



REPORT TO COUNCIL

City of Sacramento

H

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

CONSENT
September 28, 2010

**Honorable Mayor and
Members of the City Council**

Title: Appeal: Happy Happy Entertainment Permit Application Denial

Location/Council District: 6048 Stockton Boulevard (District 3)

Recommendation: Adopt a Resolution causing the appeal of the decision to deny issuance of an entertainment permit for The Happy Happy Restaurant, to be heard by a City Council appointed administrative hearing examiner.

Contact: Max B. Fernandez, Director of Community Development Department, 808-7940

Presenters: Max B. Fernandez, Director of Community Development, 808-7940;
Robert Rose, Code Enforcement Manager, 808-5947

Department: Community Development

Division: Code Compliance

Organization No: 21001313

Description/Analysis

Issue: On June 2, 2010, owner/s of the Happy Happy Restaurant, located in City Council District 3, submitted an Entertainment Permit application to the City. After a thorough investigation, the application was denied pursuant to the Entertainment Ordinance (Sacramento City Code Chapter 5.108). The basis of the denial is described in the "Notice of Denial" letter dated July 20, 2010 (Exhibit A). On July 30, 2010, the applicant filed an appeal of the denial (Exhibit B).

Policy Considerations: The Code Compliance Division of the Community Development Department has an established hearing process with hearing examiners appointed by the City Council. The Entertainment Ordinance allows for aggrieved applicants to appeal to the City Council. The Entertainment Ordinance also allows the City Council to refer appeals to an administrative hearing examiner.

Environmental Considerations: Under the CEQA guidelines, continuing administrative activities do not constitute a "project" as defined in Section 15378 of the CEQA Guidelines and are therefore exempt from review.

Sustainability Considerations: There are no sustainability considerations applicable to the staff recommendation.

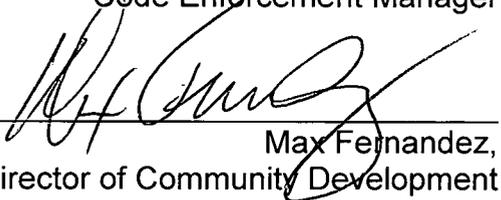
Commission/Committee Action: None.

Rationale for Recommendation: Staff anticipates that the issues raised in this notice of appeal will involve a lengthy fact finding process. Therefore, staff is recommending that the Mayor and the City Council refer the appeal of the Happy Happy Restaurant to an administrative hearing examiner, in which case the administrative hearing examiners decision will be final.

Financial Considerations: The administrative hearing examiner appointed by the Mayor and the City Council will charge the City of Sacramento for the services of hearing various appeals on an hourly basis. The anticipated cost of referring this appeal to be heard by an administrative hearing examiner is not expected to exceed \$500.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

Respectfully Submitted by: 
Robert Rose
Code Enforcement Manager

Approved by: 
Max Fernandez,
Director of Community Development

Recommendation Approved:

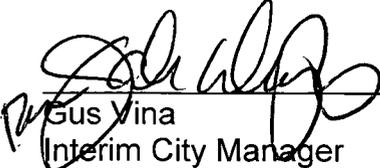

Gus Vina
Interim City Manager

Table of Contents:

Report	Pg.	1
Attachments		
1. Background	Pg.	3
2. Resolution	Pg.	4
3. Exhibit A: Notice of Denial	Pg.	5
4. Exhibit B: Applicant Appeal	Pg.	8

Attachment 1**BACKGROUND**

The current Entertainment Ordinance (Sacramento City Code 5.108) was adopted by the City Council in October of 2003. The City Council encourages the development of arts and culture in Sacramento, and recognizes that many entertainment venues provide a means for such development. The ordinance requires establishments providing entertainment venues to secure an Entertainment Permit. Additionally, under Section 5.108.190 D,1, a through j, the City Manager may impose conditions relating to the operation of the entertainment establishment.

On June 2, 2010, owner/s of the Happy Happy Restaurant located at 6048 Stockton Boulevard, suite 170, submitted an Entertainment Permit application to the department requesting approval to conduct/hold entertainment activities at the premises. After a thorough investigation of the application, including a review of reports/recommendations from the Chief of the Sacramento Police Department, the application was denied pursuant to Sacramento City Code sections 5.108.190 (B)(4) and 5.108.190 (B)(5). A formal "Notice of Denial" of the entertainment permit application was issued on July 20, 2010. Copies of this notice were mailed to the applicant/s by first class and certified mail, and personally delivered to the applicant on July 20, 2010. The basis of the denial are described in the "Notice of Denial" letter dated July 20, 2010, and are included in this report as Exhibit A of the resolution. On July 30, 2010, the applicant filed an appeal of the denial; a copy of the appeal is included in this report as Exhibit B of the resolution.

In the event an Entertainment Permit application is denied, the ordinance allows any applicant aggrieved by the decision of the City Manager or designee to appeal the decision to the City Council. In lieu of hearing the appeal itself, the City Council may cause the appeal to be heard by a hearing examiner designated by the City Council whenever it determines from an examination of the notice of appeal that a hearing may involve a lengthy fact finding process which could be more appropriately accommodated by a formal hearing before a hearing examiner

Staff anticipates that the issues raised in this notice of appeal will involve a lengthy fact finding process. Therefore, staff is recommending that the City Council refer the appeal of the Happy Happy Restaurant to an administrative hearing examiner, in which case the administrative hearing examiners decision will be final.

Attachment 2

RESOLUTION NO.

Adopted by the Sacramento City Council
September 28, 2010

A RESOLUTION CAUSING THE APPEAL OF THE PROPOSED DENIAL OF THE ENTERTAINMENT PERMIT FOR HAPPY HAPPY RESTAURANT LOCATED AT 6048 STOCKTON BOULEVARD SUITE 240 TO BE HEARD BY AN ADMINISTRATIVE HEARING EXAMINER

BACKGROUND

- A. Sacramento City Code Section 5.108.260 provides that any person aggrieved by a decision of the City Manager in denying, suspending, modifying, or revoking an entertainment permit may appeal the decision to the City Council.
- B. Sacramento City Code Sections 1.24.050 and 1.24.060 provide that in lieu of hearing an appeal itself, the City Council may cause an appeal to be heard by a hearing examiner designated by the City Council whenever it determines from an examination of the notice of appeal that a hearing on the subject of the appeal may involve a lengthy fact finding process which could be more appropriately accommodated by a formal hearing before a hearing examiner.
- C. Appeals from denial, suspension, modification, or revocation of an entertainment permit are not included in the categories of appeal set forth in current City Council Resolutions.
- D. An examination of the notice of appeal filed by Deborah Barron regarding the proposed denial of the entertainment permit for Happy Happy Restaurant located at 6048 Stockton Boulevard reveals that the subject appeal may involve a lengthy fact finding process more appropriately accommodated by an administrative hearing officer.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Clerk shall refer the appeal filed by Deborah Barron regarding the proposed denial of the entertainment permit for Happy Happy Restaurant located at 6048 Stockton Boulevard to administrative law judge.

Table of Contents:

- Exhibit A: Notice of Denial – Page 5
- Exhibit B: Notice of Appeal – Page 8



COMMUNITY DEVELOPMENT
DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

Mailing Address:

915 I STREET, MC 20000
SACRAMENTO, CA
95814-2998

Business Compliance
PH 916-808-8149
FAX 916-808-7722

July 20, 2010

Tony Chung
Happy Happy Restaurant
6048 Stockton Blvd., Suite 170
Sacramento, CA 95824

Dear Mr. Chung:

On June 2, 2010, the City of Sacramento received your entertainment permit application for the establishment known as Happy Happy Restaurant, located at 6048 Stockton Boulevard, Suite 170, Sacramento, CA 95824. The City Manager designated me to conduct a thorough investigation of the application as the Director of Community Development (formerly Code Enforcement). As part of the investigation, I received reports and recommendations from the Chief of the Sacramento Police Department. Based on the findings of my investigation, I hereby deny your application pursuant to Sacramento City Code sections 5.108.190(B)(4) and 5.108.190(B)(5).

Your application is denied for the following reasons:

- **False or Misleading Information in Application:** Applicant Tony Huy Chung answered, "No," to Question #15 on the entertainment permit application form. Question #15 asked the applicant whether he had any previous criminal convictions. The Sacramento Police Department conducted a background check that revealed a misdemeanor conviction in Santa Rosa from 2008 and a driving-while-under-the-influence (DUI) conviction in Sacramento from 2009. Under Sacramento City Code Section 5.108.190(B)(5), this is sufficient grounds for denial of the permit application because Applicant Chung provided false or misleading material information in the application.

- **History of Committing Significant Violations of the Sacramento City Code and ABC License:** Happy Happy Restaurant has repeatedly and flagrantly violated Sacramento City Code Section 5.108.030(A) by providing—without an entertainment permit issued pursuant to Chapter 5.108 of the Sacramento City Code—entertainment that is open to the public. In addition, Happy Happy Restaurant has not lived up to its obligations as an Alcoholic Beverage Control (ABC) license holder. The following incidents show a history of Applicant Chung committing, permitting or failing to prevent significant violations of the Sacramento City Code and Happy Happy Restaurant's ABC license, and the incidents are sufficient grounds to deny the permit application under Sacramento City Code Section 5.108.190(B)(4).

- On May 28, 2010, Sacramento police officers observed that Happy Happy Restaurant was holding entertainment activities without a valid entertainment permit issued by the City of Sacramento. Responding officers issued a warning and advised Applicant Chung and the establishment's employees to cease all entertainment activities, which require a permit, until a valid entertainment permit was obtained from the City of Sacramento.
- On June 16, 2010, Sacramento police officers again observed that entertainment activities were being held at Happy Happy Restaurant without a valid entertainment permit issued by the City of Sacramento. Subsequently, officers issued a written notice of violation pursuant to Sacramento City Code Section 5.108.030(A) (entertainment permit required before holding entertainment activities that are open to the public). This second violation occurred despite the previous warning from Sacramento police officers, a mere nineteen (19) days earlier on May 28, 2010. Furthermore, when Applicant Chung submitted the permit application, he was advised not to provide entertainment until the permit had been issued. This second violation of Sacramento City Code Section 5.108.030(A) on June 16, 2010, displays an unwillingness to comply with City of Sacramento ordinances even while the permit application was being processed.
- On June 24, 2010, Sacramento police officers reported that Happy Happy restaurant was in violation of its ABC license. Specifically, the restaurant's employees were unable to produce for inspection a copy of the Happy Happy Restaurant's ABC conditions as required by the State of California, Department of Alcohol Beverage Control.

Additionally, on at least three recent occasions, Sacramento police officers have reported that validated gang members have been observed routinely hanging out at Happy Happy Restaurant. And the Sacramento Police Department has informed me of a lack of cooperation from the management and owners of Happy Happy Restaurant with regard to the police officers' investigation into gang activity on the premises.

Please be advised that where an application for an entertainment permit is denied, no application for an entertainment permit to conduct the proposed activity at the same location shall be considered for a period of one (1) year from the date of denial (Sacramento City Code Section 5.108.230).

In accordance with Sacramento City Code Section 5.108.260, you may appeal my decision to deny your entertainment permit application to the City Council as provided in Chapter 1.24 of the Sacramento City Code. The appeal shall be made by filing a written notice thereof with the City Clerk at the Historic City Hall Building, First Floor, 915 I Street, Sacramento, CA 95814, not later than ten (10) calendar days after this notice is personally served upon or mailed to you. The written appeal must be accompanied by a non-refundable appeal fee in the amount of \$250.00.

Respectfully,



Max B. Fernandez
Director of Community Development

Attachment – Entertainment Permit Appeal Request Form

cc: Ron O'Connor, Operations Manager
Robert Rose, Code Enforcement Manager
Captain Dana Matthes, Sacramento Police Department



City of Sacramento
 Community Development Department
 Business Compliance Division

ENTERTAINMENT PERMIT APPEAL REQUEST FORM

PLEASE PRINT

CASE # 10-016421

Incomplete forms will be returned to you.

I hereby appeal the Notice of Suspension or Revocation of the Entertainment Permit (City Code 5.108), for the property located at:

Name: Happy Happy Restaurant

Address: 6098 Stockton Blvd., Suite 170
Sacramento, CA 95824

I submit the following material facts to substantiate action in reversing, modifying or setting aside the decision of the City Manager:

SEE ATTACHED DECLARATIONS
and photos

I hereby certify under the penalty of perjury that the information submitted in the appeal is true.

Printed Name: Deborah Barron - Barron Law Corporation

Address: 1900 Point West Hwy, St 202 City: Sacramento

State: CA Zip: 95815 Phone Number/s: 916-486-1712

Signature: [Signature] Date: July 29, 2010

Return this completed form to:
 Community Development Department
 Business Compliance Division
 915 I Street, MC20000
 Sacramento, CA 95814

LAW OFFICES OF DEBORAH BARRON
A Professional Law Corporation
1900 Point West Way, Suite 202
Sacramento, CA 95815
Telephone: (916) 486-1712
Facsimile: (916) 927-5524

DESIGNATION OF REPRESENTATIVE

I, Devin Tran + Tony Chung, ^{involving} ~~making a claim against~~
appeal of denial of entertainment license
hereby designate the following law firm to represent my interests with respect to the handling of the
claim regarding the incident that occurred on or about July 20 2010 in Sacramento County, California arising from denial of entertainment
license.

Deborah Barron, Esq.
LAW OFFICES OF DEBORAH BARRON
A Professional Law Corporation
1900 Point West Way, Suite 202
Sacramento, CA 95815
Ph: 916/486-1712
Fax: 916/927-5524

The firm designated above shall have full authority to act on my behalf in connection with such claim, including but not limited to, the furnishing of necessary information and the negotiation of such claim. The insurer and its agents may rely upon all statements and information furnished by my designee, and any communication to such designee shall have the same force and effect as if made to me personally. Unless otherwise directed by me in writing, my designee shall not have the power to execute any legally binding documents on my behalf, nor to negotiate any funds on my behalf.

I understand that, pursuant to the California Code of Regulations, this designation is valid for a period of two (2) years from the date of its execution, unless earlier revoked or renewed by me. I understand that any such revocation of renewal must be made by way of a written document, signed and dated, and communicated to the insurer at its customary place of business within the State of California.

I declare under penalty of perjury under the laws of the State of California that the statements made in this designation are true and correct and that this designation was personally executed by me the 28 day of July, 2010 at Sacramento, California.

Signature
[Signature]
[Signature]
Devin Tran
Tony Chung

1 Deborah Barron, Esq. / SBN 153840
2 **BARRON LAW CORPORATION**
3 1900 Point West Way, Suite 202
4 Sacramento, CA 95815
5 Telephone: (916) 486-1712
6 Facsimile: (916) 927-5524

7 Attorneys for Appellant
8 **HAPPY HAPPY RESTAURANT, TONY CHUNG, DEVIN TRAN**

9 **HAPPY HAPPY, RESTAURANT,**)
10 **TONY CHUNG, DEVIN TRAN,**)
11 **Appellant**)
12 **CITY OF SACRAMENTO,**)
13 **Respondent**)
14 _____)
15)
16)
17)

Entertainment Permit Application:
**APPEAL OF THE NOTICE OF
SUSPENSION OR REVOCATION OF THE
ENTERTAINMENT PERMIT FOR HAPPY
HAPPY RESTAURANT; DECLARATION
OF TONY CHUNG IN SUPPORT OF
APPEAL**

14 Happy Happy Restaurant and owners, Tony Chung and DevinTran submit the following
15 legal and factual argument in support of their appeal of denial of entertainment permit
16 application.

17 **FALSE OR MISLEADING INFORMATION IN APPLICATION:**

18 Failure to replace an under size Abalone is not a crime of moral turpitude. It is not even a
19 crime against a person or their property. It is a fishing ticket and fine. It had to have shown up
20 on the ABC live scan of Tony Chung and yet the ABC did not care and the license was granted.

21 As to the Wet and Reckless, Tony Chung explained in his declaration that he thought this
22 was reduced to just a suspension of his license and a fine after settlement. He did not know it
23 was considered a criminal conviction.

24 Tony Chung knew that a live scan would pick up any criminal convictions, so if he
25 thought he had any, he would have disclosed since he knew it would show up if they existed.
26 There is no evidence that he provided false or misleading information on the application. It was
27

1 merely an misunderstanding on his part of what constituted a criminal charge. Neither
2 conviction was a felony, nor would it be grounds for denial of a professional license or permit.

3 **HISTORY OF COMMITTING SIGNIFICANT VIOLATION OF THE SACRAMENTO**
4 **CITY CODE AND ABC LICENSE:**

5 First of all the applicant is NOT Tony Chung, the applicant is Happy Happy Restaurant.
6 Tony Chung is only one of the owners. There have been no complaints voiced by the City
7 regarding the other owner, the applicant restaurant or the manager.

8 There is no history of "significant violation". As set forth in the declaration of Tony
9 Chung, they were unaware they needed a permit to have Karaoke until they were advised. The
10 May 28, 2010 did not result in a fine and was just a notice they needed to apply for a permit it
11 was not a significant violation.

12 June 16, 2010, we contend was an improper ticket by officer Hasegawa. There was no
13 entertainment going on in a public place. First of all the singing occurred in a private VIP room,
14 with the door closed and not open to the public. The singing was not done for the purpose of
15 "entertainment", was not done in a "public place" and did not require an entertainment permit or
16 a special event permit. This is an improper ticket that was written by Officer Hasagawa and is
17 groundless as a matter of law.

18 June 24, 2010 ABC license lack of conditions on display with the license is not a
19 violation of its ABC license. The restaurant had the conditions on the premises, they just were
20 not out on display as the license was. The employee on duty could not find them at that moment
21 to show them to the officer.

22 The owners are not aware of any "gang members" who hang out at their restaurant. If the
23 police can identify any gang members, they do not frequent this establishment any more than any
24 other Stockton Blvd. Restaurant and Bar that is open at night. The owners have no affiliation
25 with gang members. There have been no fights or arrests at this restaurant and bar. The
26 allegations are unfounded and just more retaliation by officer Hasegawa.

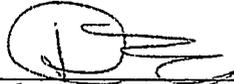
1 Happy Happy Restaurant has filed a complaint against officer Hasegawa and since then
2 he has stopped coming in to the restaurant to harass the owners and customers. As all of the
3 allegations in the denial were initiated and provided by officer Hasegawa. The credibility of
4 officer Hasegawa must be questioned based on his harassment and retaliation.

5 **CONCLUSION**

6 Based on the forgoing and the declaration of Tony Chung, the appeal of denial of the
7 permit should be granted and the entertainment permit be issued forthwith. Should the permit
8 not
9 be issued, applicant reserves the right to seek an administrative writ of mandate in the Superior
10 Court.

11 Dated: JULY 29, 2010

BARRON LAW CORPORATION



Deborah Barron, Attorney for the Appellant

1 **PROOF OF SERVICE**

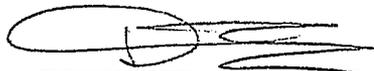
2 I am employed in the County of Sacramento, State of California. I am over the age of 18
3 and am not a party to the within action; my business address is 1900 Point West Way Suite 202,
4 Sacramento, CA 95815.

5 On July ³⁰ 29, 2010, I served on the parties of record in this action the foregoing document
6 described as: **APPEAL OF THE NOTICE OF SUSPENSION OR REVOCATION OF THE
ENTERTAINMENT PERMIT FOR HAPPY HAPPY RESTAURANT; DECLARATION
OF TONY CHUNG IN SUPPORT OF APPEAL**

7
8 **I caused to be served by personal service** the above referenced documents on:

9 City Clerk, City of Sacramento
10 Historic City Hall Building
11 First Floor
12 915 I Street
13 Sacramento, CA 95814

14 I declare under penalty of perjury under the laws of the State of California that the above
15 is true and correct. Executed on ³⁰ JULY 29, 2010, at Sacramento, California.

16 

17 Deborah Barron

1 Deborah Barron, Esq. / SBN 153840
2 **BARRON LAW CORPORATION**
3 1900 Point West Way, Suite 202
4 Sacramento, CA 95815
5 Telephone: (916) 486-1712
6 Facsimile: (916) 927-5524

7 Attorneys for Appellant
8 **HAPPY HAPPY, TONY CHUNG, DEVIN TRAN**

9 **HAPPY HAPPY, TONY CHUNG,**)
10 **DEVIN TRAN,**)
11 **Appellant**)
12 **CITY OF SACRAMENTO,**)
13 **COMMUNITY DEVELOPMENT**)
14 **DEPARTMENT,**)
15 **Respondent**)

Entertainment Permit Application:
**DECLARATION OF TONY CHUNG IN
SUPPORT OF APPEAL OF
ENTERTAINMENT LICENSE DENIAL**

16 I, Tony Chung do declare:

17 1. I am one of the owners, along with Devin Tran, of the Happy Happy restaurant
18 located at 6048 Stockton Boulevard, Suite 170, Sacramento, CA 95824. I have personal
19 knowledge of the facts stated herein and if called upon to testify, I could competently do so.

20 2. I have reviewed the July 20, 2010 City of Sacramento letter from Max Fernandez
21 denying Happy Happy Restaurant's entertainment license application and present the following
22 facts in support of our appeal of the denial.

23 3. As to the claim that I did not disclose or presented false or misleading information on
24 my application, I deny that allegation based on the following. I was not aware that I had what
25 would be considered a "criminal conviction" on my record. The Santa Rosa 2008 alleged
26 conviction was actually a fish and game ticket regarding Abalone. I pulled out an Abalone that
27 was too small to take, showed it to my friend and told him it had to be put back in the water and
28 he grabbed it and threw it back in the water. The Fish & Game warden was watching this and
gave me a ticket as I was leaving. The ticket was based on the violation that it was supposed to

1 be placed back where the Abalone was removed from, not thrown back in the water as my friend
2 did. I was not aware that this was a criminal conviction. I thought it was a fishing violation fine.
3 I had no idea it was considered a "criminal conviction". There was no intent on my part to
4 present false information on my application.

5 4. The 2009 DUI conviction was actually a wet and reckless charge. I did not realize it
6 was considered a "criminal conviction" since my attorney took care of it, settled the matter and
7 all I did was pay a fine. I thought it just went to points on my DMV license for suspension,
8 which I did disclose on my permit application. There was no intent on my part to present false
9 information on my application in this regard.

10 5. As to the alleged history of committing significant violations I have the following
11 comments. We did not know an entertainment license was required for Karaoke. The first
12 notice of 5/28/10 was the first notice to us that we were required to obtain an entertainment
13 license. After this we presented the application for permit.

14 6. The second alleged violation. On June 16, 2010, officer Hasegawa (who for some
15 unknown reason) does not like us or our establishment, came in to the restaurant and asked if he
16 could use the restroom under the auspices of snooping around. We have two private VIP rooms
17 that are not open to the public located in the back near the bathrooms. Someone was singing in
18 the room with the door closed and may have been watching the TV monitor playing a Karaoke
19 video. The officer opened the door to one of the private rooms and then came out and gave us a
20 ticket. There was no entertainment going on and it was not open to the public. Someone singing
21 along with a video in a private room that the public is not allowed in is not what I consider "open
22 to the public" nor was there any entertainment going on. Someone singing for themselves is not
23 what I would consider "entertainment".

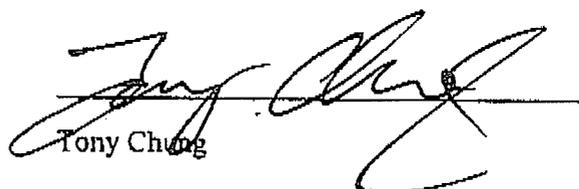
24 7. On June 24, 2010 Sacramento Police officers allegedly reported that Happy Happy
25 employees could not produce the conditions that go along with the ABC license. We were not
26 aware that we needed to post the conditions. We now have them posted so they can be seen at
27
28

1 any time without an employee looking for a copy if the police ask. Technically, I don't think we
2 were in violation of the ABC license by not having it posted.

3 8. Police officers report of seeing gang members hanging out at Happy Happy
4 Restaurant. I believe this arose because groups of customers go outside together to smoke since
5 they can't do so inside. I do not believe that we have any more alleged "gang affiliated"
6 customers than any other restaurant and bar frequented by younger customers on Stockton Blvd.
7 There has been no gang related activity on the premises, no fights or arrests at our restaurant.

8 9. We finally filed a complaint with Internal Affairs against Sacramento police officer
9 Hasagawa because of his discriminatory behavior towards Happy Happy Restaurant. I don't
10 know why he does not like us. Officer Hasagawa used to stop customers in the parking lot and
11 tell them not to come in to our restaurant, there are gang members in there. This is defamation
12 and slander and is ruining our business. Officer Hasagawa also pulls over our customers when
13 leaving when the bar closes. He is picking on our business and we do not know why. Our
14 business is down 60-70% due to his harassment and discrimination. The complaints in the denial
15 letter are based on Officer Hasagawa's retaliatory opinions.

16 Executed this 29th day of July 2010 in Sacramento, California. I declare under penalty of
17 perjury under the laws of the State of California that the foregoing is true and correct.

18
19
20 
21
22
23
24
25
26
27
28