



## **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 Victoria Gonzalez Zarate is the owner/manager of the after-hours club known as Club Eclipse located at 2628 FM 1960 Rd. This defendant may be served at 9010 Napfield, Spring, Texas 77379.
3. Defendant Miguel Zarate is also the owner of the after-hours club known as Club Eclipse located at 2628 FM 1960 Rd. This defendant may be served at 9010 Napfield, Spring, Texas 77379.
4. Defendant Sunlight Group Inc. is the owner of the Real Property Known As 2628 FM 1960 Rd., Houston, Texas 77073 and may be served by serving its registered agent, Zhuo Gang Chen, at 9720 Town Park Drive, Suite 180, Houston, Texas 77036.
5. Defendant the Real Property known as 2628 FM 1960 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, Sunlight Group Inc., by serving its registered agent, Zhuo Gang Chen, at 9720 Town Park Drive, Suite 180, Houston, Texas 77036.

## **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. 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 the Defendants are maintaining a common nuisance is located in Harris County, Texas.

### **IV. Statutory Basis for Suit**

#### **a. common nuisance – habitual criminal activity**

8. §125.0015(a) of the Texas Civil Practices & Remedies Code 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 [125.0015(a) (1)-(22)]:

- (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.

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. Section 125.004(c) provides that evidence of the general reputation of the place will also show the existence of a common nuisance.

11. Defendants have knowingly tolerated this Chapter 125 activity 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.

12. In keeping with Section 125.002(h) of the Texas Civil Practice and Remedies Code, Plaintiff considered the failure of Defendants to promptly notify the appropriate law enforcement agency of the occurrence of such criminal acts at Club Eclipse and to cooperate with law enforcement investigations of criminal acts at Club Eclipse.

**b. TABC nuisance**

13. 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.

## V. Facts

### **Chapter 125 Violations**

14. Club Eclipse, also known to law enforcement as Club Night, is owned and managed by Defendants Victoria Gonzalez Zarate and her husband, Miguel Zarate. The club is located in a retail shopping center at 2628 FM 1960 Rd. E. in Houston, Texas. The shopping center is owned by Defendant Sunlight Group Inc.

15. Club Eclipse is an after-hours night club where large crowds of people congregate from late at night into the early hours of the morning. Club Eclipse illegally sells and serves alcohol without a permit from TABC and harbors criminal activity inside and outside its doors. Violence is common at Club Eclipse and the incidents of aggravated assaults, aggravated robberies, large group fights, gang presence, and dangerous gunplay generates frequent complaints from law enforcement officials, area business owners, and residents.

16. Defendants Victoria Gonzalez Zarate and Miguel Zarate are well known for the illegal after hours clubs they own. Victoria Gonzalez Zarate and Miguel Zarate previously owned Club La Cave located at 4714 FM 1960 Rd. W. Similar to Club Eclipse, Club La Cave was the scene of violent, habitual, criminal activity, including a murder, rampant gang activity, drug crimes, and illegal alcohol sales. The Harris County Attorney's Office brought a nuisance action against Club La Cave, Victoria Gonzalez Zarate, and the property owner of 4714 FM 1960 Rd. W. in December 2012. *See attached Cause No. 2012-73386.*

17. The Club La Cave lawsuit was resolved when the property owners evicted Club La Cave, thereby abating the criminal activity there. The property owners entered into an agreed permanent injunction in early 2013 with Harris County to abate the nuisance created and

**maintained at 4714 FM 1960 Rd. W. by Club la Cave. *See attached Agreed Final Judgment and Permanent Injunction.***

**18. Now, Victoria Gonzalez Zarate and Miguel Zarate are maintaining a common nuisance at 2628 FM 1960 Rd. W. known as Club Eclipse. They signed a lease for the space located at 2628 FM 1960 Rd. W. in January 2013 while the nuisance case against them for Club la Cave was pending and with full knowledge of Texas laws against maintaining a common nuisance.**

**19. Since relocating to 2628 FM 1960 Rd. W., these Defendants have created another nuisance requiring the regular intervention of officers with Harris County Constable Precinct 4, the Harris County Sheriff's Department, TABC, and the Harris County Fire Marshal. Among the Chapter 125 crimes regularly committed at Club Eclipse, weapons violence is the most habitual. Customers of the club have committed assault against other customers and security guards. These incident involved knives, guns, and vehicles. Within the last eighteen months, the following incidents have occurred at Club Eclipse:**

- A patron of the club used his vehicle to run over a security guard then backed into the front door and windows of the Bingo Hall next door.**
- A patron was shot in the chest and leg and left to die on the sidewalk following a fight inside the club.**
- Two patrons were robbed at gunpoint as they approached the club, then denied entrance by club security when the suspect ran into the club.**
- A patron was shot in the leg when a large crowd was exiting the club following a fight inside.**
- Recently, a patron tried to steal a car and run over a security guard at the club.**

20. In early December 2014, a large fight broke out inside Club Eclipse and spilled into the parking lot just as the sun was coming up. The fight was captured on cell phone video and posted on a Facebook site called "Strippers and Fights." Harris County law enforcement, local business owners, and nearby residents complained about the level of violence shown in the video and known to regularly occur at Club Eclipse. As a result of this fight, at least one person was stabbed in the head and arm, his car windows bashed in, and shots were fired.

#### **TABC Violations**

21. Fueling the frequent aggravated assaults is the alcohol served illegally by bartenders at Club Eclipse to rowdy crowds in excess of 250 people inside the club. Defendant Victoria Gonzalez Zarate admitted to officers in March 2014 that the club does not have permits to serve alcohol. An undercover investigation by TABC on January 10, 2015 confirmed that alcohol is regularly served inside Club Eclipse during prohibited hours and without a permit in violation of the TABC code. As a result, TABC arrested the bartender at Club Eclipse and charged him with selling liquor without a permit.

#### **Fire Code Violations**

22. The Harris County Fire Marshal's Office and Precinct 4 responded to Club Eclipse in March 2014 when crowds of over 300 people overwhelmed the club and the parking lot outside. Defendant Victoria Gonzalez Zarate admitted to officers that the club does not have a set occupancy limit or permits to operate, and she has not applied for permits or scheduled an inspection of the building. She also admitted to officers that she and Defendant Miguel Zarate signed a lease for the Club Eclipse space in January 2013 and opened the club in March 2013.

23. The report by the Harris County Fire Marshal's Office noted that after walking through the club they observed multiple fire and life safety hazards throughout. Some of the notable

hazards were the locked exit doors, the electrical wiring and breaker panel, no fire detection system, no fire extinguishers, and the floor had the covering removed and condensation was built up making the floor condition very slick.

#### **VI. Request for Temporary Injunctive Relief**

24. Club Eclipse has 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. Defendants have knowingly tolerated this Chapter 125 crime and have allowed such activity to occur habitually on the property for almost two years. Defendants have knowingly maintained a place to which persons habitually engage in aggravated assaults, illegal alcohol consumption, and other criminal activity in violation of the law. The Defendant Property, therefore, is a common nuisance as defined by Section 125.0015 (a) of the Texas Civil Practice & Remedies Code.

25. The general reputation of Club Eclipse as a place where customers are served alcohol after-hours when other clubs are closed is further evidence that the club and the property located at 2628 FM 1960 Rd. is a common nuisance per Tex. Civ. Prac. & Rem. Code § 125.004(c) and per to Section 101.70 of the Texas Alcoholic Beverage Code.

26. The Texas Civil Practice & Remedies Codes authorizes suit to enjoin and abate a common nuisance under Section 125.002. The Defendants maintain an establishment where reckless, unlawful, and illegal use/discharge of firearms, aggravated assaults, aggravated robbery, and other Chapter 125 crimes are committed. Unless Defendants are enjoined from maintaining the property as a common nuisance, irreparable harm will be suffered by the citizens of Houston and Harris County, Texas. Plaintiff has no other adequate remedy at law to prevent the continued maintenance of the property as a common nuisance.

27. The consequences of the above-described unlawful activities at the property, as well as the foreseeable resulting criminal activity associated with these acts, would proximately cause a person of ordinary sensibilities to be substantially frightened, discomforted, annoyed, and inconvenienced in the use of any premises surrounding the property.

28. Plaintiff requests a temporary injunction under Tex. Civ. Prac. & Rem. Code Section 125.002. If after notice and a hearing the Court determines that the Plaintiff is likely to succeed on the merits in this suit to abate a common nuisance, the Court shall order reasonable requirements to prevent the use and maintenance of Club Eclipse and the property located at 2628 FM 1960 Rd. as a nuisance and require Defendants to 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 Club Eclipse and the Club Eclipse premises.

29. Under Section 125.003(a), if the Defendants violate any condition of the bond or any injunctive order by this court, the Plaintiff shall sue on the bond in the name of the State of Texas, and upon a showing of a violation of any condition of the bond or injunctive order, the whole sum of the bond plus costs and attorney fees, should be ordered forfeited to Harris County, Texas and Club Eclipse and the Club Eclipse premises be ordered closed for one year from the date of the order of bond forfeiture. In addition, the Court may impose the laundry list of sanctions under Section 125.045(b), including cutting off utilities to Club Eclipse, revoking the occupancy permit, prohibiting access, limiting hours of operation, ordering termination of the tenant's lease, or any other legal remedy available under the law.

## **VII. Request for Permanent Injunctive Relief**

30. Additionally, the Plaintiff seeks permanent injunctive relief.

31. If final judgment favors the Plaintiff, the Court shall grant a permanent injunction ordering Defendants, including the real property known as 2628 FM 1960 Rd., Houston, Harris County, Texas, to abate the nuisance and/or be forever 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.

32. Because the Plaintiff brings this action *in rem*, the final judgment shall be a judgment *in rem* against the property as well as against the Defendants.

33. If the Defendants violate a temporary or permanent injunctive order of this Court, they are 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 10-30 days;
- c. both a fine and confinement.

## **VIII. Attorney's Fees**

34. In order to litigate this case, it was necessary to secure the services of the undersigned attorneys. Based on sections 125.003(b) and 125.068 of the Texas Civil Practice & Remedies Code, Plaintiff requests the Defendants be ordered to pay reasonable attorney's fees and costs, including investigative costs, witness fees, court costs, and deposition fees.

## **IX. Verification**

35. 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.

**X. Initial Disclosures**

36. Pursuant to 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.

**XI. Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that: this Court grants judgment in favor of Plaintiff for temporary and permanent injunction and other such relief; and issue a judgment *in rem* against the Premises ordering it closed for one year. Further, Plaintiff prays for their costs of court, reasonable attorney's fees, investigative costs, witness fees, and such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

VINCE RYAN  
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/S/ Julie Countiss

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**ATTORNEYS FOR THE STATE OF TEXAS**