

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Scheper

Electronically FILED by Superior Court of California, County of Los Angeles on 03/01/2021 01:28 PM Sherri R. Carter, Executive Officer/Clerk of Court, by M. Barel, Deputy Clerk

1 AMELIA ANN ALBANO, CITY ATTORNEY  
 State Bar No. 103640  
 2 MICHAEL M. LEE, SR. ASST. CITY ATTY.  
 State Bar No. 246363  
 3 JILL VANDER BORGHT, SR. ASST. CITY ATTY.  
 State Bar No. 240004  
 4 275 E. Olive Avenue  
 Burbank, CA 91502  
 5 Tel.: (818) 238-5707  
 Fax: (818) 238-5724  
 6 Email: MMLee@burbankca.gov  
 Attorneys for Plaintiffs CITY OF BURBANK  
 7 and THE PEOPLE OF THE STATE OF  
 CALIFORNIA  
 8

**FILING FEE EXEMPT  
PURSUANT TO GOV. CODE § 6103**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT  
 11

12 CITY OF BURBANK, a municipal )  
 corporation; and THE PEOPLE OF THE )  
 13 STATE OF CALIFORNIA, by and through )  
 AMELIA ANN ALBANO, City Attorney for )  
 14 the City of Burbank, )

Case No.: **21STCV07923**

**COMPLAINT FOR:**

**(1) VIOLATION OF BURBANK  
MUNICIPAL CODE § 4-1-101-1(8.04.932);**

15 Plaintiffs,

**(2) VIOLATION OF BURBANK  
MUNICIPAL CODE § 10-1-501; AND**

16 v.

**(3) ABATEMENT OF A PUBLIC  
NUISANCE (CODE OF CIVIL  
PROCEDURE § 731)**

17 BARFLY, INC., a California corporation; )  
 18 BARET LEPEJIAN, an individual; LUCAS )  
 LEPEJIAN, an individual; TALYA )  
 19 LEPEJIAN, an individual; ISABELLE )  
 20 LEPEJIAN, an individual; and DOES 1 )  
 through 100, inclusive, )

21 Defendants.  
22

1 Plaintiffs CITY OF BURBANK (the “City”) and THE PEOPLE OF THE STATE OF  
2 CALIFORNIA, by and through Amelia Ann Albano, City Attorney for the City of Burbank (the  
3 “People” and collectively, “Plaintiffs”) hereby allege in their Complaint (the “Complaint”),  
4 against Defendants BARFLY, INC., a California corporation; BARET LEPEJIAN, an  
5 individual; LUCAS LEPEJIAN, an individual; TALYA LEPEJIAN, an individual; ISABELLE  
6 LEPEJIAN, an individual; and DOES 1 THROUGH 100, inclusive (collectively, “Defendants”),  
7 as follows:

8 **NATURE OF THE ACTION**

9 1. COVID-19 has changed all of our lives. The County of Los Angeles alone has  
10 reported approximately 1.2 million known cases and over 21,000 deaths since the pandemic  
11 began, and California is the first state to report the grim milestone of crossing 50,000 deaths.  
12 Countless small businesses, including restaurants, have suffered enormous hardships in an effort  
13 to comply with State, county, and local laws and orders designed to help curb the spread of  
14 COVID-19. These orders required great sacrifice from restaurants in closing indoor and/or  
15 outdoor dining for extended periods of time. The vast majority of restaurants did their part and  
16 acted as good citizens by complying with these orders, despite the tremendous difficulty and  
17 hardship they have suffered as a result.

18 2. Not everyone has borne the sacrifice willingly. Defendants operate a  
19 restaurant/drinking establishment, Tin Horn Flats Saloon/Bar and Grill (“Tin Horn Flats”),  
20 located in the Magnolia Park district in the City of Burbank, a district known for its large variety  
21 of small businesses, including restaurants, bars, barber shops and salons, and mom-and-pop  
22 stores and boutiques. On December 10, 2020, Defendants declared Tin Horn Flats a “peaceful  
23 protest” site and opened for outdoor *and* indoor dining in defiance of the State and County health  
24 orders prohibiting any onsite dining. They did so as a means of soliciting patronage to the  
25 establishment and in open and blatant defiance of and disrespect for both their fellow neighbors  
26 and the applicable orders, laws, and regulations. They loudly and proudly proclaimed to the  
27 news media and on social media that they would disobey the rules they disagreed with, and stay  
28

1 open for business, regardless of the applicable health orders or the frightening, exponential surge  
2 in COVID-19 cases, hospitalizations, and deaths at the time.

3 3. True to their word, Defendants have remained open even after the Los Angeles  
4 County Department of Public Health (“DPH”) first suspended and then revoked their public  
5 health permit due to their continued operations. They now remain open even after the City  
6 revoked their conditional use permit to operate and after being given ample notice and  
7 opportunities to comply with the law. Defendants simply believed—and continue to believe—  
8 that they can cherry-pick which rules to follow and that they are above the law.

9 4. But no one—not even Defendants—is above the law. By continuing to remain  
10 open without required health and land use permits, Defendants have violated multiple provisions  
11 of the Burbank Municipal Code, and their conduct constitutes a public nuisance. Defendants’  
12 continued non-compliance with the law has forced the City to file this action to seek help from  
13 the Court to stop Defendants and their bad faith conduct once and for all. This is no longer about  
14 COVID-19; this is about being a good neighbor, and this is about law and order. Personal  
15 disagreement with the law does not allow Defendants the right to repeatedly disobey it without  
16 consequence. Court intervention is necessary to prohibit Defendants from further violating the  
17 law.

18 **THE PARTIES**

19 5. Plaintiff City of Burbank is a municipal corporation organized and existing as a  
20 charter city under the Constitution and laws of the State of California and is located in the  
21 County of Los Angeles.

22 6. Plaintiff People of the State of California are hereby represented by and through  
23 Amelia Ann Albano, City Attorney for the City of Burbank, who acts on their behalf pursuant to  
24 Code of Civil Procedure section 731.

25 7. Barfly, Inc. (“Barfly”) operates Tin Horn Flats Saloon/Bar & Grill, located at  
26 2623 West Magnolia Boulevard, Burbank, California 91505, APN 2478-023-001.

27  
28

1 8. Baret Lepejian (“Baret”) is the Chief Executive Officer, Chief Financial Officer,  
2 Secretary, Director, President, and agent for service of process of Barfly. On information and  
3 belief, Baret resides within the County of Los Angeles.

4 9. Lucas Lepejian (“Lucas”) is the son of Baret and has held himself out to be a co-  
5 owner, manager, operator, and/or employee of Tin Horn Flats. On information and belief, Lucas  
6 resides within the County of Los Angeles.

7 10. Talya Lepejian (“Talya”) is the daughter of Baret and has held herself out to be a  
8 manager, operator, and/or employee of Tin Horn Flats. On information and belief, Talya resides  
9 within the County of Los Angeles.

10 11. Isabelle Lepejian (“Isabelle”) is listed as the parcel owner for the parcel located at  
11 2623 West Magnolia Boulevard, Burbank, CA 91505, APN 2478-023-001, on which Tin Horn  
12 Flats is located. On information and belief, Isabelle resides within the County of Los Angeles.

13 12. The Defendants named as Does 1 through 100, inclusive, are sued and designated  
14 by fictitious names pursuant to Code of Civil Procedure section 474 because their true names and  
15 capacities are unknown at this time. Plaintiffs will amend the Complaint to show the true names  
16 and capacities of such defendants fictitiously named when ascertained. Plaintiffs are informed  
17 and believe, and on that basis allege, that each of the Doe Defendants is responsible in some  
18 manner for the violations alleged herein.

19 13. Plaintiffs are informed and believe, and on that basis allege, that at all times  
20 mentioned herein, each of the Defendants was and is the agent, officer, employee, member,  
21 representative, and/or alter ego of one or more of the remaining Defendants, and, in doing the  
22 things, hereinafter alleged, was acting within the scope of his, her, or its authority as such agent,  
23 officer, employee, member, representative, and/or alter ego with the permission and consent of  
24 the remaining Defendants.

25 **JURISDICTION AND VENUE**

26 14. This case is an unlimited civil case because it is not one of the proceedings  
27 described by statute as a limited civil case.

28

1 15. Pursuant to Code of Civil Procedure section 410.10, this action lies within the  
2 general jurisdiction of this Court, because the causes of action arise under California law and  
3 Defendants reside and/or do business within California.

4 16. Pursuant to Los Angeles Superior Court Local Rule 2.3 and Code of Civil  
5 Procedure sections 392, 393, and 395, venue is proper in the Los Angeles Superior Court,  
6 Central District, as Plaintiffs seek to enjoin unlawful conduct on property located within the  
7 County of Los Angeles.

8 **FACTUAL ALLEGATIONS**

9 **A. Defendants and Their Conditional Use Permit from the City.**

10 17. Tin Horn Flats is a restaurant/drinking establishment located at 2623 West  
11 Magnolia Boulevard, Burbank, California 91505 within the County of Los Angeles (the  
12 “County”). This location is approximately 1,628 square feet and includes a back patio area with  
13 seating but no onsite parking.

14 18. Tin Horn Flats is located within the “MPC-3 Magnolia Park General Business”  
15 zone in the City. Restaurant/drinking establishments within this zone are required to hold a  
16 Conditional Use Permit (“CUP”) issued by the City in order to operate within the City.

17 19. Tin Horn Flats has been operating under a CUP at its current location since 1987.  
18 The most recent CUP for Tin Horn Flats (CUP No. 11-0000126) was issued to Defendants on  
19 June 27, 2011. This CUP superseded and replaced previously approved conditional use permits  
20 for Tin Horn Flats. The June 27, 2011 CUP contained 35 conditions of approval in order for  
21 Defendants to operate their business in the City. As with any CUP, the applicant is required to  
22 comply with all conditions of approval.

23 20. Among the 35 conditions of approval, Defendants were required to comply with  
24 the following:

- 25 a. Condition of Approval No. 31: “The applicant shall comply with all  
26 federal, state, and local laws. Violation or conviction of any of those laws  
27 in connection with the use will be cause for revocation of this permit.”  
28

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  
26  
27  
28

b. Condition of Approval No. 32: “Project No. 11-0000126 may be modified or revoked by the City should it be determined that the use or conditions under which they were permitted are detrimental to the public health, welfare, or materially injurious to property or improvements in the vicinity or if the use is maintained so as to constitute a public nuisance.”

**B. The COVID-19 Pandemic and Public Health Orders.**

21. Since early 2020, this country has faced an extraordinary and unprecedented public health crisis with the spread of COVID-19. The City is no exception. Beginning in March 2020, federal and State authorities issued a series of emergency orders to try to slow the spread of COVID-19 and avoid overwhelming the healthcare system.

22. On or about March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency in California as a result of COVID-19.

23. On or about March 4, 2020, the Los Angeles County Board of Supervisors and the Los Angeles County Department of Public Health declared a local and public health emergency in response to the COVID-19 pandemic.

24. On or about March 12, 2020, the City declared a state of local emergency within the City of Burbank in response to the COVID-19 pandemic.

25. Since March 2020, State and local officials have issued emergency health orders, which have been revised several times, based on evolving public health conditions.

26. Since July 1, 2020, indoor dining at restaurants within the County has been prohibited under the County Health Officer Orders and State orders.

27. On December 3, 2020, the California Department of Public Health issued a “Regional Stay at Home Order,” which would take effect once intensive care unit beds dipped below a certain level in specified regions of the state. This order prohibited outdoor and indoor dining. The County is part of the Southern California region, and the State’s Regional Stay at Home Order was triggered in the County on December 6, 2020 at 11:59 p.m.

1           28.     On December 9 and 30, 2020, the County Health Officer issued revised orders  
2 that prohibited both indoor and outdoor dining at restaurants. The December 9, 2020 order was  
3 in compliance with the State’s “Regional Stay at Home Order.”<sup>1</sup>

4           29.     On January 25, 2021, the State lifted the “Regional Stay at Home Order” for the  
5 Southern California region including the County. The prohibition on outdoor dining remained in  
6 effect within the County until January 29, 2021, when the County Health Officer issued a revised  
7 order to permit outdoor dining with certain restrictions.

8           30.     For purposes of the relevant time frames for this action, both indoor and outdoor  
9 dining for restaurants within the County were prohibited by the County’s and/or the State’s  
10 health orders from December 9, 2020 to January 24, 2021. Restaurants during this period could  
11 only offer food to customers via delivery service, pick-up, or drive-thru.

12 **C.     The Suspension and Revocation of Defendants’ Public Health Permit.**

13           31.     Between December 7 and 10, 2020, the County received approximately 52  
14 complaints about Tin Horn Flats engaging in outdoor dining activities on its patio in violation of  
15 the applicable health officer orders.

16           32.     On December 10, 2020, DPH investigated the complaints at Tin Horn Flats and  
17 observed both food and alcoholic beverages being prepared and served onsite to customers  
18 seated in the outdoor dining area. In turn, DPH issued a citation, noting a violation with a  
19 corrective action that Defendants discontinue all onsite dining activities and limit services only  
20 to prepared foods via delivery service, pickup, or takeout.

21           33.     From December 10 to 12, 2020, the County received 72 additional complaints,  
22 and DPH followed up with a December 12, 2020 investigation. DPH found Defendants  
23 continuing to provide outdoor dining service and observed the service and consumption of food,  
24 beverages, and alcoholic beverages onsite in violation of the applicable health officer order. As  
25

26  
27 \_\_\_\_\_  
28 <sup>1</sup> Although the County Health Officer had previously issued an order on November 25, 2020 to  
prohibit outdoor and indoor dining, the December 9 and 30, 2020 orders were issued to comply  
with the State’s order.

1 a result, DPH suspended Defendants' public health permit and directed them to discontinue all  
2 operations at once due to repeated violations of the applicable health officer order.

3 34. Thereafter, on December 13, 2020, December 15, 2020, December 16, 2020,  
4 December 17, 2020, December 22, 2020, December 23, 2020, December 29, 2020, December  
5 30, 2020, December 31, 2020, January 5, 2021, January 6, 2021, January 7, 2021, January 8,  
6 2021, January 10, 2021, and January 12, 2021, DPH inspectors conducted follow-up inspections  
7 at Tin Horn Flats and observed continued operations on a suspended public health permit and/or  
8 onsite dining. Additional citations were issued to Defendants based on the observed violations.

9 35. On January 12, 2021, the County sent a cease-and-desist letter to Defendants,  
10 declaring Tin Horn Flats to be in violation of the health officer orders by continuing to offer  
11 onsite outdoor dining and by continuing to operate on a suspended public health permit. Among  
12 other things, in the letter, the County demanded that Defendants immediately cease operation of  
13 Tin Horn Flats.

14 36. Nonetheless, Defendants continued their operations on a suspended health permit.  
15 On January 13, 2021, January 14, 2021, January 15, 2021, January 16, 2021, January 17, 2021,  
16 January 19, 2021, and January 20, 2021, DPH inspectors conducted follow-up inspections of Tin  
17 Horn Flats and observed ongoing violations of the applicable health officer orders and operations  
18 on a suspended public health permit.

19 37. On January 20, 2021, DPH held a revocation hearing for Defendants' public  
20 health permit.

21 38. On January 21, 2021, January 22, 2021, January 23, 2021, and January 24, 2021,  
22 DPH inspectors conducted follow-up inspections of Tin Horn Flats and observed ongoing  
23 violations of the applicable health officer orders and operations on a suspended public health  
24 permit.

25 39. On January 26, 2021 and January 27, 2021, DPH inspectors conducted follow-up  
26 inspections of Tin Horn Flats and observed operations on a suspended health permit.

27 40. On January 27, 2021, DPH issued a Notice of Decision letter to Defendants to  
28 revoke Tin Horn Flats' public health permit. DPH found that Tin Horn Flats did not provide



1 evidence that it was in compliance with the California Health and Safety Code, the Los Angeles  
2 County Code, and the current health officer order. The Notice of Decision letter required  
3 Defendants to keep Tin Horn Flats closed until they were issued a new public health permit. On  
4 the same day, the County filed a civil action in the Superior Court for the County of Los Angeles  
5 against Defendants Barfly and Baret for violating the health officer orders and operating without  
6 a public health permit. (See *County of Los Angeles, et al. v. Croag, Inc., et al.*, Case No.  
7 21STCV03275.)

8 41. On January 28, 2021, January 29, 2021, January 30, 2021, January 31, 2021,  
9 February 2, 2021, February 4, 2021, February 5, 2021, February 9, 2021, February 11, 2021,  
10 February 16, 2021, and February 18, 2021, DPH inspectors conducted follow-up inspections of  
11 Tin Horn Flats and observed ongoing operations without a public health permit.

12 42. On information and belief, Defendants operated outdoor dining at Tin Horn Flats  
13 in violation of the health officer orders on each day it has been open from at least December 10,  
14 2020, to January 24, 2021, and Defendants have been operating with a suspended and/or revoked  
15 public health permit on each day Tin Horn Flats has been open since December 12, 2020 to the  
16 present.

17 43. Social media posts by Defendants, Tin Horn Flats, and their customers on  
18 platforms such as Facebook, Twitter, and Instagram contain photographs and videos of onsite  
19 outdoor (and indoor) dining at Tin Horn Flats when not permitted under the public health orders  
20 and continued operations during these time periods. In fact, Defendants have openly boasted in  
21 the media and on social media that they will not comply with applicable health orders and that  
22 they will continue operations without a public health permit. Defendants have even posted with  
23 enthusiastic approval a video documenting harassment against DPH inspectors who entered their  
24 facility to conduct inspections. This documented evidence further cements their blatant  
25 disregard for the law.

26 44. In addition, Defendants have participated in and/or encouraged patrons to engage  
27 in aggressive, threatening, and intimidating behavior toward DPH inspectors who have attempted  
28 to inspect Tin Horn Flats. Such behavior has included yelling profanities, taunting inspectors,

1 and asking why inspectors have not been killed yet. With this charged and heated atmosphere  
2 ever since December 10, 2020, patrons of Tin Horn Flats have verbally intimidated inspectors  
3 and prevented inspectors from driving away from Tin Horn Flats. Further, a patron physically  
4 assaulted another patron, who was admitted to the hospital for his injuries, right outside Tin Horn  
5 Flats, as tempers were flaring. Neighbors have complained about the increased activity and lines  
6 of people congregating and smoking outside Tin Horn Flats, which on information and belief has  
7 led to dirtier and unsanitary conditions impacting the surrounding neighborhood.

8 **D. The City’s Revocation of Defendants’ Conditional Use Permit.**

9 45. In December 2020 and January 2021, the City received numerous complaints and  
10 emails about Defendants’ continued operations and offering of outdoor dining on its patio in  
11 violation of the applicable health officer orders.

12 46. Pursuant to Burbank Municipal Code section 10-1-1952, the City Council of the  
13 City of Burbank (the “City Council”) may, after 20 days’ notice by mail to the recorded owner of  
14 a property and a public hearing, revoke a CUP if the CUP “has been exercised contrary to the  
15 terms or conditions of approval, or in violation of any statute, ordinance, law or regulation not  
16 excused by the [CUP]” and/or “the conditional use is being or has been so exercised as to be  
17 detrimental to the public health or safety or so as to constitute a public nuisance.”

18 47. On January 8, 2021, the City issued a Notice of Violation letter to Defendants that  
19 the City intended to hold a public hearing on February 22, 2021, to consider revocation,  
20 suspension, or modification of CUP No. 11-0000126. The letter referenced Defendants’  
21 previously approved CUP and the Conditions of Approval within, which require Defendants to  
22 operate Tin Horn Flats in compliance with all federal, State, and local laws and Conditions of  
23 Approval within the CUP. The Notice of Violation letter further stated that Defendants were  
24 operating Tin Horn Flats in violation of the State and County health officer orders and without a  
25 health permit, and thus violating the terms of the CUP including Conditions of Approval Nos. 31  
26 and 32. The Notice of Violation letter required Defendants to provide clear evidence that they  
27 had cured all violations of the CUP by January 19, 2021, or the February 22, 2021 hearing would  
28 move forward.

1           48. Defendants did not submit any evidence in response to the Notice of Violation  
2 letter by the January 19, 2021 deadline or at any time before the February 22, 2021 hearing.

3           49. On February 22, 2021, the five-member City Council held a public hearing to  
4 consider whether to revoke, suspend, or modify Defendants' CUP No. 11-0000126 for Tin Horn  
5 Flats. After hearing presentations from City staff and representatives for Defendants, as well as  
6 extensive public comment, the five-member City Council unanimously voted to adopt a  
7 resolution to revoke Defendants' CUP based on their violation of the CUP's Conditions of  
8 Approval Nos. 31 and 32, as well as a separate ground of creating a public nuisance under  
9 Burbank Municipal Code section 10-1-1952(3). The revocation of CUP No. 11-0000126 was  
10 effective immediately and was memorialized in Resolution No. 21-29,211, signed by Mayor Bob  
11 Frutos on February 23, 2021.

12           50. As a result of the City Council's decision on February 22, 2021, Defendants no  
13 longer have a CUP, which is required to legally operate Tin Horn Flats within the City of  
14 Burbank.

15 **E. Defendants' Continued Operations Without a Public Health Permit and CUP.**

16           51. Notwithstanding the revocation of both their public health permit from the County  
17 of Los Angeles and their CUP from the City of Burbank, Defendants have continued to operate  
18 Tin Horn Flats, which remains open for business.

19           52. Within minutes of the City Council's decision to revoke its CUP on February 22,  
20 2021, Defendants posted on Tin Horn Flats' social media accounts: "WE WILL NOT  
21 COMPLY. OPEN 12 NOON TOMORROW."

22           53. On information and belief, Defendants opened Tin Horn Flats for business at  
23 noon on February 23, 2021 and has flagrantly continued to operate within its normal business  
24 hours every day since then, even though both their public health permit from the County and  
25 their CUP from the City have been revoked.

26           54. On February 24, 2021, the City sent a cease-and-desist letter to Defendants and  
27 their attorney, demanding that Defendants cease and desist operating any restaurant at 2623 West  
28 Magnolia Boulevard until such time as the City has issued either an Administrative Use Permit

1 (“AUP”) to operate a restaurant or a CUP to operate a restaurant that serves alcohol, and the  
2 County has issued a public health permit.

3 55. To date, Defendants have provided no response to that letter. Defendants also  
4 have not applied for an AUP or another CUP to operate a restaurant at 2623 West Magnolia  
5 Boulevard. Instead, Defendants have defiantly remained open for business without a public  
6 health permit or any land use permit authorized by the City.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of Burbank Municipal Code Section 4-1-101-1(8.04.932))**

9 ***By the City Against All Defendants and Does 1-100***

10 56. Plaintiffs re-allege and incorporate by reference each and every one of the  
11 allegations contained in Paragraph 1 through 55 of this Complaint.

12 57. Pursuant to Burbank Municipal Code section 3-5-102, food establishments are  
13 governed by the provisions of the Los Angeles County Code, the Burbank Municipal Code, and  
14 State law. As such, Tin Horn Flats is a “food facility” as defined by Health and Safety Code  
15 section 113789, and is a “restaurant” as defined by Los Angeles County Code section 11.02.320  
16 and Burbank Municipal Code section 4-1-101-1(11.02.320).<sup>2</sup>

17 58. Health and Safety Code section 114381 provides that a “food facility shall not be  
18 open for business without a valid permit.”

19 59. Burbank Municipal Code section 4-1-101-1(8.04.560) provides that any person  
20 conducting, at a fixed location, any business within the geographic area under the jurisdiction of  
21 the county health officer shall procure a county public health license or permit from the county  
22 health officer.

23  
24 \_\_\_\_\_  
25 <sup>2</sup> Pursuant to Burbank Municipal Code section 4-1-101, the Burbank Municipal Code has  
26 adopted and incorporates by reference Title 11 and Chapter 8.04 of Title 8 of the Los Angeles  
27 County Code. These provisions of the Los Angeles County Code are made a part of the Burbank  
28 Municipal Code with the same force and effect as though set out in full within the Burbank  
Municipal Code. Pursuant to Burbank Municipal Code section 4-1-104, to provide consistency  
with the adopted Los Angeles County Code provisions, the actual section of the Los Angeles  
County Code shall be retained within and preceded by the prefix 4-1-101-1 (e.g., 4-1-101-  
1(11.02.320)).

1           60.     Burbank Municipal Code section 4-1-101-1(8.04.932) provides: “No person shall  
2 engage in, conduct, manage or carry on any business or other activity for which a license or  
3 permit is required by this chapter [concerning public health licenses] . . . [i]f such license or  
4 permit has expired, been suspended, revoked, or denied.”

5           61.     On December 12, 2020, DPH suspended Defendants’ public health permit for Tin  
6 Horn Flats. From that date to January 27, 2021, Defendants operated Tin Horn Flats on a  
7 suspended public health permit, in violation of Burbank Municipal Code section 4-1-101-  
8 1(8.04.932).

9           62.     On January 27, 2021, DPH revoked Defendants’ public health permit for Tin  
10 Horn Flats. From that date to the present, Defendants have been operating Tin Horn Flats  
11 without a public health permit, in violation of Burbank Municipal code section 4-1-101-  
12 1(8.04.932).

13           63.     Burbank Municipal Code section 4-1-101-1(8.04.936) provides that any person  
14 operating without a public health permit pursuant to section 4-1-101-1(8.04.932) may be  
15 enjoined by any court of competent jurisdiction.

16           64.     Each Defendant falls within the definition of “person” as set forth in Burbank  
17 Municipal Code section 1-1-301.

18           65.     As set forth above, Defendants have continued to operate their restaurant after  
19 their public health permit was suspended and/or revoked.

20           66.     The City cannot be fully compensated in damages and is without a plain, speedy,  
21 or adequate remedy at law because the exact amount of damage to the general public’s health,  
22 safety, and welfare is not ascertainable.

23           67.     Unless Defendants are restrained and enjoined by order of this court and/or the  
24 court provides other equitable relief permissible by law, Defendants will continue to illegally  
25 operate in violation of Burbank Municipal Code section 4-1-101-1(8.04.932).

26  
27  
28

1 **SECOND CAUSE OF ACTION**

2 **(Violation of Burbank Municipal Code Section 10-1-501)**

3 ***By the City Against All Defendants and Does 1-100***

4 68. Plaintiffs re-allege and incorporate by reference each and every one of the  
5 allegations contained in Paragraph 1 through 67 of this Complaint.

6 69. Title 10 of the Burbank Municipal Code contains the City’s Zoning Regulations.  
7 Pursuant to Burbank Municipal Code section 10-1-201, the Zoning Ordinance of the City  
8 contains a set of regulations that, among other things, controls the uses of land and the uses and  
9 locations of structures.

10 70. Burbank Municipal Code section 10-1-202 provides: “The purpose of the Zoning  
11 Ordinance is to promote the public health, safety, peace, comfort, convenience, prosperity and  
12 welfare of the City and its inhabitants . . . .”

13 71. Pursuant to Burbank Municipal Code section 10-1-301 *et seq.*, the City is divided  
14 into a series of zones.

15 72. Burbank Municipal Code section 10-1-502 contains a table of all the available  
16 land uses for each zone and whether such land use is permitted without a permit or whether a  
17 CUP or AUP is required.

18 73. Burbank Municipal Code section 10-1-501 provides: “Uses in all zones are only  
19 allowed as described in the use table comprising Section 10-1-502 . . . . Unless otherwise  
20 provided, uses not authorized shall not be carried on where not authorized, except as lawful  
21 nonconforming uses.”

22 74. Burbank Municipal Code section 10-1-504 further provides: “All structures and  
23 land shall be used and occupied in conformity with this chapter.”

24 75. As set forth above, Tin Horn Flats is within the MPC-3 Magnolia Park General  
25 Business zone. For the “Restaurant / Drinking Establishment” use within the MPC-3 zone, a  
26 CUP is required. For the land use of “Restaurant with incidental alcohol” within the MPC-3  
27 zone, a CUP is required. For the land use of “Restaurant, Full Service” (without alcohol) within  
28 the MPC-3 zone, an AUP is required.

1           76. Defendants' CUP was revoked effective immediately upon the City Council  
2 adopting Resolution No. 21-29,211 on or about February 22, 2021. As a result, the use of  
3 "Restaurant / Drinking Establishment" at Tin Horn Flats was no longer authorized. Each and  
4 every Defendant's continued operation of Tin Horn Flats without a CUP since February 22, 2021  
5 violates Burbank Municipal Code section 10-1-501.

6           77. Defendants have not applied for an AUP or a new CUP and have not received any  
7 such permit since CUP No. 11-0000126 was revoked. Thus, Defendants are operating Tin Horn  
8 Flats without any use permit from the City, in violation of Burbank Municipal Code section 10-  
9 1-501.

10           78. Burbank Municipal Code section 10-1-408 provides: "The City Attorney, upon  
11 request of the Building Director, is authorized to institute necessary legal proceedings to enforce  
12 the provisions of the Zoning Ordinance."

13           79. The City cannot be fully compensated in damages and is without a plain, speedy,  
14 or adequate remedy at law because the exact amount of damage to the general public's health,  
15 safety, and welfare is not ascertainable.

16           80. Unless Defendants are restrained and enjoined by order of this court and/or the  
17 court provides other equitable relief permissible by law, Defendants will continue to illegally  
18 operate in violation of Burbank Municipal Code section 10-1-501.

19                                           **THIRD CAUSE OF ACTION**

20                                           **(Code of Civil Procedure § 731 – Abatement of Public Nuisance)**

21                                           ***By Plaintiffs Against All Defendants and Does 1-100***

22           81. Plaintiffs re-allege and incorporate by reference each and every one of the  
23 allegations contained in Paragraph 1 through 80 of this Complaint.

24           82. Defendants operated Tin Horn Flats with a suspended public health permit from  
25 December 12, 2020 to January 27, 2021, and have operated Tin Horn Flats without a public  
26 health permit from January 27, 2021 to the present.

27           83. Defendants have operated Tin Horn Flats without a CUP from February 23, 2021  
28 to the present.

1           84.     Moreover, Defendants’ continued operations without a public health permit and  
2 CUP, especially in the midst of the COVID-19 pandemic, demonstrates Defendants’ flagrant  
3 flouting of the code, regulations, rules, and standards required for health and safety practices in  
4 businesses such as restaurants. Operating without a public health permit and CUP leads to  
5 increased dangers and risks, such as lack of regulatory oversight to monitor whether standard  
6 safety practices are being adhered to. Failure to abide by these standards can lead to increases in  
7 potential illnesses and unsanitary practices, and thus is injurious to public health and safety in the  
8 City of Burbank and surrounding communities. Allowing this to go unchecked could embolden  
9 other restaurants and facilities to flout the same permit requirements, which would further  
10 undermine public health and safety. This constitutes a public nuisance that should be abated  
11 immediately.

12           85.     Burbank Municipal Code section 1-1-108 provides: “[A]ny condition caused or  
13 permitted to exist in violation of any of the provisions of this code [the Burbank Municipal  
14 Code] shall be deemed a public nuisance and may be, by this City, summarily abated as such,  
15 and each day that such condition continues shall be regarded as a new and separate offense.”

16           86.     Each and every Defendant’s continued operation of Tin Horn Flats without a  
17 public health permit and without a CUP violates Burbank Municipal Code sections 4-1-101-  
18 1(8.04.932) and 10-1-501 and is a public nuisance per se.

19           87.     Burbank Municipal Code section 10-1-409 provides: “Any property, building or  
20 structure used, erected, constructed, moved or altered in violation of the Zoning Ordinance is  
21 declared to be a public nuisance.”

22           88.     Each and every Defendant’s continued operation of Tin Horn Flats without a CUP  
23 violates the Zoning Ordinance and is a public nuisance per se.

24           89.     Pursuant to Code of Civil Procedure section 731, a civil action may be brought in  
25 the name of the people of the State of California to abate a public nuisance, as defined by section  
26 3480 of the Civil Code, by the city attorney of any city in which the nuisance exists.

27  
28





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  
26  
27  
28

7. For any other relief that the Court sees as just and proper.

DATED: March 1, 2021

Respectfully submitted,

AMELIA ANN ALBANO on behalf of the People  
of the State of California and City Attorney's Office  
of the City of Burbank

By: 

Michael M. Lee  
Senior Assistant City Attorney  
Attorneys for Plaintiffs CITY OF  
BURBANK and THE PEOPLE OF THE  
STATE OF CALIFORNIA