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9/26/2013

C

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 20

Case Disposed	☑
Settle Order	☐
Schedule Appearance	☐

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

CNY

-against-

Voyage Assets

Index Nº. 250998/13

Hon. KENNETH L. THOMPSON JR.

Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this motion is denied as moot. Action has been discontinued by stipulation

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 9/23/13

Hon. KENNETH L. THOMPSON JR.

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NO FEE

SEP 17 '13

BRONX COUNTY
CLERK'S OFFICE

SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX

----------X

THE CITY OF NEW YORK,

Plaintiff,

-against-

VOYAGE ASSETS LLC.; THE LAND AND BUILDING KNOWN AS 684 EAST 241 STREET, TAX BLOCK #5083, TAX LOT #33, Bronx County, City and State of New York; THE NEW YORK STATE LIQUOR AUTHORITY; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the parties intended being the owners, lessees, operators or occupants of the commercial establishment located at 684 EAST 241 STREET, Bronx, New York, d/b/a "CARNIVAL BAR" and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

----------X

NOTICE OF VOLUNTARY DISCONTINUANCE

Index No: 250998/2013

RECEIVED
SEP 17 AM 9:14
COUNTY CLERK
BRONX COUNTY

PLEASE TAKE NOTICE that pursuant to CPLR §3217(a)(1) plaintiff's attorney hereby discontinues the above entitled action against all defendants, without costs to either party as against the other, as a the tenant surrendered the lease, the landlord has legal possession of the subject premise, and the nuisance has been abated.

Dated: New York, New York
September 11, 2013

MICHAEL A. CARDOZO, ESQ.
Corporation Counsel of the
City of New York
MAYNARD B. DOUGLASS, ESQ.
Deputy Commissioner Legal Matters
New York City Police Department
Attorney for Plaintiff
By: ANTONY M. ANISMAN, ESQ.
Two Lafayette Street, Fifth Floor
New York, New York 10007
(917) 454-1100

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9/23/13
204

The City of New York

POLICE DEPARTMENT
LEGAL BUREAU
CIVIL ENFORCEMENT UNIT
2 LAFAYETTE STREET-5th Floor
NEW YORK, N.Y. 10007-1307

BY FAX ONLY
718-618-3554
914-921-5410

September 9, 2013

Hon. Kenneth L. Thompson, Jr.
Bronx County Supreme Court, Part 20
851 Grand Concourse
Bronx, NY 10451

ATT: NOEL

Re: The City of New York v. VOYAGE ASSETS, LLC.; *et. al.*,
Index No. 250998/2013

Your Honor,

The above referenced case was on your motion calendar today, September 9, 2013. However, due to an administrative over-sight, we apologize for not having someone present to represent the Plaintiff today. I cannot offer an explanation why no one was present for the defendant, VOYAGE ASSETS, LLC., but I spoke with the attorney below this morning and he informed me that he was just retained.

I humbly and respectfully request an adjournment to September 23, 2013. The attorney claiming to represent the defendant, VOYAGE ASSETS, LLC., joins in this request. Thank you for your consideration.

Sincerely,

Antony M. Anisman, Esq.
Attorney for Plaintiff

Cc: Guy Parisi, Esq.
Attorney for defendant, VOYAGE ASSETS, LLC.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

X

City of NY

v

Voyage Assets LLC, et al X

INDIVIDUAL ASSIGNMENT PART 20

STIPULATION

Index No. 250998/13

Mot. Cal. No

Date 8/5/13

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

Defense counsel, Guy Parisi, 914-454-2006, 914-921-5533, contacted counsel for plaintiff. Mr. Parisi informed counsel for plaintiff that he represents Voyage Assets LLC, but is engage in Westchester County Supreme. Requested an adjournment.

Parties request adjournment to Sept. 9, 2013

Date:

So Ordered.

ENTER: _____
J.S.C.

_____
Attorney for Plaintiff

_____
Attorney for Defendant

_____
Attorney for Defendant

SC. NO. 8G Rev. 3/86

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phone 917-454-1174
fax 917-454-1185

At Individual Assignment Part 20 of the Supreme Court of the State of New York, held in and for Bronx County, City and State of New York, at the courthouse located at 851 Grand Concourse, Bronx, New York on the 25th day of July, 2013.

PRESENT: HON. KENNETH L. THOMPSON, JR. JUDGE
JUSTICE

THE CITY OF NEW YORK,

Plaintiff,

- against -

VOYAGE ASSETS LLC.; THE LAND AND BUILDING KNOWN AS 684 EAST 241 STREET, TAX BLOCK #5083, TAX LOT #33, Bronx County, City and State of New York; THE NEW YORK STATE LIQUOR AUTHORITY; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the parties intended being the owners, lessees, operators or occupants of the commercial establishment located at 684 EAST 241 STREET, Bronx, New York, d/b/a "CARNIVAL BAR" 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 Number: 250998-2013

Date Filed: July 25, 2013

Upon the annexed affirmation of Antony M. Anisman, Esq., dated June 6, 2013; the affidavit of Lt. Paul Gaglio, dated June 13, 2013; together with the Exhibits, Summons and Verified Complaint, verified by Gabriel Taussig, Esq. on June 26, 2013.

LET the defendants or their attorneys Show Cause before THE EX PARTE AND URGENT MOTION PART ~~this Court at I.A.S. Part~~ ___ of the Court, Room 217, to be held at the Courthouse, located at 851 Grand Concourse, Bronx County, City and State of New York, on the 29th day of July, 2013, at 9:30AM 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 § 7-707, § 7-709, § 7-710 and § 7-711 of

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the Administrative Code and § 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 the commercial establishment located at 684 EAST 241 STREET, Bronx, New York, d/b/a "CARNIVAL BAR" (hereinafter the "subject premise") 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 premise to be used or occupied for the illegal sale of alcoholic beverages or for any other activity enumerated within Section 123 of the Alcoholic Beverage Control Law.

NOW IT IS HEREBY ORDERED THAT, pending the hearing ~~and determination~~ 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 §7-709, §7-710 and §7-711 of the New York City Administrative Code and §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 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 § 7-711(c) of the Administrative Code; and

J.S.C.

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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 premise to be used or occupied for the illegal sale of alcoholic beverages or for any other activity enumerated within Section 123 of the Alcoholic Beverage Control Law; and it is further

J.S.C

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 25th day of July, 2013, 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 express mail on or before the 25th day of July, 2013.

ENTER:

JUL 25 2013

J.S.C.

Hon. Kenneth L. Thompson Jr.

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SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

THE CITY OF NEW YORK,

Plaintiff,

- Against -

VOYAGE ASSETS LLC.; THE LAND AND BUILDING KNOWN AS 684 EAST 241 STREET, TAX BLOCK #5083, TAX LOT #33, Bronx County, City and State of New York; THE NEW YORK STATE LIQUOR AUTHORITY; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the parties intended being the owners, lessees, operators or occupants of the commercial establishment located at 684 EAST 241 STREET, Bronx, New York, d/b/a "CARNIVAL BAR" and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

ATTORNEY AFFIRMATION

Index Number:

Date Filed:

Antony M. Anisman, Esq., an attorney admitted to practice before the courts of this State, affirms the truth of the following under the penalties of perjury pursuant to § 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 Douglass B. Maynard, acting by designation of Michael Cardozo, 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.

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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 § 7-707, § 7-710 and § 7-711 of the New York City Administrative Code (hereinafter the "Administrative Code") and § 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 in the commercial establishment located at 684 EAST 241 STREET, Bronx, New York, d/b/a "CARNIVAL BAR" (hereinafter the "subject premises"), by prohibiting the defendants from using or operating said premises while employing unlicensed security guards, or for any other activity in violation of Article 7-A of the General Business Law the unlawful and for any other activity in violation of Section 123 of the Alcoholic Beverage Control Law. To enforce such temporary restraining order and preliminary injunction, plaintiff's application includes a request for the issuance of a closing order pursuant to § 7-707, § 7-709 and § 7-711 of the Administrative Code.

THE PARTIES

3. 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 a party to and a subject of this action is located at 684 EAST 241 STREET, Bronx, New York.

5. Defendant VOYAGE ASSETS LLC. is the owner of the real property which is the subject of this action according to the New York City Department of Finance, Property Division. See Copy of the Deed, annexed hereto as Exhibit 1.

6. Defendant THE LAND AND BUILDING KNOWN AS 684 EAST 241 STREET, TAX BLOCK #5083, TAX LOT #33, Bronx County, City and State of New York is the site of subject premises where the activities that form the basis of this action have and are taking place.

7. Defendant THE NEW YORK STATE LIQUOR AUTHORITY is a New York State agency which licenses the sale of alcoholic beverages. Defendant the NEW YORK STATE LIQUOR AUTHORITY has issued a license to the owners(s), occupant(s), operator(s), and/or lessee(s) of the subject premises to serve and/or sell alcoholic beverages.

8. 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, agent, operator 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.

BACKGROUND FACTS

9. Since February 16, 2013, inclusive, the subject premise has been the site of five (5) violations of NYS Alcoholic Beverage Control Law §123(1).

10. On February 16, 2013, the individual exercising dominion and control over the subject premise was issued one (1) summons for violations of the New York State Alcoholic Beverage Control Law ("ABC") §65(1) the sale of alcohol to minors. *See* affidavit of Lt. Paul Gaglio, annexed hereto as Exhibit 2.

11. On April 5, 2013, two (2) summonses were issued to the individual exercising dominion and control over the subject premise was issued a summons for violation of ABC §65(1) the sale of alcohol to minors. *See* affidavit of Lt. Paul Gaglio, annexed hereto as Exhibit 2.

12. On April 21, 2013 two (2) summonses were issued to the individual exercising dominion and control over the subject premise was issued a summons for violation of ABC §65(1) the sale of alcohol to minors. *See* affidavit of Lt. Paul Gaglio, annexed hereto as Exhibit 2.

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APPLICABLE LAW

16. In 1977, the New York City Council enacted the Nuisance Abatement Law (§§ 7-701 et seq. of the Administrative Code) 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 . . .alcoholic beverages . . . 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, § 7-701

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

> (h) Any building, erection or place including one- or two-family dwellings, used for any of the unlawful activity as defined in section one hundred twenty-three of the Alcoholic Beverage Control Law... *As amended by a bill dated December 29, 1993.*
>
> and
>
> (l) Any building, erection or place including one- or two- family dwellings, wherein there exists or is occurring a criminal nuisance as defined in § 240.45 of the penal law…

19. Section 123(1) of the Alcoholic Beverage Control Law states that:

> (a) If any person shall engage or participate ... in the manufacturing or sale of liquor, wine, or beer in this state without obtaining the appropriate license therefor, or shall traffic in liquor, wine or beer contrary to any provision of this chapter, or otherwise unlawfully, or shall traffic in illegal liquor, wine or beer, or, operating a place for profit or pecuniary gain, with a capacity for the assemblage of twenty or more persons, shall permit a person or persons to come to such place of assembly for the purpose of consuming alcoholic beverages without having the appropriate license therefor pursuant to section sixty-four-b of this chapter, the liquor authority or any taxpayer residing in the city, town or village, may present a verified petition or complaint to a justice of the supreme court ... for an order enjoining such person engaging or participating in such activity or from carrying on such business....

21. 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 the purposes of engaging in unlawful conduct."

22. Pursuant to § 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 nuisance from further conducting, maintaining or 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 nuisance has been intentionally conducted, maintained or permitted.

A PUBLIC NUISANCE EXISTS AT THE SUBJECT PREMISES

23. A public nuisance as defined by § 7-703 of the Administrative Code exists at the subject premises. As stated above, Nuisance Abatement Law § 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. Further, Nuisance Abatement Law § 7-703 (h) declares a premises to be a public nuisance where it is conducted or operated in violation of ABC section 123.

24. The evidence set forth in support of this order to show cause clearly demonstrates that the subject premises is a public nuisance under § 7-703 (h) and/or (l). There have been blatant violations of the Alcohol Beverage Control Law within the subject premises.

25. Given these circumstances, it is clear that the subject premise presents a continuous threat to the immediate and surrounding community.

26. Despite the grave consequences of this illegal conduct and the fact that summonses were issued the operators of this location have continued to permit the illegal sale of alcoholic beverages, in violation of the Alcoholic Beverage Control Laws.

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

27. The plaintiff has demonstrated that the defendants are selling alcoholic beverages to minors in violation of Alcoholic Beverage Control Law at the subject premises and as a result, the plaintiff is entitled to a judgment permanently enjoining the defendants from continuing their illegal use and occupancy of said 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.

28. 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
>
> . . .

29. Furthermore, ex parte temporary relief is authorized pursuant to § 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 . . .

30. 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 (2nd 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 73 (Sup. Ct. Bronx Co., 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. Co.), aff'd, 115 A.D.2d 423, 496 N.Y.S.2d 954 (App. Div. 1st Dept., 1985) rearg. den., 01/16/86, (App. Div. 1st Dept.). 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.

31. Upon information and belief, in the case herein, there can be no doubt that the defendants are permitting subject premises to be used for the purpose of selling alcoholic beverages to minors, as well as other violations of the Alcoholic Beverage Control Law. Indeed, the plaintiff

has established by clear and convincing evidence that the defendants are maintaining a public nuisance as defined by § 7-703(h) and § 7-703(l) of the Administrative Code and is thus entitled to a preliminary injunction and a temporary restraining order, pursuant to § 7-707 and § 7-710 of the Administrative Code.

32. Upon information and belief, the neighboring community has severely suffered and continues to suffer as a result of the blatant disregard of the Alcoholic Beverage Control Law at the subject premises. Upon information and belief, these activities are interfering with the health, safety, and well being of those who live and work in the surrounding neighborhood, as well as the health, safety, and well being of the business patrons of neighborhood establishments. Therefore, the Court should grant a temporary restraining order pending its determination on the motion for a preliminary injunction.

33. 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. § 6301. In determining whether a preliminary injunction is warranted under C.P.L.R. § 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. Kelly 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 31, 32, 417 N.Y.S.2d 68, 69 (1st Dept., 1979). The plaintiff respectfully submits that the evidence satisfies this traditional three-pronged test.

34. First, the plaintiff's likelihood of success on the merits is strongly supported by the evidence submitted in support of this motion. There have been numerous violations of Alcoholic

Beverage Control Law occurring at the subject premises.

35. 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.

36. Third, the equities are balanced in favor of the plaintiff. The subject premises is currently being operated, occupied, and used illegally and thus, upon information and belief no legitimate interest of defendants will be harmed by an injunction. In contrast, the City of New York, and the public at large which it is required to protect, will benefit greatly if this location is prohibited from illegal sale of alcohol.

37. Accordingly, the plaintiff has established a prima facie case that the defendants are maintaining a public nuisance and, therefore, plaintiff is entitled to a preliminary injunction and a temporary restraining order pursuant to § 7-707 and § 7-710 of the Administrative Code and C.P.L.R. § 6301.

IN SUPPORT OF A CLOSING ORDER

38. 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.

39. This closing order is sought under the provisions of the Nuisance Abatement Law § 7-709(a), which specifies:

> 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.

40. 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, upon information and belief, 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.

41. It is clear that the subject premise is being used in an ongoing illegal manner and that repeated issuance of summonses to the offenders have not stopped the illegal activity. Given this flagrant attitude toward the rule of law, the plaintiff submits that an injunction alone may not be honored by those responsible for conducting, maintaining or permitting the illegal activity and that 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.

42. The relief sought upon this application is expressly authorized by § 7-707, § 7-709 and § 7-711 of the New York City Administrative Code. Courts have granted ex parte temporary closing orders in a number of similar cases involving the Nuisance Abatement Law. See, e.g., City of New York v. 2407 Boston Road Realty Corp., et. al., Index No. 2078/92 (Sup. Ct. Bx. Cty.); City

of New York v. Jose Quesada and Flor Rodriguez, et. al., Index No. 2633/92 (Sup. Ct. Bx. Cty.); City of New York v. Two-Nought-Five-One Associates, et. al., Index No. 2609/92 (Sup. Ct. Bx. Cty.); City of New York v. Cauzal Mgmt., Inc., et. al., Index No. 2634/92 (Sup. Ct. Bx. Cty.); City of New York v. Wedmar Realty Corp., et. al., Index No. 2893/92(Sup. Ct. Bx. Cty.); City of New York v. Lulanai Assn. Inc. et. al., Index No. 30424/92 (Sup. Ct. Bx. Cty.); City of New York v. Basil Company, Index No. 43713/90 (Sup. Ct. N.Y. Cty.); City of New York v. Howard K. Bloom and Linda J. Bloom, Index No. 43698/90 (Sup. Ct. N.Y. Cty.); City of New York v. Nathan Shuchat, Index No. 43697/90 (Sup. Ct. N.Y. Cty.); City of New York v. 10-162 Corp., Index No. 3690/89 (Sup. Ct. N.Y. Cty.); City of New York v. 242 East Third Street Associates, Index No. 333/89 (Sup. Ct. N.Y. Cty.); City of New York v. Rosario, Index No. 3345/89 (Sup. Ct. N.Y. Cty.); City of New York v. Baitzim Assets, Inc., Index No. 45241/89 (Sup. Ct. N.Y. Cty.); City of New York v. Capri Cinema, Inc., Index No. 44731/89 (Sup. Ct. N.Y. Cty.); City of New York v. Cameo Cinema, Inc., Index No. 40238/89 (Sup. Ct. N.Y. Cty.).

43. Accordingly, 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 § 7-707, § 7-709 and § 7-711 of the Administrative Code, directing that the subject premises which is currently being used in violation of the Alcoholic Beverage Control Law be closed against all use pending the determination of this action.

PLAINTIFF IS EXEMPT FROM THE NOTICE REQUIREMENTS OF SECTION 202.7 OF THE UNIFORM CIVIL RULES

44. There will be significant prejudice to the Plaintiff by granting notice of this motion to the defendants under section 202.7 of the Uniform Civil Rules.

45. Ex parte temporary relief in this application is statutorily authorized pursuant to

Section 7-710 (a) of the New York City Administrative Code, which exempts notice as a requirement. Section 7-710 (a) specifies that:

> If on a motion for a preliminary injunction pursuant to Section 7-707 of this subchapter, the corporation 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, pending order of the Court granting or refusing the preliminary injunction and until further order of the Court…

46. The requirement of notice contradicts the express mandate and objective of Section 7-710 (a), which authorizes the granting of an order without notice for the express purpose of preserving evidence consisting of furniture, fixtures or movable property which may have been used to conduct and/or facilitate the public nuisance. The granting of notice will provide defendants with the opportunity to destroy and/or remove such evidence.

47. The Administrative Code authorizes the New York City Police Department to serve and enforce the orders the Plaintiff is seeking. As a consequence, the granting of notice may endanger the safety of the police officers and civilian attorneys employed by the Police Department who are mandated to serve and enforce said orders.

48. The subject premises is being used in an ongoing unlawful manner, and the operators of the premises have continued their activities despite police inspections and enforcement. Given this disregard for the rule of law, Plaintiff submits that the granting of temporary restraining and closing orders without notice is consistent with the aforementioned statutory authority, and is the best assurance that this public nuisance will be immediately abated.

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49. No prior application for this relief or any other provisional remedy has been secured or sought in the same action against the same defendant in this or any other court.

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

DATED: New York, New York
June 6, 2013

Antony M. Anisman, Esq.

FILED Sep 26 2013 Bronx County Clerk

LIST OF EXHIBITS

Exhibit 1: Copy of the Deed

Exhibit 2: Affirmation of Lt. Paul Gaglio

FILED Sep 26 2013 Bronx County Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

----------X

THE CITY OF NEW YORK,
Plaintiff,

- against -

VOYAGE ASSETS LLC.; et. al.,
Defendants.

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AFFIDAVIT OF SERVICE

Index Number: 250998/13

STATE OF NEW YORK)
ss.:
COUNTY OF BRONX)

Lloyd Rund, a Police Officer employed by the New York City Police Department, being duly sworn, deposes and says: That deponent is not a party in this matter and is over 18 years of age. On July 25, 2013, deponent enclosed a copy of the within **ORDER TO SHOW CAUSE, AFFIRMATION, EXHIBITS, RJI, AND SUMMONS AND VERIFIED COMPLAINT,** in a United States Postal Service Express Mail Next Day Service postpaid wrapper properly addressed to the defendants as follows:

VOYAGE ASSETS LLC.
c/o Joseph Kosofsky
81 Main Street
White Plains, NY 10601

THE LAND AND BUILDING KNOWN AS 684 East 241 Street, TAX BLOCK 5083, TAX LOT 33, COUNTY of BRONX, CITY and STATE of NEW YORK;
684 East 241 Street
Bronx, NY 10470

JOHN DOE
c/o CARNIVAL BAR
684 East 241 Street
Bronx, NY 10470

JANE DOE
c/o CARNIVAL BAR
684 East 241 Street
Bronx, NY 10470

defendants' last known addresses. I thereafter deposited said mailings into an official depository under the exclusive care and control of the United States Postal Service.

FILED Sep 26 2013 Bronx County Clerk

That on July 25, 2013, deponent also served the within **ORDER TO SHOW CAUSE, AFFIRMATION, EXHIBITS, RJI, AND SUMMONS AND VERIFIED COMPLAINT** along with a separate **SUMMONS AND VERIFIED COMPLAINT** upon the defendants:

Defendant John Doe
Defendant Jane Doe
Defendant VOYAGE ASSETS LLC., and
Defendant The Land And Building Known As 684 East 241 Street, Tax Block 5083, Tax Lot 33, County Of Bronx, City And State Of New York

by POSTING OF SAME TO THE FRONT DOOR OF THE SUBJECT PREMISES, as well as posting a TEMPORARY RESTRAINING ORDER and CLOSING ORDER on the front door of the subject premises.

Sgt. Lloyd Rund

Sworn to before me this
25th day of July, 2013

NOTARY PUBLIC

ANTONY ANISMAN
Notary Public, State of New York
No. 02AN5027614
Qualified in Westchester County
Commission Expires May 9, 2014

FILED Sep 26 2013 Bronx County Clerk

The City of New York

POLICE DEPARTMENT
LEGAL BUREAU
CIVIL ENFORCEMENT UNIT
2 LAFAYETTE STREET-5th Floor
NEW YORK, N.Y. 10007-1307

250998/2013

July 25, 2013

County Clerk
Bronx County
New York

Re: The City of New York v. VOYAGE ASSETS LLC.; *et. al.*

Dear Sir or Madam:

An Order to Show Cause has been filed by the New York City Police Department on behalf of the City of New York which seeks to close the subject premises indicated in the aforementioned case, under the Nuisance Abatement Law. Said location has been the source of multiple violations of law.

The New York City Police Department respectfully requests that the order be signed for **THURSDAY, JULY 25, 2013**. The Department will thereafter execute the order on said date.

Thank you for your courtesy and consideration.

Very truly yours,

Antony Anisman
Agency Attorney III
NYPD Legal Bureau
Civil Enforcement Unit
(917) 454-1174