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14  
15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **Bennett Montoya, Karen King,**  
18 **BMGV-LLC,**

19 Plaintiffs

20 -v-

21 **City of San Francisco, CA,**  
22 **SFPD Commander David Lazar,**  
23 **SFPD Officer Steve Matthias**  
24 **and John and Jane Does,**

25 Defendants

26 **Case number**  
27 **17-cv-06534 JD**

28 **FIRST AMENDED**  
**COMPLAINT**

**42 U.S.C. § 1983 et**  
**seq, § 1988**

**Jury Trial**  
**Demanded**

1  
2 **INTRODUCTION**

3  
4 1.This case is about racism and racist conduct by  
5 the San Francisco Police Department.

6 2.Particular police officers in the San Francisco  
7 Police Department (SFPD) engaged in blatantly racist  
8 efforts to shut down Atmosphere, a nightclub on the busy  
9 entertainment 400 block of Broadway (the club has changed  
10 its name to Hue), because the club features hip-hop music  
11 that attracts African-American patrons.

12 3.In the words of SFPD Captain David Lazar (he has  
13 recently been promoted to Commander), who is the driving  
14 force behind the racist conduct, hip-hop music that was  
15 and is featured by the club "brings in the wrong crowd",  
16 "a crowd we do not want". His target was and is African-  
17 Americans. His words and his conduct demonstrate that he  
18 set out to shut down the club in order to keep African-  
19 Americans from coming to the Broadway nightclub area.

20 4.At the direction of Captain Lazar, several SFPD  
21 officers under his command participated in the effort to  
22 keep Black people, "the wrong crowd", from coming to  
23 Broadway. Among other acts, the SFPD provided false and  
24 misleading reports to the California Alcoholic Beverage  
25 Control Board (ABC) and the San Francisco Entertainment  
26 Commission (EC). These reports provided the basis for the  
27 EC's decision to amend the club's permit to bar it as of  
28 June 6, 2017, from presenting live entertainment,  
including and especially popular hip-hop disc jockeys,  
after midnight. In the nightclub business, such a  
restriction is a death-blow to a club's survival.

1 5.The SFPD also provided false and misleading  
2 reports to the ABC, which resulted in an Accusation by  
3 the ABC that the club was a "disorderly house" and a law  
4 enforcement problem.

5 6.Captain Lazar more than once expressed his racist  
6 "wrong crowd" comments directly to Bennett Montoya,  
7 plaintiff, co-owner and operator of the club, and he did  
8 so on at least one occasion in the presence of another  
9 person. On one particular occasion, Lazar made his "wrong  
10 crowd" statements in the presence of Benjamin Horne, who  
11 was at that time the director of the Top of Broadway  
12 Community Benefit District (BCBD), a non-profit  
13 organization that plays an active role in monitoring  
14 activities in the Broadway entertainment area.

15 7.Mr. Horne provided testimony regarding Captain  
16 Lazar's comments when he was called as a witness at a  
17 hearing before an administrative law judge in 2015  
18 regarding this matter. Mr. Horne was called as a witness  
19 adverse to plaintiffs at the hearing by the ABC. He  
20 nevertheless testified truthfully about statements made  
21 by Captain Lazar, corroborating Plaintiff Montoya's  
22 testimony before the administrative law judge who was  
23 conducting the evidentiary hearing regarding the ABC's  
24 inquiry into whether the club was a "disorderly house".

25 8.Captain Lazar also "recommended" to Mr. Montoya a  
26 number of times to cease presenting hip-hop music at the  
27 club (the club was known at that time, 2014, as  
28 Atmosphere). There can be no question that the  
"recommendation" of a police captain was, in fact, an  
ultimatum and a threat.

9.In furtherance of his efforts to shut down the

1 club and thus keep African-Americans ("the wrong crowd")  
2 from coming to Broadway, Captain Lazar directed SFPD  
3 officers under his command to prepare reports to the ABC  
4 that would lead the ABC to attempt to revoke the club's  
5 license by finding that the club was a "disorderly  
6 house". Captain Lazar also directed SFPD officers to  
7 provide false and misleading reports to the EC to cause  
8 the EC to revoke and/or impose limitations on the club's  
9 permit and shut down the club.

10 10. The SFPD officer who drafted and provided most of  
11 the reports to the ABC and to the EC was Officer Steve  
12 Matthias. Nearly all the SFPD reports prepared by Officer  
13 Matthias regarding the club were deceitful and/or  
14 misleading. Those reports falsely attributed to the club  
15 nearly all misconduct and criminal activity that took  
16 place anywhere in the 400 block of Broadway, nearly all  
17 of which activity was unconnected to the club.

18 11. That fraudulent tactic was accomplished in part  
19 via Captain Lazar's direction that the SFPD park a marked  
20 and manned SFPD patrol car in front of or directly across  
21 the street from the club. That stratagem by Captain Lazar  
22 was (and still is) intended to accomplish two goals:

23 (1) producing SFPD reports that falsely identified  
24 the club as the problem. That fraud was accomplished by  
25 SFPD officers listing the club as the source of incidents  
26 and disturbances that happened elsewhere in the 400 block  
27 of Broadway based solely on the location of the police  
28 vehicle that was parked at or very near the club. The  
29 reports that were prepared by Officer Matthias and other  
30 officers attributed negative events to the club based  
31 solely on the geographic location of the police car,

1 despite the fact that nearly all of the events had taken  
2 place at or near other locations on Broadway and were  
3 unrelated to the club. The reports were provided by the  
4 SFPD to the ABC and to the EC, both of which took action  
5 against the club based primarily on the false and  
6 misleading SFPD reports.

6 12. The other reason Captain Lazar directed that SFPD  
7 officers park a manned marked police car in front of or  
8 directly across the street from the club was to  
9 intimidate African-Americans, most of whom were and are  
10 acutely aware of the risks they face because of extremely  
11 racist attitudes and conduct by SFPD officers against  
12 African-Americans<sup>1</sup>.

12 13. This deplorable conduct was conceived and  
13 directed by Captain Lazar. It was and is an integral part  
14 of the effort to shut down the club and thus keep the  
15 "the wrong crowd, a crowd we don't want" off Broadway.

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16 1. In October of 2016, The United States Department of Justice published a lengthy and  
17 detailed Report regarding racism and racist conduct by the SFPD. The Report is scathing  
18 in its criticism of the SFPD's racist attitudes and conduct. The racist practices by the  
19 SFPD that are described in the Report are well-known, particularly in the Black  
20 Community.

20 There was considerable publicity regarding recent revelations involving a number of  
21 SFPD officers who sent appallingly racist "humorous" text messages to each other.  
22 Despite the fact that these highly publicized events were whitewashed by the SFPD and  
23 the City of San Francisco, the disclosure of this conduct increased awareness by the  
24 public of racism by the SFPD, especially so in the Black community. These issues are  
25 described in the Department of Justice Report, as are data regarding racially-motivated  
26 traffic stops and other SFPD conduct targeting African-Americans. The racism of many  
27 SFPD officers is notorious, and parking a marked and manned patrol car in front of  
28 Atmosphere (Hue) was and is intended to intimidate African-Americans and keep them  
from coming to Broadway to patronize the club. The stationing of a SFPD patrol vehicle  
in front of or very near the club at the direction of Captain Lazar was clearly intended to  
intimidate and discourage African-American patrons from coming to Broadway.

1 The false and misleading SFPD reports were submitted to  
2 the ABC Board and to the EC by the SFPD. Based largely on  
3 these reports, the EC ruled on June 6, 2017 that the club  
4 could not present live entertainment after midnight. This  
5 limitation has, predictably, decimated the club's  
6 business and has caused disastrous financial and other  
7 damage to plaintiffs.

8 14. Further, the false and misleading police reports  
9 led to a formal Accusation against the club by the ABC  
10 that has jeopardized the club's license. The issues that  
11 have been created by the Accusation have been the subject  
12 of protracted litigation. This litigation has been very  
13 costly for plaintiffs, financially and otherwise. The  
14 litigation continues, and the club's license is at risk  
15 because of Lazar's racist crusade and the *de facto*  
16 sanctioning and endorsement of those efforts by two SFPD  
17 Chiefs of Police and other leadership of the SFPD.

18 15. Captain Lazar also engaged in, and directed,  
19 other efforts to shut down the club. He convened meetings  
20 that required Mr. Montoya and his business partner (and  
21 wife), Karen King, to justify conduct that was improperly  
22 attributed to the club.

23 16. Captain Lazar also created pretextual physical  
24 intrusions into the club, including at least one "raid"  
25 on the club that led to allegations of labor violations.  
26 In fact, under Captain Lazar's direction, the police  
27 invaded Atmosphere nine times in two months, December  
28 13, 2014, through February 15, 2015. The SFPD also  
invaded the club three times after it changed its name to  
Hue. These and other acts that were directed and ordered  
by Captain Lazar, with the participation of other SFPD

1 officers, were implemented for the purpose of shutting  
2 down the club. No other club in San Francisco has been  
3 subjected to anything approaching these kinds of actions.  
4 There was, and is, selective targeting of this club  
5 because it features hip-hop entertainment that attracts  
6 Black patrons.

7 17. Captain Lazar and other officers also engaged in  
8 other activities to target and harass the club and people  
9 associated with it. For example, an employee of the club,  
10 Samantha Bigueur, left the club after work late one night  
11 to learn that her car had apparently been hit by a driver  
12 who had left the scene. Ms. Bigueur went to the officers  
13 who were seated in the patrol car that was parked across  
14 the street from the club to ask the officers to file a  
15 report about the incident. Instead of doing so, they told  
16 her that she would have to go to the police station to  
17 file a report. When she protested at having to make her  
18 way unescorted to the police station several blocks away  
19 at 2 AM, the officers laughed in her face and told  
20 her, "We know where you work".

21 18. There can be no question that the SFPD chose to  
22 target this club and everyone associated with it. In  
23 fact, the ABC found in 2016 after an evidentiary hearing  
24 that plaintiffs had a "very strong case" *that [the club]*  
25 *and its management are the targets of selective*  
26 *enforcement* (emphasis added). (The ABC did not rule on  
27 the issue at that time because it chose to make its  
28 determination of contested issues on narrower grounds).  
The issue of selective enforcement is currently the  
subject of inquiry by the ABC Appeals Board which has  
been directed by the California Court of Appeals to make

1 a finding regarding that issue.

2 19.As a result of Captain Lazar's intentional  
3 racially-motivated efforts to target and shut down the  
4 club, and thus keep African-Americans from participating  
5 in the Broadway entertainment scene, the EC decided on  
6 June 6, 2017, as noted above, to modify the club's permit  
7 to bar the club from presenting live entertainment  
8 (including popular disc jockeys) after 12 midnight. This  
9 decision by the EC was largely based on the false and  
10 misleading reports that were provided to the EC by SFPD  
11 officers.

12 20.The midnight limitation has been devastating to  
13 the club and to the plaintiffs. It has decimated the  
14 income and destroyed the viability of the club and caused  
15 a range of very significant pecuniary and other damages  
16 to the club and to plaintiffs. Yet again, African-  
17 Americans are the targets of racism by the SFPD and the  
18 City of San Francisco. As a result, the plaintiffs have  
19 suffered, and continue to suffer, significant damages.

20 21.The damages include:

21 \*loss of business income every night the club is open,  
22 Thursday through Sunday. That loss of income continues to  
23 this day;

24 \*loss of private rentals of the club (especially in the  
25 holiday season when corporate entities rent clubs such as  
26 Hue for holiday events). A number of corporate rentals of  
27 the club have been lost in 2017 since the EC barred the  
28 club from presenting live entertainment after midnight;

\*substantial attorney fees, including fees for ABC  
counsel, labor attorneys, and present counsel;

\*drastic reduction in the value of the business;



1 damage to plaintiffs' personal and business reputation;  
2 negative impact on plaintiffs' credit standing;  
3 draining of plaintiffs' financial and personal  
4 resources;  
5 extreme disruption of and damage to plaintiffs' personal  
6 lives as a result of having to focus on the problems  
7 created by the racist conduct of the SFPD, including  
8 limitation of available time for plaintiffs to devote to  
9 their young daughter, as well as the immense stresses  
10 that now plague their lives, including emotional pain and  
11 suffering.

12 22.The negative effects of the conduct by Captain  
13 Lazar and other SFPD personnel, including acquiescence in  
14 and *de facto* sanctioning of this racially-motivated  
15 misconduct by two SFPD Chiefs of Police and other  
16 supervisory SFPD officials, are ongoing. Damages increase  
17 every day the midnight limitation imposed by the EC is in  
18 effect.

19 23.Beyond the impact on plaintiffs and on the club  
20 that is addressed in the instant Complaint, a further  
21 tragedy is the fact that this blatant racism is taking  
22 place in the truly magnificent and progressive city of  
23 San Francisco.

24 **JURISDICTION**

25 24.This Court has jurisdiction pursuant to the Civil  
26 Rights Act, 42 U.S.C.1983 *et seq* and 1988, United States  
27 Judicial Code 1331 and 1343.

28 **VENUE**

1 25.Venue in the Northern District of California is  
2 proper because Plaintiffs and Defendants reside therein,  
3 and the relevant events took place therein.

4  
5 **PARTIES**

6 **Plaintiffs:**

7 26.Bennett Montoya and Karen King, owners and operators  
8 of Hue, a nightclub.  
9 BMGV-LLC, the corporate entity that owns Hue.

10 **Defendants:**

11 27.The City of San Francisco, California, a municipal  
12 corporation that operates and controls the San Francisco  
13 Police Department.  
14 SFPD Commander (formerly Captain) David Lazar,  
15 SFPD Officer Steve Matthias.

16 **STATEMENT OF FACTS**

17  
18 28.Plaintiffs Bennett Montoya and his wife and  
19 business partner, Karen King, own and operate a nightclub  
20 on the busy 400 block of Broadway in San Francisco,  
21 California. They opened the club in 2008. It was known at  
22 that time as Atmosphere. It is now known as Hue. The  
23 corporate entity is BMGV-LLC. There are approximately  
24 ten other nightclubs on the block, and Hue is the largest  
25 one. Plaintiffs have managed the club very efficiently  
26 and professionally. The fact that the club has been  
operating for nine years is noteworthy because most  
nightclubs close after a few years. Mr. Montoya is

1 regarded as an excellent and responsible manager.

2       29. All the SFPD officers who have interacted with  
3 Mr. Montoya other than Captain Lazar hold him in high  
4 regard. They describe him as "co-operative", "a very nice  
5 individual", "a gentleman", "very cordial",  
6 "responsible". They have testified at an evidentiary  
7 hearing to that effect and in those words. They have  
8 "never had a bad experience" with him. The officers have  
9 also stated that he and his security team have actively  
10 assisted SFPD officers in dealing with troublesome  
11 individuals on the street, and that Mr. Montoya has  
12 implemented measures to encourage and maintain peaceful  
13 behavior on the street, such as toning down music and  
14 adjusting lighting at closing time. He has done  
15 everything possible to minimize noise problems, including  
16 making costly renovations. He has employed professional  
17 and responsible security personnel. His employees have  
18 undergone training to assist them in addressing problems  
19 that are related to managing intoxicated patrons. He has  
20 fully co-operated with all SFPD protocols regarding the  
21 management of unruly and intoxicated people in the area  
22 of the club.

23       30. As to the issue of party busses (which often  
24 bring intoxicated people to many of the clubs on Broadway  
25 and elsewhere) Mr. Montoya agreed long ago to decline the  
26 lucrative income that is generated by party busses.

27       31. From the outset in 2008, Mr. Montoya developed  
28 and maintained an excellent relationship with all four  
successive captains who headed SFPD's Central Station.  
But in May of 2014, Captain David Lazar took the helm at  
Central Station and everything changed for the worse.

1 Until Captain Lazar took over the leadership of Central  
2 Station, the club had never had any major problems. It  
3 had never received any warnings or violations of any kind  
4 from the Alcohol Beverage Control Board (ABC) that  
5 supervises nightclubs, or from the SF Entertainment  
6 Commission (EC) that issues and supervises permits to  
7 nightclubs in San Francisco.

8 32.The objective and uncontradicted evidence  
9 demonstrates that Captain Lazar (who has been promoted to  
10 Commander) determined that he would destroy the club when  
11 he took over the leadership of the Central Station in May  
12 of 2014. His actions and his statements demonstrate that  
13 he decided that he was going to close the club, and that  
14 his decision to do so was motivated by his desire to  
15 eliminate or minimize the presence of African-Americans  
16 on Broadway.

17 33.The club frequently features hip-hop music that  
18 attracts an African-American clientele. As expressed in  
19 his own words, Captain Lazar stated that the club's hip-  
20 hop entertainment was "attracting the wrong crowd, a  
21 crowd we don't want". More than once, he "recommended" to  
22 Mr. Montoya that he stop presenting hip-hop entertainment  
23 (well-known disc jockeys who are very popular in the hip-  
24 hop community).

25 34.When, in the opinion of Captain Lazar, Mr.  
26 Montoya did not comply with his "recommendations" that he  
27 terminate hip-hop entertainment, Captain Lazar and SFPD  
28 officers under his command undertook measures to destroy  
the club and to put it out of business.

35.Lazar instituted and directed a number of actions  
to accomplish his goal of eliminating "the wrong crowd"

1 from the Broadway entertainment scene. One of his tactics  
2 was directing SFPD officers under his command to park a  
3 manned marked police car in front of, or directly across  
4 the street from, the club. The purpose of this tactic was  
5 twofold:

6 One of Captain Lazar's goals was to intimidate  
7 African-Americans by the mere presence of SFPD officers.  
8 It was, and is, well-known in the Black community that  
9 the SFPD is regarded as extremely racist against African-  
10 Americans. The factual basis of this understanding is  
11 embodied in a scathing Report issued by the United States  
12 Department of Justice in October of 2016.

13 36. That Report found, *inter alia*, the following,  
14 verbatim:

15 Re Use of force by the SFPD:

- 16 • The majority of deadly use of force incidents by the  
17 SFPD involved persons of color.
- 18 • The SFPD does not adequately investigate officer use of  
19 force.
- 20 • The SFPD does not maintain complete and consistent  
21 officer-involved shooting files.

22 Re bias:

- 23 • The weight of the evidence indicates that  
24 African-American drivers were disproportionately stopped  
25 compared to their representation in the driving  
26 population.
- 27 • African-American and Hispanic drivers were  
28 disproportionately searched and arrested compared to  
29 white drivers.

1 • Not only are African-American and Hispanic drivers  
2 disproportionately searched following traffic stops but  
3 they are also less likely to be found with contraband  
4 than White drivers.

5 • The SFPD did not conduct a comprehensive audit of  
6 official electronic communications, including  
7 department-issued e-mails, communications on mobile data  
8 terminals, and text messages on department-issued phones  
9 following the texting incidents.

10 • The SFPD's failure to fully and adequately address  
11 incidents of biased misconduct contributed to a  
12 perception of institutional bias in the department.

13 Re accountability:

14 • The SFPD is not transparent around officer discipline  
15 practices.

16 • Evaluation of employee performance is not an  
17 institutionalized practice in the SFPD.

18 Re race and force:

19 Community members' race and ethnicity are not  
20 "significantly associated with the severity of force"  
21 used by officers, although the "majority of deadly use of  
22 force incidents by the SFPD involved persons of color."

23 Re racist texts:

24 In light of two racist texting scandals, the Police  
25 Department should regularly audit officers' electronic  
26 communication devices to determine whether they are being  
27 used to send biased messages

1 37.As developed in an evidentiary hearing that took  
2 place in this matter in 2015 before an administrative law  
3 judge, although the African-American population of San  
4 Francisco is only six percent (a figure derived from  
5 census data), 42% of people arrested by the SFPD in the  
6 relevant time period were African-Americans, and an  
7 astonishing 58% of the people arrested in the Broadway  
8 area were African-Americans. These data are published on  
9 the SFPD website.

10 38.Scaring off and intimidating Black people was one  
11 reason Captain Lazar directed his officers to park a  
12 manned marked police vehicle in front of or directly  
13 across the street from the club.

14 39.The other reason Captain Lazar directed SFPD  
15 officers to park a manned and marked SFPD vehicle in  
16 front of or directly across the street from the club was  
17 and is central to Captain Lazar's strategy. Broadway,  
18 with its many clubs, is a very heavily-trafficked street,  
19 especially on weekends. Much of that traffic involves  
20 people who have been drinking alcohol. As a result, there  
21 are significant problems involving rowdy and unlawful  
22 behavior. Many of these kinds of events require active  
23 involvement by police officers.

24 40.Under the direction of Captain Lazar, the police  
25 officers who were involved in responding to incidents  
26 that took place *anywhere* on the 400 block of Broadway  
27 indicated in their reports that the incidents involved  
28 Atmosphere (now known as Hue) based solely on the  
location of the parked SFPD police car at or across the  
street from the club. The geographic location of the  
parked police car was designated in the SFPD reports as

1 the location of the incident no matter where in the 400  
2 block of Broadway the incident had taken place. The  
3 reports painted a false and totally misleading picture by  
4 their reference to the geographic location of the police  
5 vehicle as the locus of the disturbances. The reports  
6 supported the false conclusion that plaintiffs' club was  
7 at the center of, and the cause of, disturbances that had  
8 taken place anywhere in the 400 block of Broadway.

9 41.As directed by Captain Lazar, SFPD Officer Steve  
10 Matthias submitted these reports to the EC and to the ABC  
11 that characterized the club as a "disorderly house" and  
12 as a law enforcement problem. Based on these reports, the  
13 EC amended the club's permit on June 6, 2017, to bar  
14 presentation of live entertainment after midnight.  
15 (Plaintiffs have been in full compliance with the  
16 direction of the EC).

17 42.Further, the ABC sought to revoke the club's  
18 license by filing an Accusation that was intended to shut  
19 down the club as a "disorderly house" (those issues are  
20 still pending in ABC litigation). This effort by the ABC  
21 was based on the distorted and misleading reports filed  
22 by SFPD officers, as directed by Captain Lazar.

23 43.The midnight limitation imposed by the EC was set  
24 in motion by actions directed by Captain Lazar.  
25 Predictably, it has devastated the club's business. It  
26 has facilitated Captain Lazar's plan to eliminate "the  
27 wrong crowd, a crowd we do not want" from Broadway and  
28 thus drive the club out of business. The midnight  
29 limitation has caused multiple negative consequences to  
30 plaintiffs:

31 -Nightly and weekly business of the club has decreased



1 dramatically;

2 Corporate bookings for parties (one-night rentals) have  
3 drastically diminished. This has been particularly  
4 devastating in this 2017 season of corporate holiday  
5 parties. The income from these one-night rentals  
6 typically ranges from \$30,000 to \$50,000. Nearly all  
7 corporations that have rented the club in previous years  
8 have chosen not to rent in 2017 because of the midnight  
9 limitation;

10 Plaintiffs have paid, and are paying, substantial fees  
11 to attorneys to represent their interests at protracted  
12 hearings before the ABC Board and the state Court of  
13 Appeals. They are also paying attorney fees to present  
14 counsel. Further, as a result of a "raid" on the club by  
15 the SFPD that was ordered by Captain Lazar on December  
16 13, 2014, plaintiffs have also had to retain labor  
17 lawyers to protect their interests;

18 The value of the club itself has markedly decreased as a  
19 result of the midnight limitation imposed by the EC and  
20 the litigation before the ABC Board;

21 Plaintiff Montoya's personal reputation has been  
22 dramatically reduced as a club manager, entrepreneur, and  
23 businessman.

24 Mr. Montoya has lost business opportunities as a result  
25 of the racially-motivated actions of the SFPD;

26 His credit rating has been severely damaged as well, and  
27 management of his finances has been a significant  
28 problem;

29 Plaintiffs have seen their assets greatly reduced;

30 Plaintiffs have been immersed every day in fighting the  
31 consequences of the actions of the SFPD. These efforts

32

33

1 have caused considerable pain and suffering to them and  
2 have impacted their personal lives, including reduction  
3 of time available to spend with their young daughter and  
4 otherwise live a peaceful, normal and productive life.

5 44. From the time Captain Lazar's assault on the club  
6 and the plaintiffs began, supervising SFPD authorities,  
7 including Commanders and two Chiefs of Police, have  
8 acquiesced in, endorsed, enabled, ratified, authorized  
9 and effectively approved of the conduct and goals of  
10 Captain Lazar.

11 45. The relevant procedural chronology that has taken  
12 place is as follows:

13 -On February 13, 2015, pursuant to the false and  
14 misleading SFPD Reports, the ABC filed an Accusation  
15 against the club, citing some 52 alleged "subcounts"  
16 (violations). The 52 subcounts were based on false and  
17 misleading reports generated by the SFPD. ABC's claim was  
18 that the club was a "disorderly house", and that its  
19 license should be revoked.

20 -Evidentiary hearings were conducted before an  
21 Administrative Law Judge in 2015.

22 -On January 19, 2016, the administrative law judge  
23 issued an Order in which he dismissed 39.5 of the 52  
24 claims as unsubstantiated, finding that only 11.5 claims  
25 were sustained. He rejected plaintiffs' claim of  
26 selective enforcement. He determined that the sanction  
27 should be a 45-day suspension, 15 days of which would be  
28 stayed.

-Plaintiffs appealed to the ABC Appeals Board.

-On October 17, 2016, the ABC Appeals Board decided  
that:

1 -Only 4.5 of the original 52 subcounts could be  
2 sustained, and that 47.5 of the claims (*more than 90%*)  
3 should be dismissed;

4 -The club was NOT a "disorderly house";

5 -No penalty of any kind was warranted;

6 -The ABC Appeals Board found that the attorneys  
7 for the club had made a strong case for selective  
8 enforcement, but declined to reach that question because  
9 it determined the issues on narrower grounds.

10 -The ABC appealed the determination of the ABC  
11 Appeals Board to the California Court of Appeals.

12 -The Court of Appeals decided on August 28, 2017  
13 that suspension of the license was permissible, but the  
14 Court remanded the matter to the ABC Appeals Board with  
15 instructions that the Appeals Board determine two issues:  
16 (1) Selective enforcement, and (2) whether the discipline  
17 was grossly disproportionate to the alleged offenses.

18 -Those issues have been briefed and a determination  
19 of those issues is pending before the ABC Appeals Board.

20 46. In the evidentiary hearings that took place in  
21 2015, the evidence revealed a number of facts, including  
22 other actions taken by the SFPD beyond the false and  
23 misleading SFPD Reports that were submitted to the EC and  
24 the ABC. The testimony and other evidence presented at  
25 the hearing (reports, various documents, and videotapes)  
26 demonstrated the following:

27 - The ABC called Benjamin Horne as one of its own  
28 witnesses. Mr. Horne was the director of a non-profit  
organization known as the Top of Broadway Community  
Benefit District (BCBD). A key function of that

1 organization, whose membership includes the property  
2 owners and nightclub operators in the Broadway corridor,  
3 is to maintain order in the often chaotic Broadway  
4 nightclub area. Mr. Horne testified that Captain Lazar  
5 discussed with him and Mr. Montoya the issue of  
6 Atmosphere attracting "the wrong crowd, a crowd we don't  
7 want". He testified that, at a meeting in August of 2014  
8 that had been called by Captain Lazar, the issue of hip-  
9 hop music and "the wrong crowd, a crowd we don't want",  
10 was discussed. Mr. Horne, a witness who was called by the  
11 ABC, as noted above, thus confirmed in his testimony that  
12 Captain Lazar made clear that his intent was to shut down  
13 the club in order to keep "the wrong crowd" off Broadway.

14 47. Captain Lazar also directed other actions against  
15 the club intended to drive the club out of business. For  
16 example, Captain Lazar arranged for the SFPD to conduct a  
17 "raid" of the club on December 13, 2014. The officers  
18 determined that plaintiffs could not satisfactorily  
19 demonstrate that all employees of the club were properly  
20 covered by Workers Compensation, and they shut down the  
21 club. Captain Lazar did not direct any such raid at any  
22 other venue. He and his SFPD officers selectively  
23 targeted Atmosphere. That raid resulted in allegations of  
24 labor law violations, and required plaintiffs to shut  
25 down and retain a labor lawyer to protect their  
26 interests.

27 48. Between December 14, 2014 and February 15, 2015,  
28 SFPD officers, at the direction of Captain Lazar entered  
(literally invaded) the club nine times to harass  
plaintiffs and discourage people from patronizing the  
club. The police continued their practice of invading the

1 club, which they did at least three times after the club  
2 changed its name to Hue.

3 49. On December 15, 2014, the SFPD invaded the club,  
4 disrupting a private party by the Genentech Corporation.  
5 The SFPD did so for no reason other than to discourage  
6 private corporate rentals of the club.

7 50. On October 31, 2014, Captain Lazar and other  
8 officers were the street and they claim to have heard  
9 either one gunshot or a number of gunshots (Captain Lazar  
10 testified both ways at the evidentiary hearing). In fact,  
11 gunfire had taken place in a parking lot on the block and  
12 it was not associated with the club. But the SFPD Report  
13 of the event claimed that the gunshot/gunshots were  
14 connected to Atmosphere.

15 51. On January 10, 2015, there was a private birthday  
16 party at the club for Mr. Montoya's cousin. Captain Lazar  
17 directed that the officers under his command invade that  
18 private party. There was no justification for that  
19 invasion other than harassment of plaintiffs.

20 52. On one occasion, an employee of the club,  
21 Samantha Bigueur, left the club after work late one night  
22 to learn that her car had apparently been hit by a driver  
23 who had left the scene. Ms. Bigueur went to the officers  
24 who were seated in the patrol car that was parked across  
25 the street from the club to ask the officers to file a  
26 report about the incident. Instead of doing so, they told  
27 her that she would have to go to the police station to  
28 file a report. When she protested at having to make her  
way unescorted to the police station several blocks away  
at 2 AM, the officers laughed in her face and told  
her, "We know where you work".

1 53. Considerable evidence at the evidentiary 2015  
2 hearing demonstrated that Captain Lazar and SFPD officers  
3 under his command targeted plaintiffs' club in an effort  
4 to shut down the club and thus keep African-American  
5 people, the crowd that Lazar did not want, off Broadway.  
6 His appallingly racist actions have done great damage to  
7 plaintiffs.

8 54. The conduct by Captain Lazar and other SFPD  
9 officers set in motion the negative consequences and  
10 resultant damages that have befallen plaintiffs. This  
11 conduct is the proximate cause of plaintiffs' damages.  
12 The SFPD acted under color of state law to deprive  
13 plaintiffs of their constitutional rights to equal  
14 protection and to property.

15 55. The rights of plaintiffs that are protected by  
16 the United States Constitution have been violated by the  
17 SFPD and the City of San Francisco, a great city that  
18 suffers from the racism that pervades the SFPD.

19 **FIRST CAUSE OF ACTION**

20 56. Plaintiffs incorporate by reference all  
21 paragraphs herein as if fully set forth herein again.

22 57. Pursuant to 42 U.S.C 1983 *et seq* and 1988,  
23 plaintiffs allege that the defendants jointly and  
24 severally deprived plaintiffs of the constitutional  
25 rights to which they are entitled pursuant to the  
26 Fourteenth Amendment to the United States Constitution in  
27 that the defendants herein jointly and severally deprived  
28 Plaintiffs of their property without due process of law  
and failed to provide equal protection of the law.

58. Plaintiffs seek relief and judgment against all

1 defendants herein, all of whom were acting within the  
2 course and scope of their duties and who undertook their  
3 actions under color of state law.

4 59. Defendants are jointly and severally liable for  
5 the damages. The City of San Francisco acquiesced in and  
6 ratified the conduct of the police officers in its  
7 employ.

8 **SECOND CAUSE OF ACTION**

9 60. Plaintiffs incorporate by reference all  
10 paragraphs herein as if fully set forth herein again.

11 61. Pursuant to 42 U.S.C 1983 *et seq* and 1988,  
12 plaintiffs allege that the defendants jointly and  
13 severally deprived plaintiffs of the constitutional  
14 rights to which they are entitled pursuant to the Fifth  
15 Amendment to the United States Constitution in that the  
16 defendants herein jointly and severally deprived  
17 plaintiffs of their property without due process of law  
18 and deprived Plaintiffs equal protection of the law.

19 **THIRD CAUSE OF ACTION**

20 62. Plaintiffs incorporate by reference all  
21 paragraphs herein as if fully set forth herein again.

22 63. Pursuant to 42 U.S.C 1983 *et seq* and 1988,  
23 plaintiffs allege that the defendants jointly and  
24 severally deprived plaintiffs of the constitutional  
25 rights to which they are entitled pursuant to the  
26 Constitution of the State of California, including, but  
27 not limited to, Article One thereof, sections 1, 7, 13,  
28 24, and 31, in that the defendants herein jointly and  
severally deprived Plaintiffs of their property without

1 due process of law and failed to provide equal protection  
2 of the law. Plaintiffs respectfully request that this  
3 Court exercise supplementary jurisdiction over any and  
4 all state causes of action and misconduct related to  
5 Plaintiffs' federal claims.

6 64. As to all Causes of Action herein, the  
7 individual police officer defendants acted within and  
8 pursuant to their duties of employment with Defendant  
9 City of San Francisco, and the City of San Francisco is  
10 thus responsible for the injuries and damages to  
11 Plaintiffs as a result of the violations of Plaintiffs'  
12 rights.

13 65. Defendant City of San Francisco acted with  
14 deliberate indifference to the unlawful actions of  
15 defendant police officers in its employ. The principles  
16 of *respondiat superior* and related legal authority  
17 imposes liability upon the City of San Francisco.

18 66. Defendant City of San Francisco failed to put in  
19 place a structure for containment of risk, and thus  
20 ratified the unlawful misconduct by defendant police  
21 officers.

22 67. Defendant City of San Francisco failed to put in  
23 place a viable and reasonable process by which to  
24 supervise and evaluate the conduct of its employee police  
25 officers.

26 68. Defendant City of San Francisco functioned in a  
27 manner that created risk to the public, including  
28 Plaintiffs herein.

69. All defendants herein engaged in intentional  
acts that caused damage to Plaintiffs herein.



1 70. All defendants herein acted with malice.

2 71. All defendants herein failed to provide equal  
3 protection of the law as to the Plaintiffs.

4 72. Defendants herein are sued herein in both their  
5 individual capacities and their official capacities.

6 73. The actions, and the failures to act, by the  
7 City of San Francisco were undertaken with reckless  
8 disregard of the rights of the Plaintiffs herein.

9 74. As to all Causes of Action, the actions and  
10 failures to act to prevent its police employees from  
11 violating the rights of Plaintiffs herein demonstrate  
12 improper *de facto* practices and policies of defendant  
13 City of San Francisco.

14 75. As to all Causes of Acton herein, Defendant City  
15 of San Francisco failed to properly supervise and failed  
16 to educate defendant police officers, ratified their  
17 improper conduct, hired the officers without appropriate  
18 investigation of their character, and in general and  
19 specifically demonstrated deliberate indifference to the  
20 improper conduct by the officers that took place over an  
21 extended period of time.

22 **PRAYER**

23 76. WHEREFORE, plaintiffs, and each of them, seek and  
24 demand:

25 (1) monetary relief and judgment against defendants, jointly  
26 and severally, including nominal, presumed,  
27 compensatory, and punitive damages, in such amounts as  
28 shall be determined by a Jury;

(2) Attorneys Fees under 42 U.S.C. § 1988;

(3) costs of litigation; and

1 (4) other and further relief as is just and appropriate in  
2 the premises of this Civil Rights case.

3  
4 **JURY DEMAND**

5 77.Plaintiffs demand that this case be tried by a jury.

6 January 22, 2018

7 Respectfully submitted,

8 /s/ Robert Bloom

9 Attorney for Plaintiffs  
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