

MASSAGE ESTABLISHMENT PERMIT APPLICATION - HYPNOTIQ WELLNES

History. Hypnotiq Wellness applied for a Massage Establishment Permit that was to be approved at the March 6, 2025 regular Planning Commission meeting wherein the Planning Department Director recommended that the permit be approved because the applicant had successfully complied with all requirements necessary for approval of the application. Compatibility, public health and safety and the general welfare was found to be consistent with the immediate area as well as Lake Forest ordinances.

Improper Denial of Application. During that March 6, 2025 meeting, several commissioners had questions about how the outstanding building code violations would be handled. These details seemed to satisfy the commissioners. A call for public testimony or comments was made by the chairman, to which nobody responded. Not one resident or business owner, not one person in the city of Lake Forest objected to the Massage Permit approval. After the public discussion was completed, one planning commissioner in the city of more than 85,000 residents and over 5,000 business owner objected. This commissioner expressed fears that the hypnotherapists at Hypnotic Wellness would become a threat to the community health and safety, and general welfare. Possibly, the hypnotherapists would venture out to a park or the comic book store to solicit sex.

On the contrary, the community's health and safety would actually be enhanced with the addition of new wellness therapies based on hypnosis. These therapies would actually enhance welfare, safety, and health of the community.

Improper Accusations of Prostitution. The Planning Department staff has reversed its recommendation to approve the permit application, apparently because staff became convinced that the massage license would make the business incompatible and dangerous to the community. From the staff report, "There is documented evidence of illicit sexual activity...". This is not true. This accusation by the planning department staff was apparently based on reports submitted by two deputies that were laced with innuendo, conjecture, and opinion. These reports were inconsistent between each deputy's reporting of the "facts". In fact, Deputy Castro's versions of events changed between his original report and his recollection of events at subsequent hearings. The behavior described in either of these reports did not rise even to the level of issuing administrative citations let alone making arrests. *There were no charges filed, citations issued, or convictions of anyone for any illicit sex acts at Lake Forest Marketplace. Ever. The owner of Lake Forest Marketplace has never received a complaint or comment from anyone in the public or the City of Lake Forest. Ever.*

"... within 300 feet of the proposed massage establishment". This is pure fabrication. To walk from one business to another is almost a half a mile.

Improper Code Violations Issued. The business owner and the property owner were both unlawfully and improperly cited for operating a massage business without a license. The spa could not have been operating a massage business without a license because it was not a massage

business. It was a spa. The owner of the property was also charged with indecent exposure. All charges were later cancelled by The State of California Administrative Court.

Expansion of “massage”. The recommendation to deny the Massage Establishment Permit is seeking to be able to apply the “objectionable, detrimental, and incompatible to public health and safety and the general welfare argument” to all “personal care businesses”, including:

Cosmetologists

Hair Stylists

Barbers

Manicurists

Pedicurists

Home Care workers

Facial Treatments:

Facials: Designed to cleanse, exfoliate, and nourish the skin, leaving it refreshed and revitalized.

Microdermabrasion: A non-invasive procedure that exfoliates the outer layer of skin.

Chemical Peels: Use chemical solutions to improve skin texture and appearance.

Body Treatments:

Body Wraps: Treatments that involve applying a substance to the body and wrapping it, often to detoxify or hydrate the skin.

Body Scrubs: Exfoliating treatments that use natural ingredients to remove dead skin cells.

Saunas and Steam Rooms: Facilities that promote relaxation and detoxification through heat.

Whirlpools and Jet Baths: Offer a relaxing and therapeutic experience.

Mud Baths: Use mud to detoxify and nourish the skin.

Salt Scrubs: Exfoliating treatments that use salt to remove dead skin cells.

Seaweed Body Wraps: Use seaweed to hydrate and nourish the skin.

Clay or Herbal Body Masks: Used to cleanse and rejuvenate the skin.

Reflexology: A relaxation therapy that uses pressure points on the feet to promote overall well-being.

Waxing: A hair removal service.

Nail Care:

Manicures and Pedicures: Treatments for the hands and feet, including nail shaping, cuticle care, and polish application.

Paraffin Treatments: Used to moisturize and soothe dry skin.

Other Services:

Aromatherapy: Uses essential oils to promote relaxation and well-being.

Maternity Massage: Specially designed massage for pregnant women.

Relaxation Room: A quiet space for guests to unwind and relax.

Pool and Gym Facilities: Some spas offer access to pools and gyms as part of their packages.

Consequences. As a result of these improper charges by the Code Enforcement Department, the planning commission's libel, slander has deprived the owners of their livelihood and has violated the business owners and the property owner of their civil rights. Lake Forest Marketplace as well as the business owner has suffered irreparable and irreversible name and reputation damage. The owner has been deprived of his livelihood for the rest of his life due to the criminal charges now on his criminal record.

Solution. The Code Enforcement Department should adopt the procedures described in the City of Lake Forest web page (Appendix B) or at least comply with their own City of Lake Forest Ordinance §1.16.030 (Appendix A). The department should not threaten or charge property owners with improper code violations to try to force owners to do the jobs of Code Enforcement Department, especially because property owners are powerless to force tenants to do anything. The code enforcement department would be much more successful in ridding the city of truly bad actors by cooperating with business and property owners, rather than ruining their lives. The department would be further ahead, and the city would be much better served.

Prayer. Please approve the application USE PERMIT 11-24-5754 Hypnotiq to avoid the very slippery slope of city officials being able to arbitrarily, unlawfully, and maliciously close down any personal services businesses that a single commissioner or councilmember does not personally approve of. This not only puts the owners out of business, but in most cases, ruins them financially because the rent continues to the end of their leases. It is corrupt, illegal, and unconscionable. This also sends a message that the City of Lake Forest is not open for business.

As an alternative, please postpone the decision to approve the Use Permit Application until the applicant, the Commission, and the city can verify these facts. The Owner of Hypnotiq Wellness deserves due process under the law as well as equal protection under the law, especially if he is denied these civil rights under color of authority. It is clearly established law that depriving a person of their civil liberties of legal due process and equal protection of law is a violation of the Fourteenth Amendment of the U.S. Constitution.

Please see APPENDIX C for the real facts.

APPENDIX A

§ 1.16.030 Administrative citation—General.

A. Any enforcement officer, upon determining that any provision of this Code, which he or she is charged to enforce, has been violated has the authority to issue an administrative citation to any responsible person or persons. An enforcement officer may issue an administrative citation for a violation the officer did not see occur if the officer has determined, through investigation, that the person is a responsible person. Courtesy violations shall be issued for a first violation, except when the violation threatens the public health or safety, in which case an administrative citation may be immediately issued.

1. Except for courtesy administrative citations issued for building violations pursuant to Section 1.16.040 and courtesy administrative citations issued to a responsible person as defined in Section 1.16.020(J)(6), a courtesy administrative citation shall provide the violator a minimum of five days to correct the violation, or a reasonable amount of time in the enforcement officer's discretion, unless the violation threatens the public health or safety.
2. A courtesy administrative citation issued to a responsible person, as defined in Section 1.16.020(J)(6), shall provide the violator a minimum of 30 days to correct the violation, or a reasonable amount of time in the enforcement officer's discretion, unless the violation threatens the public health or safety.

APPENDIX B

<https://www.lakeforestca.gov/en/departments/community-development/code-enforcement>

What We Do

The Code Enforcement Division is charged with maintaining and improving the character, aesthetic quality and property values within the City by notifying property owners of conditions of violation observed on properties. The Division maintains and improves the City's residential and commercial neighborhoods through the enforcement of codes pertaining to such matters as public nuisances, property maintenance, zoning, building, health and safety, and signage.

Code Enforcement is an important component of a city's effort to improve, preserve, and maintain those qualities that residents and businesses find to be desirable or important. Working in conjunction with other departments in the City, Code Enforcement staff responds to requests for service from the community and maintains compliance with laws, regulations, and permits over which they have authority, in the process significantly improving the appearance of the community.

When a violation occurs, staff applies an education-based approach to assist residents and business owners in quickly resolving a violation and discouraging future violations. However, despite these efforts, violations inevitably occur. In situations where property/business owners fail to acknowledge the violation or initiate corrective measures in a reasonable time, Code Enforcement staff can respond with a variety of escalating enforcement options. These options can include:

- commencement of a nuisance abatement action
- issuance of Administrative Citations carrying fines that can range from \$100 to \$500
- filing of criminal or civil complaints in the Superior Court

Report a Violation

Report an Issue is an easy-to-use tool to report code violations online, with the ability to upload photos and provide location details.

EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

BRIAN McMILLAN,

Plaintiff,

vs.

DOUG CIRBO, MARK TETTEMER,
SCOTT VOIGTS, ROBERT PEQUENO,
BENJAMIN YU, DEBRA ROSE, CITY
OF LAKE FOREST, and DOES 1 TO 10,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES
AND INJUNCTION BASED ON:**

**1. CIVIL RIGHTS VIOLATION,
2. LIBEL, AND
2. FOR CANCELLATION OF
CITATION**
[42 U.S.C. §1983]

**PLAINTIFF DEMANDS TRIAL
BY JURY**

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS:

EXECUTIVE SUMMARY

1. Plaintiff BRIAN McMILLAN successfully challenged citations issued under city ordinances requiring a landlord to evict occupants of leased units whom a code enforcement officer suspected of illegal activity or nuisance, see decision in *McMillan v. City of Lake Forest*, Orange County Superior Court Case No. 30-2024-01449358-CL-JR-CJC (February 20, 2025) (the “Lawsuit”). The code enforcement officer who issued citations acted under the direction, with the prior approval, and subsequent ratification of Defendants DOUG CIRBO, MARK TETTEMER, SCOTT VOIGTS, ROBERT PEQUENO, BENJAMIN YU, DEBRA ROSE, and the CITY OF

1 LAKE FOREST. Defendants enacted the challenged city ordinances, singled out
2 Plaintiff for compliance with the ordinances, and pursued issuance of citations to him
3 for perceived violations of the ordinances related to a First Tenant "Ocean Pearl."
4 The citations were upheld in a first administrative hearing, but canceled after the
5 above Lawsuit concluded. Enforcement of the ordinances was calculated to cause
6 Plaintiff to be deprived of the rights, privileges, or immunities secured by the 14th
7 Amendment to the U.S. Constitution and other laws as described in 42 U.S.C. §1983.

8 2. Plaintiff operates a business of leasing commercial properties which he
9 owns. He employs a Professional Property Management Company to vet prospective
10 tenants, to contract with responsible tenants, to collect rents, and to review tenant
11 compliance with leases and statutes.

12 3. The city ordinances requiring eviction of tenants based on suspicion of
13 illegal activity were never used before, against any landlord within the CITY OF
14 LAKE FOREST, until Defendants used the ordinances against Plaintiff. Suspicion of
15 illegal activity committed by a tenant as a predicate for filing misdemeanor charges
16 against Plaintiff violated procedural due process based on inadequate notice to him of
17 potential liability, and violated substantive due process because Plaintiff was not
18 provided with sufficient evidence to justify pursuing an unlawful detainer action
19 against any tenant. Had Plaintiff pursued eviction, he would have been civilly at risk
20 for tenant countersuit due to malicious prosecution and/or abuse of process. Further,
21 under Defendants' own ordinances, the alleged illegal activity of the First Tenant did
22 NOT relate to any building, housing, fire and health codes, or zoning violations. The
23 alleged illegal activity was not property-related, and therefore, could not have
24 resulted in citations to Plaintiff.

25 4. After Plaintiff prevailed in the above Lawsuit, Defendants held a second
26 administrative hearing citing other ordinances against Plaintiff related to a Second
27 Tenant "Lake Forest Beauty Spa." Defendants doubled down on their misconduct,
28 showing a pattern of misconduct, by upholding their own ordinances, despite the fact

1 that the ordinances violated Plaintiff's rights of due process, and the citations were
2 not property-related. Plaintiff seeks damages against Defendants who relied on
3 unconstitutional city ordinances to violate Plaintiff's civil rights. Plaintiff also seeks
4 damages for libel based on circulation of false publications calculated to harm his
5 reputation. Plaintiff also seeks cancellation of the citations which were approved in
6 the second administrative hearing. Finally, Plaintiff seeks injunctive relief barring
7 Defendants from authorizing any code enforcement officer to determine the nature of
8 a business for purposes of issuing citations.

9 **JURISDICTION AND VENUE**

10 5. This civil action arises under Federal law in 42 U.S.C. §1983, and the
11 14th Amendment to the U.S. Constitution.

12 6. This Court has subject matter jurisdiction, pursuant to 28 U.S.C. §1331.

13 7. This Court has personal jurisdiction over Defendants, because each
14 Defendant resides and committed the harmful acts within California, and within the
15 U.S. Central District of California, Southern Division.

16 8. Venue properly lies within the U.S. Central District of California,
17 Southern Division pursuant to 28 U.S.C. §§ 1391(b)(1) and (2), and (c), because
18 Defendants are subject to personal jurisdiction in this Judicial District as set forth
19 above, and Plaintiff has been harmed by Defendants' conduct, as described below, in
20 this Judicial District.

21 **PARTIES**

22 9. Plaintiff is and at all times was a resident of Orange County, California.

23 10. All of the Defendants DOUG CIRBO, MARK TETTEMER, SCOTT
24 VOIGTS, ROBERT PEQUENO, BENJAMIN YU, DEBRA ROSE, and the CITY OF
25 LAKE FOREST, perform governmental functions at 100 Civic Center Dr., Lake
26 Forest, CA 92630.

27 11. The true names and capacities, whether individual, corporate, associate,
28 or otherwise, of Defendants sued as DOES 1 through 10, inclusive, are unknown to

1 Plaintiff who therefore sues said Defendants by such fictitious names; Plaintiff will
2 amend this complaint to show such true names and capacities when he has
3 ascertained the same.

4 12. At all times herein mentioned, each of the Defendants was the agent
5 and/or employee of each of the remaining Defendants, and was at all times herein
6 mentioned acting within the course and scope of such agency and employment,
7 and/or ratified the actions or omissions of each of the other Defendants. Plaintiff is
8 further informed and believes, and thereon alleges, that each of the said Defendants is
9 in some way responsible for the obligations hereinafter alleged.

10 **FACTUAL BACKGROUND**

11 13. Plaintiff, through his solely owned business, Lake Forest Marketplace,
12 LLC, owns a Shopping Center in Lake Forest. He acquired the Shopping Center on
13 March 2, 2023.

14 14. As the owner of the Shopping Center, Plaintiff holds property interests in
15 collecting rents, in avoiding fines imposed by ordinances, and in being able to use his
16 real estate as security for mortgages in order to expand his real estate portfolio, which
17 are fundamental rights protected by the 14th Amendment to the U.S. Constitution.

18 15. At the time Plaintiff acquired the Shopping Center, there was a tenant in
19 place "Oasis Relax," who operated a massage establishment at 23803 El Toro Road,
20 Lake Forest, CA within the Shopping Center.

21 16. "Oasis Relax" was duly licensed to operate a massage establishment by
22 the CITY OF LAKE FOREST. Its operators were required to sign an
23 acknowledgment, whereby they agreed to obey the provisions of the Lake Forest
24 Municipal Code "LFMC" pertaining to massage establishments. In addition to the
25 massage establishment license, Oasis Relax also obtained a massage permit for the
26 premises, identified as "Use Permit." The Use Permit runs with the premises.
27 Plaintiff was never asked to sign nor was he given any acknowledgment pertaining to
28 massage establishments by Defendants.

1 17. On December 31, 2023, Oasis Relax massage establishment license was
2 not renewed by Defendants. Oasis Relax left the premises. The Use Permit still
3 covered the premises owned by Plaintiff.

4 18. Plaintiff employs a Professional Property Management Company to vet
5 prospective tenants, to contract with responsible tenants, to collect rents, and to
6 review tenant compliance with leases and local ordinances. The Management
7 Company located a replacement tenant for Oasis Relax.

8 19. Plaintiff then leased the same premises previously occupied by Oasis
9 Relax to the First Tenant "Ocean Pearl." Ocean Pearl provided facial services, but
10 not massage services. On August 13, 2024, the First Tenant was cited by a code
11 enforcement officer for violation of LFMC §5.07.200 "Operation of massage
12 establishment without a permit," and LFMC §5.07.230(O) "Unlawful conduct."
13 Notably, the code enforcement officer made the determination that the First Tenant
14 should be classified as a massage establishment. The classification was directed by,
15 pre-approved by, and/or ratified by Defendants. On information and belief, Ocean
16 Pearl paid the fines imposed by the citation it received, and continued in its facial
17 services business.

18 20. On the same date as Ocean Pearl was cited, Defendants cited Plaintiff for
19 the same violations. There was no prior notice of the First Tenant's alleged non-
20 compliance with any city ordinance to Plaintiff. The purpose of notice is to provide
21 an opportunity for cure. No cure period was provided to Plaintiff. Under
22 Defendants' own ordinances, a notice period of five days was required by LFMC
23 §1.16030 – although, five days is obviously too short a period of time to effectuate
24 any reasonable cure. Further, any violation of the city ordinances also constituted a
25 public nuisance under LFMC §6.14.002(A). LFMC §1.01.210 imposed liability on
26 Plaintiff for "causing, permitting, aiding, abetting, suffering, or concealing," unlawful
27 conduct. The unlawful conduct was classified as a misdemeanor in LFMC §1.01.100,
28 LFMC §1.01.220.C., and LFMC §1.16.010.

1 21. Defendants directed Plaintiff to evict the First Tenant. Since Plaintiff
2 was not aware of any specific conduct committed by the First Tenant which would
3 justify eviction based on breach of lease terms, Plaintiff requested that Defendants
4 provide information and documents establishing the basis for the citation issued
5 against the First Tenant, and that the information and documents be sworn to by a
6 peace officer. The citation was signed by the code enforcement officer, and was not
7 sworn to by a peace officer. Defendants declined to provide the information and
8 documents to Plaintiff and declined to provide a sworn statement by a peace officer.
9 In the absence of Defendants' information, documents, and sworn statement, Plaintiff
10 had nothing to establish that the First Tenant's use of the leased property constituted
11 a nuisance to substantiate an unlawful detainer action under Code of Civil Procedure
12 §1161(4). Similarly, Plaintiff had no basis for requiring any cure of allegedly bad
13 conduct by the First Tenant due to Defendants' failure to provide substantiating
14 information and documents. Since the alleged illegal activity was not property-
15 related, the only cure available to Plaintiff was eviction of the First Tenant.

16 22. A first administrative hearing was held by Defendants' agent, a hearing
17 officer. The hearing officer upheld the citations as being valid. Plaintiff appealed the
18 conviction by Defendants' agent. The citation was cancelled in *McMillan v. City of*
19 *Lake Forest*, Orange County Superior Court Case No. 30-2024-01449358-CL-JR-
20 CJC (February 20, 2025) (the "Lawsuit").

21 23. At another location within the same Shopping Center, Plaintiff also owns
22 23785 El Toro Road, Lake Forest, CA. Based on recommendations and vetting by
23 the Professional Property Management Company, Plaintiff leased the property to a
24 Second Tenant "Lake Forest Beauty Spa." The Second Tenant operated a spa, not a
25 massage establishment. Nevertheless, on January 24, 2025, Defendants issued
26 citation to the Second Tenant for violation of LFMC §5.07.200(A) "Operation of
27 massage establishment without a permit," and LFMC §6.14.002(V) "Massage
28 establishment operating without valid zoning approval use permit." Again, notably,

1 the code enforcement officer made the determination that the Second Tenant should
2 be classified as a massage establishment. The classification was directed by, pre-
3 approved by, and/or ratified by Defendants. On the same date as the Second Tenant
4 was cited, Defendants cited Plaintiff for the same violations. There was no prior
5 notice of the Second Tenant's alleged non-compliance with any law to Plaintiff, and
6 no opportunity for a cure period was provided to Plaintiff. Once again, the code
7 violations gave Defendants the power to prosecute the conduct as misdemeanors. On
8 information and belief, Lake Forest Beauty Spa paid the fines imposed by the citation
9 it received, and continued in its spa business.

10 24. Defendants directed Plaintiff to evict the Second Tenant. Since Plaintiff
11 was not aware of any specific conduct committed by the Second Tenant which would
12 justify eviction based on breach of lease terms, Plaintiff requested that Defendants
13 provide information and documents establishing the basis for the citation issued
14 against the Second Tenant, and that the bad conduct be sworn to by a peace officer.
15 The citation was signed by the code enforcement officer, and not sworn to by a peace
16 officer. Defendants declined to provide the information and documents to Plaintiff,
17 and declined to provide a sworn statement by a peace officer. In the absence of
18 Defendants' information, documents, and sworn statement, Plaintiff had nothing to
19 establish that the Second Tenant's use of the leased property constituted a nuisance to
20 substantiate an unlawful detainer action under Code of Civil Procedure §1161(4),
21 and/or other bad conduct which would require notice to cure. Since the alleged
22 illegal activity was not property-related, the only cure available to Plaintiff was
23 eviction of the Second Tenant.

24 25. Plaintiff requested a second administrative hearing. The results were the
25 same as at the first administrative hearing – citations were upheld. Since property
26 rights under 42 U.S.C. §1983 are involved, exhaustion of state administrative
27 remedies is not required.

28 26. On February 18, 2025 by posting at the Lake Forest City Hall, and again

1 on February 20, 2025 in a newspapers of general circulation, prior to a March 6, 2025
2 hearing of the Lake Forest Planning Commission, Defendants published and
3 circulated remarks and recommendations to Plaintiff's neighbors and other members
4 of the community. The publications averred that Oasis Relax should lose its Use
5 Permit based on alleged acts of prostitution, which purportedly occurred about four
6 months prior to Plaintiff acquiring the premises, and where Plaintiff was given no
7 notice of the commission of allegedly illegal acts. The publications stated that
8 Defendants were investigating operations of the First Tenant Ocean Pearl at the same
9 location. The First Tenant was not a massage establishment, it provided facial
10 services, but it was classified as a massage establishment by the code enforcement
11 officer at the direction, with pre-approval by, and/or ratification by Defendants. The
12 publications also stated that the owner of the First Tenant denied the allegations of
13 operation of a massage establishment or that any other bad conduct had been
14 committed on the premises. And the publications continued that if the Use Permit
15 were revoked then no massage establishment could be located on the same premises
16 for two years. The publications transmitted false information in significant part by
17 omitting the true facts that the citations against Ocean Pearl had been canceled in the
18 above Lawsuit, as to Plaintiff, the owner of the premises. The publications raised the
19 false inference that Plaintiff and his tenants were liable for illegal conduct.

20 **FIRST CLAIM: VIOLATION OF CIVIL RIGHTS**

21 **Against All Defendants**

22 27. Plaintiff incorporates herein by reference the allegations of paragraphs 1
23 through 26 as though fully set forth herein.

24 28. Plaintiff at all times held a property interest in the Shopping Center in
25 Lake Forest where he entered into leases to the First Tenant, and the Second Tenant.
26 Plaintiff had the right to receive rents from tenants, the right to avoid fines and liens
27 against the Shopping Center, the right to minimize costs by avoiding pursuit of
28 unlawful detainer actions which were not justifiable, and the right to use his property

1 as security for mortgages to expand and/or improve his real estate portfolio.

2 29. Defendants and each of them created and enacted the city ordinances
3 which would cause a commercial landlord to be automatically liable for unlawful
4 conduct of a tenant where the conduct was not related to property. Prior notice of the
5 allegedly bad conduct and opportunity for cure were not available to the landlord
6 under Defendants' ordinances. A period of five days for notice to cure to a landlord
7 was ignored by Defendants in their haste to punish Plaintiff. However, even had they
8 observed the five day cure period, that would have been too short for a landlord to
9 pursue any reasonable cure. The First Tenant operated a facial services business, but
10 the code enforcement officer, as directed by, as pre-approved by, and/or as ratified by
11 Defendants determined that the First Tenant should be classified as a massage
12 establishment. Since the allegedly bad conduct was not property-related, the only
13 possible cure was eviction. Defendants knew or should have known that prior to
14 seeking enforcement of the ordinances against Plaintiff, the ordinances had not been
15 previously used against any other landlord. Defendants singled Plaintiff out for
16 punishment under the ordinances, where the violations could be classified as
17 misdemeanors.

18 30. Defendants caused Plaintiff to be simultaneously issued a citation for the
19 same violations of city ordinances as the First Tenant had purportedly committed, on
20 the same date. Defendants knew or should have known that enforcement of the city
21 ordinances would deprive Plaintiff of his constitutional due process rights under the
22 14th Amendment to the U.S. Constitution and 42 U.S.C. §1983.

23 31. In a first administrative hearing, the citations were upheld by
24 Defendants' agent acting as a hearing officer. The issuance of the citations was
25 cancelled by the Superior Court for the State of California, County of Orange, in
26 *McMillan v. City of Lake Forest*, Orange County Superior Court Case No. 30-2024-
27 01449358-CL-JR-CJC (February 20, 2025).

28 32. Defendants caused Plaintiff to be cited again for the allegedly unlawful

1 acts of the Second Tenant. In a second administrative hearing, the citations were
2 upheld by Defendants' agent acting as a hearing officer. Defendants have not sought
3 to recall or cancel the results of the second administrative hearing based on the
4 findings of the Superior Court in the Lawsuit identified above.

5 33. Defendants violated 42 U.S.C. §1983 by subjecting Plaintiff to multiple
6 citations under color of city ordinances. Defendants knew or should have known that
7 the ordinances were invalid for imposing automatic liability against a commercial
8 landlord without notice, and without providing the substantive information,
9 documents, and sworn statement by a peace officer, proving that a tenant had violated
10 the ordinances. Defendants knew or should have known that they could not demand
11 Plaintiff evict his tenants without providing information and documents establishing
12 the basis for the citation as sworn to by a peace officer. Since Plaintiff declined to
13 evict either the First Tenant or the Second Tenant, Defendants chose to use the power
14 against him. Defendants use of power under the city ordinances was misplaced,
15 because by failing to give proper notice to Plaintiff, and by failing to provide
16 substantive safeguards, the ordinances were wrongfully applied to Plaintiff.

17 34. The second round of issuance of a citation to Plaintiff demonstrates a
18 pattern of bad conduct. Defendants act as if they are immune to the laws of the land
19 by repeatedly applying invalid city ordinances to Plaintiff.

20 35. Further, by seeking to remove the Use Permit for the premises previously
21 occupied by Oasis Relax and currently occupied by Ocean Pearl, Defendants have
22 relied on the conclusions regarding classification of a business by the code
23 enforcement officer, without substantiation and without being sworn to by a peace
24 officer. On information and belief, neither Oasis Relax nor Ocean Pearl have been
25 criminally prosecuted; only fines were imposed, the payment of which does not
26 establish that illegal activity actually occurred.

27 36. As a proximate result of the use of invalid city ordinances against
28 Plaintiff, Defendants have caused damages to Plaintiff by interference with his

1 property rights. The damages caused by imposition of unjust citations, consist of
2 compromising Plaintiff's ability to obtain futures mortgages from private institutions,
3 and reducing the likelihood that he will qualify for other special licenses including
4 any licenses before the State Board of Alcohol Beverage Control, or other agencies.
5 Further, Defendants have interfered with collection of rents from tenants, and have
6 acted in a fashion calculated to revoke the Use Permit which runs with the premises
7 that Plaintiff owns. The Use Permit is a valuable asset since having it would save
8 application costs for a future tenant. Premises with Use Permit can be leased at a
9 higher rate. Previously, Plaintiff had unblemished record. Now, by Defendants'
10 actions, his credit worthiness and reputation have been unfairly tarnished.

11 37. To defend himself against unjust charges, Plaintiff has had to retain and
12 pay attorneys. Plaintiff is entitled to recovery of fees and costs pursuant to statute in
13 42 U.S.C. §1988(b).

14 38. As a further proximate result of the use of invalid city ordinances to
15 obtain convictions against Plaintiff, Plaintiff has suffered emotional and
16 psychological distress, worry, fear, and grievous concerns. Plaintiff will seek
17 damages according to proof at trial.

18 39. Damages are an inadequate remedy for Plaintiff, because Defendants'
19 code enforcement officer, can and likely will classify other businesses leasing
20 Plaintiff's premises as massage establishments with the pre-approval, direction,
21 and/or ratification by Defendants, but without substantial justification. There is
22 irreparable and recurring harm, based on arbitrary classification of the nature of
23 businesses as massage establishments by Defendants' code enforcement officer, even
24 though the business had not been identified by the owners as massage establishments.
25 Due to constitutional vagueness and arbitrariness of the classification as massage
26 establishments, a temporary and permanent injunction should issue barring the
27 Defendants' ability to classify any business as a massage establishment without
28 affording a full hearing to Plaintiff and to any accused tenant of Plaintiff.

1 **SECOND CLAIM: LIBEL**

2 **Against All Defendants**

3 40. Plaintiff incorporates herein by reference the allegations of paragraphs 1
4 through 39 as though fully set forth herein.

5 41. On February 18, 2025 by posting at the Lake Forest City Hall, and again
6 on February 20, 2025 in a newspapers of general circulation, prior to a March 6, 2025
7 hearing of the Lake Forest Planning Commission, Defendants published and
8 circulated remarks and recommendations to Plaintiff's neighbors and other members
9 of the community.

10 42. The publications stated that Oasis Relax should lose its Use Permit based
11 on alleged acts of prostitution, which purportedly occurred about four months prior to
12 Plaintiff acquiring the premises, and where Plaintiff was given no notice of the
13 commission of allegedly illegal acts. The Use Permit runs with the premises, and is a
14 property right belonging to Plaintiff.

15 43. The publications stated that Defendants were investigating operations of
16 the First Tenant Ocean Pearl at the same location. The First Tenant was not a
17 massage establishment, it provided facial services, but it was classified as a massage
18 establishment by the code enforcement officer at the direction, with pre-approval by,
19 and/or ratification by Defendants. The publications also stated that the owner of the
20 First Tenant denied the allegations of operation of a massage establishment or that
21 any other bad conduct had been committed on the premises.

22 44. And the publications continued that if the Use Permit were revoked then
23 no massage establishment could be located on the same premises for two years. The
24 publications transmitted false information in significant part by omitting the true facts
25 that the citations had been canceled in the above Lawsuit, as to Plaintiff, the owner of
26 the premises. The publications were libelous against Plaintiff by stating that illegal
27 conduct had been committed at the premises, inferring that the Shopping Center
28 owner was responsible for the illegal conduct, and the property owner was in

1 jeopardy of losing the Use Permit in which he had an interest. Use Permits have
2 value, because once issued, unless revoked, they run with the premises such that a
3 new or replacement tenant would not have to go through the expensive procedure of
4 acquiring Use Permit for a massage establishment. Premises with Use Permits in
5 place garner higher lease rates.

6 45. As a proximate result of Defendants making libelous publications,
7 Defendants have caused damages to Plaintiff. The damages caused by imposition of
8 unjust citations, consist of compromising Plaintiff's ability to obtain futures
9 mortgages from private institutions, and reducing the likelihood that he will qualify
10 for other special licenses including any licenses before the State Board of Alcohol
11 Beverage Control, or other agencies. Previously, Plaintiff had unblemished record.
12 Now, by Defendants' actions, his credit worthiness and reputation have been unfairly
13 tarnished.

14 46. As a further proximate result of Defendants' publication of libelous
15 statements against Plaintiff, Plaintiff has suffered emotional and psychological
16 distress, worry, fear, and grievous concerns. Plaintiff will seek damages according to
17 proof at trial.

18 **THIRD CLAIM: CANCELLATION OF CITATION**

19 **Against Defendants CITY OF LAKE FOREST and DOES 1-2**

20 47. Plaintiff incorporates herein by reference the allegations of paragraphs 1
21 through 46 as though fully set forth herein.

22 48. Plaintiff seeks cancellation of the citation issued against him based on
23 Defendants' claim that the Second Tenant committed allegedly bad acts. Attribution
24 of the Second Tenant's alleged criminal conduct to Plaintiff without notice and
25 opportunity to cure, amounts to denial of constitutional due process.

26 Wherefore, Plaintiff prays for:

- 27 1. Economic damages of at least \$75,000,000.00;
- 28 2. General, special and non-economic damages of at least \$3,000,000.00;

3. For temporary and permanent injunction barring Defendants' code enforcement officer from classifying any business as a massage establishment without affording Plaintiff and his tenant a full hearing;

4. For prejudgment interest;

5. For attorneys fees and costs under 42 U.S.C. §1988(b);

6. For injunctive relief in cancelling the citations against Plaintiff; and

7. For such further relief as may be proper.

Respectfully submitted,

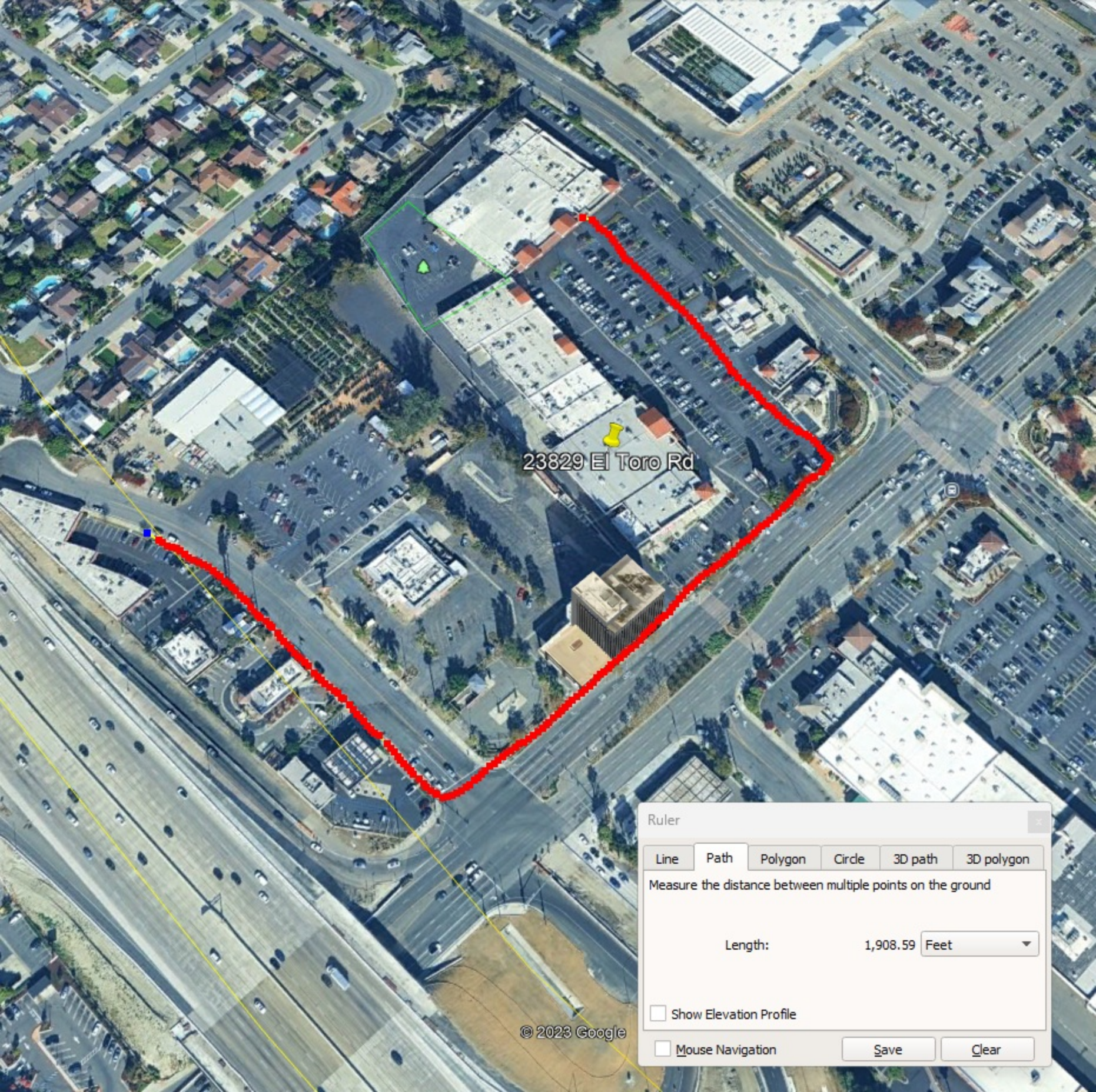
FLYER & FLYER, A PROFESSIONAL
LAW CORPORATION

Dated: _____, 2025

By: /s/ David R. Flyer

David R. Flyer
Raquel Flyer Dachner
Attorneys for
Plaintiff BRIAN McMILLAN

PLAINTIFF DEMANDS TRIAL BY JURY



23829 El Toro Rd

Ruler

Line

Path

Polygon

Circle

3D path

3D polygon

Measure the distance between multiple points on the ground

Length: 1,908.59 Feet

☐ Show Elevation Profile

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Save

Clear