are maintaining a common nuisance at the property, the court render any order allowed by law as necessary to abate the common nuisance;

39. Upon a showing by the plaintiff that any temporary or permanent injunctive order by this court has been violated, the person in violation of said order be subject to the following sentences for civil contempt.

1. a fine of not less than \$1,000 or more than \$10,000;
2. confinement in jail for a term of not less than 10 or more than 30 days;
3. both fine and confinement;

40. Upon showing that any defendant has violated a temporary or permanent injunction of the court, the court may:

- a. order a political subdivision to discontinue the furnishing of utility services to the place at which the nuisance exists;
- b. prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;

- c. revoke the certificate of occupancy of the place;
- d. prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance;
- e. limit the hours of operation of the place, to the extent that the hours of operation are not otherwise specified by law;
- f. order a landlord to terminate a tenant's lease if:
 - 1. the landlord and the tenant are parties to the suit; and
 - 2. the tenant has violated a condition of the injunctive order; or
- g. order any other legal remedy available under the laws of the state.

41. If, upon final hearing, the court finds in favor of the plaintiff that a common nuisance exists at Acapulco Night Club at 10632 FM 1960 W. Rd., Houston, Harris County, Texas 77070, the court shall order that the property be closed for one year after the date of judgment;

42. Upon final judgment against the defendant, under Tex. Alco. Bev. Code Ann. § 101.70c, the court order that Acapulco Night Club at 10632 FM 1960 W. Rd., Houston, Harris County, Texas 77070 be closed for one year or less until the owner, lessee, tenant, or occupant gives bond with sufficient surety as approved by the court in the sum of at least \$1,000. The bond must be payable to the state and conditioned:

- a) that the Texas Alcoholic Beverage Code not be violated;
- b) that no person will be permitted to resort to the place to drink alcoholic beverages in violation of this code; and

c) that the defendants will pay all fines, costs, and damages assessed against him for any violation of the Texas Alcoholic Beverage Code.

43. The judgment of this court be a judgment *in rem* against the property, as well as against the defendants and the Real Property Known as 10632 FM 1960 W. Rd., Houston, Harris County, Texas 77070 and,

44. Upon final hearing, a judgment against defendants Ernesto Gonzalez Dominguez d/b/a Acapulco Night Club, J PAL Properties Inc. and the Real Property Known as 10632 FM 1960 W. Rd., Houston, Harris County, Texas 77070 for:

1. court costs;
2. costs of suit;
3. costs of investigation;
4. witness fees and deposition fees;
5. reasonable attorney's fees; and
6. such other and further relief to which plaintiff may be justly entitled.

Respectfully submitted,

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Harris County Attorney

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