

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of

Appeal No. **16-167**

TIAN YI ZHAO DBA "PARADISE HEALTH CENTER,")

Appellant(s))

vs.)

DEPARTMENT OF PUBLIC HEALTH,)

Respondent

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on October 20, 2016, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is a 60-day SUSPENSION imposed on October 19, 2016, of a Massage Establishment Permit at 242 Balboa Street.

CASE NO. MSG-16-68

FOR HEARING ON January 25, 2017

Address of Appellant(s):

Address of Other Parties:

Tian Yi Zhao dba "Paradise Health Center," Appellant
c/o Paul Horcher & Christopher Hall, Attorneys for Appellant
234 Van Ness Avenue
San Francisco, CA 94102

N/A



CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS

Date Filed:

BOARD OF APPEALS

OCT 20 2016

APPEAL # 16-167

PRELIMINARY STATEMENT OF APPEAL

I / We, **Tian Yi Zhao dba "Paradise Health Center,"** hereby appeal the following departmental action:

SUSPENSION of Massage Establishment Permit, Case No. MSG-16-68 by the **Department of Public Health** which was issued or became effective on: **October 19, 2016**, for the property located at: **242 Balboa Street**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: **January 05, 2017, (no later than three Thursdays prior to the hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible. *ph*

Respondent's and Other Parties' Briefs are due on or before: **January 19, 2017, (no later than one Thursday prior to hearing date)**, up to 12 pages in length, doubled-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible.

Only photographs and drawings may be submitted by the parties at hearing.

Hearing Date: **Wednesday, January 25, 2017, 5:00 p.m., City Hall, Room 416, One Dr. Carlton B. Goodlett Place.**

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should submit eleven (11) copies of all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection at the Board's office. You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

If you have any questions please call the Board of Appeals at 415-575-6880

The reasons for this appeal are as follows:

Appellant alleges that the Oct. 19, 2016 Order is an arbitrary and capricious use of discretion.

Appellant or Agent (Circle One):

Signature: *Paul V Horcher*

Print Name: PAUL V HORCHER

BOARD OF APPEALS

OCT 20 2016

APPEAL # 16-167



City and County of San Francisco
Edwin M. Lee
Mayor

San Francisco Department of Public Health

Barbara A. Garcia, MPA
Director of Health

October 19, 2016

Paradise Health Center
Attn: Tian Yi Zhao
242 Balboa Street
San Francisco, CA 94118

Subject: Health Director's Hearing Order Case #MSG-16-68
DBA: Paradise Health Center
242 Balboa Street, San Francisco, California 94118

Dear Tian Yi Zhao:

As the owner of the Paradise Health Center, you were cited on May 10, 2016, and ordered to appear before the Director of Health for the following violation of Article 29 of the San Francisco Health Code¹:

Section 29.31(f). Practitioner Conduct. Massage Establishments shall be responsible for the conduct of all individuals providing Massage for Compensation on their business premises and shall ensure that such individuals do not wear improper attire or engage in lewd conduct as set forth in Section 29.17.

Section 29.17 states:

(a). **Required Attire.** Massage Practitioners shall remain fully clothed while administering massage or otherwise visible to clients on business premises, including premises designated by the client through an Outcall Massage Service. The Massage Practitioner's attire shall not include: (1) attire that is transparent, see-through, or that substantially exposes the Practitioner's undergarments; (2) swim attire, unless the Practitioner is providing a water-based massage modality that has been approved by CAMTC; or (3) attire that exposes the individual's breasts, buttocks, or genitals.

¹ The hearing was originally scheduled for 6/15/16, but was continued to at the request of your counsel to 8/17/16. The SFPD was unable to attend the hearing on 8/17/16 so the parties agreed to continue the case. Since your counsel was unable to attend a hearing in September, the hearing was scheduled for 10/19/16.

(b) Lewd Conduct Prohibited. Massage Practitioners shall not engage in lewd conduct on the business premises, including locations designated by the client through an Outcall Massage Service. Lewd acts include, but are not limited to: the performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, copulation (oral, and or vaginal), or flagellation; the actual or simulated caressing or fondling by one adult human being of the anus or genitals of another adult human being; the actual or simulated displaying of the pubic hair, anus, vagina, penis, vulva, buttocks, areola, or any other external genitalia of the human body.

At the Director's Hearing on October 19, 2016, the Health Hearing Officer found the following:

- Based on the evidence presented at the Director of Public Health Hearing, it has been determined that Tian Yi Zhao, doing business as Paradise Health Center located at 242 Balboa Street, in the said City and County of San Francisco, has been found to be in violation of Article 29 Sections 29.31(f) of the San Francisco Health Code. The Massage Establishment failed to ensure that its massage practitioner, "Wei Juan Gao CAMTC #19992," was fully clothed and properly attired as required by Section 29.17(a). Additionally, the Massage Establishment failed to ensure that Ms. Gao did not engage in lewd conduct as set forth in Section 29.17(b).
- That on May 10, 2016, upon inspection conducted by this Department and members of the Mayor's Massage Task Force, it was determined that your massage practitioner "Wei Juan Gao CAMTC #19992" was found to be completely nude with a nude male customer in Room # 3.
- That on May 10, 2016, upon inspection conducted by this Department and members of the Mayor's Massage Task Force, it was determined that your massage practitioner "Wei Juan Gao CAMTC #19992" was engaged in lewd conduct which was observed by DPH inspector and SFPD in Room #3.

As authorized by Section 29.45(a)(12)(A) and (B), the Health Hearing Officer Orders the following:

1. *That you shall pay a \$1000 administrative fine for Wei Juan Gao's (CAMTC #19992) violation of section 29.17(b) (engaging in lewd conduct). You shall mail your check or money order payable to the San Francisco Department of Public Health, 1390 Market Street Suite 210, San Francisco CA 94102 within 30 days of this letter.*
2. *Your Massage Business Permit to Operate is suspended for 60 calendar days. You must cease and desist all massage activity at this Massage Establishment and this suspension shall be effective 15 calendar days from the date of your receipt of this Order unless an appeal is timely filed with the Board of Appeals.*

-
3. A repeat violation will warrant a revocation of your Massage Business permit and you will be permanently ineligible for a subsequent Massage Practitioner or Massage Business Permit.
 4. That failure to comply as stipulated will result in this case being referred to the City Attorney's Office with a request to file an injunctive action against you.

The aforementioned is a true copy of the orders issued in the name of the Director of Public Health in the City and County of San Francisco on the 19th day of October 2016.

Permit Matters: You have the right to appeal this decision to the Board of Appeals. Appeals must be made **within 15 calendar days of receipt of this letter**. The Board of Appeals can be contacted at 1650 Mission Street, Suite 304, San Francisco, California, telephone number (415) 575-6880 or e-mail boardofappeals@sfgov.org.

Administrative Fines: You have the right to Judicial Review by filing a petition for review in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

At the hearing, your attorney, Ms. Leila Vaez-Iravani, agreed to accept service of this Order by email to Leila@vaeziravanilaw.com . This Order shall also be sent via Certified Mail.

Should you have any questions, please contact Sojeatta Khim, Senior Environmental Health Inspector, at (415) 252-3868.

Sincerely,



Julie Rosenberg
Hearing Officer, San Francisco Department of Public Health

CC: Leila Vaez-Iravani, Esq. Leila@vaeziravanilaw.com

IMPORTANT: Can you read this document? If not, we can have somebody help you read it. For free help, please call Department of Public Health at 415-252-3800.

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9 Attorneys for Appellant TIAN YI ZHAO dba
10 PARADISE HEALTH CENTER

11 CITY AND COUNTY OF SAN FRANCISCO BOARD OF APPEALS
12 1650 Mission Street, Room 304, San Francisco, CA 94103

13 TIAN YI ZHAO dba
14 PARADISE HEALTH CENTER,

15 Appellant

16 vs.

17 SAN FRANCISCO DEPT. OF PUBLIC HEALTH
18 ("DPH"),

19 Respondent.

20 Appeal No.: 16-167

21 SFDPH Director's Case No. MSG-16-68

22 APPELLANT'S BRIEF

23 Hearing Date: March 8, 2016

24 Hearing Time 5:00 p.m.

25 Hearing Place: Room 416

26 San Francisco City Hall
27 1 Dr. Carlton Goodlett Pl.

28 **INTRODUCTION:**

29 TIAN YI ZHAO dba PARADISE HEALTH CENTER ("Appellant") located at 242 Balboa St.,
30 respectfully appeals from the 10-19-16 DPH Director's Ruling ("the Ruling"), Case #MSG-16-19, ordering
31 the suspension of Appellant's massage establishment permit for sixty (60) calendar days. The DPH
32 Hearing Officer based her ruling on *San Francisco Health Code* ("SFHC") §29.31(f) to impose vicarious
33 liability on the Appellant for the alleged violations of SFHC §29.31(a) and SFHC §29.31(b) by Appellant's
34 then employee on 05-10-16. This Ruling is based on faulty incomplete fact findings and the misapplication
35 of the SFHC.

36 **ARGUMENT: The Punishment was Excessive and Without Foundation Because DPH**
37 **Ignored an Important Relevant SFHC Precondition Before Rushing to Judgment.**

38 SFHC §29.33 reads in pertinent part with emphasis added as follows:

1 "SEC. 29.33. SUSPENSION OR REVOCATION OF MASSAGE ESTABLISHMENT, SOLE
2 PRACTITIONER MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE PERMIT.

3 (a) **Grounds for Suspension or Revocation.** The Director may revoke or suspend any Massage
4 Establishment, Sole Practitioner Massage Establishment, or Outcall Massage Service permit, after
5 a hearing, if the Director finds: ...

6 (4) Any employee or independent contractor of the permittee has engaged in Conduct that
7 violates any state or local laws at permittee's place of business, and the permittee had or, in the
8 exercise of due diligence, should have had knowledge of the prohibited conduct; ..."

9 In other words, the Hearing Officer ignored this additional required finding that the owner knew or
10 should have known about her employee's misconduct before imposing the suspension. There is no
11 evidence in the Ruling that she found that Appellant knew or should have known about the employee's
12 prohibited conduct. The Appellant is innocent and should not have been punished.

13 Appellant did not and does not hire unlicensed masseuses. It is reasonable to impose liability upon
14 massage establishment owners who hire unlicensed masseuses or masseuses with a tainted record,
15 because this manifests an absolute lack of due diligence. The employee accused of misconduct, Wei
16 Juan Gao ("Ms. Gao"), was a CAMTC certified massage therapist ("CMT") with an unblemished record.
17 San Francisco allows CMTs and their own DPH permitted massage practitioners to massage within this
18 jurisdiction. CMT's are rigorously FBI/DOJ screened before being credentialed.¹ Appellant displayed due
19 diligence in her reliance on Ms. Gao's credentialing when she hired her on 01-02-16 and had observed no
20 intervening misconduct between the date of hire and the 05-10-16. As a matter of fact, there had never
21 been a previous citation for a violation of SFHC §29.31(b) ("Lewd Conduct") by anyone at Paradise Health
22 Center since it opened in 2012 and no employee, including Ms. Gao, has ever been cited for prostitution.

23 **DPH's Questionable Delay.** It is also noteworthy that in the past, after an inspection, DPH
24 immediately sent referrals to the CAMTC in the form of Declarations, resulting in the very prompt interim
25 suspensions of the CMTs. In this case, DPH waited over five months after the 05-10-16 inspection and at
26

27
28

¹ California Business & Professions Code §4601.3

1 least six (6) weeks after the 10-19-16 Hearing to send its 11-29-16 Declaration authored by DPH Inspector
2 Sojetta Khim to Sacramento. Perhaps this delay reflects doubts by DPH that there was indeed a violation.
3 It does indicate that DPH was very slow to punish "the guilty" but very quick to punish the innocent.

4 There is a management saying regarding the six (6) stages of a project:

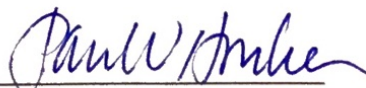
5 "Stage 1: Enthusiasm,
6 Stage 2: Disillusionment,
7 Stage 3: Panic and hysteria,
8 **Stage 4: Search for the guilty,**
9 **Stage 5: Punishment of the innocent,** and
10 Stage 6: Distinction for the uninvolved." (emphasis added)

11 DPH should have stopped at Stage 4. If there is a "guilty" party, it is solely the ex-employee,
12 Ms. Gao, and she was punished by CAMTC.² But DPH has moved on to Stage 5 by seeking to
13 punish the innocent Appellant too despite the inconvenient fact that Appellant, in the exercise of due
14 diligence, did not know or could not have known about the ex-employee's alleged misconduct

15 **Conclusion:** The facts were not there to allow the Hearing Officer to make the required finding
16 that the permittee (Appellant) had or, in the exercise of due diligence, should have had knowledge of the
17 prohibited conduct. There was no history of lewd conduct on the premises by anyone and the accused
18 masseuses' credentials were in order to the date of the incident.

19 **Board Action Requested:** DPH's fact findings and legal conclusions are out of order; the 60-day
20 permit suspension penalty imposed is unwarranted, excessive, and contrary to the *SFHC*. Appellant
21 requests that the Board overrule and rescind the Ruling ordering the 60-day suspension of Appellant's
22 massage establishment permit, or, alternatively, impose just conditions on the Ruling.

23 Dated: Feb. 16, 2017

24 

25 PAUL V. HORCHER, Co-Counsel with
26 CHRISTOPHER C. HALL for Appellant TIAN YI ZHAO
27 dba PARADISE HEALTH CENTER

28

² Ms. Gao's massage therapist certificate was suspended on an interim basis by CAMTC on 12-30-16.

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City Attorney
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Attorneys for Respondent
DEPARTMENT OF PUBLIC HEALTH

SAN FRANCISCO

BOARD OF APPEALS

1650 Mission Street, Room 304
San Francisco, CA 94103

TIAN YI ZHAO,

Appellant,

vs.

DEPARTMENT OF PUBLIC HEALTH,

Respondent.

Appeal No. 16-68

RESPONDENT SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH'S
BRIEF IN OPPOSITION TO TIAN YI ZHAO

Hearing date: March 8, 2017
Time: 5:00 p.m.
Place: City Hall, Room 416

INTRODUCTION

Article 29 of the San Francisco Health Code (SFHC) is intended to promote the health and safety of both massage customers and practitioners by addressing, among other things, illicit businesses that act as outlets of the sex trade. In adopting Article 29, the Board of Supervisors recognized that massage parlors that act as outlets of the sex trade "are detrimental to the health and safety of the community and adversely impact the local economy by driving legitimate business away,

1 potentially affecting the vitality of neighborhoods and the provision of adequate services for residents
2 and visitors alike.”

3 In this case, photographic evidence obtained during an inspection at the Paradise Health Spa
4 indisputably shows a massage practitioner and massage customer, both entirely in the nude. A police
5 incident report sworn under penalty further reveals that after entering the massage room, the police
6 officer observed that the practitioner was straddling her customer and it clearly appeared they were
7 engaged in a sex act. Under these indisputable facts, the Board should uphold the Hearing Officer’s
8 decision to impose a 60-day suspension of Paradise Health Center’s permit to operate a massage
9 establishment.

10 FACTS

11 On Tuesday, May 10, 2016, the Department of Public Health (DPH), in collaboration with the
12 San Francisco Police Department (SFPD), conducted an inspection of the Paradise Health Center. *See*
13 Declaration of Sojeatta Khim in Support of Respondent Department of Public Health’s Brief in
14 Opposition to Tian Yi Zhao’s Appeal (“Khim Decl.”) at ¶¶ 3, 6. According to Health Inspector
15 Sojeatta Kim, when she neared the door of a massage room, she observed a practitioner and client,
16 both in the nude. *Id.* at ¶ 4. Inspector Khim was accompanied by Investigator Procak of the City
17 Attorney’s Office, who photographed the nude practitioner and client observed by Inspector Khim.
18 Khim Decl. at ¶ 5 and Exh. A.

19 Inspector Khim was also accompanied on the inspection by Sgt. Randy Ly of the San
20 Francisco Police Department. Khim Decl. at ¶ 6. According to Sgt. Ly’s Police Incident Report, upon
21 entering massage room, he observed a nude massage practitioner straddling a nude customer on a
22 massage table in an apparent sex act. *Id.*, and Exh. B. .

23 At the conclusion of the May 10, 2016 inspection, DPH cited Appellant Tian Yi Zhao, the
24 establishment’s permittee, to appear at a Director’s Hearing. Exh. C. DPH cited Zhao with violation
25 of Section 29.31(f) (holding Massage Establishments responsible for ensuring that Massage
26 Practitioners do not violate Section 29.17). *Id.* A Director’s Hearing was held on October 19, 2016 at
27 which time the Hearing Officer issued her decision, imposing a 60-day suspension of Zhao’s permit to
28 operate a massage establishment. Khim Decl. at ¶ 8, and Exh. E.

ARGUMENT

A. The Photographic and Eye-witness Evidence of Improper Dress and Lewd Conduct support a 60 Day Suspension.

Section 29.33(a) of the SFHC gives DPH the authority to suspend a Massage Establishment permit for a variety of reasons, including but not limited to “engag[ing] in . . . conduct in connection with the operation of the business that violates the operating requirements set forth in Section 29.31 . . .” SFHC § 29.33(a)(3). Subsection (f) of Section 29.31 provides that “Massage Establishments shall be responsible for the conduct of all individuals providing Massage for Compensation on their business premises and shall ensure that such individuals do not wear improper attire or engage in lewd conduct as set forth in Section 29.17.”

In this case, photographic evidence showing a nude massage practitioner clearly confirms that Appellant failed to ensure that individuals were not wearing improper dress within the Massage Establishment. A photograph taken by City Attorney Investigator Procak during the May 10, 2016 inspection shows a Massage Practitioner in Appellant’s establishment completely naked while with a client. Khim Decl. ¶ 5, and Exh. A. Practitioner nudity is an undeniable violation of the duty to ensure proper attire on establishment premises.

Photographic evidence, coupled with eye-witness testimony from Sgt. Ly, also confirm that a lewd conduct violation occurred on the establishment premises. Under the SFHC, lewd conduct is defined to include “the actual or simulated displaying of the pubic hair, anus, vagina, penis, vulva, buttocks, areola, or any other external genitalia of the human body.” SFHC § 29.17(b). The photographs from the inspection show a fully naked practitioner which is a clear violation of the prohibition on displaying intimate body parts outlined in Section 29.17(b).

Further, Sgt. Ly’s police incident report, which was sworn under penalty of perjury, indicates that he observed the practitioner straddling the client, engaged in a sex act. Khim, Decl. at ¶ 6, at Exh. B. There is no doubt that the conduct observed and recorded by these eye-witnesses constitutes lewd acts, in violation of Article 29.

CONCLUSION

The Department of Public Health respectfully requests that the Board of Appeals deny the Appellant's appeal.

Dated: March 2, 2017

DENNIS J. HERRERA
City Attorney
ANNE PEARSON
Deputy City Attorney

By: 

ANNE PEARSON

Attorneys for Respondent
DEPARTMENT OF PUBLIC HEALTH AND THE
AND COUNTY OF SAN FRANCISCO

PROOF OF SERVICE

I, ANA JIMENEZ, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On March 2, 2017, I served the following document(s):

**RESPONDENT SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH'S BRIEF
IN OPPOSITION TO TIAN YI ZHAO**

on the following persons at the locations specified:

Paul V Horcher, Esq.
234 Van Ness Ave.,
San Francisco CA 94102
P. O. Box 423202,
San Francisco CA 94142-3202
Telephone: (415) 988-0275
Email: pvh831@gmail.com

Attorney for Appellant

VIA ELECTRONIC SERVICE

in the manner indicated below:

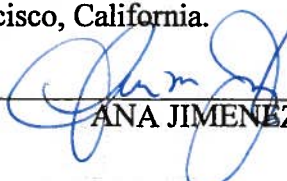
☐ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such document(s) were transmitted *via* electronic mail from the electronic address: ana.jimenez@sfgov.org ☒ in portable document format ("PDF") Adobe Acrobat or ☐ in Word document format. OR

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed March 2, 2017, at San Francisco, California.



ANA JIMENEZ

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 JULIE VAN NOSTERN, State Bar #103579
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8 Attorneys for Respondent
DEPARTMENT OF PUBLIC HEALTH
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10 SAN FRANCISCO

11 BOARD OF APPEALS

12 1650 Mission Street, Room 304
San Francisco, CA 94103
13

14 TIAN YI ZHAO,

15 Appellant,

16 vs.

17 DEPARTMENT OF PUBLIC HEALTH,

18 Respondent.
19
20
21

Appeal No. 16-68

DECLARATION OF SOJEATTA KHIM IN
SUPPORT OF RESPONDENT SAN
FRANCISCO DEPARTMENT OF PUBLIC
HEALTH'S BRIEF IN OPPOSITION TO TIAN
YI ZHAO'S APPEAL

Hearing date: March 8, 2017
Time: 5:00 p.m.
Place: City Hall, Room 416

22 I, SOJEATTA KHIM, declare as follows:

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct and that this document was executed on the 1st day of March, 2017 in San Francisco,
25 California.

26 1. I have personal knowledge of the facts set forth herein, except for those facts set forth
27 on information and belief, which I also believe to be true. If called upon to testify, I could and would
28 testify competently to the matters set forth below.

1 2. I am an inspector with the San Francisco Department of Public Health, Environmental
2 Health Section. I have held this position since March 30, 2015. My duties include the inspection of
3 massage establishments to determine whether the establishment and massage providers are in
4 compliance with the San Francisco Health Code. I have participated in all aspects of these
5 inspections.

6 3. On May 10, 2016, I participated in an inspection of a massage establishment known as
7 "Paradise Health Center." Paradise Health Center is located at 242 Balboa St., in the City of San
8 Francisco, and is owned by Tian Yi Zhao.

9 4. At approximately 9:05 pm, I entered the massage establishment and personally
10 observed inside a treatment room a female massage practitioner who was completely naked, and a
11 male customer who was also completely naked. Both the customer and practitioner began reaching
12 for their clothes and attempting to dress themselves.

13 5. City Attorney Investigator Borys Procak was with me when I entered the massage
14 establishment, and took photos of both the massage practitioner and the male customer at the moment
15 we observed them. A true and correct copy of a photo taken by Borys Procak during the inspection is
16 attached hereto as **Exhibit A**.

17 6. Sergeant Randy Ly of the San Francisco Police Department (SFPD) also participated in
18 the inspection that occurred on May 10, 2016. The day after the inspection, on May 11, 2016,
19 Sergeant Ly wrote a police incident report that described his observations during the inspection. This
20 narrative is made under penalty of perjury. A true and correct copy of the police incident report is
21 attached as **Exhibit B**. Sgt. Ly's police incident report indicates that after opening a massage room
22 door he observed a client "being straddled on the massage table" by a practitioner. He stated that
23 "[b]oth [client and practitioner] were completely nude, and it clearly appeared they were engaging in
24 a sexual act."

25 7. At the conclusion of the May 10, 2016 inspection, I issued a Notice of Hearing to Zhao,
26 citing violations of Section 29.31(f) (requiring massage establishments to be responsible for the
27 conduct of all practitioners, and ensuring that such individuals do not wear improper attire or engage
28 in lewd acts). This is not Paradise Health Center's first citation for improper attire. In 2012, the

1 Establishment was found to have permitted improper attire by a practitioner, and received a warning
2 for a first offense. A true and correct DPH's record of this warning is attached as **Exhibit C**. In
3 addition, a Paradise Health Center practitioner was cited for improper attire in 2015. A true and
4 correct copy of the Hearing Officer's Order in that matter is attached as **Exhibit D**.

5 8. A Director's Hearing was held on October 19, 2016. The Hearing Officer found that
6 Zhao, doing business as Paradise Health Center, had violated Section 29.31(f) of the San Francisco
7 Health Code by failing to ensure that a massage practitioner was properly attired, and failing to
8 ensure that a massage practitioner did not engage in lewd conduct. Based on these findings, the
9 hearing officer ordered that the establishment's permit to operate a massage establishment be
10 suspended for 60 days. A true and correct copy of the hearing decision is attached as **Exhibit E**.

11
12 I declare under penalty of perjury under the laws of the State of California that the foregoing is
13 true and correct and that this document was executed on the 1st day of March, 2017 in San Francisco,
14 California.


15
16
17 
18 SOJEATTA S. KHIM
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Exhibit A



Exhibit B

Report Type: Initial

San Francisco Police Department
INCIDENT REPORT

Incident Report Statement

INCIDENT NO.

1	6	0	3	8	4	0	4	3
Name (Last,First,Middle) Chan, Rodney 1399			DOB/Age		Residence Phone(Day/Night)		Business Phone (Day/Night) 415/553-9225	
Residence			Zip Code		Business Address / City if not San Francisco			Zip Code
Date of Statement 05/11/16		Time Started 20:20		Time Completed 20:40		Location Where Statement Taken At Scene <input type="checkbox"/> Other: SVUSEX		

On 5/10/16, I assisted on a Massage Parlor Inspection with the Mayors Task Force. During the inspection, we visited 242 Balboa St, the Paradise Spa. While making entry, I observed a white male completely naked and a Asian female completely naked inside of a massage room. The male was the only customer inside at the time and the female was later identified as "Coco".

After CoCo got dressed, I assisted Sgt. Flores with his secondary interview. The secondary interview was conducted with the help of the Language Line ID#22106 in Mandarin. CoCo stated she speaks and understand English fine, but to make sure she understood the questions we were asking, we decided to reinterview with the language line.

When we asked what was going on in the massage room between her and the male customer, she said they were "friends". When asked what a friend meant, she replied a "long time friend." We asked several times for her to clarify if he was a boyfriend, friend or customer, she answered by saying a friend.

CoCo stated he paid the manager upfront for a massage and nothing to her. While getting a massage, he started kissing her. Because he was a friend, he let her kiss her. He then started to take of her clothes. When we asked if he forcefully did that or if she willingly allowed him to do so, she replied she allowed it because he was a friend. She stated "He helped me take of my clothes" She did not object at all and no force was used what so ever.

She stated they were only kissing while completely naked and nothing else happened. She allowed him to kiss her and take of her clothes because she was not "conscious" about it. When asked her to explain what that meant, she could not. She stated she was not under the influence of any drugs or substance.

She stated she only knows the male as a friend and does not know his name. She gave him her phone number forma prior visit and recognizes him because he has a "415" number which is saved on her phone without a name.

CoCo stated she was never forced to do anything at her work and understands everything we asked her. She is not afraid to talk to us and is not afraid of anyone else at her work.

San Francisco Police Department INCIDENT REPORT

Report Type: Initial

I N C I D E N T	Incident Number 180-384-043		Occurrence From Date / Time 08/10/2018 21:05		Occurrence To Date / Time		Reported Date / Time 05/10/2018 20:09		CAD Number				
	Type of Incident MESSAGE ESTABLISHMENT PERMIT VIOLATION 30011 HUMAN TRAFFICKING (A)-COMMERCIAL SEX ACTS 13045												
	Location of Occurrence: 242 BALBOA ST				At Intersection with/Premise Type MISC. BUILDING OR STORE				District RICHMOND				
	Confidential Report? <input type="checkbox"/>	Arrest Made? <input type="checkbox"/>	Suspect Known? <input checked="" type="checkbox"/>	Suspect Unknown? <input type="checkbox"/>	Non-Suspect Incident? <input type="checkbox"/>	Domestic Violence? <input type="checkbox"/>			(Type of Weapon Used)				
	Location Sent / On View: 242 BALBOA ST				At Intersection with				Reporting District RICHMOND				
Crime and Clearance Status 8		Reported to Bureau SVU/MC		Name		Star		Date/Time		Elder Victim <input type="checkbox"/>	Gang Related? <input type="checkbox"/>	Juvenile Subject? <input type="checkbox"/>	Prejudice Based? <input type="checkbox"/>

Have you reviewed the attached list of procedures required by Department General Order (DGO) 7.04?

O F F I C E R A T I O N	I declare under penalty of perjury, this report of <u>5</u> pages is true and correct, based on my personal knowledge, or is based on information and belief following an investigation of the events and parties involved. PROP 118 CERTIFIED 5 Year/Post										
	Reporting Officer LY, RANDY V			Star 884		Station SVU - Vice		Watch 1200-2100		Date 05/18/18 18:48	
	Reviewing Officer LY, RANDY V			Star 884		Station SVU - Vice		Watch 1200-2100		Date 05/18/18 16:49	
	OIG LY, RANDY V			Star 884		Station SVU - Vice		Watch 1200-2100		Date 05/18/18 18:49	
	Related Case		Related Case		Re-assigned to Copies to 5T300B 2G200 5I200		Assigned to 5T300B Add'l Copies		Assigned by RL 684		

N O T I F Y	1 Code N 1		Name (Last, First Middle)				Alias				Email			
	Zip Code													

DOB Unk. <input type="checkbox"/>		or age between and		Race A	Sex	Height	Weight	Hair Color	Eye Color	
Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>		Star		Follow-up Form YES <input type="checkbox"/>		Statement YES <input type="checkbox"/>		Relationship to Subject
School (if Juvenile)		Injury/Treatment				Other Information/If Interpreter Needed Specify Language PART-TIME CLEANER				
Interpreter Needed <input type="checkbox"/>	Language		Language Description(if Other)			Language Line Service/Interpreter ID#			Bilingual Ofc Star#	

N O T I F Y	2 Code N 2		Name (Last, First Middle)				Alias				Email			
	Zip Code													

Age/DOB		or age between		Race	Sex	Height	Weight	Hair Color	Eye Color BRO	
Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>		Star		Follow-up Form YES <input type="checkbox"/>		Statement YES <input type="checkbox"/>		Relationship to Subject
School (if Juvenile)		Injury/Treatment				Language				
Interpreter Needed <input type="checkbox"/>	Language		Language Description(if Other)			Language Line Service/Interpreter ID#			Bilingual Ofc Star#	

Incident# 180384043

**San Francisco Police Department
INCIDENT REPORT**

Report Type: Initial

N O T I F Y	3	Code N3	Name (Last, First Middle) [REDACTED]		Alias [REDACTED]	Email [REDACTED]					
		Age	DOB Unk. <input type="checkbox"/>	or age between and	Race	Sex	Height	Weight	Hair Color	Eye Color	Zip Code No.
Confidential Person <input type="checkbox"/>		Violent Crime Notification <input type="checkbox"/>		283 PC Notification <input type="checkbox"/>	Star		Follow-up Form YES <input type="checkbox"/>		Statement YES <input type="checkbox"/>		Relationship to Subject
School (if Juvenile)		Injury/Treatment				or Needed Specify Language IN MASSAGE ROOM #1 COMPLETELY					
Interpreter Needed <input type="checkbox"/>		Language		Language Description (if Other)		Language Line Service/Interpreter ID#		Bilingual Ofc Star#			
		NUDE.									

C I T I E D	1	Code C1	Name (Last, First Middle) [REDACTED]		Alias [REDACTED]	Email [REDACTED]			
	Type								
	Night Phone		Type	Work Address		City	State	Zip Code	
	DK Un	Age	or age between and	Race	Sex	Height	Weight	Hair Color	Eye Color
	SFNO	J/D# (if Juv)	or		ID Type/Jurisdiction/Number		ID Type/Jurisdiction/Number		
	Booking Charge(s)				Booking Location				
	Warrant #	Court#	Action#	Dept#	Enroute to				
	Warrant Violation(s)						Bail (\$)		
	Citation#	Violation(s) 847(b) PC		Appear Date/time 08/15/2016 09:00					
	<input type="checkbox"/> CA Form Booked Copy Attached	Mirandized: Star <input type="checkbox"/>		Date	Time	CWB Check	Star		
	Book/Cite Approval SGT LY	Star 884	Mass Arrest Code	M X-Rays <input type="checkbox"/>	School (if Juvenile)		Statement <input type="checkbox"/>		
	Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos IN MASSAGE ROOM #3 COMPLETELY NAKED BEING STRADDLED BY HIS MASSEUSE WHO WAS ALSO COMPLETELY NAKED								
	Interpreter Needed <input type="checkbox"/>	Language		Language Description (if Other)		Language Line Service/Interpreter ID#		Bilingual Ofc Star#	

P R O P E R T Y	1	Code/No EVD 1	Item Description PERMISSION TO SEARCH FORM			Brand SFPD488	Model	
	Serial No.		Gun Make	Caliber	Color Whi	Narcotics Lab No.	Quantity 1	Value TBD
	Seized by (Star) 884		From Where [REDACTED]					
	Additional Description/Identifying Numbers Permission to search form signed by C [REDACTED]							

Incident# 160384043

**San Francisco Police Department
INCIDENT REPORT**

Report Type: Initial

P R O P E R T Y	2	Code/No EVD 2	Item Description U.S. CURRENCY				Brand US MINT		Model	
		Serial No.	Gun Make	Caliber	Color GRN	Narcotics Lab No.	Quantity	Value \$215.00 Total		
		Seized by (Star) 884		From Where						
	Additional Description/Identifying Numbers									
P R O P E R T Y	3	Code/No EVD 3	Item Description PROPERTY RECEIPT FORM				Brand SFPD315		Model	
		Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity 1	Value TBD		
		Seized by (Star) 684		From Where						
	Additional Description/Identifying Numbers Property Receipt Form given to [redacted] for currency seized. Retained in case file.									
P R O P E R T Y	4	Code/No EVD 4	Item Description PHOTOS				Brand DIGITAL		Model	
		Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value		
		Seized by (Star) 684		From Where CAI BORYS PROCAK						
	Additional Description/Identifying Numbers Photos taken by City Attorney Investigator Borys Procak.									

San Francisco Police Department
INCIDENT REPORT

NARRATIVE

On Tuesday, March 10, 2016, members of the Mayor's Task Force (DPH Inspector DPH Inspector Sojeatta Khim, DPH Inspector Allan Para, DPH Inspector Jorge Montiel, DPH Manager Patrick Fosdahl, Permit Inspector Donald Duffy, and City Attorney Investigator Borys Procak), SFFD Mary Tse, SFFD Lourdes Russell, Sergeant Matt Elseth, Sergeant Antonio Flores, Sergeant Rodney Chan, DDS Special Agent Chris Inami, and I conducted an inspection at 242 Balboa Street (Paradise Spa). Based on my training and experience, illicit massage businesses such as parlors in which women are forced, coerced, and defrauded into performing countless sex acts with strangers on a daily basis. Often times, these women fail to self-identify themselves as victims of sexual and physical violence by perpetrators who exploit their inability or unwillingness to engage the criminal justice system. These women are in constant fear of retaliation from their controllers, and rarely will they disclose their abuse to law enforcement.

While working in an undercover capacity, DPH Inspector Montiel and Sergeant Chan and I walked up to the establishment in an attempt to gather information of illegal activity. A few minutes later, the team entered the establishment and made contact with all the occupants inside.

Sergeant Chan and I walked into the front door first and announced ourselves as police officers. I met N-1 [REDACTED] at the front counter. We continued our way through the massage parlor with the rest of the team opening massage room doors. We opened massage room door #1 and observed C-1 [REDACTED] being straddled on the massage table by N-3 [REDACTED]. Both [REDACTED] and [REDACTED] were completely nude, and it clearly appeared they were engaging in a sexual act. Upon seeing the inspection team, [REDACTED] and [REDACTED] frantically attempted to put their clothes back on. DAI Borys Procak took photos of [REDACTED] and [REDACTED]. Both subjects were separated, [REDACTED] remained in massage room #1 pending an interview with Sergeant Elseth. [REDACTED] told Sergeant Elseth that he paid \$50.00 cash making out. [REDACTED] said he and his masseuse [REDACTED] (aka "Coco") both got undressed and began given her phone number to him and they began texting, and he thought she was interested in possibly dating him. [REDACTED] signed the "Permission To Search" form giving Sergeant Elseth consent to read the text messages on his cell phone. (SFPD-468 form attached to case file)

Based on my training experience, my observations of [REDACTED] and [REDACTED], I developed probable cause to believe that [REDACTED] was engaging in a sexual activity (vaginal intercourse) with his [REDACTED]. [REDACTED] was subsequently issued a misdemeanor citation for violation of 647(b) PC - Solicitation for Purpose of Prostitution. I seized [REDACTED] \$215.00 as evidence and issued him a property receipt form.

Sergeant Flores interviewed [REDACTED] who denied having sex with her customer [REDACTED]. [REDACTED] could not explain why she was not wearing any clothes. [REDACTED] said she is a massage therapist and she earns \$20.00 per customer. [REDACTED] said her masseuse name is "Coco". [REDACTED] said she feels safe working at this massage parlor, and she is free to leave the business and go home after it is closed for the evening. [REDACTED] said she has never been threatened or solicited for sex while working at Paradise Health Center.

Sergeant Chan interviewed N-2 [REDACTED] who stated that she is a massage therapist and she receives \$20.00 per customer. [REDACTED] said she has been working here for 2 years and her massage name is "Ana". [REDACTED] said she feels safe and has never been threatened by her manager [REDACTED] or her co-workers. [REDACTED] said she is not in debt, and she is not being forced to have sex with her customers. I interviewed N-1 [REDACTED] who stated that she is a "cleaner" and this is her second day working here. [REDACTED] said she receives \$100.00 cash a day for her cleaning services, and she works from 10 am to 9:30 pm. [REDACTED] said she answered an advertisement in the Chinese newspaper and called the phone number and spoke to a person named [REDACTED] about this position. [REDACTED] said she was born in Vietnam but immigrated to the United States in 1984. [REDACTED] said she is single and she lives with her boyfriend.

After conducting interviews with parties on scene regarding working conditions and if they were being force to perform/witness any illegal activities by force, fraud, or coercion, we determined at this time that no human trafficking

**San Francisco Police Department
INCIDENT REPORT**

**Report Type: Initial
violations were committed.**

Human trafficking services and contact information were provided and left at scene. Photos were taken by City Attorney Investigator Borys Procak.

During the inspection, DPH Inspector Sojeatta Khim did find violations on premise.

(LEP) Language Line was not used for our interviews. SFFD Tse helped with interpretations.

Case Closed/CAT 13

Exhibit C



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
OCCUPATIONAL & ENVIRONMENTAL HEALTH

Mitchell H. Katz, M.D.
Director of Health

Rajiv Bhatia, M.D., M.P.H.
Medical Director

Date: 12-10-12

Subject: Department Abatement Hearing Case #

From: Ed Walsh

242 Balboa St.

(Address)

Paradise Health Center

(dba)

Qiao Yun Hu (practitioner)

(Owner)

To:

Director, Public Health

From: Rajiv Bhatia

Director - Consumer Protection, Environmental Health Management Section

On 12-12-12, subject case shall be presented before the Director of Health for hearing and
(hearing date)

Appropriate resolution. Following is a chronology of events leading to this action:

Date	Section	Violation(s)	Action Taken
12-7-12	SFHC ART 29 SEC 1926 Rules & Regs Xtg	Improper attire by massage practitioner	Immediately cease & desist Notice to Director's Hearing
12-12-12		No fine, warning for 1st offense	

It is recommended by the undersigned that the Director of Health, upon hearing all facts presented, issue the
Following order: 1st offense warning, 2nd offense \$500 administrative fine

Johnson Ojo
Principal Inspector HC Massage
Program

Exhibit D

February 18, 2014

Director's Hearing Case #MSG-14-12

Re: 242 Balboa Street

DBA: Paradise Health Center

Jing Peng

San Francisco, CA 94112

COPY

Following the hearing of a complaint on file in the office of the Department of Public Health of the City and County of San Francisco, numbered MSG-14-12 and against Jing Peng, 242 Balboa Street, doing business as Paradise Health Center in the said City and County has been found to be in violation of Article 29, Section 1926 XI(G) of the San Francisco Health Code and the following are ordered:

1. That you were inappropriately attired at Paradise Health Center, 242 Balboa Street on 1-10-14.
2. That you shall wear non-transparent outer garments that cover all exposed skin between the shoulders and mid-thighs at all times.
3. That you shall not pay an administrative fine pursuant to Article 29, Section 1929 of the Health Code. A 2nd repeat violation will warrant an administrative fine of a \$500 administrative fine.

The following is a true copy of the orders issued in the name of the Director of Public Health in the City and County of San Francisco on the 12th day of February 2014.

If you have any questions you may call Ed Walsh at 415-252-3835.

Sincerely,



Tomas Aragon, M.D., Dr. PH
Deputy Health Officer
San Francisco Department of Public Health

Exhibit E

BOARD OF APPEALS

OCT 20 2016

APPEAL # 16-107



City and County of San Francisco
Edwin M. Lee
Mayor

San Francisco Department of Public Health
Barbara A. Garcia, MPA
Director of Health

October 19, 2016

Paradise Health Center
Attn: Tian Yi Zhao
242 Balboa Street
San Francisco, CA 94118

Subject: Health Director's Hearing Order Case #MSG-16-68
DBA: Paradise Health Center
242 Balboa Street, San Francisco, California 94118

Dear Tian Yi Zhao:

As the owner of the Paradise Health Center, you were cited on May 10, 2016, and ordered to appear before the Director of Health for the following violation of Article 29 of the San Francisco Health Code¹:

Section 29.31(f). Practitioner Conduct. Massage Establishments shall be responsible for the conduct of all individuals providing Massage for Compensation on their business premises and shall ensure that such individuals do not wear improper attire or engage in lewd conduct as set forth in Section 29.17.

Section 29.17 states:

(a). **Required Attire.** Massage Practitioners shall remain fully clothed while administering massage or otherwise visible to clients on business premises, including premises designated by the client through an Outcall Massage Service. The Massage Practitioner's attire shall not include: (1) attire that is transparent, see-through, or that substantially exposes the Practitioner's undergarments; (2) swim attire, unless the Practitioner is providing a water-based massage modality that has been approved by CAMTC; or (3) attire that exposes the individual's breasts, buttocks, or genitals.

¹ The hearing was originally scheduled for 6/15/16, but was continued to at the request of your counsel to 8/17/16. The SFPD was unable to attend the hearing on 8/17/16 so the parties agreed to continue the case. Since your counsel was unable to attend a hearing in September, the hearing was scheduled for 10/19/16.

(b) **Lewd Conduct Prohibited.** Massage Practitioners shall not engage in lewd conduct on the business premises, including locations designated by the client through an Outcall Massage Service. Lewd acts include, but are not limited to: the performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, copulation (oral, and or vaginal), or flagellation; the actual or simulated caressing or fondling by one adult human being of the anus or genitals of another adult human being; the actual or simulated displaying of the pubic hair, anus, vagina, penis, vulva, buttocks, areola, or any other external genitalia of the human body.

At the Director's Hearing on October 19, 2016, the Health Hearing Officer found the following:

- Based on the evidence presented at the Director of Public Health Hearing, it has been determined that Tian Yi Zhao, doing business as Paradise Health Center located at 242 Balboa Street, in the said City and County of San Francisco, has been found to be in violation of Article 29 Sections 29.31(f) of the San Francisco Health Code. The Massage Establishment failed to ensure that its massage practitioner, "Wei Juan Gao CAMTC #19992," was fully clothed and properly attired as required by Section 29.17(a). Additionally, the Massage Establishment failed to ensure that Ms. Gao did not engage in lewd conduct as set forth in Section 29.17(b).
- That on May 10, 2016, upon inspection conducted by this Department and members of the Mayor's Massage Task Force, it was determined that your massage practitioner "Wei Juan Gao CAMTC #19992" was found to be completely nude with a nude male customer in Room #3.
- That on May 10, 2016, upon inspection conducted by this Department and members of the Mayor's Massage Task Force, it was determined that your massage practitioner "Wei Juan Gao CAMTC #19992" was engaged in lewd conduct which was observed by DPH inspector and SFPD in Room #3.

As authorized by Section 29.45(a)(12)(A) and (B), the Health Hearing Officer Orders the following:

1. *That you shall pay a \$1000 administrative fine for Wei Juan Gao's (CAMTC #19992) violation of section 29.17(b) (engaging in lewd conduct). You shall mail your check or money order payable to the San Francisco Department of Public Health, 1390 Market Street Suite 210, San Francisco CA 94102 within 30 days of this letter.*
2. *Your Massage Business Permit to Operate is suspended for 60 calendar days. You must cease and desist all massage activity at this Massage Establishment and this suspension shall be effective 15 calendar days from the date of your receipt of this Order unless an appeal is timely filed with the Board of Appeals.*

3. A repeat violation will warrant a revocation of your Massage Business permit and you will be permanently ineligible for a subsequent Massage Practitioner or Massage Business Permit.
4. That failure to comply as stipulated will result in this case being referred to the City Attorney's Office with a request to file an injunctive action against you.

The aforementioned is a true copy of the orders issued in the name of the Director of Public Health in the City and County of San Francisco on the 19th day of October 2016.

Permit Matters: You have the right to appeal this decision to the Board of Appeals. Appeals must be made within 15 calendar days of receipt of this letter. The Board of Appeals can be contacted at 1650 Mission Street, Suite 304, San Francisco, California, telephone number (415) 575-6880 or e-mail boardofappeals@sfgov.org.

Administrative Fines: You have the right to Judicial Review by filing a petition for review in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

At the hearing, your attorney, Ms. Leila Vaez-Iravani, agreed to accept service of this Order by email to Leila@vaeziravanilaw.com. This Order shall also be sent via Certified Mail.

Should you have any questions, please contact Sojeatta Khim, Senior Environmental Health Inspector, at (415) 252-3868.

Sincerely,



Julie Rosenberg

Hearing Officer, San Francisco Department of Public Health

CC: Leila Vaez-Iravani, Esq. Leila@vaeziravanilaw.com

IMPORTANT: Can you read this document? If not, we can have somebody help you read it. For free help, please call Department of Public Health at 415-252-3800.

PROOF OF SERVICE

I, ANA JIMENEZ, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On March 2, 2017, I served the following document(s):

DECLARATION OF SOJEATTA KHIM IN SUPPORT OF RESPONDENT SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH'S BRIEF IN OPPOSITION TO TIAN YI ZHAO'S APPEAL

on the following persons at the locations specified:

Paul V Horcher, Esq.
234 Van Ness Ave.,
San Francisco CA 94102
P. O. Box 423202,
San Francisco CA 94142-3202
Telephone: (415) 988-0275
Email: pvh831@gmail.com

Attorney for Appellant

VIA ELECTRONIC SERVICE

in the manner indicated below:

☐ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such document(s) were transmitted *via* electronic mail from the electronic address: ana.jimenez@sfgov.org ☒ in portable document format ("PDF") Adobe Acrobat or ☐ in Word document format. OR

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed March 2, 2017, at San Francisco, California.



ANA JIMENEZ



DATE: February 22, 2017

TO: SF BOARD OF APPEALS

RE: Appeal No. 16-167; 242 Balboa Street

BOARD OF APPEALS

MAR 02 2017

APPEAL # 16-167

We appreciate the opportunity to express our concerns regarding the "Massage Establishment" that is located across the street from our business on Balboa Street.

We are a Pediatric Occupational Therapy Clinic, servicing children aged 3-12 years old and their families. We have 50+ families that we serve weekly. Peter's Place Nursery School, which also serves young children and their families, is located right next door. Needless to say, there are a lot of little bodies running around on this block of Balboa Street.

The "Massage Establishment" at 242 Balboa has been a concern since it first opened. Though they are quite discrete, it has been obvious that it is not a typical massage therapy business. We have discussed our shared concerns with the teachers and director at Peter's Place Nursery School, and parents of our families who have also brought up their surprise and concern that "this type of business" would be in our neighborhood. We all have both public health concerns, as well as legal and ethical concerns, as all of these children are exposed to the happenings surrounding this



business. These happenings include the providers that come across the street to get food at Uncle Boy's, as well as the customers sitting in their cars and waiting to go ring the bell to the door that will only open to them.

We ask you to please review the health risks and legalities of this "Massage Establishment" and its affect on our community.

Thank you for your consideration.

A handwritten signature in cursive script that reads "Julia Harris, OTR/L".

Julia Harris, OTR/L

A handwritten signature in cursive script that reads "Lora Harris, OTR/L".

Lora Harris, OTR/L

Emily Langston, OTR/L

A handwritten signature in cursive script that reads "Emily Langston, OTR/L".

Kristen Vilhauer
335 30th Avenue
San Francisco, CA 94121

March 1, 2017

Department of Public Health, Respondent Department
c/o Anne Pearson, Deputy City Attorney
1390 Market Street, 5th Floor
San Francisco, CA 94102

BOARD OF APPEALS
MAR 02 2017
APPEAL 16-167

Regarding Appeal No.: 16-167

Subject Property: 242 Balboa Street

To the Department of Public Health:

I write to protest the continuation of business at the Paradise Health Center. I am a Peter's Place Nursery School Board Member, as well as a current parent of a 5-year-old student at the school. Peter's Place Nursery School is at 227 Balboa Street, just across the street from Paradise Health Center.

I am appalled that illegal activity of a lewd nature has occurred within a stone's throw of our children's school. We love our nursery school in part because it feels like a friendly neighborhood school. Many students walk to school with their families, and students and parents gather in front of the school at drop-off and pick-up. My son and his class walked to the neighborhood businesses at Christmas-time to sing songs and offer greetings. My youngest son has struck up a little friendship with the neighborhood butcher and always waves hello as we pass by the door. We value the small-town feel of our nursery school in the midst of San Francisco. The Paradise Health Center/Massage Parlor frankly seems out of place and inappropriate in this neighborhood.

The 60-day suspension of its business permit currently being served seems a minimum given the illegal behavior occurring, and we request that the Paradise Health Center business license be revoked permanently. We cannot trust that the Paradise Health Center will change its approach to business and all of a sudden become an upstanding neighborhood business. I trust that the Department of Public Health will uphold the law and make a decision that provides a healthy environment for the entire neighborhood.

Sincerely,


Kristen Vilhauer

February 24, 2017

BOARD OF APPEALS

MAR 02 2017

APPEAL # 16-167

City & County of San Francisco
Board of Appeals
1650 Mission Street, Suite 304
San Francisco, CA 94013

Re: Appeal No. 16-167; 242 Balboa Street

Dear Board Members:

I am writing in opposition to allowing the Paradise Health Center to conduct business at 242 Balboa Street. I am an employee of a neighboring business and am concerned after reading the incident report about activities at the center. I do not feel this establishment is in line with the type of community and family we have here in the Inner Richmond district. We promote family, safety and respectable small businesses.

My other concern is the safety of the women that work there. I worked here since before they opened their doors and I have only seen one woman walk in or out, only one time. They keep the door locked, do not answer to women and seem to service men in sweat pants very often. With the increase of women and children as victims of sex trafficking, I am not comfortable with the Paradise Health Center continuing operations. In all my time here, I have not been able to approach any employee of the organization to confirm that they are not being held against their will.

Please do not release the suspension of their permit.

Regards,



Marcelia Nava

Board of Appeals
City and County of San Francisco
1650 Mission Street, Suite 304
San Francisco, CA 94103

BOARD OF APPEALS

MAR 02 2017

APPEAL # 16-167

Letter of Opposition to Appeal No.: 16-167

Dear Board of Appeals:

I am a member of the board of the directors at Peter's Place Nursery School ("PPNS") located at 227 Balboa Street and also the parent of children attending the school. I write to urge the Board of Appeals to revoke Paradise Health Center's ("PHC") massage business permit due to the finding of illicit, lewd activities at its premises. PHC is located at 242 Balboa Street, just 66 feet away from PPNS, which is, a year-round preschool program serving 55 children aged between 2.9 and 6 years old.

I am alarmed by PHC's endangerment of public health and safety caused by its violations of Article 29 of the San Francisco Health Code. I am disturbed that PHC has done so in a family neighborhood where many households have younger and adolescent children. It is intolerable that PHC has done so in close proximity to three child-serving businesses, including: PPNS, a pediatric occupational therapeutic practice located at 219 Balboa Street, and a children's science education program located at 140 Balboa Street.

PHC's disregard for certain conditions of its business permit—choosing instead to provide sex-for-pay services (per San Francisco Department of Public Health Director's Hearing on October 19, 2016)—is cause for serious concern about any future intention and ability it may have to provide legal massage services within the scope of its licensing.

The Inner Richmond is an established family-friendly community whose many residents share values that promote public health and safety. It is well known that sex-for-pay services are associated with increased risk for human-trafficking of both minors and adults; San Francisco is already one of the five U.S. cities with the greatest number of instances of human trafficking.

Especially in these shared commercial and residential blocks of the Inner Richmond where PPNS has provided high-quality and well-regarded early childhood education services for over 15 years, PHC's engagement in illegal, lewd activity is especially unwelcome and un-neighborly behavior. I urge the Board of Appeals to revoke Paradise Health Center's massage business permit.

Respectfully yours,



Erika J. Dirkse
Member, Board of Directors, Peter's Place Nursery School
Parent, Peter's Place Nursery School

Mary K. Miller
Peter's Place Nursery School
227 Balboa Street
San Francisco, CA 94118
March 1, 2017

BOARD OF APPEALS

MAR 02 2017

APPEAL 16-167

Re: Appeal 16-167

Dear Sir or Madam:

I am a Board Member of Peter's Place Nursery School, located at 227 Balboa Street. Peter's Place is directly across from Paradise Health Center (PHC), located at 242 Balboa Street. I am strongly in favor of the suspension of PHC's Massage Establishment Permit and, further, believe that the violation of the Massage Establishment Permit and the Conditional Use Permit by PHC should result in a revocation of its Massage Establishment Permit.

The business was granted a Conditional Use Permit in which General Citywide Objective 6, Policy 6.1 was found to be met because "the proposed project would fill a vacant commercial space with a commercial use that would be complimentary to the type of neighborhood-serving uses within the immediate area". The San Francisco Department of Health cited the PHC for violations of Section 29.17 (a) and (b) of the San Francisco Health Code in finding that PHC's employee engaged in lewd conduct when observed to be nude with a nude customer.

This is an egregious violation of the Conditional Use Permit and the San Francisco Health Code. Such conduct is in no way complimentary to the type of neighborhood-serving uses of this area. Peter's Place Nursery School has operated in San Francisco since 1974, and has resided at 227 Balboa Street since 2000. The Inner Richmond is the home of many of our school's families, who patronize the neighboring businesses. It is completely inappropriate to have a massage parlor in which lewd conduct is occurring in this neighborhood.

The violations by PHC should, at a minimum, be sanctioned with the proposed suspension. Furthermore, given the outrageous lewd conduct that has occurred at Paradise Health Center, we believe it is impossible to have confidence that this business will operate in compliance with its permit in the future, and we request that the Massage Establishment Permit be revoked.

Very truly yours,

Mary K. Miller

Mary K. Miller

BOARD OF APPEALS

MAR 02 2017

APPEAL # 16-167

Abraham Martinez
PO Box 784
San Francisco, CA, 94104

March 1, 2017

Department of Public Health
1390 Market Street, 5th Floor
San Francisco, CA

Dear Board,

One of the reasons I love being a resident of the Richmond District is how family oriented the community is. Regarding Appeal No 16-167 - I was shocked to read the reasons the massage parlor's license had been suspended.

Furthermore, after discovering this was occurring less than 200 feet away from the neighborhood nursery school (located at 227 Balboa St), where I have a child attendee and I am on the board, my concern has turned to the safety and well-being of the children.

With the outrageous behavior that has occurred and the disregard of its business permit, I hope that the massage parlor serve its full 60 day suspension, at a minimum, and long term have its business permit in this location revoked.

This business has not operated in a manner appropriate to the family and child oriented neighborhood that it sought to do business in. As a parent and as a member of the school's board, I cannot have confidence in a business that has clearly violated its conditions of its permit and the laws governing its operations.

Thank you for your attention to this matter.



Abraham Martinez

03/01/2017

Department of Public Health
1390 Market St., 5th Floor
San Francisco, CA 94102

BOARD OF APPEALS

MAR 02 2017

APPEAL # 16-167

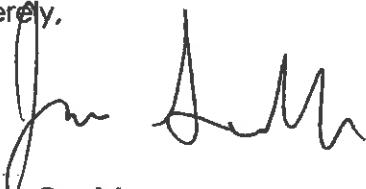
To Whom It May Concern,

I am a current board member of Peter's Place Nursery School which resides at 227 Balboa St. across the street from Paradise Health Center. I also live in the neighborhood.

Upon hearing the violations at Paradise Health Center I was appalled. Given the behavior and disregard of permit conditions I think the permit should be revoked. This business is located in a residential neighborhood and across the street from a nursery school that draws the traffic of many small children.

The business has clearly violated the conditions of its permit and because of this I have no confidence that they will abide by the conditions in the future.

Sincerely,



Jason Gruhl
686 12th Ave.
San Francisco, CA. 94118

BOARD OF APPEALS

MAR 02 2017

APPEAL # 16-167

February 27, 2017

City & County of San Francisco
Board of Appeals
1650 Mission Street, Suite 304
San Francisco, CA 94013

Re: Appeal No. 16-167; 242 Balboa Street

Dear Board Members:

I am writing in opposition to allowing the Paradise Health Center to conduct business at 242 Balboa Street. I am an employee of a neighboring business and am concerned after reading the incident report about activities at the center. I do not feel this establishment is in line with the type of community and family we have here in the Inner Richmond district. We promote family, safety and respectable small businesses.

My other concern is the safety of the women that work there. I have worked here in a neighboring business for three years and I have only seen one woman walk in or out, only one time. They keep the door locked, do not answer to women and seem to service men in sweat pants very often. With the increase of women and children as victims of sex trafficking, I am concerned for the safety and rights of the women working there and am not comfortable with the Paradise Health Center continuing operations. In my time here, I have not been able to approach any employee of the organization to confirm that they are not being held against their will.

Please do not release the suspension of their permit.

Regards,

Brigitte Toy

BOARD OF APPEALS

MAR 02 2017

APPEAL # 16-167

Jennifer So

151 22nd Avenue
San Francisco, CA 94121
415.298.6301
jchan2003@yahoo.com

March 1, 2017

City and County of San Francisco

BOARD OF APPEALS

Cynthia Goldstein, Executive Director
1650 Mission Street, Suite 304
San Francisco, CA 94103

Dear Ms. Goldstein and the Board of Appeals,

I am a member of the Board of Directors of Peter's Place Nursery School, which is located at 227 Balboa Street in San Francisco. Our preschool is situated across the street from the Paradise Health Center, at 242 Balboa Street, which recently had its Conditional Use permit to operate as a massage establishment suspended by the Department of Health. I am writing to strongly oppose the appeal, by Tian Yi Zhao of Paradise Health Center, of the suspension for violating the conditions of the permit.

Peter's Place Nursery School, and the Paradise Health Center, are located in the family-oriented neighborhood of the Inner Richmond. The majority of the properties and businesses consists of residential buildings, restaurants, markets, offices, child-centered businesses, and preschools. Several playgrounds and an elementary school are within walking distance of the Paradise Health Center. This neighborhood is adjacent to Golden Gate Park, where families and tourists alike spend hours exploring the park and museums. The Paradise Health Center, given the nature of its business suspension, does not belong on a street frequented by children throughout the day.

According to the suspension letter, the Paradise Health Center clearly violated several conditions in the Planning Code. The Paradise Health Center did not comply with standard massage use operation standards, and consequently, should serve its 60-day suspension. I am not confident that the business, which flagrantly used its conditional use permit to offer illicit services, will comply with the conditions of the permit. The Paradise Health Center does NOT "promote the health, safety, and welfare of the City," as stated by the Planning Commission on approval of its Conditional Use permit in 2011.

On these grounds, I respectfully urge the Board to deny the appeal of the suspension and ask that its business permit be revoked permanently.

Sincerely,



Jennifer So



BOARD OF APPEALS

MAR 02 2017

APPEAL # 16-167

Date: March 1, 2017

To: San Francisco Board of Appeals

Re: Appeal No: 16-167
Paradise Massage
242 Balboa Street 94118

I am writing in support of the 60-day suspension of Paradise Massage located at 242 Balboa Street. I am the Business Manager at Peter's Place Nursery School located at 227 Balboa Street – across the street from Paradise Massage. I am also a concerned neighbor. I live around the corner at 124 Cabrillo Street.

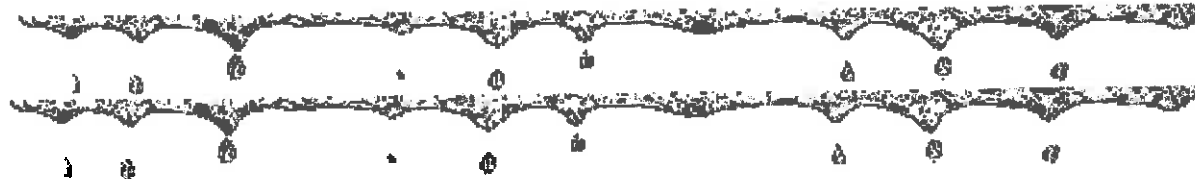
I am outraged that an illegal massage parlor operates in our neighborhood. The inner Richmond district is full of young families and older residents as well as several child-centered businesses. Not only should the 60-day suspension be upheld, but also we are asking that the business license be revoked. On a day-to-day basis, I see men coming and going from 242 Balboa. The windows are heavily tinted so you can't see in and you therefore question what is happening inside. When the business first opened, one of our teachers tried to get a massage and was immediately turned away for no reason. I have also attached pictures from their website. We are concerned for the safety of our children and families as illegal businesses can bring unsavory characters and trouble to a neighborhood.

Paradise Massage has clearly violated the conditions of its permit and the laws governing its operation. One cannot have confidence that the business will operate properly in the future, thus necessitating at a minimum, the suspension, but long term, the revocation of the permit.

Christina Antipa
Business Manager
Peter's Place Nursery School
227 Balboa Street 94118
admin@petersplace.org
415-752-1444

*** Best Asian Massage ***

NEW YOUNG STAFFS



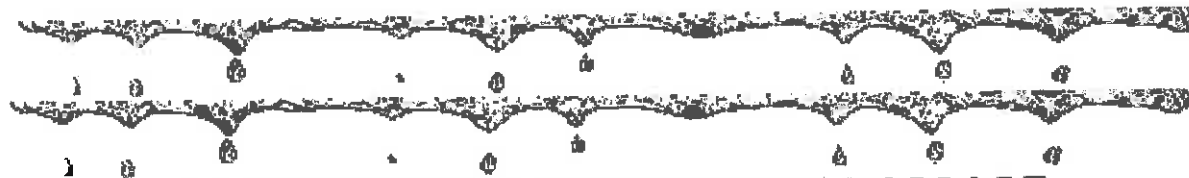
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[Enlarge Picture](#)



BOARD OF APPEALS

MAR 02 2017

APPEAL # 16-167

Date: February 28, 2017

To: SF Board of Appeals

Re: Appeal No. 16-167, 242 Balboa Street

I am the program director for Peter's Place Nursery School located at 227 Balboa Street. We serve close to sixty families enrolling children ages 2.9 to 6 years.

We are located across the street from the "Massage" establishment. 242 Balboa is clearly visible from our entrance and all of our front windows. We have children coming and going from 8:30 in the morning to 5:00 in the evening. They wait out front on the sidewalk and look out our front window, which is eye level for the young ones.

In front of "Paradise Massage," men wait out front in their cars and are let in one at a time. Women are not welcome – the door is never opened when the bell is rung. The web site makes it obvious that they operate not only for massage. Even after their violation, the web site has continued to advertise "Beautiful Sexy Charming Asian Girl Staff Here to Please You."

We are outraged that such an obvious front for illegal activities be permitted to conduct lewd activities on a block with two businesses that serve families and young children. In addition, the neighborhood is full of family homes and other facilities that cater to children.

We would ask that that the "massage parlor" at a minimum, serve its 60 day suspension; and furthermore, given the disregard of its business permit conditions, we ask that the business permit be permanently revoked.

Thank you for your consideration in such an important neighborhood community issue.

A handwritten signature in black ink that reads "Noelle A. Rich". The signature is written in a cursive style with a large, stylized 'N' and a long, sweeping underline.

Noelle Rich
Program Director
Peter's Place Nursery School