

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----  
THE CITY OF NEW YORK,

Plaintiff,

- against -

THE LAND AND BUILDING KNOWN AS 41-06  
12TH STREET, TAX BLOCK #465, TAX LOT #1,  
COUNTY of QUEENS, CITY and STATE of NEW  
YORK; NEW YORK CITY HOUSING AUTHORITY;  
"JOHN DOE" and "JANE DOE," fictitiously named  
parties, true names unknown, the intended being the  
owners, lessees, operators or occupants of Apartment  
4D located at 41-06 12th Street, Long Island City, New  
York; and any person claiming any right title or interest  
in the real property which is the subject of this action,

Defendants.  
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TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED TO ANSWER the complaint in this action and serve a  
copy of your answer on the Plaintiff's attorney within twenty (20) days after the service of this  
summons, exclusive of the day of service or within thirty (30) days after service is complete if this  
summons is not personally delivered to you within the State of New York. In the case of your failure  
to answer, judgment will be taken against you by default for the relief demanded in the complaint.

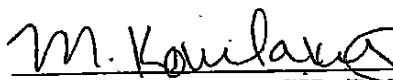
SUMMONS

Index No.: 14733/15

Filed On: 12/11/2015

The basis of venue designated is Queens County, the county in which the property affected by this action is located. Plaintiff designates Queens County as the place of trial.

DATED: New York, New York  
May 21, 2015



ZACHARY W. CARTER, ESQ.  
Corporation Counsel, City of New York  
LAWRENCE BYRNE, ESQ.  
Deputy Commissioner, Legal Matters  
New York City Police Dept.  
Attorney for Plaintiff

By: MELISSA R. KOHILAKIS, ESQ.  
2 Lafayette Street, 5th floor  
New York, New York 10007  
(917) 454-1121

SUPREME COURT OF THE STATE OF NEW YORK  
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THE LAND AND BUILDING KNOWN AS 41-06  
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**VERIFIED COMPLAINT**

Index No.: 14733/15

Filed On: 12/11/2015

Plaintiff, the City of New York, by its attorney, Zachary W. Carter, Corporation Counsel of the  
City of New York, Lawrence Byrne, Deputy Commissioner for Legal Matters, New York City Police  
Department, of counsel, alleges as follows upon information and belief:

**INTRODUCTION**

1. That the Plaintiff brings this action pursuant to and by the authority of Section 20 of the  
General City Law, Section 394 of the New York City Charter and Sections 7-704(a) and 7-706(a) of  
the Administrative Code of the City of New York.

**THE PARTIES**

2. That Plaintiff THE CITY OF NEW YORK is a municipal corporation incorporated  
under the laws of the State of New York.

3. The real property which is the subject of this action is Apartment 4D within Defendant THE LAND AND BUILDING KNOWN AS THE LAND AND BUILDING KNOWN AS 41-06 12TH STREET, TAX BLOCK #465, TAX LOT #1, COUNTY of QUEENS, CITY and STATE of NEW YORK (hereinafter, the "subject premises.")

4. Defendant NEW YORK CITY HOUSING AUTHORITY is the last recorded owner of the real property which is the subject of this action according to information maintained by the New York City Register and a development map maintained by Defendant NEW YORK CITY HOUSING AUTHORITY, however, no relief is being sought against Defendant NEW YORK CITY HOUSING AUTHORITY.

5. Apartment 4D within the premises located at 41-06 12<sup>th</sup> Street, Tax Block #465, Tax Lot #1, County of Queens, City and State of New York, is the subject premises wherein the activities complained of herein have taken place.

6. Defendants, "JOHN DOE" and "JANE DOE", are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, operator, employee, agent and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the subject of this action.

7. On three (3) dates since January 23, 2015, inclusive, the subject premises has been the site of two (2) controlled crack cocaine "buys" and the execution of one (1) search warrant resulting in the arrests of three (3) individuals for violating Article 220 of the Penal Law, as well as the recovery of additional controlled substances, live ammunition, a pistol magazine, and a large sum of United States currency.

8. During this investigation, a Confidential Informant (hereinafter referred to as "CI"), who is registered with the New York City Police Department, was used to develop the case. The

Confidential Informant has proven reliable in the past in that the Confidential Informant has provided information to the New York City Police Department which has been the basis for multiple search warrants, which have resulted in numerous arrests. All New York City Police Department policies and procedures concerning the use of a Registered Confidential Informant were followed.

**January 23, 2015**

9. On January 23, 2015, Police Officer Ricardo Moreno, assigned to the Queens Narcotics Division, took the CI to the vicinity of the subject premises. The CI was searched and found not to be in possession of any illegal drugs or United States currency. The CI was then given buy money (U.S. Currency) for the controlled buy at the subject premises. The CI was observed as s/he walked in the direction of subject premises building without stopping or talking to anyone. The CI subsequently handed Police Officer Moreno a quantity of crack cocaine purchased from a male individual known to the CI at the subject premises. The CI was then searched once again and found not to be in possession of additional illegal contraband. The quantity of crack cocaine was then vouchered under Property Clerk's Invoice 4000286525.

**January 30, 2015**

10. On January 30, 2015, Police Officer Ricardo Moreno again participated in an official investigation at the subject premises. The CI was searched and found not to be in possession of any illegal drugs or United States currency. The CI was then given buy money (U.S. Currency) for the controlled buy at the subject premises. The CI was observed as s/he walked in the direction of subject premises building without stopping or talking to anyone. The CI subsequently handed Police Officer Moreno a quantity of crack cocaine purchased from a male individual known to the CI at the subject premises. The CI was then searched once again and found not to be in possession of additional illegal

contraband. The quantity of crack cocaine was then vouchered under Property Clerk's Invoice 4000287862.

**February 6, 2015**

11. On February 6, 2015, a search was conducted within the subject premises pursuant to a search warrant. As a result of the search, three (3) individuals were arrested for violating Penal Law Articles 220 and/or 470. Items were seized as arrest evidence including one (1) ziplock bag containing crack cocaine, three (3) ziplock bags containing crack cocaine recovered within a plastic wrap, nineteen (19) .380 caliber rounds of ammunition, one (1) glock pistol magazine with capacity for fifteen (15) rounds of ammunition, and twenty one thousand five hundred and thirty dollars (\$21,530.00) of United States currency. The items recovered were then vouchered under Property Clerk's Invoices 4000289258, 4000289261 and 4000289267.

12. In each case in which controlled substances were purchased and/or recovered from individual(s) inside the subject premises, the transaction was conducted openly and the drug sellers appear to have evinced a "business as usual" attitude.

13. Upon information and belief, the offending tenant(s) still have access or could have access to the subject premises, thus the propensity of violence surrounding narcotics dealing still exists. Accordingly, a closing order is necessary to abate this serious public nuisance.

**AS AND FOR A FIRST CAUSE OF ACTION**

14. That Plaintiff repeats and realleges, as if fully set forth herein at length, the facts contained in the preceding paragraphs.

15. That, pursuant to Section 7-703 of the Administrative Code, a public nuisance includes:

(g) Any building, erection or place including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred three or more violations of any of the provisions of Article . . . two hundred twenty . . . of the penal law [offenses relating to controlled substances] . . .

16. On three (3) dates since January 23, 2015, inclusive, the subject premises has been the site of two (2) controlled crack cocaine "buys" and the execution of one (1) search warrant resulting in the arrests of three (3) individuals for violating Article 220 of the Penal Law, as well as the recovery of additional controlled substances, live ammunition, a pistol magazine, and a large quantity of United States currency within the one (1) year period immediately preceding the commencement of this action.

17. That by virtue of the foregoing, there exists a public nuisance at the subject premises.

18. That, pursuant to Section 7-706 and Section 7-714 of the Administrative Code, Plaintiff is entitled to a judgment against the Defendants, their agents, assigns, employees and/or representatives, and any and all persons acting individually or in concert with them, permanently enjoining such public nuisances; directing the sheriff to seize and remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and directing the sale by the sheriff of such property; and closing the subject premises for a period of one (1) year from the posting of the judgment.

19. That Defendants have owned, leased, used, maintained or conducted the subject premises for drug trafficking and have permitted, promoted, condoned or acquiesced in the use of the premises for the illegal activity.

20. That Defendants have intentionally conducted, maintained or permitted the aforementioned public nuisance.

21. That, pursuant to Section 7-706(h) of the Administrative Code, Plaintiff is entitled to a judgment against the Defendants ordering that each Defendant pay a penalty of one thousand (\$1,000.00) dollars for each day that such Defendant intentionally conducted, maintained or permitted the public nuisance.

**AS AND FOR A SECOND CAUSE OF ACTION**

22. That Plaintiff repeats and realleges, as if fully set forth herein at length, the facts contained in the preceding paragraphs.

23. That, pursuant to Section 7-703 of the Administrative Code, a public nuisance includes:

(1) Any building, erection or place including one - or two-family dwellings, wherein there exists or is occurring a criminal nuisance as defined in Section 240.45 of the penal law.

24. That section 240.45 of the Penal Law states that:

A person is guilty of Criminal Nuisance in the second degree when:

2. he knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct. ✓

25. That the subject premises has been used as a place where persons engage in possession and sale of controlled substances in violation of Article 220 of the Penal Law.

26. That Defendants have created a criminal nuisance pursuant to Penal Law Section 240.45 by knowingly conducting or maintaining the subject premises as a place where persons gather for purposes of engaging in controlled substance transactions/trafficking in violation of Penal Law Article 220. ✕

27. That the subject premises has been used as a location where persons buy, sell, possess and/or traffic in controlled substances.



28. That, by virtue of the foregoing, there exists a public nuisance at the subject premises.

29. That, pursuant to Sections 7-706 and 7-714 of the Administrative Code, Plaintiff is entitled to a judgment against the Defendants, their agents, assigns, employees and/or representatives, and any and all persons acting individually or in concert with them, permanently enjoining such public nuisance; directing the sheriff to seize and remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and directing the sale by the sheriff of such property; and closing the subject premises for a period of one (1) year from the posting of the judgment.

30. That Defendants have owned, leased, used, maintained or conducted the subject premises or drug trafficking and have permitted, promoted, condoned or acquiesced in the use of said portion of the premises for the illegal activity.

31. That, pursuant to Section 7-706(h) of the Administrative Code, Plaintiff is entitled to a judgment against the Defendants ordering that each Defendant pay a penalty of one thousand (\$1,000.00) dollars for each day that such Defendant intentionally conducted, maintained or permitted the public nuisance.

WHEREFORE, the Plaintiff demands judgment against the Defendants as follows:

a. With respect to the **FIRST CAUSE OF ACTION**, directing that the subject premises described herein and part of the building made a Defendant in this action shall be permanently and perpetually enjoined as a place which is conducted, maintained or permitted to be a public nuisance, by the Defendants, their agents, assigns, employees and/or representatives, and any and all persons acting individually or in concert with them; directing the sheriff to seize and

remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and directing the sale by the sheriff of such property; directing that the subject premises, which has been conducted and maintained as a public nuisance, shall be closed against all use for a period of one (1) year from the date of the posting of the judgment herein, pursuant to Section 7-714(c) of the Administrative Code, unless sooner released as provided by law; and awarding to Plaintiff civil penalties in the amount of one thousand (\$1,000.00) dollars from each Defendant for each and every day that such Defendant intentionally conducted, maintained or permitted the public nuisance;

b. With respect to the **SECOND CAUSE OF ACTION**, directing that the subject premises described herein and part of the building made a Defendant in this action shall be permanently and perpetually enjoined as a place which is conducted, maintained or permitted to be a public nuisance, by the Defendants, their agents, assigns, employees and/or representatives, and any and all persons acting individually or in concert with them; directing the sheriff to seize and remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and directing the sale by the sheriff of such property; directing that the subject premises, which has been conducted and maintained as a public nuisance, shall be closed against all use for a period of one (1) year from the date of the posting of the judgment herein, pursuant to Section 7-714(c) of the Administrative Code, unless sooner released as provided by law; and awarding to Plaintiff civil penalties in the amount of one thousand (\$1,000.00) dollars from each Defendant for each and every day that such Defendant intentionally conducted, maintained or permitted the public nuisance;

c. Taxing and allowing Plaintiff's costs and disbursements against the Defendants pursuant to the Civil Practice Law and Rules, and directing that Plaintiff have execution therefor;

d. Taxing and allowing Plaintiff's actual costs, expenses and disbursements in investigating, bringing and maintaining the action, pursuant to Administrative Code Section 7-714(g), and directing that Plaintiff have execution therefor; and

e. Granting to Plaintiff such other and further relief as the Court deems just, proper and equitable.

DATED: New York, New York  
May 21, 2015



ZACHARY W. CARTER, ESQ.  
Corporation Counsel, City of New York  
LAWRENCE BYRNE, ESQ.  
Deputy Commissioner, Legal Matters  
New York City Police Dept.  
Attorney for Plaintiff

By: MELISSA R. KOHILAKIS, ESQ.  
2 Lafayette Street, 5th floor  
New York, New York 10007  
(917) 454-1121

CITY VS THE LAND & BUILDING KNOWN AS

41-06 12<sup>th</sup> Street

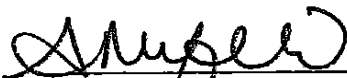
VERIFICATION

SHERYL NEUFELD, an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under the penalties of perjury, pursuant to C.P.L.R. 2106:

I have been duly designated as Acting Corporation Counsel of the City of New York and, as such, I am an officer of the City of New York, the Plaintiff in the within action. I have read the foregoing complaint and know the contents thereof; the same are true to my knowledge except as to those matters therein alleged upon information and belief, and as to those matters I believe them to be true.

The reason why this verification is not made by the City of New York is that it is a corporation. My belief as to all matters not stated upon my knowledge is based upon information obtained from various departments of the city governments, from statements made to me by certain officers or agents of the City of New York, and from statements, affidavits or affirmations of other persons.

DATED: New York, New York  
June 27, 2015

  
\_\_\_\_\_  
SHERYL NEUFELD, ESQ.

At Individual Assignment Part 17 at the Supreme Court of the State of New York, held in and for the County of Queens, City and State of New York, at the Courthouse located at 88-11 Sutphin Boulevard, Queens, New York on the 11<sup>th</sup> day of December, 2015.

P R E S E N T: HON. JUSTICE O. KITZES

-----  
THE CITY OF NEW YORK,

Plaintiff,

- against -

THE LAND AND BUILDING KNOWN AS 41-06 12<sup>TH</sup> STREET, TAX BLOCK #465, TAX LOT #1, COUNTY of QUEENS, CITY and STATE of NEW YORK; NEW YORK CITY HOUSING AUTHORITY; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of Apartment 4D located at 41-06 12<sup>th</sup> Street, Long Island City, New York; and any person claiming any right title or interest in the real property which is the subject of this action,

Defendants.  
-----

**ORDER TO SHOW CAUSE**

Index No.: 14733/15

Filed On: 12/11/2015

Upon the annexed affirmation of Melissa R. Kohilakis, Esq., dated December 10, 2015; the affidavit of Police Officer Ricardo Moreno, dated June 2, 2015; together with the exhibits, Summons and Verified Complaint, verified by Sheryl Neufeld, Esq., on June 29, 2015.

LET the Defendants or their attorneys Show Cause before this Court at I.A.S. Part 17 of the Court, Room 116, to be held at the Courthouse, at 88-11 Sutphin Boulevard, Jamaica, County of Queens, City and State of New York, on the 15 day of December, 2015, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard,

Why an Order should not be made pursuant to Sections 7-707, 7-709, 7-710 and 7-711 of the Administrative Code and Sections 6301 and 6311 of the Civil Practice Law and Rules, enjoining the Defendants, their agents, employees and/or representatives, and all persons acting individually, or in concert with them, during the pendency of this action:

A. From the use and/or occupancy of Apartment 4D located at 41-06 12<sup>th</sup> Street, Tax Block #465, Tax Lot #1, County of Queens, City and State of New York, (hereinafter the "subject premises") for any purpose whatever and directing that said premises shall be closed; and

B. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and

C. From conducting, maintaining, operating or permitting the subject premises to be used or occupied for the criminal sale and/or possession of controlled substances, or for any other activity in violation of Article 220 of the New York Penal Law; and

D. From conducting, maintaining or permitting the subject premises to be operated in such a manner as to endanger the safety or health of a considerable number of persons, which creates a criminal nuisance pursuant to Section 240.45(1) of the New York Penal Law;

NOW IT IS HEREBY ORDERED THAT, pending the hearing of this motion, the Defendants, their agents, employees and/or representatives, and any and all persons acting individually or in concert with them are enjoined, pursuant to Sections 7-709, 7-710 and 7-711 of the New York City Administrative Code and Section 6313 of the Civil Practice Law and Rules:

1. From the use and/or occupancy of the subject premises for any purpose whatever and directing that said premises shall be closed, and that the New York City Police Department shall take all steps necessary to effectuate this closing order, including the use of reasonable force, and shall

gain entry to the subject premises in order that an inventory of the personal property therein may be effectuated, as required by Section 7-711(c) of the Administrative Code; and

2. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and

3. From conducting, maintaining, operating or permitting the subject premises to be used or occupied for the criminal sale and/or possession of controlled substances, or for any other activity in violation of Article 220 of the New York Penal Law; and

4. From conducting, maintaining or permitting the subject premises to be operated in such a manner as to endanger the safety or health of a considerable number of persons, which creates a criminal nuisance pursuant to Section 240.45(1) of the New York Penal Law; and it is further

ORDERED that service of a copy of this Order to Show Cause, together with the papers upon which it is based and the Summons and Verified Complaint, be made upon the Defendants personally; or by leaving a copy thereof with a person of suitable age and discretion at the subject premises; or by posting a copy thereof at the subject premises, on or before the 11<sup>th</sup> day of December, 2015, and that this be deemed good and sufficient service on the Defendants, provided however, that if service is not made personally, a copy of the papers will be mailed to such Defendant at his or her last known address by overnight mail on or before the 12<sup>th</sup> day of December, 2015.

ENTER:

HON. 151 J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----  
THE CITY OF NEW YORK,

Plaintiff,

- against -

THE LAND AND BUILDING KNOWN AS 41-06  
12TH STREET, TAX BLOCK #465, TAX LOT #1,  
COUNTY of QUEENS, CITY and STATE of NEW  
YORK; NEW YORK CITY HOUSING  
AUTHORITY; "JOHN DOE" and "JANE DOE,"  
fictitiously named parties, true names unknown, the  
intended being the owners, lessees, operators or  
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claiming any right title or interest in the real property  
which is the subject of this action,

Defendants.  
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**ATTORNEY AFFIRMATION**

Index No.: 14733/15

Filed On: 12/11/2015

MELISSA R. KOHILAKIS, an attorney admitted to practice before the courts of this State,  
affirms the truth of the following under the penalties of perjury pursuant to Section 2106 of the Civil  
Practice Law and Rules:

**INTRODUCTORY STATEMENT**

1. I am an attorney in the office of the Legal Bureau of the Police Department and of  
counsel to Lawrence Byrne, acting by designation of Zachary W. Carter, Corporation Counsel for the  
City of New York, attorney for Plaintiff herein. I make this affirmation based upon my review of  
records maintained by, and information obtained from, various departments of the city government  
and from statements made to me by certain officers or agents of the City of New York.

2. This affirmation is submitted in support of the Plaintiff's Order to Show Cause for a  
temporary restraining order and preliminary injunction pursuant to Sections 7-707, 7-710 and 7-711



of the New York City Administrative Code ("Administrative Code") and Section 6301 of the C.P.L.R., enjoining and restraining Defendants and all persons during the pendency of this action from maintaining, creating, conducting or permitting a public nuisance within Apartment 4D located at 41-06 12<sup>th</sup> Street, Long Island City, New York (hereinafter the "subject premises"); by prohibiting Defendants from using or operating said premises for the purpose of selling and/or possessing illegal drugs, or any other illegal activity. To enforce such temporary restraining order and preliminary injunction, Plaintiff's application includes a request for the issuance of a closing order pursuant to Sections 7-707, 7-709 and 7-711 of the Administrative Code.

### **BACKGROUND FACTS**

3. The Plaintiff, the City of New York, is a municipal corporation incorporated under the laws of the State of New York.

4. The real property which is the subject of this action is Apartment 4D within Defendant THE LAND AND BUILDING KNOWN AS THE LAND AND BUILDING KNOWN AS 41-06 12TH STREET, TAX BLOCK #465, TAX LOT #1, COUNTY of QUEENS, CITY and STATE of NEW YORK.

5. Defendant NEW YORK CITY HOUSING AUTHORITY is the last recorded owner of the real property which is the subject of this action according to information maintained by the New York City Register and a development map maintained by Defendant NEW YORK CITY HOUSING AUTHORITY, however, no relief is being sought against Defendant NEW YORK CITY HOUSING AUTHORITY. See copy of information maintained by the New York City Register and copy of Development Map maintained by Defendant NEW YORK CITY HOUSING AUTHORITY, annexed hereto as Exhibit "1".

6. Apartment 4D within the premises located at 41-06 12<sup>th</sup> Street, Tax Block #465, Tax Lot #1, County of Queens, City and State of New York, is the subject premises wherein the activities complained of herein have taken place.

7. Defendants, "JOHN DOE" and "JANE DOE", are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, operator, employee, agent and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the subject of this action.

8. On three (3) dates since January 23, 2015, inclusive, the subject premises has been the site of two (2) controlled crack cocaine "buys" and the execution of one (1) search warrant resulting in the arrests of three (3) individuals for violating Article 220 of the Penal Law, as well as the recovery of additional controlled substances, live ammunition, a pistol magazine, and a large sum of United States currency.

9. During this investigation, a Confidential Informant (hereinafter referred to as "CI"), who is registered with the New York City Police Department, was used to develop the case. The Confidential Informant has proven reliable in the past in that the Confidential Informant has provided information to the New York City Police Department which has been the basis for multiple search warrants, which have resulted in numerous arrests. All New York City Police Department policies and procedures concerning the use of a Registered Confidential Informant were followed.

**January 23, 2015**

10. On January 23, 2015, Police Officer Ricardo Moreno, assigned to the Queens Narcotics Division, took the CI to the vicinity of the subject premises. The CI was searched and found not to be in possession of any illegal drugs or United States currency. The CI was then given buy money (U.S. Currency) for the controlled buy at the subject premises. The CI was observed as

s/he walked in the direction of subject premises building without stopping or talking to anyone. The CI subsequently handed Police Officer Moreno a quantity of crack cocaine purchased from a male individual known to the CI at the subject premises. The CI was then searched once again and found not to be in possession of additional illegal contraband. The quantity of crack cocaine was then vouchered under Property Clerk's Invoice 4000286525. See affidavit of Police Officer Ricardo Moreno, annexed hereto as Exhibit 2; Property Clerk's Invoices and Police Laboratory Results, annexed hereto collectively as Exhibit 3.

**January 30, 2015**

11. On January 30, 2015, Police Officer Ricardo Moreno again participated in an official investigation at the subject premises. The CI was searched and found not to be in possession of any illegal drugs or United States currency. The CI was then given buy money (U.S. Currency) for the controlled buy at the subject premises. The CI was observed as s/he walked in the direction of subject premises building without stopping or talking to anyone. The CI subsequently handed Police Officer Moreno a quantity of crack cocaine purchased from a male individual known to the CI at the subject premises. The CI was then searched once again and found not to be in possession of additional illegal contraband. The quantity of heroin was then vouchered under Property Clerk's Invoice 4000287862. See Exhibit 2; Exhibit 3.

**February 6, 2015**

12. On February 6, 2015, a search was conducted within the subject premises pursuant to a search warrant. As a result of the search, three (3) individuals were arrested for violating Penal Law Articles 220 and/or 470. Items were seized as arrest evidence including one (1) ziplock bag containing crack cocaine, three (3) ziplock bags containing crack cocaine recovered within a plastic wrap, nineteen (19) .380 caliber rounds of ammunition, one (1) glock pistol magazine with capacity

for fifteen (15) rounds of ammunition, and twenty one thousand five hundred and thirty dollars (\$21,530.00) of United States currency. The items recovered were then vouchered under Property Clerk's Invoices 4000289258, 4000289261 and 4000289267. See Exhibit 2; Exhibit 3; arrest reports annexed hereto collectively as Exhibit 4.

13. In each case in which controlled substances were purchased and/or recovered from individual(s) inside the subject premises, the transaction was conducted openly and the drug sellers appear to have evinced a "business as usual" attitude.

14. Upon information and belief, the offending tenant(s) still have access or could have access to the subject premises, thus the propensity of violence surrounding narcotics dealing still exists. Accordingly, a closing order is necessary to abate this serious public nuisance.

#### APPLICABLE LAW

15. In 1977, the New York City Council enacted the Nuisance Abatement Law (Section 7-701 *et seq.* of the Administrative Code was amended in December 1993) with the express purpose of addressing the serious problem created by:

the operation of certain commercial establishments . . . in flagrant violation of the . . . multiple dwelling laws, penal laws regulating . . . controlled substances and dangerous drugs . . . all of which interfere[s] with the interest of the public in the quality of life and total community environment, the tone of commerce in the city, property values and the public health, safety and welfare . . . Administrative Code, Section 7-701.

16. Pursuant to Section 7-703 of the Administrative Code, a public nuisance includes:

(g) Any building, erection or place including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred three or more violations of any of the provisions of Article . . . two

hundred twenty. . . of the penal law [offenses relating to controlled substances];

(l) Any building, erection or place including one- or two- family dwellings, wherein there exists or is occurring a criminal nuisance as defined in Section 240.45 of the penal law.

17. Section 240.45 of the Penal Law states that:

A person is guilty of Criminal Nuisance in the second degree when:

2. he knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

18. Pursuant to Section 7-706 of the Administrative Code, the Corporation Counsel is explicitly authorized to bring and maintain an action in the Supreme Court to permanently enjoin the above public nuisances, as well as to permanently enjoin the person or persons conducting, maintaining or permitting such public nuisances from further conducting, maintaining or permitting such public nuisances. In addition, the Corporation Counsel is expressly authorized to seek civil penalties of up to \$1,000.00 for each day such public nuisances have been intentionally conducted, maintained or permitted.

**A PUBLIC NUISANCE EXISTS AT THE SUBJECT PREMISES**

19. A public nuisance, as defined by Section 7-703 of the Administrative Code, exists at the subject premises. As stated above, the Nuisance Abatement Law Section 7-703 (g) declares a premises to be a public nuisance where three (3) or more violations of Article 220 of the Penal Law (i.e., controlled substances) have occurred inside a premises within the year preceding commencement of an action. Additionally, Nuisance Abatement Law Section 7-703 (l) declares a premises to be a public nuisance where it is conducted or maintained for persons to gather for purposes of engaging in unlawful conduct, regardless of the number of incidents.

20. The evidence set forth in support of this Order to Show Cause clearly demonstrates that the subject premises is a public nuisance under both Section 7-703 (g) and Section 7-703 (l).

The supporting affidavit shows that on three (3) separate dates crack cocaine was purchased and/or recovered at the subject premises.

21. On all three (3) dates actual crack cocaine was purchased and/or recovered at the subject premises. See Exhibits 2 and 3.

22. Criminal activity is persistent at the subject premises as evidenced by the numerous incidents. It is clear that a closing order is the only effective remedy to abate this serious public nuisance.

**PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION  
AND A TEMPORARY RESTRAINING ORDER**

23. Plaintiff has demonstrated that Defendants have trafficked controlled substances at the subject premises, in violation of Article 220 of the Penal Law, and that Plaintiff is entitled to a judgment permanently enjoining Defendants from continuing their illegal use and occupancy of the subject premises. Pending an action for a permanent injunction the Court may grant a preliminary injunction to enjoin the public nuisance. The Court may also issue a temporary restraining order upon the motion for a preliminary injunction.

24. The Nuisance Abatement Law itself specifically provides for preliminary injunctive relief ancillary to an action for a permanent injunction. Section 7-707(a) of the Administrative Code provides that:

Pending an action for a permanent injunction as provided for in section 7-706 of this subchapter, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this Article and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance . . .

25. *Ex parte* temporary relief is authorized pursuant to section 7-710(a) of the Code. This section also specifies that such temporary relief shall remain in effect pending further order of the court:

If on a motion for a preliminary injunction pursuant to section 7-707 of this subchapter, the corporation counsel shall show by clear and convincing evidence that a public nuisance within the scope of this Article is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary restraining order, such temporary restraining order may be granted without notice restraining the defendants and all persons from removing or in any manner interfering with the furniture, fixtures, and movable property used in conducting, maintaining or permitting the public nuisance and from further conducting, maintaining or permitting the public nuisance, pending order of the court granting or refusing the preliminary injunction and until further order of the court. . . . [emphasis added]

26. Since Plaintiff is seeking injunctive relief *pendente lite* under the Administrative Code Nuisance Abatement Law, a showing of immediate and irreparable injury is not a prerequisite to the injunctive relief sought herein. City of New York v. Castro, 143 Misc.2d 766, 542 N.Y.S.2d 101, *aff'd*, 559 N.Y.S.2d 508 (1st Dept. 1990); City of New York v. Bilynn Realty Corp., 118 A.D.2d 511, 499 N.Y.S.2d 1011 (1st Dept. 1986); Town of Islip v. Clark, 90 A.D.2d 500, 454 N.Y.S.2d 893 (2d Dept. 1982); City of Utica v. Ortner, 256 App. Div. 1039, 10 N.Y.S.2d 729 (4th Dept. 1939); City of New York v. Narod Realty Corp., 122 Misc.2d 885, 471 N.Y.S.2d 757 (Sup. Ct. New York Cty. 1983); Rochester v. Gutberlett, 211 N.Y. 309 (1914); People ex rel. Bennett v. Laman, 277 N.Y. 368 14, N.E.2d 439 (1938); City of New York v. Goldman, N.Y.L.J. 04/03/85, p. 11 (Sup. Ct. N.Y. Cty.), *aff'd*, 115 A.D.2d 423, 496 N.Y.S.2d 954 (App. Div. 1st Dept., 1985), *rearg. denied*, 01/16/86, (App. Div. 1st Dept.). Rather, since injunctive relief is specifically authorized by statute, the Plaintiff need only show that the statutory conditions have been satisfied. Therefore, a *prima facie* showing that the Defendants are indeed violating the relevant law is sufficient to entitle the municipality to a preliminary injunction *pendente lite*.

27. In the case herein, there can be no doubt that the Defendants are permitting the subject premises to be used for drug trafficking. Indeed, the Plaintiff has established by clear and convincing evidence that the Defendants are maintaining a public nuisance as defined by Sections 7-703(g) and 7-703(l) of the Administrative Code, and is thus entitled to a preliminary injunction and a temporary restraining order pursuant to Sections 7-707 and 7-710 of the Administrative Code.

28. Upon information and belief, the community and neighboring businesses have suffered severely, and continue to suffer, as a result of drug trafficking in the subject premises. This illegal activity is interfering with the health, safety and well being of those who live and work in the surrounding neighborhood, as well as that of the local neighborhood business patrons. In addition, upon information and belief, drug enterprises such as that operating at the subject premises, are often the scene of and/or cause of violent crimes, including shootings. Therefore, the Court should grant a temporary restraining order pending its determination on the motion for a preliminary injunction.

29. Even if the Nuisance Abatement Law provisions for preliminary injunctions and temporary restraining orders did not exist, this Court could nonetheless grant a preliminary injunction and a temporary restraining order pursuant to C.P.L.R. Section 6301. In determining whether a preliminary injunction is warranted under C.P.L.R. Section 6301, the courts have traditionally employed a three-pronged test, requiring that the moving party demonstrate: (1) a likelihood of ultimate success on the merits; (2) irreparable injury absent the granting of a preliminary injunction; and (3) that the balancing of equities favors its position. See, Gambar Ent., Inc. v. Savage Serv., 69 A.D.2d 297, 306, 418 N.Y.S.2d 818, 824 (4th Dept. 1979); Paine & Chriscott v. Blair House Assoc., 70 A.D.2d 571, 572, 417 N.Y.S.2d 68, 69 (1st Dept. 1979). The Plaintiff respectfully submits that, since the evidence satisfies this traditional three-pronged test, a preliminary injunction is wholly appropriate.



30. First, the Plaintiff's likelihood of success on the merits is strongly supported by the evidence submitted in support of this motion. The Court is respectfully referred to the fact that on three (3) separate dates crack cocaine was purchased and/or recovered at the subject premises. Additionally, drug paraphernalia and a large sum of U.S. currency were also recovered from the subject premises.

31. Second, the Defendants' persistent and intentional illegal use of the subject premises constitutes irreparable harm to the City of New York, its residents and visitors. Indeed, in the legislative declaration incorporated into the Nuisance Abatement Law, the City Council recognized that any violation of the law deemed to be a public nuisance is, by definition, harmful to the public. See Section 7-701.

32. Third, the equities are balanced in favor of the Plaintiff. The subject premises is currently being operated, occupied and used illegally. Thus, when the equities are balanced, the great benefit to the City of New York -- and the public at large which it is required to protect -- of eliminating drug trafficking from the subject premises substantially outweighs any interest which the Defendants have in the subject premises.

33. Accordingly, the Plaintiff has established a *prima facie* case that the Defendants are maintaining a public nuisance, as well as satisfying the traditional three-pronged test used to determine whether a preliminary injunction is appropriate. Therefore, Plaintiff is entitled to a preliminary injunction and a temporary restraining order pursuant to Sections 7-707 and 7-710 of the Administrative Code, and C.P.L.R. Section 6301.

#### **IN SUPPORT OF A CLOSING ORDER**

34. Plaintiff also seeks an order directing that the subject premises be closed against all use pending the determination of this action and during the pendency of the instant motion for a

preliminary injunction. As set forth above, an active and ongoing public nuisance is operating at the subject premises, thereby threatening the health, safety and welfare of the community.

35. This closing order is sought under the provisions of the Nuisance Abatement Law, which specifies in Section 7-709(a) that:

If, on a motion for a preliminary injunction pursuant to section 7-707 of this subchapter, the corporation counsel shall show by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary closing order, a temporary order closing such part of the building, erection or place wherein the public nuisance is being conducted, maintained or permitted may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary closing order, the court shall direct the holding of a hearing for the preliminary injunction at the earliest possible time but in no event later than three business days from the granting of such order; a decision on the motion for a preliminary injunction shall be rendered by the court within three business days after the conclusion of the hearing.

36. It is respectfully submitted that the above criteria have been met. Not only has the Plaintiff shown by clear and convincing evidence that there exists at the subject premises a public nuisance within the scope of the Nuisance Abatement Law, but it is also clear that the public health, safety and welfare require immediate abatement of the public nuisance by an order closing the premises against all use pending the determination of this action.

37. It is clear that the subject premises has been used in an illegal manner. Given such disrespect for the law, the Plaintiff submits that an injunction alone will likely not be honored by those responsible for conducting, maintaining or permitting the illegal activity. Thus, an order closing the subject premises against all use during the pendency of this action is the best assurance that this persistent public nuisance will be abated.

38. The relief sought upon this application is expressly authorized by Sections 7-707, 7-709 and 7-711 of the New York City Administrative Code. Recently, the Courts have been consistent in granting *ex parte* temporary preliminary injunctions and closing orders in a number of similar cases involving the Nuisance Abatement Law. See, e.g., City of New York v. Land and Building Known as 33-27 100 St., et al., Index No. 7876/12 (Sup. Ct. Qns. Cty.); City of New York v. Land and Building Known as 39-20 Queens Blvd., et al., Index No. 25844/10 (Sup. Ct. Qns. Cty.); City of New York v. Land and Building Known as 219-19 Linden Blvd., et al., Index No. 22326/11 (Sup. Ct. Qns. Cty.); City of New York v. Land and Building Known as 139-01 Grand Central Pkwy., et al., Index No. 6506/12 (Sup. Ct. Qns. Cty.); City of New York v. Land and Building Known as 168-01 Jamaica Ave., et al., Index No. 13459/10 (Sup. Ct. Qns. Cty.); City of New York v. Land and Building Known as 120-10 Liberty Ave., et al., Index No. 8295/12 (Sup. Ct. Qns. Cty.); City of New York v. Land and Building Known as 100-23 37 Ave., et al., Index No. 25542/11 (Sup. Ct. Qns. Cty.); City of New York v. Land and Building Known as 142-19 Hook Creek Blvd., et al., Index No. 9764/12 (Sup. Ct. Qns. Cty.); City of New York v. Land and Building Known as 32-45 108 St., et al., Index No. 15862/11 (Sup. Ct. Qns. Cty.).

39. Accordingly, the Plaintiff requests that this Court grant, in addition to a preliminary injunction and temporary restraining order, a closing order, to be enforced by the Plaintiff pursuant to Sections 7-707, 7-709 and 7-711 of the Administrative Code, directing that the subject premises, be closed against all use pending the determination of this action.

40. No prior application for this relief has been made to this or any other court or justice.

WHEREFORE, it is respectfully requested that Plaintiff's application be granted in all respects.

DATED: New York, New York  
December 10, 2015

  
\_\_\_\_\_  
MELISSA R. KOHILAKIS, ESQ.

**LIST OF EXHIBITS**

- Exhibit 1: Copy of information maintained by the New York City Register and copy of Development Map maintained by Defendant NEW YORK CITY HOUSING AUTHORITY**
- Exhibit 2: Affidavit of Police Officer Ricardo Moreno**
- Exhibit 3: Property Clerk's Invoices and Police Laboratory Results**
- Exhibit 4: Arrest Reports**

**EXHIBIT**

**1**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
THE CITY OF NEW YORK,

Plaintiff,

- against -

AFFIDAVIT

THE LAND AND BUILDING KNOWN AS  
41-06 12<sup>TH</sup> STREET, *et al.*,

Defendants.  
-----X

STATE OF NEW YORK )

: ss.:

COUNTY OF QUEENS )

Police Officer Ricardo Moreno, Shield # 25829, being duly sworn, deposes and says:

1. I am a member of the New York City Police Department and I am currently assigned to the Queens Narcotics Division. My duties include the enforcement of laws concerning illegal drugs and related activities. I have received professional training in the identification of crack cocaine, participated in numerous controlled buys in which the substance purchased and believed by me to be crack cocaine was later chemically determined to be crack cocaine, and am fully familiar with the common methods of packaging crack cocaine for sale.

2. I submit this affidavit in support of the plaintiff's application for a temporary restraining and closing order, and motion for preliminary injunction.

3. Pursuant to my assigned duties, I participated in an official investigation at Apartment 4D located at 41-06 12<sup>th</sup> Street, Long Island City, New York, (hereinafter the "subject premises").

4. During this investigation, a Confidential Informant (hereinafter referred to as "CI"), who is registered with the New York City Police Department, was used to develop the case. The Confidential Informant has proven reliable in the past in that the Confidential Informant has provided information to the New York City Police Department which has been the basis for multiple search warrants, which have resulted in numerous arrests. All New York City Police Department policies and procedures concerning the use of a Registered Confidential Informant were followed.

**January 23, 2015**

5. On January 23, 2015, I met the CI and the CI was searched. At this time the CI did not possess any controlled substances or contraband. The CI was then given a sum of United States Currency and instructed to purchase controlled substances at the subject premises.

6. I observed the CI walk in the direction of the subject premises building without stopping or talking to anyone. Subsequently, the CI gave me a quantity of crack cocaine. The CI was searched again for currency and contraband, and none was found. The CI then informed me that the transaction occurred when the CI went to the subject premises and engaged in a narcotics related conversation with a male individual known to the CI. The CI then handed the male individual a sum of United States Currency and the CI was given a quantity of crack cocaine in return. Subsequently, the CI left the location.

7. Based on my professional training and experience in the identification and packaging of the crack cocaine, and the texture, appearance and packaging of the substances vouchered, I determined that the quantity of alleged crack cocaine was actual crack cocaine – an illegal drug. The quantity of crack cocaine was vouchered under Property Clerk Invoice Number 4000286525.

**January 30, 2015**

8. On January 30, 2015, I met the CI and the CI was searched. At this time the CI did not possess any controlled substances or contraband. The CI was then given a sum of United States Currency and instructed to purchase controlled substances at the subject premises.

9. I observed the CI walk in the direction of the subject premises building without stopping or talking to anyone. Subsequently, the CI gave me a quantity of crack cocaine. The CI was searched again for currency and contraband, and none was found. The CI then informed me that the transaction occurred when the CI went to the subject premises and engaged in a narcotics related conversation with a male individual known to the CI. The CI then handed the male individual a sum of United States Currency and the CI was given a quantity of crack cocaine in return. Subsequently, the CI left the location.

10. Based on my professional training and experience in the identification and packaging of the crack cocaine, and the texture, appearance and packaging of the substances vouchered, I determined that the quantity of alleged crack cocaine was actual crack cocaine – an illegal drug. The quantity of crack cocaine was vouchered under Property Clerk Invoice Number 4000287862.



February 6, 2015

11. On February 6, 2015, a search was conducted at the subject premises pursuant to a Criminal Court search warrant.

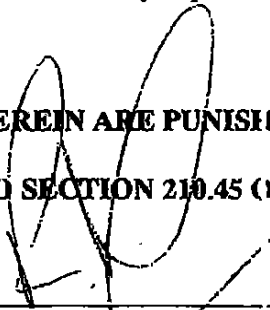
12. Items were seized as arrest evidence including one (1) ziplock bag containing crack cocaine, three (3) ziplock bags containing crack cocaine recovered within a plastic wrap, nineteen (19) .380 caliber rounds of ammunition, one (1) glock pistol magazine with capacity for fifteen (15) rounds of ammunition, and twenty one thousand five hundred and thirty dollars (\$21,530.00) of United States currency. The items recovered were then vouchered under Property Clerk's Invoices 4000289258, 4000289261 and 4000289267. Three (3) individuals were arrested and charged with violating Articles 220 and/or 470 of the Penal Law.

13. Based upon my professional training, experience, and observations at the subject premises, it is my opinion that the subject premises is used primarily as a front for the sale of illegal drugs.

**FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS**

**A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW.**

6/2/15  
Date and Time

  
\_\_\_\_\_  
Police Officer Ricardo Moreno