

Application for Temporary and Permanent Injunctions and Request for Disclosure, and in support of this action would show the following:

I. Discovery Control Plan

1. The State of Texas 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.

II. Parties

2. Plaintiff is the State of Texas is 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.Alco. Bev. Code Ann. § 101.70 (b) (Vernon2007). As provided by Section 6.001 of Texas Civil Practices & Remedies Code, no bond is required of plaintiff.

3. Defendant Helda Shaghaghi is the owner of the Property and may be served at 15702 Memorial Drive, Houston, Texas 77079-4110.

4. Defendant Allen Sena, Inc. is the owner of Foxy's Cabaret, which is located on the Property. It may be served by serving its registered agent and president, Helda Shaghaghi at 15702 Memorial Drive, Houston, Texas 77079-4110.

5. Defendant, the Real Property Known as 11112 South Post Oak Road, Houston, Texas 77035, 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, Helda Shaghaghi at 15702 Memorial Drive, Houston, Texas 77079-4110.

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) (Vernon 2011) 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. The court

also has subject matter and personal jurisdiction over the cause and the parties based on Tex. Alco. Bev. Code Ann. § 101.70.

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 Practices & Remedies 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 Helda Shaghaghi, Allen Sena, Inc., d/b/a/ Foxy's Cabaret, and 11112 South Post Oak Road, Houston, Texas 77035 are maintaining a common nuisance is located in Harris County, Texas.

IV. Statutory Basis for Suit

8. The Texas Civil Practice and Remedies Code Section 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 or crimes that give rise to a Chapter 125 nuisance are set out in Civ. Prac. & Rem. Code Ann. § 125.0015(a) (1-22).

9. Texas Civil Practice and Remedies Code § 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. Allen Sena, Inc. is currently operating Foxy's Cabaret. It is located in a strip center located at 11112 South Post Oak Road, next to a church, the Christian Assembly of Houston, and is within 500 feet of the Varnet Public School, Southwest Campus, an elementary school. Foxy's Cabaret does not have a sexually oriented business license as required by the City of Houston. The City of Houston Sexually Oriented Business ordinance requires a 1,500 foot distance between a sexually oriented business and a church or school.

11. There were more than 100 calls for service at 11112 South Post Oak Road from January 1, 2011 through January 25, 2013, according to Houston Police Department records. Among the police reports generated from these incidents in the above period are at least 12 prostitution cases, including some instances where dancers at the club offered, for an extra fee, to perform sexual acts in the club's "champagne" room that features small lounge sofas that are separated off from each other by 6-foot-high privacy walls. Patrons to the club pay a \$10 entrance fee and are subject to a search by the doorman. An additional \$25 fee is paid to the club for entrance into the "champagne" room. Also, from January 1, 2011 through January 25, 2013, there were several arrests for cocaine possession and an aggravated assault at the club.

12. In addition, the Texas Alcoholic Beverage Commission (TABC) last November suspended the club's alcoholic beverage license for four days for prostitution offenses. TABC has also cited the club for drug offenses occurring in the club.

13. Defendants have knowingly tolerated 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.

Request for Temporary Injunctive Relief

a. nuisance

14. Foxy's Cabaret at 11112 South Post Oak Drive is knowingly maintained as a place where prostitution, drug offenses, assaults, and other crimes under Chapter 125 of the Texas Civil

Practice & Remedies Code are committed. In addition, there are violations of TABC rules. As such, the property constitutes a common nuisance as defined by Section 125.0015(a) of the Texas Civil Practice & Remedies Code and Section 101.70 of the Texas Alcoholic Beverage Code.

15. Defendants, Helda Shaghagi, Allen Sena, Inc. d/b/a/ Foxy's Cabaret, and the Real Property Known as 11112 South Post Oak Road, have failed or refused to abate the nuisance. Defendants, Helda Shaghagi, Allen Sena, Inc. d/b/a/ Foxy's Cabaret, and the Real Property Known as 11112 South Post Oak Road, are likely to continue to maintain the property as a common nuisance unless restrained by an injunctive order of the court.

16. 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..

17. 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, Helda Shaghagi, Allen Sena, Inc. d/b/a/ Foxy's Cabaret, and the Real Property Known as 11112 South Post Oak Road, 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.

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

19. 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.

20. 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.

21. 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

22. 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.

23. Under the Tex. Alco. Bev. Code Ann. § 104.01, "No person authorized to sell beer at retail, nor his agent, servant of employee, may engage in or permit conduct on the premise of the retailer which is lewd, immoral or offensive to public decency, including, but not limited to, any of the following facts:

- (6) permitting lewd or vulgar entertainment or acts;
- (7) permitting solicitations of persons for immoral or sexual purposes;
- (8) failing or refusing to comply with state or municipal health or sanitary laws or ordinances; or
- (9) possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so."

Tex. Alco. Bev. Code Ann. § 104.01(Vernon 2007).

24. 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).

VI. Request for Permanent Injunctive Relief

25. Additionally, the State seeks permanent injunctive relief.

a. Chapter 125 nuisance

26. As alleged above, Foxy's Cabaret at 11112 South Post Oak Road in Houston, Texas is knowingly maintained as a place to which persons go and use for purposes of prostitution, drug offenses and where assaults and other crimes set out in § 125.0015(a) of the Texas Civil Practice & Remedies Code are committed. In addition, prostitution and lewd, immoral and indecent conduct occurs at Foxy's Cabaret, which is licensed to sell mixed beverages, including beer, and, as such, constitutes a common nuisance under Section 101.70 of the Texas Alcoholic Beverage Code.

27. Defendants, Helda Shaghagi, Allen Sena, Inc. d/b/a/ Foxy's Cabaret, and the Real Property Known as 11112 South Post Oak Road have failed or refused to abate the nuisance. Defendants Helda Shaghagi, Allen Sena, Inc. d/b/a/ Foxy's Cabaret; and the Real Property Known as 11112 South Post Oak Road are likely to continue to maintain and use, and be party to the maintenance and use of Foxy's Cabaret at 11112 South Post Oak Road as a common nuisance unless restrained by an injunctive order of this Court.

28. 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 Foxy's Cabaret at 11112 South Post Oak Road be closed for one year after the date of the judgment.

29. Because the petitioner brings this action *in rem*, the judgment shall be a judgment *in rem* against the property as well as against defendants Helda Shaghagi and Allen Sena, Inc. d/b/a/ Foxy's Cabaret, according to Section 125.002(b) and (e) of the Texas Civil Practice & Remedies Code.

b. TABC

30. Under Tex. Alco. Bev. Code Ann. § 101.70c, the final judgment is a judgment *in rem* against the property and a judgment against the defendant. If the court finds against the defendant 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 penal 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 defendant will pay all fines, costs and damages assessed against him for any violation of the Texas Alcoholic Beverage Code.

VII. Attorney's Fees

31. 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

32. Pursuant to Section 101.70 of the Texas Alcoholic Beverage Code no bond is 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

33. 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.

X. Prayer

WHEREFORE, PREMISES CONSIDERED, plaintiff respectfully requests that:

34. After notice and a hearing on a request for a temporary injunction, the court order defendants, Helda Shaghagi, Allen Sena, Inc. d/b/a/ Foxy's Cabaret, and the Real Property Known as 11112 South Post Oak, 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 defendant will not knowingly maintain a common nuisance to exist at that place;

35. If the court determines that defendants, Helda Shaghagi, Allen Sena, Inc. d/b/a/ Foxy's Cabaret, and the Real Property Known as 11112 South Post Oak Road, are maintaining a common nuisance at the property, the court render any order allowed by law as necessary to abate the common nuisance;

36. 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;

37. 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.

38. If, upon final hearing, the court finds in favor of the plaintiff that a common nuisance exists at Foxy's Cabaret at 11112 South Post Oak Road, the court shall order that the property be closed for one year after the date of judgment;

39. Upon final judgment against the defendant, under Tex. Alco. Bev. Code Ann. § 101.70c, the court order that Foxy's Cabaret at 11112 South Post oak Drive 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 penal 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 defendant will pay all fines, costs, and damages assessed against him for any violation of the Texas Alcoholic Beverage Code.

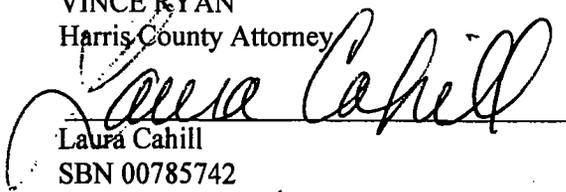
40. The judgment of this court be a judgment *in rem* against the property, as well as against the defendants, Helda Shaghagi and Allen Sena, Inc. d/b/a/ Foxy's Cabaret; and,

41. Upon final hearing, plaintiff have judgment against defendants Helda Shaghagi, and Allen Sena, Inc. d/b/a/ Foxy's Cabaret, 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,

VINCE RYAN
Harris County Attorney


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ATTORNEYS FOR PLAINTIFF



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this January 31, 2013

Certified Document Number: 54579386 Total Pages: 12

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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