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STATE OF CALIFORNIA

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

CERTIFICATE OF DECISION

APR 06 2009

FILE : 47 - 430051
REG. : 08068524

It is hereby certified that the Department of Alcoholic Beverage Control, having reviewed the findings of fact, determination of issues and recommendation in the attached proposed decision submitted by an Administrative Law Judge of the Administrative Hearing Office, adopted said proposed decision as its decision in the case therein described on April 3, 2009.

A REPRESENTATIVE OF THE DEPARTMENT WILL CALL ON YOU ON OR AFTER MAY 21, 2009 TO PICK UP THE LICENSE CERTIFICATE.

Sacramento, California
[Dated: April 3, 2009]


Helen McConville
Supervisor, Hearing and Legal Unit

Pursuant to Government Code Section 11521(a), any party may petition for reconsideration of this decision. The Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or on the effective date of the decision, whichever is earlier.

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9 of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 300 Capital Mall, Suite 1245, Sacramento, CA 95814.

Chien Duong & Chung Nguyen
47-430051
08 068 524
page 2

FINDINGS OF FACT

1. The Accusation was filed on January 12, 2009.
 2. Department issued a type 47 license (On-sale General Public Eating Place) to Respondents at the above-identified location [Licensed Premises] on January 11, 2006.
 3. Respondents have been the subject of the following discipline:

| | |
|--------------------------|---|
| <u>Date of violation</u> | October and November 2006 |
| <u>Violation</u> | Penal Code 148(a)(1), 647f, 347b, B&P 25601 and 25177 |
| <u>Penalty</u> | 20 day suspension plus conditions |
| <u>Reg. No.</u> | 06064482 |

That disciplinary matter is final. (See Exhibit 2).
 4. At the start of the hearing the Department moved to dismiss Counts 3 and 6 of the Accusation. There was no objection and that motion was granted.
 5. The parties stipulated that the facts contained within Counts 1 and 4 of the Accusation are true and correct.
 6. During the course of the hearing, Count 8D and Count 9F were amended to read as follows:

On or about August 10, 2008, police officers from the Sunnyvale Police Department contacted two subjects in front of the premises who were intoxicated and unable to care for themselves. The subjects were arrested for 647f P.C. (drunk in public).

There was no objection to the amendment.
 7. Also during the hearing Count 8C and Count 9E were amended by striking the last sentence from each of the counts. They now read as follows:

On about 5-25-08, 21 officers from the Sunnyvale Police Department responded to several fights and a large unruly crowd of 200 to 500 premises patrons that had been dispersed from the premises out onto the public streets. Sunnyvale Police Department had to call for mutual emergency aid from the neighboring Santa Clara Police Department and S. Murphy Street was closed down.

There was no objection to the amendment.
- (January 17, 2008)
[Count 2]
8. On the evening of January 17, 2008, Department Investigator Jeffery Anadon went to the premises. He arrived at 8:30 p.m. Anadon noted that there was no security guard in the rear parking lot. A security guard is required in that parking lot by Condition # 5 of

Chien Duong & Chung Nguyen
47-430051
08 068 524
page 3

the Petition for Conditional License. (Exhibit 3). There were security guards in front of the premises and inside the premises. There was no evidence presented as to whether there was a security guard in the parking lot at any time after 8:30 p.m.

(February 28, 2008)

[Count 5]

9. On February 28, 2008, at approximately 10:00 p.m., Investigator Allison Martinez entered the premises in an undercover capacity posing as a customer. Upon entering the premises she noted a DJ (disc jockey) booth that overlooked the dance floor. There was a DJ present at the booth. The DJ was wearing headphones, playing music, and mixing the records. Martinez continued to observe this activity for approximately 30 minutes before leaving.

(December 31, 2007)

[Count 7]

10. On December 31, 2007, New Year's Eve, at approximately 10:40 p.m., Sunnyvale Police Officer Shawn Rybak entered the premises. Officer Rybak was in full uniform and conducting an inspection of the premises. Officer Rybak noted that there was a DJ present on the center stage of the main floor. Rybak also noted a different DJ on the second floor and a third DJ on the third floor. All three DJ's were performing functions normally associated with that of being a DJ. They appeared to be playing and mixing music for the patrons.

11. Officer Rybak contacted Hai Nguyen, aka Michael Nguyen, who represented himself to be the manager. Hai Nguyen told Officer Rybak that the DJ was not actually playing music. Hai Nguyen took Officer Rybak to a location where there was electronic equipment. Hai Nguyen told Rybak that the DJ's were not playing and mixing music but simply insert a pre-recorded compact disc and pretend that they are mixing music. Just as a person who was mouthing the words of a recording being played would be said to be "lip syncing", in this case the DJ would be "DJ syncing". Hai Nguyen told Officer Rybak that if there was no DJ then the customers would not come to the club. Officer Rybak noted that the compact disc players in the area where Hai Nguyen had taken him all indicated either "No CD" or "Insert CD", indicating to Rybak that the DJ was in fact playing and mixing music and not "DJ syncing".

(March 8, 2008)

[Count 8A, 8B, 9A, 9B, 9C and 9D]

12. On March 8, 2008, Mario Knight was at the premises with friends Gavino Orosco and Victor. While on the dance floor a fight broke out. Knight observed an Asian male stab his friend Gavino Orosco and another male. Knight and Victor carried Orosco outside to Victor's car. Victor drove Orosco to the hospital. Knight re-entered the premises and was met by Usiku Barrow who is the head of security at the premises.

Chien Duong & Chung Nguyen
47-430051
08 068 524
page 4

During the course of the hearing Barrow was referred to by witnesses as "Mr. Pea coat", "Suit", and "Sook". His physical description was always the same; a black male who was large in stature. Barrow always wore a pea coat while working at the club Abyss. When Knight re-entered the Club Abyss, Barrow was holding onto an Asian male. Knight positively identified the person Barrow was holding as the person who stabbed his friend Ososco and another patron. This person was never identified by the Club Abyss security staff and never turned over to the police. The suspect was released prior to the arrival of police. These two stabbings still remain unsolved.

13. Anthony Frasier was a security guard at Club Abyss on March 8, 2008. Frasier heard screaming and someone yell stabbing. Frasier located a victim of a stabbing on the main floor. Frasier took the victim to the coat room. Frasier was unable to locate any first aid gear so he went to his truck in the parking lot and obtained some gear. Frasier began to treat the victim and noted that the injuries were serious. Frasier got on the radio and asked for someone to call "911". Barrow then got on the radio and said not to call "911". Barrow said to patch him up (the victim) and his friend will take him to the hospital.

14. Frank Collins was also a security guard at Club Abyss on March 8, 2008. After the stabbings on the main floor, a patron informed Collins that the knife was still on the floor. Collins went to the location. A female patron had her foot on the knife. Collins put on a pair of gloves and picked up the knife. It was a folding pocket knife in the closed position. Collins picked up the knife and gave it to Phong Lyong, a security supervisor. Later when the police officers arrived Collins was approached by an officer who began to ask him questions. While talking to the officer Collins observed Phong Lyong making gestures to Collins indicating that Collins should not say anything. Lyong was moving his hand back and forth across his throat in a slicing type motion and also holding his finger up to his lips. Collins answered the officer's questions but did not offer any information at that time. Collins telephoned Frasier and informed him of the above information.

15. A short distance from Club Abyss Sunnyvale Police Officer Jesse Curiel made a traffic stop of an erratic driver. Inside the vehicle was one of the stabbing victims from Club Abyss, Tavio Bell. During this time security guard Frasier arrived at Curiel's location and advised Curiel that the security guards at the Club Abyss were withholding evidence. Frasier informed Curiel of what Collins had told him. Officer Curiel passed this information on to the other officers.

16. Sunnyvale police officer Andrew Zarriello interviewed Phong Lyong at Club Abyss. Lyong told Zarriello that he was a bar back and he didn't know anything. Zarriello asked Lyong about the knife that had been recovered and turned over to him. Lyong said that he did not know anything about a knife. The knife was never recovered.

Chien Duong & Chung Nguyen
47-430051
08 068 524
page 5

(May 25, 2008)

[Counts 8C and 9E]

17. On May 25, 2008, Sunnyvale Police Officers responded to a Code 3 call at Club Abyss at 11:20 p.m. A fight had broken out inside the premises. Security shut down the premises and had everyone exit. The fights continued to the front of the premises. When officers arrived there were approximately 300 patrons pushing, shoving and fighting. Sunnyvale officers were forced to resort to donning their riot gear for their own safety. Because of the size of the crowd, all on duty Sunnyvale officers were required at the Club Abyss. Through mutual aid agreements, the Santa Clara Police Department responded to calls for service within the City of Sunnyvale. Crime Scene Investigator Karin Jenks took several photos at the location after the crowd began to disburse. (Exhibit 7).

(August 10, 2008)

[Counts 8D and 9F]

18. On August 10, 2008, Sunnyvale Police Officer Marie Plonka and her partner were at the premises. Both officers were in uniform. While at the location they noted two individuals who were exiting the premises. Both were rowdy and loud. They began to attract a crowd. The officers contacted these two individuals and immediately detected a strong odor of alcoholic beverages on their persons. Both subjects had slurred speech, an unsteady gait, bloodshot and watery eyes, and both needed assistance to sit down. The subjects, Hao Hong Le and Nghia Truong, were not able to care for themselves or their own safety. Both were arrested for 647f P.C. (drunk in public).

(August 13, 2008)

[Counts 8E and 9G]

19. On August 13, 2008, Sunnyvale Police Officer Nicole Pastore was at the premises. She was in uniform. Officer Pastore noted a male in front of the premises who became loud and combative. While attempting to control the subject, the subject turned and threw his elbow at an officer, striking the officer. The subject continued to fight with the officers and additional officers had to be called to the scene.

(September 7, 2008)

[Counts 8F and 9H]

20. On September 7, 2008, Sunnyvale Police Officer Stanley Stewart responded to a radio call of the victim of an ADW in the parking lot behind Club Abyss. Officer Stewart noted an odor of alcoholic beverage on the victim. Stewart also noted that the victim had been severely beaten about the face and chest. Hung Tran testified that he was in the premises with his friend Brian Tran when someone threw a drink at Brian Tran and several people began to hit and kick Brian. Brian Huu and Dat Nguyen Tran were arrested a short time later for assault with a deadly weapon.

Chien Duong & Chung Nguyen
47-430051
08 068 524
page 6

CONCLUSIONS OF LAW

1. Article XX, Section 22 of the California Constitution and California Business and Professions Code Section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.
2. Section 24200(b) provides that a licensee's violation or causing or permitting of a violation of any penal provisions of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.
3. Section 23038 provides that a "[b]ona fide public eating place' means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. 'Meals' means the usual assortment of foods commonly ordered at various hours of the day; the service of such foods and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. 'Guests' shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage."
4. Section 23396 prohibits sale or service of any alcoholic beverages, other than beer, in a "bona fide public eating place for which an on-sale license has been issued unless the premises comply with the" provisions of Section 23038.
5. Cause for suspension or revocation of Respondents' license was established for the violations alleged in Counts 1 and 4. The parties stipulated that the facts in Count 1 and 4 were true and correct. (Findings of Fact, ¶ 5)
6. Section 23804 provides that violation of a condition placed upon a license constitutes the exercise of a privilege for which a license is required without the authority therefore and is grounds for suspension or revocation of the license.
7. Cause for suspension or revocation of Respondent's license was not established for the violation alleged in Count 2 of the Accusation. A preponderance of the credible evidence established that the premises does not open until 10:00 p.m. Investigator Anadon noted there was no security guard in the parking lot at 8:30 p.m. No evidence was presented as

Chien Duong & Chung Nguyen
47-430051
08 068 524
page 7

to any other time when there was no security guard in the parking lot, especially after the premises was open and operating. It is unreasonable to penalize Respondents for not having a security guard in the parking lot when the business is closed. The evidence clearly established that the Club Abyss is only open on Thursday, Friday, Saturday and sometimes Sunday. Are Respondents violating the condition by not having security guards in the parking lot on Monday, Tuesday and Wednesday evenings? Certainly they are not even though the condition itself does not specify which days of the week it does apply.

8. Cause for suspension or revocation of Respondents' license was established for the violations alleged in Counts 5 and 7 of the Accusation. The credible evidence did establish that on both occasions disc jockeys were in fact providing live entertainment at the premises. They were playing the music and mixing the records. Respondents' argument that the DJ's were "DJ syncing" and not actually providing live entertainment is rejected. Even if it were true, Respondents were intentionally misleading their customers by advertising the DJ's in their advertisements. Usiku Barrow, the head of security at the premises, was shown the Petition for Conditional License (Exhibit 3) during his cross examination. Barrow admitted that Club Abyss was not in compliance with the condition regarding the DJ's. Emanuel Nguyen, daughter of licensees who operates the premises on a daily basis, testified that if they did not have a DJ then no customers would come to the club. It is obvious that rather than complying with the conditions on the license, Respondents tried to circumvent it completely and are now attempting to justify their non-compliance.

9. California Penal Code Section 148(a)(1) states, in pertinent part, "Every person who willfully resists, delays, or obstructs any ...peace officer...in the discharge or attempt to discharge any duty of his or her office or employment...shall be punished by a fine...or imprisonment..."

10. California Penal Code Section 242 defines battery; "A battery is any willful and unlawful use of force or violence upon the person of another."

11. California Penal Code Section 415 states: "Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine:
(1) Any person who unlawfully fights in a public place or challenges another person in a public place to fight."

12. California Penal Code Section 647(f) states: "Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: (f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance,

Chien Duong & Chung Nguyen
47-430051
08 068 524
page 8

or toluene, in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way."

13. California Penal Code Section 245(a)(1) states, "Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment..."

14. Business and Professions Code Section 25601 defines a disorderly house as follows: "Every licensee, or agent or employee of a licensee, who keeps, permits to be used, or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience, or safety, is guilty of a misdemeanor."

15. A Department licensee has an affirmative duty to maintain his or her premises in a lawful and orderly fashion. *Givens v. Department of Alcoholic Beverage Control* (1959) 176 Cal.App.2d 529. A disorderly house charge is synonymous in the law with a nuisance allegation, wherein a person, or licensee in this matter, permits ongoing illegal activity to continue unchecked. *Yu v. Alcoholic Beverage Control Appeals Board* (1992) 3 Cal.App.4th 286. Disorderly house accusations are inherently aimed at stopping persistent violations of the law. As the court in *Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal.App.2d 504, observed; "Where... objectionable behavior in a licensed establishment is of a continuing nature and not merely an isolated or accidental instance, it is an inescapable conclusion that the licensees have permitted and suffered the resultant condition which offends public welfare and morals and violates the statutory prohibition against keeping a disorderly house." (See also *Harris v. Alcoholic Beverage Control Appeals Board* (1963) 212 Cal.App.2d 106; frequent arrests of intoxicated patrons over a six-month period sufficient to sustain a disorderly house accusation.)

16. In this case subcounts 8A through 8F are plead to establish liability under Section 25601, Count 8.

17. Cause for suspension or revocation of Respondents' license was established for the violation alleged in subcount 8A of the accusation. There was no evidence presented to establish that Hai Nguyen dissuaded the stabbing victims from calling the police. However, the management and security personnel were in fact involved in the cover up of the stabbings of two patrons at the premises. Additionally, Phong Lyong destroyed

Chien Duong & Chung Nguyen
47-430051
08 068 524
page 9

evidence. Lyong, who was given the weapon used in the stabbing of the two patrons by security guard Collins, failed to turn the evidence over to police officers and denied having any knowledge of the knife. (See Findings of Fact, ¶¶ 12-16)

18. Cause for suspension or revocation of Respondents' license was established for the violation alleged in subcount 8B of the accusation. The security managers and personnel willfully delayed and obstructed Sunnyvale police officers in the performance of their duties by not immediately contacting police regarding the assault with a deadly weapon that occurred in the premises, releasing the person who stabbed the two victims, failing to identify the person who was identified as the suspect who stabbed the two victims, and withholding and/or destroying evidence. (See Findings of Fact, ¶¶ 12-16)

19. Cause for suspension or revocation of Respondents' license was established for the violation alleged in subcount 8C of the accusation. Security personnel cleared the premises of approximately 300 patrons after a fight began inside. Once outside the fighting continued and Sunnyvale police were called to the scene. All on duty Sunnyvale police officers responded to the premises in order to keep the peace. Santa Clara police officers were forced to handle calls for service within the City of Sunnyvale during this time because all Sunnyvale police officers were deployed at the premises. (See Findings of Fact, ¶ 17)

20. Cause for suspension or revocation of Respondents' license was established for the violation alleged in subcount 8D of the accusation. Police Officer Marie Plonka and her partner contacted two individuals as they were exiting the premises. Both were loud and rowdy, had slurred speech, smelled of alcohol, had bloodshot and watery eyes, had unsteady gait, and needed assistance to sit down. Both were arrested for being drunk in public. (See Findings of Fact, ¶ 18)

21. Cause for suspension or revocation of Respondents' license was established for the violation alleged in subcount 8E of the accusation. Officers contacted an unruly patron in front of the premises. The patron fought, struck and resisted the police officers. Additional officers had to be called to control the situation. (See Findings of Fact, ¶ 19)

22. Cause for suspension or revocation of Respondents' license was established for the violation alleged in subcount 8F of the accusation. Patron Brian Tran was severely beaten and kicked by other patrons inside the premises. Brian Tran was in a semi-consciousness state and needed to be hospitalized. (See Findings of Fact, ¶ 20)

23. Cause for suspension or revocation of Respondents' license was established for the violation alleged in count 8 of the accusation, disorderly house. The incidents described in subcounts 8A through 8F occurred within a relatively short period of time, that being about six months. The incidents involving the destruction of evidence, releasing

Chien Duong & Chung Nguyen
47-430051
08 068 524
page 10

suspected crime suspects, and disclaiming any knowledge of any of this is particularly troubling. Respondents had prior knowledge and warning regarding these types of incidents. In the prior disciplinary matter (Exhibit 2) Respondents were charged with violating substantially the same sections that are charged in the present accusation. Those charges included Penal Code Section 148 (a) (1), failing to contact law enforcement in a timely manner, public drunkenness, and permitting a disorderly house. Respondents signed a stipulation and waiver admitting to the violations. As a result their license was suspended and new conditions were placed upon the license. (Exhibit 3) That Petition for Conditional License recites the reasons for the imposition of the conditions in the first paragraph. Even though there was ample notice to the Respondents, these same types of violations continued.

24. Cause for suspension or revocation of Respondents' license does exist under Article XX, Section 22 of the California State Constitution and Sections 24200(a) and (b) in that there was sufficient evidence to establish the violations contained in subcounts 9A through 9H. (See Findings of Fact; ¶¶ 6 through 20)

PENALTY

The Department is seeking revocation of Respondents' license. The Department notes the prior discipline involving same or similar violations and the fact that the violations continue even though the Respondents had sufficient prior notice. The Department also points out the seriousness of the violations.

Respondents' counsel proposes a stayed revocation along with a suspension. Counsel suggests that other than the March 8, 2008, incident the Police Department witnesses were not critical of Club Abyss or its security personnel. Counsel also suggests that the release of the suspect on March 8, 2008, by the security personnel was not intentional. These arguments are not persuasive.

Here we have a problem licensee who continues to be a problem. Prior discipline did not cause Respondents to correct the problems. Adding conditions to the license did not cause Respondents to correct the problem.

The claim of "DJ syncing" is an insult to the intelligence of anyone who hears that claim. It does however show that Respondents will try to manipulate the rules to their own benefit rather than comply. The same is true when it comes to notifying the police as to crimes committed at the premises. Respondents have learned that if the police never find out then it will not be used against them.

There is another significant factor to be considered. Respondents hold a Type 47 license, a restaurant license. Respondents are not operating as a bona fide restaurant. (See

Chien Duong & Chung Nguyen
47-430051
08 068 524
page 11

Findings of Fact; ¶ 5) They are operating as a "kiddie" night club. They are only open on Thursday, Friday and Saturday nights. They open for business at 10:00 p.m. They are occasionally open on Sunday nights for teens only. The hours of operation clearly prove that they are not operating as a bona fide restaurant. During the entire hearing the premises was referred to as "Club Abyss" or the club. Not one witness referred to it as a restaurant.

When Emanuel Nguyen, daughter of Respondents and the person who runs the business, was questioned about this, she testified that she has tried everything possible to operate as a restaurant but the customers will not buy food. She indicated that she has opened for lunch and that did not work. She had tried to change the menu and that has not worked. She has tried everything and nothing works. When asked for possible solutions she indicated that there were none because she has tried everything.

The evidence establishes that continuation of this license would be contrary to public welfare and morals. If permitted to continue it would only be a matter of time before something more serious happens at this premises. The drain on the resources of the City of Sunnyvale, particularly the police department, cannot be permitted to continue. Respondents have had ample opportunity to correct the situation. Respondents have had ample opportunity to establish themselves as a bona fide restaurant. Nothing has worked and nothing has changed. Emanuel Nguyen freely admitted that nothing else can be done to put them in compliance with Section 23038. Respondents have an affirmative duty to maintain a lawful establishment. The Department has a duty to protect the public from licensed businesses involved in the types of activities noted in this accusation. Giving Respondents another chance is clearly a waste of time and would be contrary to public welfare.

ORDER

1. Counts 2, 3 and 6 are dismissed.
2. Counts 1, 4, 5, 7, 8, including subcounts 8A through 8F, and count 9, including subcounts 9A through 9H, are sustained. Respondents' license is hereby revoked.

Dated: March 10, 2009



John W. Lewis
Administrative Law Judge

AbYSS

March **April 2009** May

April 2009 Go!

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------|--------|---------|-----------|----------|--------|----------|
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |



Glamorous

ATTACHMENT 15
Page 15 of 23

26 Sunday 27 Monday 28 Tuesday 29 Wednesday 30 Thursday Friday Saturday

PDF

ATTACHMENT 15
Page 2 of 23

21+

ABYSS NIGHTCLUB
PRESENTS



SATURDAY APRIL 25TH

GLAMOUROUS

ABYSS NIGHTCLUB
146 SOUTH MURPHY AVE.
SUNNYVALE, CA

AbysS

April **May 2009** June

May 2009 Go!

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------|--------|---------|-----------|--------------------|--------|--|
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9  Amor |
| 10 | 11 | 12 | 13 | 14 \$3 Thursday | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 \$3 Thursday | 22 | 23  Ecstasy |
| 24 | 25 | 26 | 27 | 28 \$3 Thursday | 29 | 30 |

ATTACHMENT 15
Page 4 of 23

Sunday

Monday

Tuesday

Wednesday

Thursday

Friday

Saturday

31

PDF

ATTACHMENT 15
Page 5 of 23

ABYSS NIGHTCLUB

PRESENTS

21+

SATURDAY
MAY 9TH

THREE OCEANS

PRODUCTIONS

AMOR

ABYSS NIGHTCLUB



HAPPY BIRTHDAY
TO ABYSS NIGHTCLUB'S
VERY OWN
LINDA & TIFFANY



DRESS SHOES REQUIRED

146 SOUTH MURPHY AVE. SUNNYVALE

UNIVERSITY OF CALIFORNIA



THREE OCEANS
AMOR
MAY 9TH

ABYSS NIGHTCLUB
146 SOUTH MURPHY AVE
SUNNYVALE, CA

MATURE 21+ WELCOMED
WITH VALID ID



HAPPY BIRTHDAY
TO ABYSS NIGHTCLUB'S
VERY OWN
LINDA & TIFFANY



FEATURING

DI KOMODO - DI EXTRACTED - TEDDY ROCKSPIN



DRESS CODE STRICTLY ENFORCED
NO SPORTS ATTIRE
NO BAGGY CLOTHING
NO HATS

GENTLEMEN
COLLARED SHIRTS
DRESS SHOES REQUIRED

LADIES
STAY SEXY & CLASSY

FOR BOTTLE SERVICES
CONTACT

TIFFANY TRANG
408-907-0019
LINDA TRANG
408-907-8774



GUESTLIST AVAILABLE UNTIL 11PM
FOR GUESTLIST INFO & SIGN UPS VISIT
WWW.SJABYSS.COM

ATTACHMENT 5

ABYSS NIGHT CLUB
PRESENTS



SATURDAY
MAY 23RD

ECSACY

DRESS SHOES
REQUIRED

ABYSS NIGHT CLUB
146 S. MURPHY AVE
SUNNYVALE
CALIFORNIA



FREE GUESTLIST TILL 11PM

ECSACY

THE HOTTEST
DJ'S SPINNING
YOUR FAVORITES

MAIN ROOM
HIP HOP
R&B
TOP 40

MEZANINE
HOUSE
TECHNO
MASH-UPS

VIP ROOM
OLDIES
NEW WAVE

GUESTLIST AVAILABLE
UNTIL 11PM
FOR GUESTLIST INFO
AND SIGN UPS
VISIT:
5JABYSS.COM

MATURE 21+ WELCOMED
WITH VALID ID

DRESS CODE STRICTLY
ENFORCED

GENTLEMEN:
NO BAGGY ATTIRE

LADIES:
STAY SEXY & CLASSY

FOR BOTTLE SERVICES
CONTACT

TIFFANY TRANG
408-507-0019
LINDA TRANG
408-667-8779



ATTACHMENT 15
Page 7 of 23

Abyss

May **June 2009** July

June 2009 Go!

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------|--------|---------|-----------|---|--------|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
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| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| | | | |  White Ecstasy | |  Blonde Ambition |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |

ATTACHMENT 15
Page 8 of 25

Sunday Monday Tuesday Wednesday Thursday Friday Saturday
28 29 30

Club Glow will be back
on July 19th

PDF

ATTACHMENT 15
Page 4 of 23

ECLIPSE ENT. | BLACKOUT SF
 ABYSS NIGHTCLUB
 PRESENTS



THURSDAY
 JUNE 18TH

ECLIPSE

THE OFFICIAL PRE-LAUNCH
 OF
 ECLIPSENT.

WITH SPECIAL GUEST HOSTS

SAM
 HILL



LANY
 FUMAR



\$3 GUESTLIST
 SIGN UP @
WWW.MYSPACE.COM/ECLIPSENT



THE



DJBAYSICK
RAYAREA
DJRODD
DJKEVIN



ON THE MIC
RAYAREA

TOP 40 | R&B | HIP HOP | MASH-UPS

DOORS OPEN @ 10PM - 2AM
 ALL RESPONSIBLE 18+ WELCOMED
 VALID ID REQUIRED. PASSPORTS OK
 18+ TO PARTY 21+ TO DRINK
 DRESS CODE STRICTLY ENFORCED
 DRUG AND VIOLENCE FREE EVENT

HOSTED BY



MARKEEZY



CHEW CHEW



YELLOW FIVE



CHRIS
 FISH



LANY
 FUMAR



SAM
 HILL

DRESS CODE

GUYS
 COLLARED SHIRTS REQUIRED
 NO BAGGY OR SPORTS ATTIRE
 NO HATS
 NO WHITE SHOES

LADIES

DRESS TO IMPRESS
 SEXY ATTIRE ENCOURAGED

SHOOTING STARS



LAGEYDEE MIE'SHELL
 NICKI BART

GUESTLIST

\$3 ENTRY UNTIL 10:30PM
 SIGN UP @
WWW.MYSPACE.COM/ECLIPSENT

HAVE QUESTIONS?

NEED INFO?
 NEED TO GET ON GUESTLIST?
 HAVE A BIRTHDAY?
 INTERESTED IN PROMOTIONS?

E-MAIL:
ECLIPSE.ENTERTAINMENT@YAHOO.COM
 OR
ONEPINOYOUNGING@GMAIL.COM

CELEBRATING THE BIRTHDAYS OF



ATTACHMENT 15
 Page 10 of 23

ABYSS NIGHTCLUB
PRESENTS 21+



SATURDAY
JUNE 20TH

BLONDE AMBITION

A PARTY TO
HONOR ASIAN
AMERICAN WOMEN

146 SOUTH MURPHY
SUNNYVALE, CA

21+ WITH A VALID ID



BLONDE: FREE ALL NIGHT
LADIES: FREE TIL MIDNIGHT

FEATURED DJS
DJ KOMODO
DJ EXRATED
TEDDY ROCKSPH

DRESS CODE STRICTLY ENFORCED FOR BOTTLE SERVICES CONTACT

NO SPORTS ATTIRE
NO BAGGY CLOTHING
NO HATS

TIFFANY TRANG
408-507-0019

LINDA TRANG
408-687-8777

GENTLEMEN
COLLARD SHIRTS
DRESS SHOES REQUIRED

LADIES
STAY SEXY & CLASSY



FREE GENERAL GUEST LIST TIL 11PM
FOR GUEST LIST INFO & SIGN UPS VISIT



WWW.SJABYSS.COM

Page 11 of 25
ATTACHMENT 15

Abys

June **July 2009** August

July 2009 Go!

Sunday Monday Tuesday Wednesday Thursday Friday Saturday

1 2 3 4



Midnight Affair

5 6 7 8 9 10 11

Club Glow will be back on July 19th



Pink Lollipop Remix

12 13 14 15 16 17 18

Club Glow will be back on July 19th



Allure



Serenade

19 20 21 22 23 24 25

ATTACHMENT
Page 12 of 25

Sunday

Monday

Tuesday

Wednesday

Thursday

Friday

Saturday



Club Glow - Scorcher
Sundays

26

27

28

29

30

31



Thirsty Thursday



Little Black Dress
Affair

PDF

ATTACHMENT 15
Page 13 of 23

ABYSS NIGHTCLUB & THREE OCEANS PRODUCTION
PROJECT HEAVEN ENTERTAINMENT
P R O M O T I O N S

4TH OF JULY
EDITION

Saturday
July 4th

MIDNIGHT AFFAIR

DRESS CODE STRICTLY ENFORCED

NO SPORTS ATTIRE
NO BAGGY CLOTHING
NO HATS

GENTLEMEN LADIES
COLLARED SHIRTS STAY SEXY &
DRESS SHOES REQUIRED CLASSY

FOR BOTTLE SERVICES CONTACT

TIFFANY TRANG
408-507-0019

LINDA TRANG

CLICK HERE FOR GUESTLIST

DreamScape
PRODUCTIONS

ON SATURDAY JULY 11TH
GET READY SOUTHWAY FOR DREAMSCAPE'S 2ND ANNUAL PINK EVENT

pink
LOLLIPOP
remix

LADIES DRESSED IN PINK OUTFITS GET IN FREE BEFORE 11:15PM AND
RECEIVE VIP PARTY PASSES TO PARTY WITH US ALL SUMMER FOR FREE!

DJ Neil Stone
Teddy Rockman

SPINNING THE BEST IN HIP-HOP AND MASHUPS!



WE RESERVE THE RIGHT TO REFUSE ANYONE NOT IN DRESS CODE!
LADIES: SEXY PINK OUTFITS: SKIRTS, DRESSES, ETC
GENTS: COLLAR SHIRTS, NICE DENIM MANDATORY

21 AND OVER ONLY

FREE GUESTLIST UNTIL 10:30PM, DISCOUNTED UNTIL 11PM
FOR BIRTHDAY AND VIP BOTTLE SERVICE CONTACT: INFO@SFDREAMSCAPE.COM

WWW.SFDREAMSCAPE.COM

ABYSS NIGHT CLUB 146 S. MURPHY AVE. SUNNYVALE, CA

ECLIPSE
ENTERTAINMENT
PRESENTS

THURSDAY
JULY 16TH

ALLURE

ABYSS NIGHT CLUB
146 SOUTH MURPHY
SUNNYVALE, CA

PROUDLY HOSTED BY



LANY FUMAR

BLACKOUTS



TIFFANY MAY



THE OFFICIAL B DAY BASH OF
NICOLEN | BAYFUNCTION ENT

\$3 GUESTLIST

*ONLY UNTIL 10:30PM

A-B-Y-S-S - N I G H T C L U B
P R E S E N T S



S A T U R D A Y J U L Y 1 8 , 2 0 0 9

SERENADE

A B Y S S N I G H T C L U B
1 4 6 S O U T H M U R P H Y A V E
S U N N Y V A L E , C A

A B Y S S N I G H T C L U B B R I N G S Y O U
A N U P S C A L E E V E N T F O R
A L L R E S P O N S I B L E 2 1 + A D U L T S

D R E S S S H O E S R E Q U I R E D



SERENADE

MATURE 21+ WELCOMED
WITH VALID ID

TOP 40 | R&B | HIP HOP

DJ KOMODO - DJ EXRATED - TEDDY ROCKSPIN



DRESS CODE STRICTLY ENFORCED
NO SHORTS AT ALL
NO BAGGY CLOTHING
NO HATS

FOR BOTTLE SERVICES
CONTACT

GENTLEMEN
COLLARED SHIRTS
DRESS SHOES REQUIRED

TIFFANY TRANG
408-507-0019
LINDA TRANG
408-687-8779

LADIES
STAY SEXY & CLASSY

THREE OCEANS



GUESTLIST AVAILABLE UNTIL 11PM
FOR GUESTLIST INFO & SIGN UPS VISIT
W W W . S J A B Y S S . C O M

ATTACHMENT 15
Page 17 of 23

BAYFUNKTION ENTERTAINMENT HIGH & CLUB GLOW
PRESENTS

GUARANTEED SOLD OUT EVENT!

SCORCHER SUNDAYS

MASSIVE TURNOUT TO HIT THE BAY AREA!!
BACK BY POPULAR DEMAND!!
I.D. ENFORCED

THE SCHEDULE

- > JULY 19, 2009
Ladies Night Edition ★
\$10 Off till 8pm
- > AUGUST 2, 2009
GLOW IN THE DARK
EDITION
\$5 Off in Glow Attire!
- > AUGUST 16, 2009
PAJAMA BASH EDITION
(NO WHITE T-S)
- > AUGUST 30, 2009
BACK TO SCHOOL EDITION

THE LEGEND
ABYSS NIGHT CLUB
146 SOUTH MURPHY AVE, SUNNYVALE CA

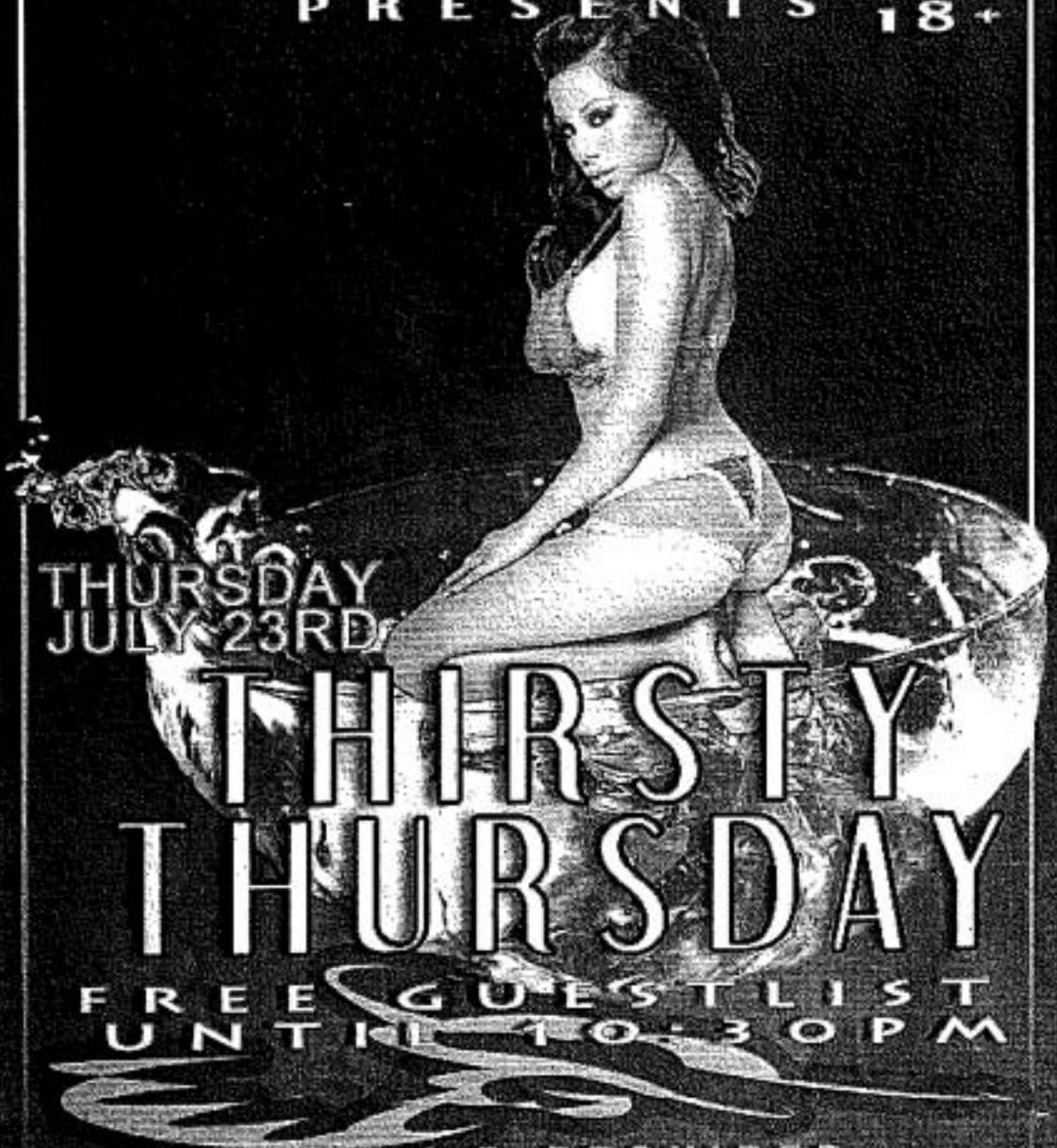
BAYFUNKTION'S FAMOUS DJ'S

DJ BAYSICK
THE SCORCHER SUNDAYS
MASSIVE TURNOUT TO HIT THE BAY AREA!!
BACK BY POPULAR DEMAND!!
GUARANTEED SOLD OUT EVENT!

DJ Kevin

MASSIVE TURNOUT TO HIT THE BAY AREA!!
BACK BY POPULAR DEMAND!!
GUARANTEED SOLD OUT EVENT!

ABYSS NIGHT CLUB
PRESENTS 18+



THURSDAY
JULY 23RD

THIRSTY THURSDAY

FREE GUESTLIST
UNTIL 10:30PM

VALID I.D. REQUIRED
PASSPORTS OK
18+ TO PARTY / 21+ TO DRINK
DRUG & VIOLENCE FREE EVENT

GUYS
COLLARED SHIRTS REQUIRED
NO POLOS, NO HATS, NO WHITE SHOES
NO BAGGY CLOTHING

LADIES
DRESS TO IMPRESS
STAY CLASSY & SEXY

BOTTLE SERVICES CONTACT
TIFFANY TRANG 408 507 0019
LINDA TRANG 408 687 8779



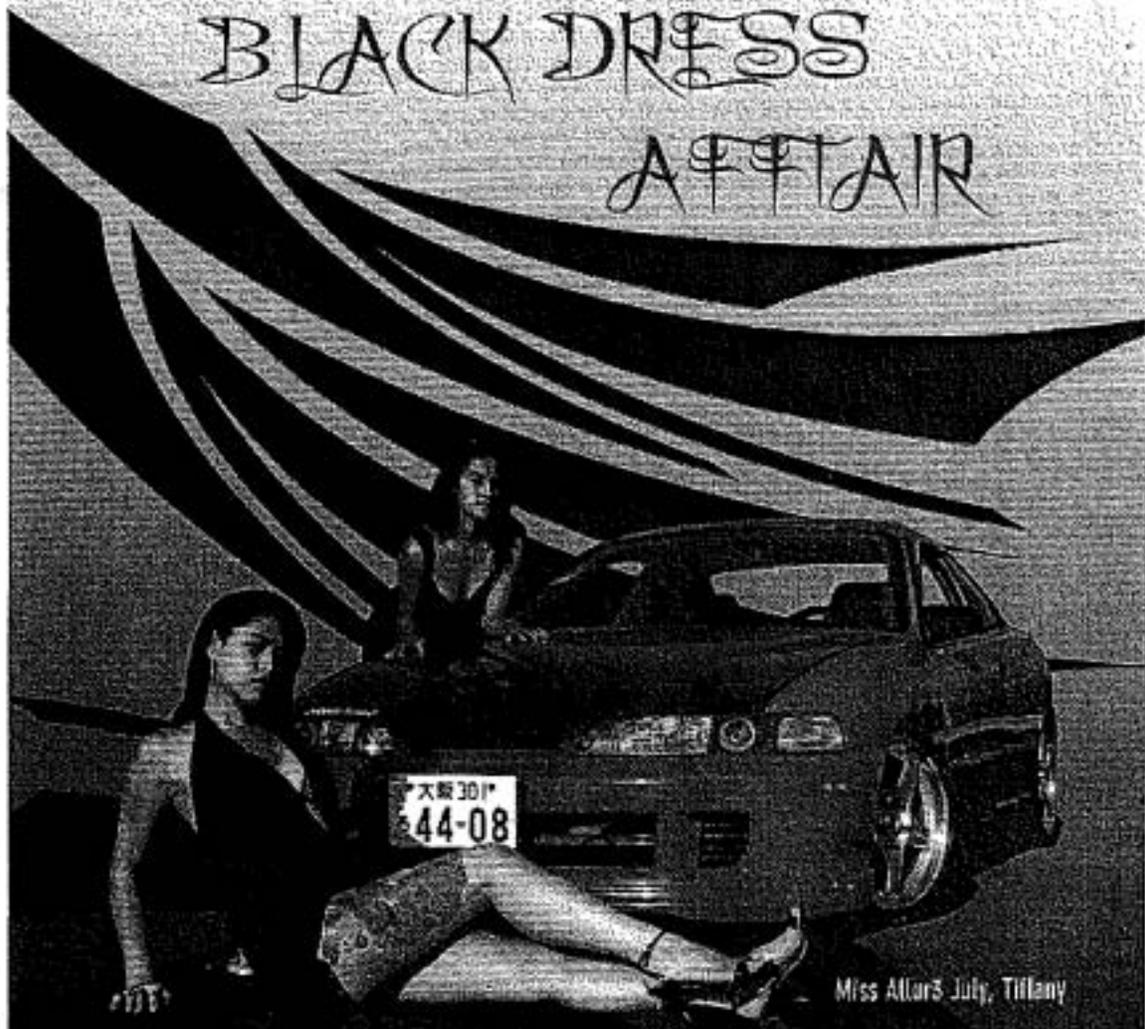
ELECTRICITY

LITTLE

Hot Spot, Miss Cali, Thea Cali, Dior Who Cali, An Thun Cali, Red Lantern Cali, Via Via Cali

BLACK DRESS

AFFAIR



Miss Allur3 July, Tiffany

MAIN ROOM: HIP-HOP, TOP 40, DANCE
dj christylz (live video set)

182 S Icon / Belmont St / www.djchristylz.com

dj jazzy c

2ND FLOOR: HOUSE, ELEKTRO
alexander twinlake
basslyn of PFI Productions

LADIES: 1/2 off before 11:30pm w/little black dress, \$20 after
GENTS: \$20

GUESTLIST: Free b4 11pm @ www.allur3.com - \$12 with your HN ticket stub

VIP BOTTLE SERVICE: vip@allure.com

DRESS CODE: fashion forward, no dirty sneakers, no baggy clothes

Wishes
Happy Birthday
To Our Very Own,
Member of Allur3



A portion of the proceeds will go to the
Little Black Dress Society

~ A CHARITY EVENT ~ 7.25.09 | CLUBBABYSS | SUNNYVALE, CA | 21+

ALLUR3
The Experience

Abuss

July **August 2009** September

August 2009 Go!

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|--------|---------|-----------|----------|--------|----------|
| | | | | | | 1 |
| 2  Club Glow - Scorcher Sundays | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16  Club Glow - Scorcher Sundays | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | | | | | |

Page 21 of 23
ATTACHMENT 15

Sunday

Monday

Tuesday

Wednesday

Thursday

Friday

Saturday



Club Glow - Scorcher
Sundays

PDF

ATTACHMENT 15
Page 22 of 23

RECEIVED OCA

City of Sunnyvale
INVOICE

ATTACHMENT **16**

JUL 13 2009

✓ AM PM

| | | |
|------------------|------------------------------------|-----------|
| Date: | Page 1 of 2 | 6/10/2009 |
| Cust Name: | Emanuel and Hai Nguyen - The Abyss | |
| Customer Number: | NGUE01 | |
| Invoice Number: | IN000031958 | |
| Amount Due: | 2,897.90 | |
| Amount Enclosed: | <input type="text"/> | |
| Page: | 1 | |

Billing information: Emanuel and Hai Nguyen - The Abyss
6927 Sessions Drive
San Jose, CA 95119

Remit To: City of Sunnyvale
Department of Finance, Accounts Receivable
Post Office Box 3707
Sunnyvale, CA 94088-3707

ACCOUNT INFORMATION

| Customer Number | Facility Address | Reference Number | Occupancy Number |
|-----------------|--------------------------------|------------------------|------------------|
| NGUE01 | Facility: 146 S. Murphy Avenue | EXTRAORDINARY RESPONSE | |

INVOICE DETAILS

| Item No. | Description/Comments | Quantity | U/M | Unit Price | Amount |
|----------|---|----------|-----|-------------|-------------------|
| DPEX | DPS- Extraordinary/Excessive Public S Cost of Public Safety Officers response for incident on March 29, 2009 at the Abyss Nightclub. | 1.00000 | EA | 2,897.90000 | 2,897.90 |
| | TOTAL: | | | | \$2,897.90 |

PLEASE SEND YOUR PAYMENT TO:

City of Sunnyvale
Department of Finance, Accounts Receivable
Post Office Box 3707
Sunnyvale, CA 94088-3707

| | |
|------------------|------------------------------------|
| Date: | 6/10/2009 |
| Cust Name: | Emanuel and Hai Nguyen - The Abyss |
| Customer Number: | NGUE01 |
| Invoice Number: | IN000031958 |
| Amount Due: | 2,897.90 |
| Amount Enclosed: | <input type="text"/> |
| Page: | 1 |

THE BALANCE IS NOW DUE AND PAYABLE TO THE CITY OF SUNNYVALE. IF PAYMENT IS NOT RECEIVED WITHIN 30 DAYS FROM THE DATE OF THIS INVOICE, INTEREST WILL ACCRUE AT 12% PER YEAR. IF THIS INVOICE IS FOR AN ADMINISTRATIVE CITATION, THE INTEREST WILL ACCRUE AT 120% A YEAR. A SEPARATE INVOICE MAY NOT BE SENT TO YOU FOR INTEREST.

DO WE HAVE YOUR CORRECT BILLING INFORMATION ? Yes No
IF YOUR BILLING INFORMATION HAS CHANGED, PLEASE COMPLETE THE REVERSE SIDE OF THIS SLIP. THANK YOU.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ACCOUNTS RECEIVABLE AT: (408) 730-7389

| CALL NO | DISPATCH DATE | PRIORITY | UNIT ID | DISPATCH TIME | CLEAR TIME | UNIT DISP CLR SEC | UNIT DISP CLR HRS | WAGES BY TYPE | TOTAL WAGES | DISPO | CALL TYPE FINAL | REPORT NO | |
|----------|---------------|----------|-----------|---------------|------------|-------------------|-------------------|------------------------|-------------|------------------------|-----------------|------------------|--|
| 90880023 | 3/29/2009 | 3 | 11R | 1:23:39 | 5:28:22 | 14782 | 4.10 | \$108.04 | \$442.72 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 22R | 1:10:10 | 4:20:40 | 11430 | 3.18 | \$108.04 | \$343.03 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 25R | 1:09:42 | 2:24:54 | 4812 | 1.25 | \$108.04 | \$135.41 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 31R | 1:09:57 | 2:28:22 | 4585 | 1.27 | \$108.04 | \$137.80 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 32R | 1:13:05 | 4:51:38 | 13114 | 3.64 | \$108.04 | \$393.57 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 42N | 1:08:59 | 2:20:18 | 4277 | 1.19 | \$108.04 | \$128.36 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 44N | 1:15:41 | 2:10:42 | 3301 | 0.82 | \$108.04 | \$88.07 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 51N | 1:08:58 | 2:24:24 | 4525 | 1.28 | \$108.04 | \$135.80 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 53N | 1:13:47 | 2:11:28 | 3481 | 0.98 | \$108.04 | \$103.87 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 61N | 1:08:58 | 2:16:45 | 4088 | 1.13 | \$108.04 | \$122.03 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 74N | 1:11:11 | 1:43:00 | 2208 | 0.61 | \$108.04 | \$68.29 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 75R | 1:09:58 | 2:43:49 | 5853 | 1.57 | \$108.04 | \$169.68 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 84N | 1:10:23 | 2:18:42 | 4099 | 1.14 | \$108.04 | \$123.02 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 81R | 1:13:00 | 1:47:30 | 2078 | 0.58 | \$108.04 | \$62.12 | A | 245 | SP0900003381 | |
| | | | | | | | | TOTAL PATROL PSC HOURS | 22.78 | TOTAL PATROL PBO WAGES | \$2,482.63 | | |
| 90880023 | 3/29/2009 | 3 | 84 | 1:15:14 | 2:05:35 | 3021 | 0.84 | \$128.09 | \$107.49 | A | 245 | SP0900003381 | |
| 90880023 | 3/29/2009 | 3 | 85 | 1:09:36 | 2:18:12 | 4175 | 1.16 | \$128.09 | \$148.58 | A | 245 | SP0900003381 | |
| | | | | | | | | TOTAL PATROL PSC HOURS | 2.00 | TOTAL PATROL PBO WAGES | \$256.07 | | |
| 90002976 | 3/29/2009 | E | EN1/PSO | 1:14:29 | 1:39:29 | 1500 | 0.42 | \$108.04 | \$45.02 | | 30 | EMS SF0900001860 | |
| 90002976 | 3/29/2009 | E | TR1/PSO 1 | 1:18:29 | 1:38:57 | 1348 | 0.37 | \$108.04 | \$40.45 | | 30 | EMS SF0900001860 | |
| 90002976 | 3/29/2009 | E | TR1/PSO 2 | 1:18:29 | 1:38:57 | 1348 | 0.37 | \$108.04 | \$40.45 | | 30 | EMS SF0900001860 | |
| | | | | | | | | TOTAL FIRE PSC HOURS | 1.15 | TOTAL FIRE PBO WAGES | \$125.93 | | |
| 90002976 | 3/29/2009 | E | EN1/LT | 1:14:29 | 1:39:29 | 1500 | 0.42 | \$128.09 | \$53.37 | | 30 | EMS SF0900001860 | |
| | | | | | | | | TOTAL FIRE PSC HOURS | 0.42 | TOTAL FIRE LT WAGES | \$53.37 | | |

DIRECT COSTS

| Personnel Costs | Rate | Hours | Specialty Pay | Total |
|-----------------|--------|-------|---------------|------------|
| PSO I | 108.04 | 23.96 | | \$2,588.48 |
| PS II | 128.09 | 2.42 | | \$309.44 |
| CAPT | 144.03 | | | |

total hours used 28.38

Notes: Emergency Response \$2,597.90



September 9, 2009

Christopher Sun, Trustee
1 Atherton Oaks Lane
Atherton, CA 94027

Abyss Entertainment Group, Inc.
Emanuel Nguyen, President
146 S. Murphy Ave
Sunnyvale, CA 94806

VIA: FEDERAL EXPRESS

RE: **Notice of Revocation Proceedings of Use Permit
146 S. Murphy Avenue**

To whom it may concern:

This is to notify you that the property at 146 South Murphy Avenue in Sunnyvale, currently doing business as "The Abyss," is operating in violation of the property's Use Permit (#5714) granted February 1986, as amended July 23, 1990

The 1990 Use Permit authorizes the operation of a nightclub which may include ballroom dancing, comedy, and live entertainment and sale of alcohol pursuant to an on-sale general liquor license. A nightclub, pursuant to Sunnyvale Municipal Code, may only provide incidental food service not to exceed 25% of the total sales. The validity of the nightclub use is in question based on the issued state liquor license which requires that the gross sales of alcoholic beverages may not exceed the total sales of food for the same period. It is the City's understanding that the business has been operating with the incorrect state liquor license, a "Type 47", which does not allow a nightclub type of use. Since the approved use has not been exercised, it by definition has expired and this will be considered as part of the revocation proceedings.

The approved Use Permit included several Conditions of Approval, one of which states that that the business comply with City Codes, Ordinances and Resolutions. Operation of business in a manner that violates state liquor laws creates a public nuisance under Sunnyvale Municipal Code

ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707
TDD (408) 730-7501

9.26.030(x), "Any other condition on or use of property which is in fact a menace to the public peace, health, or safety."

On January 11, 2006, the California Department of Alcohol and Beverage Control (ABC) issued a "Type 47" (On-sale General Public Eating Place) liquor license to Chien T. Duong and Chung Nguyen for use by The Abyss at 146 S. Murphy Ave. in Sunnyvale, California. A "Type 47" license requires that the premises be regularly used and kept open in a bona fide manner for the serving of meals. (See Bus. & Prof. Code Sections 23038 and 23396.)

On December 19, 2006, the ABC suspended The Abyss' liquor license for 20 days as a result of violations that included operating a "disorderly house" and serving contaminated beverages. On the same date, the ABC also imposed additional permanent conditions on The Abyss' liquor license, to wit:

- "1. There shall be no live entertainment of any type, including but not limited to live music, disc jockey, karaoke, topless entertain, male or female performers or fashion shows.
- "2. Licensee(s) shall not share any profits, or pay any percentage or commission to a promoter or any other person, based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimal drink orders, or the sale of drinks.
- "3. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed premises. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
- "4. The sales of alcoholic beverages for consumption off the premises is strictly prohibited.
- "5. Between the hours of 8:00 PM and 2:30 AM, the licensee(s) shall provide licensed uniformed security personnel in the premises, and parking lot adjacent to the premises, and shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of the property by nearby residents. Said personnel shall be clothed in such manner as to be readily identifiable as security.

146 S. Murphy
Notice of Revocation Proceedings

"6. Licensee(s) shall police the area under their control in an effort to prevent loitering of persons about the premises.

"7. The licensee(s) shall post and maintain a professional quality sign, one facing S. Murphy Avenue, and one facing the rear parking lot, which reads as follows: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES, VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two feet square with two inch block lettering."

Throughout 2008, the City of Sunnyvale, Department of Public Safety worked closely with The Abyss in an effort to prevent criminal activity and reduce calls for service occurring in and around the premises. In January 2009, the Abyss and Public Safety finalized a security plan pursuant to Sunnyvale Municipal Code §9.47.030. Among other things, the security plan outlines standards for security and crowd management and specifically requires The Abyss to adhere to the terms and conditions of its liquor license.

On January 12, 2009, the ABC initiated proceedings to revoke the Abyss' liquor license on a number of grounds including, among other things, sale of alcoholic beverages for consumption at times when the premises were not regularly and in a bona fide manner used and kept open for the serving of meals to guests for consumption, in violation of Sections 23038 and 23396 of the Business and Professions Code; providing live entertainment in violation of the liquor license conditions; and operation of a "disorderly house" that is injurious to the public morals, health, convenience or safety, in violation of Business and Professions Code Section 25601. At the ABC hearing, Emanuel Nguyen, the operator of The Abyss, admitted that the Abyss offers live entertainment, specifically DJ's, in violation of the liquor license conditions, because otherwise no one would come to the club.

On April 3, 2009, the ABC issued a ruling to revoke The Abyss' liquor license. This decision is currently on appeal.

On June 10, 2009, pursuant to Sunnyvale Municipal Code §9.47.040, The Abyss was billed \$2,897.90 for emergency response costs associated with an incident that occurred on March 29, 2009. To date, this bill has not been paid.

During 2009, up to the present time, the Abyss has continued to operate in a manner that violates the conditions of its liquor license including use of promoters, live entertainment, and DJ's, as evidenced by advertising on The Abyss' own website. The Abyss is not currently operating as a bona fide eating place and has probably never operated as

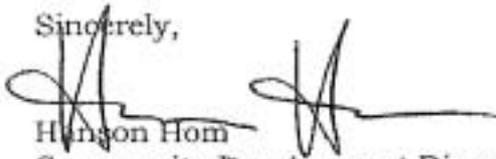
146 S. Murphy
Notice of Revocation Proceedings

a bona fide eating place as defined by the ABC. During 2009, the City has seen no significant reduction in criminal activity and calls to Public Safety related to The Abyss, despite the adoption of the security plan pursuant to Sunnyvale Municipal Code §9.47.030.

Although The Abyss is appealing the revocation of its liquor license, even if the revocation is ultimately reversed by the ABC, the terms and conditions on the liquor license will remain in full force and effect. The Abyss will still be required to operate as a bona fide eating place. The Abyss will still be prohibited from using promoters, offering live entertainment or DJ's. The Abyss will still have an obligation not to operate a disorderly house under state liquor laws. For the past three years, The Abyss has totally failed to comply with any of these conditions and restrictions despite ample notice and significant efforts by the Department of Public Safety to help The Abyss operate in a safe and lawful manner.

As a result of these violations, a public hearing before the City Council has been scheduled for October 6, 2009, to determine whether the Use Permit for operation of a nightclub at 146 S. Murphy Avenue should be revoked. You will be provided with a copy of the staff report and all supporting documentation no later than **September 21, 2009**. The City Council hearings are held 7:00 p.m. in the City Council Chambers at 456 W. Olive Avenue Sunnyvale, CA 94088. At the hearing, you will be given the opportunity to present whatever evidence you feel is relevant, call witnesses to testify on your behalf and cross-examine any witnesses offered by the City. You have a right to be represented by counsel at the hearing if you choose.

Sincerely,


Hanson Horn
Community Development Director

CC: Richard Warren, Esq., 929 Fresno Ave., Berkeley, CA 94707-2304
Gary Lubbers, City Manager, City Manager's Office
Don Johnson, Director of Public Safety, Department of Public Safety
Rebecca Moon, Assistant City Attorney, Office of the City Attorney
Mark Stivers, Deputy Chief, Department of Public Safety
Shaunn Mendrin, Senior Planner, Planning Division

Attachments:

1. 1990 Use Permit Staff Report, Conditions of Approval and Minutes
2. ABC Accusation dated December 5, 2006
3. Petition for Conditional License dated December 5, 2006
4. ABC Decision dated December 19, 2006
5. Abyss Security Plan
6. ABC Accusation dated January 18, 2009
7. ABC Decision dated April 3, 2009
8. Invoice for emergency response costs dated June 10, 2009



September 17, 2009

Christopher Sun, Trustee
1 Atherton Oaks Lane
Atherton, CA 94027

Abyss Entertainment Group, Inc.
Emanuel Nguyen, President
146 S. Murphy Ave
Sunnyvale, CA 94806

VIA: CERTIFIED MAIL

RE: **City Council Hearing Date Correction**
Notice of Revocation Proceedings of Use Permit
146 S. Murphy Avenue

To whom it may concern:

On September 10, 2009 you were notified that the City will be proceeding with Revocation proceedings for Use Permit #5714. Upon receipt of the letter, Mr. Richard Warren, counsel for Abyss Entertainment Group, contacted staff and requested the City Council hearing date be moved to October 20, 2009, due to a scheduling conflict.

As per your request, the public hearing before the City Council has been rescheduled for October 20, 2009. You will be provided with a copy of the staff report and all supporting documentation no later than **October 5, 2009.** The City Council hearings are held 7:00 p.m. in the City Council Chambers at 456 W. Olive Avenue Sunnyvale, CA 94088. At the hearing, you will be given the opportunity to present whatever evidence you feel is relevant, call witnesses to testify on your behalf and cross-examine any witnesses offered by the City. You have a right to be represented by counsel at the hearing if you choose.

Sincerely,

Hanson Horn
Community Development Director

ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707
TDD (408) 730-7501

146 S. Murphy
Notice of Revocation Proceedings (New Hearing Date)

ATTACHMENT 18
Page 2 of 2

CC: Richard Warren, Esq., 929 Fresno Ave., Berkeley, CA 94707-2304
Gary Luebbers, City Manager
Don Johnson, Director of Public Safety
Rebecca Moon, Assistant City Attorney
Mark Stivers, Deputy Chief
Trudi Ryan, Planning Officer
Shaunn Mendrin, Senior Planner