



Plaintiff seeks, *inter alia*, a temporary restraining order, and temporary and permanent injunctions to abate the nuisance and close this restaurant/bar and in support of this action would show the following:

DISCOVERY CONTROL PLAN

1. Plaintiff, the STATE OF TEXAS, intends for this case to be governed as a Level 2 Discovery Plan in accordance with Rule 190.3 of the Texas Rules of Civil Procedure (Tex. R. Civ. P.), and affirmatively pleads this case is not governed by the expedited actions process in Tex. R. Civ. P. § 169 because the relief sought by the State includes non-monetary injunctive relief. Tex. R. Civ. P. § 169(c)(1)(B).

PARTIES

2. Plaintiff, the STATE OF TEXAS, is appearing and proceeding in this cause by and through Harris County District Attorney Kim Ogg's Office in accordance with Texas Civil Practice & Remedies Code (Tex. Civ. Prac. & Rem. Code) § 125.002 and the Texas Alcoholic Beverage Code (Tex. Alco. Bev. Code) §§ 101.01, 101.70(b).

3. Defendant BMB DINING SERVICES (FUQUA), INC. is a domestic for-profit corporation doing business at 12810 GULF FREEWAY, HOUSTON, TEXAS 77089 as a restaurant/bar under the name BOMBSHELLS, and may be served with process through its registered agent Robert D. Axelrod, 5300 Memorial Drive, Ste. 1000, Houston, Texas 77007.

4. Defendant ERIC LANGAN, the President of BMB DINING SERVICES (FUQUA), INC. D/B/A BOMBSHELLS, is an individual doing business in Harris County, Texas, and may be served with process at 10959 Cutten Road, Houston, Texas 77066 or wherever he may be found.

5. Defendant BFO 45 LTD. is the owner of the REAL PROPERTY KNOWN AS 12810 GULF FREEWAY, HOUSTON, TEXAS 77089 and can be served with process through its registered agent O.N. Baker at 8554 Katy Freeway #301, Houston, Texas 77024.

6. Defendant THE REAL PROPERTY KNOWN AS 12810 GULF FREEWAY, HOUSTON, TEXAS 77089 (the "Property" or "IN REM DEFENDANT") is sued *in rem* under Tex. Civ. Prac. & Rem. Code § 125.002(b) and Tex. Alco. Bev. Code § 101.70 and can be served with process by serving the owner of the Property, BFO 45 LTD. through its registered agent O.N. Baker, 8554 Katy Freeway #301, Houston, Texas 77024.

#### JURISDICTION AND VENUE

7. This Court has subject matter and personal jurisdiction over the cause and the parties because proceedings to restrain violations of the Texas Alcoholic Beverage Code must be brought in district court pursuant to Tex. Alco. Bev. Code §§ 101.01, 101.70, and because the nuisance is alleged to exist in Harris County. Tex. Civ. Prac. & Rem. Code § 125.002(a).

8. Venue is mandatory in Harris County because the common nuisance to be enjoined is located and maintained in Harris County at 12810 GULF FREEWAY, HOUSTON, TEXAS 77089. Tex. Civ. Prac. & Rem. Code § 125.002; Tex. Alco. Bev. Code § 101.70. Venue of this cause is proper in Harris County, Texas under Tex. Civ. Prac. & Rem. Code § 15.016.

#### FACTUAL BACKGROUND

9. **BMB DINING SERVICES (FUQUA), INC.** d/b/a **BOMBSHELLS (BOMBSHELLS)** is a restaurant/bar operating at 12810 GULF FREEWAY, HOUSTON, TEXAS 77089. Defendant ERIC LANGAN is the President of BMB DINING SERVICES (FUQUA), INC. Defendant O.N. Baker is the owner of THE REAL PROPERTY KNOWN AS 12810 GULF FREEWAY, HOUSTON, TEXAS 77089.

10. DEFENDANTS and other owners, employees and representatives of the BMB DINING SERVICES (FUQUA), INC. at 12810 GULF FREEWAY, HOUSTON, TEXAS, sell and serve alcohol to the public at BOMBSHELLS under a license originally issued from the Texas Alcoholic Beverage Commission on or about April 25, 2014.

11. BOMBSHELLS has been directly linked to numerous Driving While Intoxicated cases, at least two of which resulted in serious bodily injury and, and most recently involving serious bodily injury to a Houston Police Department (HPD) officer.

12. BOMBSHELLS is also notorious for criminal activity and violence.<sup>1</sup> At least 90 people have been arrested at the business since it opened. Law enforcement has responded to numerous calls regarding shootings, assaults, aggravated robberies, narcotics, and many other crimes at the location that will be addressed in more detail by this Petition.

SUMMARY OF ARGUMENT SECTIONS

A. DEFENDANTS MAINTAIN A COMMON NUISANCE IN VIOLATION OF THE TEXAS ALCOHOLIC BEVERAGE CODE

SALE TO MINORS

Under the Texas Alcoholic Beverage Code

SALE TO INTOXICATED PERSONS

Under the Texas Alcoholic Beverage Code

ABATING DEFENDANTS' COMMON NUISANCE

Under the Texas Alcoholic Beverage Code

B. DEFENDANTS MAINTAIN A COMMON NUISANCE IN VIOLATION OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE

DISCHARGE OF FIREARM IN A PUBLIC PLACE

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<sup>1</sup> See ABC 13 News Article, *"Like a 'Bombshell': Houston bar brawl sends chairs flying,"* May 15, 2018;  
New York Daily News Article, *"Texas man kicked out of Bombshells bar for having face tattoos gets revenge on Facebook,"* March 10, 2015;  
United Kingdom Times of News, *"Footage of Houston bar brawl shows patrons throwing glasses, chairs,"* May 17, 2018.

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(1)

**POSSESSION OF A CONTROLLED SUBSTANCE**

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(4)

**AGGRAVATED ASSAULT**

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(9)

**ROBBERY**

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(12)

**AGGRAVATED ROBBERY**

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(13)

**UNLAWFULLY CARRYING A WEAPON**

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(14)

**CRIMINAL TRESPASS**

TEX. CIV. PRAC. & REM. CODE § 125.0015(a)(23)

**DISORDERLY CONDUCT**

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(24)

**CRIMINAL MISCHIEF**

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(26)

**ABATING DEFENDANTS' COMMON NUISANCE**

Under Tex. Civ. Prac. & Rem. Code

**A. DEFENDANTS MAINTAIN A COMMON NUISANCE IN VIOLATION OF  
THE TEXAS ALCOHOLIC BEVERAGE CODE**

13. The Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

14. The Texas Alcoholic Beverage Code is an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state, and is to be liberally construed to accomplish this purpose. Tex. Alco. Bev. Code § 1.03.

15. A license or permit issued under the Texas Alcoholic Beverage Code is a purely personal privilege and is subject to revocation or suspension if the holder is found to have

violated a provision of the Code or a rule of the Alcoholic Beverage Commission. Tex. Alco. Bev. Code § 6.01(b). Anyone who fails or refuses to comply with a requirement of the Texas Alcoholic Beverage Code, or a valid rule of the Alcoholic Beverage Commission, violates the Code. Tex. Alco. Bev. Code § 101.61.

16. Section 101.70(a) of the Texas Alcoholic Beverage Code provides that **any place where alcoholic beverages are sold, stored, possessed, or consumed in violation of the Code or under circumstances contrary to the purposes of the Code, the beverages themselves, and all property kept or used in the place, are a common nuisance.** Any person who maintains or assists in the maintaining of the nuisance commits an offense. *Id.* Therefore a final judgment finding a common nuisance is a judgment *in rem* against the nuisance property itself and against the “owner, lessee, tenant, or occupant.” Tex. Alco. Bev. Code § 101.70(c).

17. If the District Attorney receives credible information that a person is violating a provision of the Texas Alcoholic Beverage Code, the District Attorney shall begin proceedings in district court to restrain the person from violating the code or operating under the permit or license. Tex. Alco. Bev. Code § 101.01(a). The Court **may issue a restraining order without a hearing,** and on notice and hearing may grant an injunction, to **prevent the threatened or further violation or operation.** Tex. Alco. Bev. Code § 101.01(b). The Texas Alcoholic Beverage Code further gives the District Attorney **specific authority to sue in the name of the state for an injunction to temporarily and permanently abate a nuisance that exists in its county.** Tex. Alco. Bev. Code § 101.70(b).

18. The District Attorney, Plaintiff, has become aware that BOMBSHELLS is maintaining a **common nuisance by selling and serving alcohol to minors and selling and**

**selling alcohol to intoxicated individuals** in violation of the **Texas Alcoholic Beverage Code** §§ 106.03(a), 101.63(a), specifically:

**SALE TO MINORS**  
Under the Texas Alcoholic Beverage Code

19. Under Tex. Alco. Bev. Code § 106.03(a), Sale to Minors, a person commits an offense if with criminal negligence he sells an alcoholic beverage to a minor. A person acts with criminal negligence with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. Texas Penal Code Annotated (TX Penal Code Ann.) § 6.03(d). The risk must be of such a nature and degree that the failure to perceive it would be a gross deviation from the standard of care that an ordinary person would exercise under the same circumstances viewed from the actor's standpoint. *Id.* **The following incidents regarding Sale to Minors have occurred at BOMBSHELLS from its opening in 2014 to the present day:**

20. On October 10, 2015, at approximately 12:30 a.m., a **19 year old patron** at BOMBSHELLS was arrested for **Public Intoxication**. (HPD #1307550-15);<sup>2</sup>

21. On October 18, 2015, at approximately 6:08 p.m., HPD arrested a **19 year old suspect** for **Criminal Trespass** for returning to BOMBSHELLS after being given a trespass warning for **consuming alcohol** there a few days prior. Note: This is a different minor than the one mentioned above in paragraph #20. (HPD #1346309-15);

22. On January 14, 2017, Texas Alcohol Beverage Commission (TABC) enforcement agents conducted an undercover operation at BOMBSHELLS. Agents entered the business and saw four youthful looking female patrons sitting at a table with alcoholic drinks. An agent made contact with one of the patrons, and learned she was **20 years old** and in possession of her

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<sup>2</sup> Citations to Houston Police Department incident reports will be referenced by "HPD" followed by the incident number.

driver's license which **indicated in red lettering she was under 21 years of age**. The patron admitted to purchasing alcohol from her server. Agents made contact with the server, who stated she had not served the patron alcohol after checking her ID and determining that she was a minor. Agents pulled the patron's tab and saw that she had indeed **purchased alcohol** from the server. Agents determined BOMBSHELLS had violated Tex. Alco. Bev. Code §§ 11.61(b)(2) and 106.13 and issued an administrative citation for **Sell/Serve/Dispense/Deliver Alcoholic Beverage to a Minor** to the on-duty manager. The manager asked the agents to not issue the notice and instead advise him to use it as a training tool. The server was TABC Sell/Server certified at the time; the manager was not. (TABC #2629020);<sup>3</sup>

23. On February 15, 2017, TABC received a **complaint** against BOMBSHELLS for **Permitting Minor to Possess/Consume Alcoholic Beverage;**

24. On March 30, 2017, TABC received a **complaint** against BOMBSHELLS for **Sell/Serve/Dispense/Deliver Alcoholic Beverage to a Minor;**

25. On April 1, 2017, TABC cited BOMBSHELLS with a **violation** for **Permitting a Minor to Possess/Consume Alcohol;**

26. On May 2, 2017, TABC received a **complaint** against BOMBSHELLS for **Sell/Deliver Alcoholic Beverage to Minor;**

27. On May 20, 2017, TABC cited BOMBSHELLS with a **violation** for **Permitting a Minor to Possess/Consume Alcohol;**

28. On August 20, 2017, TABC agents conducted an undercover operation at BOMBSHELLS. Agents observed a young male patron with glassy eyes and exaggerated movements. The patron **did not have a hand stamp used by staff to identify patrons over 21**

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<sup>3</sup> Citations to Texas Alcoholic Beverage Commission reports will be referenced by "TABC" followed by the report number.

**years of age.** Agents watched as the patron **swayed while he walked, spoke with slurred speech,** and made contact with waitresses while **holding a drink in his hand.** Agents watched as a female bartender handed the patron **2 unopened bottles of beer and charged his credit card** for payment. Agents noted the distance between the bartender and the patron was approximately 3 feet, well lit, and free from any obstruction that would obscured the patron's obvious signs of intoxication. Agents made contact with the patron and **confirmed he was a minor, age 19.** The patron stated **he had not been asked for identification at the door** and exhibited further signs of intoxication during his contact with the agents. Agents issued the bartender a **Seller/Server Revocation Notice for serving to a minor and to an intoxicated person.** The manager on duty was also served an **Administrative Notice** and told agents that BOMBSHELLS does not encourage their employees to sell to intoxicated persons or minors, and that they have policies in each employee's file stating what to do in the event an intoxicated person or a minor asks to purchase an alcoholic beverage. (TABC #2774179);

29. On February 6, 2018, TABC received a **complaint** for **Sell/Serve/Dispense/Deliver Alcoholic Beverage to a Minor.**

**SALE TO INTOXICATED PERSONS**  
Under the Texas Alcoholic Beverage Code

30. Tex. Alco. Bev. Code § 101.63(a) states that a person commits an offense if the person with criminal negligence sells an alcoholic beverage to an intoxicated person. **The following incidents regarding intoxicated individuals have occurred at BOMBSHELLS from its opening in 2014 to the present day:**

31. On November 29, 2014, at approximately 2:27 a.m., a Mitsubishi 3000 GT 2-door sports car was towed from the parking lot of BOMBSHELLS after it had been **driven into a concrete pillar in the parking lot** and then left abandoned by the driver. (HPD #1517913-14);

32. On January 17, 2015, TABC received a **complaint** for **Sell/Deliver Alcoholic Beverage to Intoxicated Person**;

33. On February 1, 2015, at approximately 10:00 p.m., a security officer at BOMBSHELLS tried to escort **two male patrons who were causing a disturbance** inside the business. One of the males slapped the security guard's hand away twice before the security guard restrained the male in handcuffs. The male appeared to be **intoxicated**, slurring his words. The male signed a trespass form and was released to his family. (HPD #138495-15);

34. On March 5, 2015, at approximately 8:40 p.m., a patron of BOMBSHELLS was arrested for **Public Intoxication**. (HPD #281673-15);

35. On March 15, 2015, at approximately 8:45 p.m., a security officer at BOMBSHELLS saw a female patron **punch her male companion's face multiple times**. Both patrons appeared to be **intoxicated** when HPD officers arrived on scene. The male patron denied being hit by the female. No charges were filed; BOMBSHELLS' management issued a trespass warning to both patrons. (HPD #327064-15);

36. On April 14, 2015, at approximately 10:40 p.m., a group of male patrons at BOMBSHELLS were having a verbal argument when one patron (suspect) **pulled out a knife** and set it on the table. One of the patrons (complainant) felt threatened by this action and tried to grab the suspect's knife. The suspect and complainant began tugging the knife back and forth, which resulted in the knife cutting the complainant's hand. The suspect was arrested for **Public Intoxication**. (HPD #469551-15);

37. On April 17, 2015, at approximately 12:27 a.m., a security officer at BOMBSHELLS was approached by a patron who advised that another patron (suspect) was doing drugs. After the security officer searched the suspect and did not find any contraband on

him, the suspect became angry and refused to leave the business. An HPD officer arrived on scene and tried to get the suspect's information but the suspect kept yelling at the security guard. The suspect was arrested for **Public Intoxication**. (HPD #479456-15);

38. On May 1, 2015, at approximately 12:21 a.m., after a BOMBSHELLS security officer asked a patron (suspect) to leave two times, the patron began **cursing at the security officer** and acting violent. The security officer called for back-up; HPD officers arrived on scene and the suspect began **cursing at the HPD officers**, "You mother fuckers suck dick and your wife can suck my dick – you're a piece of shit." The suspect then began yelling at other bar patrons, "Someone get this on video so we can be like Baltimore and fight these fuckers." The suspect was arrested for **Public Intoxication**. (HPD #549103-15);

39. Also on May 1, 2015, at approximately 2:00 a.m., security officers at BOMBSHELLS were notified of a **fight out on the patio** of the business. Security officers saw a male patron (complainant) lying on his side on the ground. The complainant had a **swollen eye and due to his intoxication he did not remember anything that had happened**. A witness informed security officers that an unknown patron (suspect) walked up to the complainant and struck the complainant in the face, causing the complainant to fall forward onto the ground. The suspect then continued striking the complainant several times until security arrived. (HPD #549359-15);

40. On May 24, 2015, at approximately 1:48 a.m., security officers at BOMBSHELLS detained a **violent and belligerent patron** (suspect) who was using **vulgar language, racial slurs, and verbally threatening the security officers**. HPD officers arrived to assist, and observed the suspect to be **highly intoxicated**, with blood shot eyes, slurred speech, a staggering walk, and smelling strongly of an alcoholic beverage. The suspect kept threatening

patrons, security officers and HPD officers, telling several people they were “Nigga bitches” and that he would “fuck” them up. Officers found the suspect to be a danger to himself and others and arrested him for **Public Intoxication**. (HPD #662994-15);

41. On May 30, 2015, at approximately 2:08 a.m., a patron was arrested at BOMBSHELLS for **Public Intoxication**. (HPD #693441-15);

42. On June 12, 2015, at approximately 2:00 a.m., a patron was arrested at BOMBSHELLS for **Public Intoxication**. (HPD #757481-15);

43. On June 13, 2015, at approximately 11:00 p.m., an **extremely belligerent** patron was arrested at BOMBSHELLS for **Public Intoxication**. The patron pulled away from officers and yelled curse words at them. After the patron was placed inside a patrol vehicle, he took off his seatbelt and turned himself upside down in the car. The patron continued to yell and also **spit at officers** and kept banging his head on the seat on the drive to the jail. (HPD #766597-15);

44. On July 11, 2015, at approximately 1:50 a.m., a patron of BOMBSHELLS was arrested for **Public Intoxication**. (HPD #894641-15);

45. On July 17, 2015, at approximately 2:15 a.m., an HPD officer was flagged down by a group of people at BOMBSHELLS who advised that a **female was passed out in the back parking lot**. While the female was being evaluated by emergency medical services (EMS), she **vomited** and then became **combative with EMS and with the officer**, cursing, “Fuck you mother fucker,” “Shut the fuck up bitch,” and “Don’t touch me cause you’re white.” The female was arrested for **Public Intoxication**. (HPD #922018-15);

46. On July 19, 2015, at approximately 1:00 a.m., a patron of BOMBSHELLS was arrested for **Public Intoxication**. (HPD #931398-15);

47. On July 25, 2015, at approximately 12:50 a.m., a patron of BOMBSHELLS was arrested for **Public Intoxication**. (HPD #959219-15);

48. On August 3, 2015, at approximately 1:45 a.m., a female security guard at BOMBSHELLS asked a patron (suspect) to leave because he was causing a disturbance. The suspect **hit the security guard in the face and kicked her** while she was handcuffing him. HPD officers arrived on scene and found the suspect to be **intoxicated** and arrested him for **Public Intoxication and Assault**. (HPD #1000292-15);

49. On August 16, 2015, at approximately 10:28 p.m., an **intoxicated** patron left BOMBSHELLS on his motorcycle on Gulf Freeway and subsequently lost control and crashed it. (HPD #1063808-15). The patron sustained **life-threatening injuries** including amputation of his right leg below the knee. The patron **filed a petition against BOMBSHELLS** alleging its **employee served him alcohol when it was apparent he was obviously intoxicated** to the extent he presented a clear danger to himself and others. The patron's **blood alcohol level at the time of the crash was .18**;

50. Also on August 16, 2015, at approximately 1:05 a.m., a patron (suspect) was detained at BOMBSHELLS **by** their security officers because he had been **yelling and screaming at the manager of the bar**. An HPD officer arrived on scene and found the suspect to have a **strong odor of alcohol** and to be angry and yelling. Despite being issued a **trespass warning**, at 1:30 a.m. the suspect came back into the business and was detained again. The suspect threatened officers, "You mother fuckers better not arrest me or you will lose your jobs," before he **spit into the face of an HPD officer**. The suspect was arrested for **Assault on Public Servant**. (HPD #1060191-15);

51. On September 4, 2015, at approximately 11:00 p.m., a patron of BOMBSHELLS was arrested for **Public Intoxication**. Upon arrest, the patron **began threatening HPD officers** by stating, "I'm going to support that nigger who shot Deputy Goforth, and you motherfuckers better watch your backs when I get out of jail." The Criminal Intelligence Division of HPD generated officer safety bulletin due to the nature of the threat and the recent shooting of Deputy Goforth. (HPD #1151759-15);

52. On October 10, 2015, at approximately 1:02 a.m., a patron at BOMBSHELLS was arrested for **Public Intoxication**. (HPD #1307661-15);

53. On October 10, 2015, at approximately 1:05 a.m., a patron at BOMBSHELLS was arrested for **Public Intoxication**. (HPD #1307675-15);

54. On October 17, 2015, at approximately 8:00 p.m., a patron at BOMBSHELLS was arrested for **Public Intoxication**. (HPD #1342433-15);

55. On January 23, 2016, at approximately 2:29 a.m., a patron at BOMBSHELLS was detained by security for being **intoxicated and causing a disturbance**. HPD officers arrived on scene and arrested the patron for outstanding city warrants. HPD also identified the patron as a member of the **Barrio Denver Harbor – Lil Red C Gang**. (HPD #96156-16);

56. On January 27, 2016, at approximately 1:47 a.m., **three intoxicated patrons** at BOMBSHELLS were arrested for **Class C Assault** after getting into a **physical altercation with a security guard**. (HPD #113227-16);

57. On March 14, 2016, at approximately 1:38 a.m., HPD officers responded to BOMBSHELLS to assist with two female and two male patrons security guards had detained for fighting. After HPD officers determined that no one wanted to press charges, they released the four patrons. As the officers were leaving, they noticed **two heavily intoxicated males**

wandering around the BOMBSHELLS' parking lot. The men were not able to find anyone to pick them up and an officer took both males to the **sobering center**. (HPD #328230-16);

58. On March 18, 2016, at approximately 1:45 a.m., **three patrons** at BOMBSHELLS were arrested for **Public Intoxication**. (HPD #346739-16);

59. On March 27, 2016, at approximately 1:20 a.m., two patrons at BOMBSHELLS were arrested for **Public Intoxication** after they appeared to be a danger to themselves and others due to their **aggressive behavior** and **intoxicated** state. (HPD #388605-16);

60. On April 21, 2016, at approximately 2:00 a.m., HPD officers were dispatched to BOMBSHELLS after a **security guard felt threatened by a patron**. The security guard stated he saw the patron reach around the bar and fill his clear glass up with tap beer. The security guard asked the patron to stop and the patron became irate, claiming someone had stolen his beer so he was getting more. When the security guard tried to handcuff the patron, the patron's friends **began to surround the security guard** who then threatened to use his pepper spray. The manager of BOMBSHELLS did not want to press charges against the patron who appeared to be **intoxicated**, but did want to issue a trespass warning. (HPD #505084-16);

61. On April 23, 2016, at approximately 1:17 a.m., a patron was checked by HPD for being **intoxicated**. The patron was arrested on outstanding city warrants. (HPD #514720-16);

62. On June 10, 2016, at approximately 1:54 a.m., a patron at BOMBSHELLS who appeared **intoxicated**, with blood shot eyes and slurred speech was subsequently arrested for **Public Intoxication**. (HPD #743178-16);

63. On June 21, 2016, at approximately 1:52 a.m., HPD officers were dispatched to BOMBSHELLS to assist security guards who were trying to control the parking lot. A security guard had initially detained a patron who was **intoxicated** and attempting to drive. The patron

**broke away from the guard and ran across the freeway**, later returning with a cut on his forehead. The security guard handcuffed the patron upon his return and then a **fight broke out** inside BOMBSHELLS and continued outside in the parking lot. (HPD #795564-16);

64. On July 29, 2016, at approximately 1:40 a.m., HPD officers were dispatched to BOMBSHELLS to assist security officers who had detained an **intoxicated** female patron. The patron was **extremely combative, kicking, screaming and banging her head on the concrete floor**. She appeared to be **highly intoxicated** with red glassy eyes and a heavy odor of alcohol on her breath. Officers learned that the patron had tried to leave the bar with her child when the manager prevented her from driving. Officers contacted a family member to come get her child. The patron, also noted to have **slurred speech and unable to stand without swaying back and forth, screamed and cursed at the staff** stating she could do what she wanted to do. The patron was arrested for **Public Intoxication**. (HPD #968483-16);

65. On August 17, 2016, TABC received a **complaint** against BOMBSHELLS for **Sell/Deliver Alcoholic Beverage to an Intoxicated Person;**

66. On August 26, 2016, TABC agents conducted an undercover investigation at BOMBSHELLS after receiving a **complaint that the business was selling to intoxicated persons**. Agents spotted a group of individuals who were intoxicated, but then focused on one patron who was having **difficulty keeping his balance while walking, spilling the drink** he was holding, with his eyes squinted as though he was going to fall over. Agents kept watch over the patron, who also had **glossy red blood shot eyes** and was **slurring his speech** as he spoke to his friends. The patron physically held on to the restroom door as he waited to use the restroom, then went to the bar and ordered two drinks from the bartender. The **bartender served the patron two drinks consisting of vodka, water, and ice**. Agents made contact with the patron

who had a strong odor of alcohol coming from his person, was confrontational, and required Agents to repeat simple commands more than once. The patron was released to a friend who agreed to take responsibility for him. Agents concluded BOMBSHELLS was in **violation of Tex. Alco. Bev. Code § 11.61(b)(14), Sale of Alcoholic Beverage to Intoxicated person<sup>4</sup>** due to the bartender holding a current TABC Seller/Server Certification and negligently failing to observe the patron's signs of intoxication. The agents made contact with the manager and issued him an **Administrative Citation**. (TABC #321224);

67. On September 5, 2016, at approximately 7:30 p.m., a waitress at BOMBSHELLS was standing at the bar when a patron (suspect) **lifted her skirt and ran his hand between her legs and over her buttocks**. The waitress yelled for security officers, who called the police. HPD officers arrived and made contact with the suspect, who was **highly agitated** and cursing and **smelled of alcohol on his person**. The suspect was arrested for **Sexual Assault**. The suspect told officers that he was a vet and the officer had better watch out. (HPD #1139952-16);

68. On September 11, 2016, at approximately 11:00 p.m., a patron leaving BOMBSHELLS observed another patron (suspect) backing out of a parking spot and **striking the patron's car**. The patron called police; HPD arrived and observed the suspect to be somewhat **incoherent and unable to stand without swaying**. The suspect had **slurred speech, blood shot eyes** and a **strong odor of alcohol on his breath**. The suspect was **belligerent** towards officers and the patron whose car he had hit. HPD's investigation concluded with the suspect providing a **breath sample of .175** and being arrested for **Driving While Intoxicated 2nd**. (HPD #1167524-16);

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<sup>4</sup> Chapter 11 of the Texas Alcoholic Beverage Code, "Provisions Generally Applicable to Permits," provides that the Texas Alcoholic Beverage Commission or Administrator may suspend or cancel a permit if it is found after notice and hearing that the permittee sold or delivered an alcoholic beverage to an intoxicated person. § 11.61(b)(14).

69. On September 23, 2016, at approximately 3:00 a.m., HPD officers were dispatched to BOMBSHELLS regarding an assault in the parking lot. Officers made contact with the complainant who was **passed out in the driver seat of his truck**. The complainant had a difficult time speaking due to being **highly intoxicated**. The complainant stated that he had been walking to his truck after the bar had closed when an unknown person hit the complainant from behind and stole the keys to his truck. The complainant called his wife at home and his wife called the police. The complainant's version of events were not consistent with the scene as his truck looked like it had been moved, doors were unlocked and the powered driver's side window was down. Officers suspected someone might have taken the complainant's keys to keep him from driving due to his **highly intoxicated state**. The complainant was released to his wife. (HPD #1218943-16);

70. On September 26, 2016, at approximately 2:05 a.m., a BOMBSHELLS patron was arrested for **Public Intoxication**. (HPD #1231650-16);

71. On November 11, 2016, at approximately 10:15 p.m., HPD officers were dispatched to BOMBSHELLS in response to a patron down in the parking lot behind the business. The patron was **lying face down in the grass**, and was **unable to stand up or walk on his own** and **unable to speak**. The patron would only answer the officer's questions by screaming at him. The patron was arrested for **Public Intoxication** and **taken to the hospital** for a medical examination. (HPD #1442358-16);

72. On November 26, 2016, at approximately 8:55 p.m., a female patron (suspect) at BOMBSHELLS was arrested for **Public Intoxication**. The suspect was **slurring her words and cursing at officers**. The suspect had three credit cards in her purse that were in three

different individual's names and a prescription pill bottle in someone else's name. (HPD #1505957-16);

73. On February 11, 2017, at approximately 1:27 a.m., a suspect was being detained at BOMBSHELLS for his own safety due to his **level of intoxication**, when he started to yell and curse at the security officer and then **spit on the security officer's face**. The suspect was arrested for **Felony Harassment of Public Servant**. (HPD #185210-17);

74. On February 15, 2017, TABC received a **complaint** against BOMBSHELLS for **Sell/Deliver Alcoholic Beverage to an Intoxicated Person**.

75. On February 17, 2017, at approximately 12:57 a.m., a patron at BOMBSHELLS reported a female suspect was sitting inside the patron's unsecured vehicle in the parking lot and the patron was unable to get the suspect to get out. HPD officers were dispatched to assist and found the suspect was **heavily intoxicated**, staggering while walking. Officers discovered that the suspect's car had been parked two cars away from the patron's vehicle. The suspect was released to her boyfriend at the scene. (HPD #211781-17);

76. On March 11, 2017, at approximately 11:00 p.m., a patron at BOMBSHELLS was arrested for **Public Intoxication**. (HPD #313796-17);

77. On March 18, 2017, at approximately 2:09 a.m., security officers at BOMBSHELLS responded to a disturbance in the parking lot. One of the males involved in the disturbance was **visibly intoxicated** and **acting aggressively towards officers**. The suspect was pepper sprayed after resisting detention and transported to a **sobering center**. (HPD #340509-17);

78. On March 26, 2017, at approximately 2:28 p.m., a patron at BOMBSHELLS was arrested for **Public Intoxication** after she was observed to have slurred speech, a strong odor of alcohol, and was **not able to stand without support**. (HPD #377405-17);

79. On May 2, 2017, TABC received a **complaint** against BOMBSHELLS for **Sell/Deliver Alcoholic Beverage to an Intoxicated Person**.

80. On May 4, 2017, at approximately 8:11 a.m., a security guard at BOMBSHELLS saw a patron **defecating** outside the business near the dumpsters. The patron was **intoxicated** and escorted to a **sobering center**. (HPD #559894-17);

81. On May 21, 2017, at approximately 1:28 a.m., an HPD officer responded to BOMBSHELLS after a patron (suspect) flicked cigarette ashes at another patron and began to act belligerent. The **intoxicated** suspect **threatened and cursed at officers and spit at one of them**. The suspect was arrested for **Felony Harassment on Public Servant** and **Felony Retaliation**. (HPD #634978-17);

82. On June 1, 2017, TABC cited BOMBSHELLS for a **violation** of **Sell/Deliver to Intoxicated Person**;

83. On June 10, 2017, at approximately 12:29 a.m., security guards at BOMBSHELLS flagged down an HPD officer to assist with an **extremely intoxicated patron** who was not cooperating with them. The patron was taken to a **sobering center**. (HPD #729231-17);

84. On August 4, 2017, TABC cited BOMBSHELLS for a **violation** of **Sell/Deliver to Intoxicated Person**;

85. On August 20, 2017, TABC cited BOMBSHELLS for a **violation** of **Sell/Deliver to Intoxicated Person**;

86. On September 10, 2017, at approximately 11:45 p.m., a security guard at BOMBSHELLS asked a patron (suspect) to leave because he was **intoxicated** and **falling off the bar stool**. The suspect stood up to leave and then **elbowed the security guard** and **reached for the guard's gun**. The security guard had to pepper spray the suspect to control him. The suspect was arrested for **Class C Assault**. (HPD #1155780-17);

87. On September 29, 2017, at approximately 8:49 p.m., two **intoxicated** patrons at BOMBSHELLS were taken to the **sobering center** after they were **causing a disturbance** in the parking lot including **cursing at officers**. (HPD #1237851-17);

88. On October 9, 2017, at approximately 1:00 a.m., a security guard at BOMBSHELLS broke up a **fight that occurred among six patrons**. The patrons were **throwing bottles at each other** before the security guard pepper sprayed them and escorted them out. Three of the patrons were **highly intoxicated** and one of the patrons **threatened the security officer**. (HPD #1277199-17);

89. On October 13, 2017, at approximately 1:30 a.m., a patron at BOMBSHELLS was arrested for **Public Intoxication**. (HPD #1294480-17);

90. On November 3, 2017, at approximately 12:10 a.m., security at BOMBSHELLS detained a patron (suspect) for being **intoxicated** and **belligerent**. After an HPD officer arrived on scene to assist, the suspect **threatened to kill the officer and the officer's family** and was arrested for **Felony Retaliation**. (HPD #1386355-17);

91. On November 5, 2017, at approximately 9:12 p.m., a waitress at BOMBSHELLS was waiting on the table near where a female patron (suspect) was sitting. The suspect **punched the waitress approximately five times in the face** for no apparent reason. A security guard saw the assault, and had to pepper spray the suspect to get her to calm down and leave. When HPD

officers arrived, the suspect was sitting in front of the entrance door with **vomit and saliva coming out of her mouth**. The suspect refused to be transported to the hospital or to provide information as to any prescribed medications or **how much alcohol she consumed**. (HPD #1398893-17);

92. On December 11, 2017, at approximately 1:50 a.m., an **intoxicated patron** at BOMBSHELLS was reported to HPD and arrested on outstanding city warrants. (HPD #1549906-17);

93. On February 4, 2018, at approximately 9:55 p.m. HPD officers responded to BOMBSHELLS after security guards called for assistance with **patrons who had been fighting**. The officer noted in his report, **“I observed that the business was the BOMBSHELLS sports bar [that’s] known to over serve alcohol to highly intoxicated customers.”** (HPD #151568-18);

94. On February 5, 2018, at approximately 1:00 a.m., HPD officers responded to BOMBSHELLS in reference to a **physical altercation that had taken place between security staff and patrons**. A security guard informed officers that one patron (suspect) **over-intoxicated** and getting loud and causing a disturbance so he told him to leave. The suspect then balled his fist and looked like he was going to get aggressive, and pushed another employee. The suspect’s nephew told officers that he was getting ready to leave with his uncle (suspect) **due to his intoxication**, when the security staff became aggressive with them. The manager agreed to provide video footage to officers at a later date. (HPD #152159-18);

95. On February 6, 2018, TABC received a **complaint** against BOMBSHELLS for **Sell/Deliver to Intoxicated Person**;

96. On February 17, 2018, at approximately 2:29 a.m., an **intoxicated** patron left BOMBSHELLS on his motorcycle and was involved in a serious collision at the 16000 block of Gulf Freeway. The patron was ejected from his motorcycle and **pronounced dead** at approximately 2:34 a.m. A subsequent autopsy revealed his **blood alcohol level was .18**. (HPD #206630-18). The patron's wife **filed a petition against BOMBSHELLS** and their employee server for **continuing to serve the patron after he was obviously intoxicated and presented a clear danger to himself and others;**<sup>5</sup>

97. On March 11, 2018, at approximately 1:51 a.m., HPD officers arrived at BOMBSHELLS to assist with **two intoxicated individuals** who had been asked to leave by staff. Officers observed security officers struggling with one of the individuals (suspect). The suspect **shoved the female security officers causing her to fall to the ground** and then **jumped on top of her**. Two more security officers attempted to detain the suspect. The suspect **continued resisting** as officers put him in handcuffs and into the patrol car. The suspect began hitting his head inside the vehicle with a great amount of force as well as kicking his feet, requiring officers to put him in leg restraints. The suspect also told one of the officers, **"I hope you fucking die. I hope your wife dies. I hope your kids die. I hope your whole fucking family dies."** The suspect was subsequently charged with **Felony Assault on Security Officer** and **Felony Retaliation**. (HPD #308099-18);

98. On March 14, 2018, at approximately 11:15 p.m., HPD officers arrived to BOMBSHELLS to assist with a patron (complainant) who had been **assaulted** by another patron (suspect). A security guard witnessed the assault and told officers that someone threw a French fry at the suspect and the suspect, thinking the complainant had thrown it, walked up to and

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<sup>5</sup> See Houston Chronicle Article: *"\$1M lawsuit accuses Bombshells bar of overserving man who died in crash,"* May 29, 2018.

punched the complainant. Emergency medical services were also on scene checking on the suspect who had complained of high blood pressure. Security staff advised that the suspect had been at **BOMBSHELLS for approximately 10 hours**. The officer noted in his report, “**Aside from the assault I feel the volume of calls for assaults and disturbances at this establishment would not be so high if the bartenders would not be overserving the customers.**” The suspect was arrested for **Assault**. (HPD #325602-18);

99. On March 25, 2018, at approximately 11:50 p.m., HPD officers arrived at BOMBSHELLS to assist with an **extremely intoxicated patron** (suspect) who had assaulted another patron (complainant). Officers made contact with the complainant, who stated he did not know the suspect, but the suspect kept coming up to him and asking to shake his hand. When the complainant asked the suspect to leave him alone, the suspect **punched him on the right side of his face**. Officers determined they needed to take the suspect to the **sobering center** because of how **intoxicated** he appeared. At the sobering center, an officer observed the suspect take a **breathalyzer test with a result of .225**. (HPD #377495-18);

100. On April 3, 2018, at approximately 5:39 p.m., security officers at BOMBSHELLS were alerted to a patron (suspect) who had **slapped another patron in the face** while they had been talking to each other. The officers spoke with the suspect who stated the patron had slapped her first because she had declined him. The suspect was **intoxicated** and released to her friends to take her home. (HPD #418292-18);

101. On May 1, 2018, at approximately 12:15 a.m., a security officer at BOMBSHELLS watched as a patron (suspect) walked out and entered his car in the parking lot. The suspect then **hit a parked vehicle** as he was backing his car out. The suspect began to pull away, so the security guard jumped in front of the suspect’s car to prevent him from leaving.

HPD officers arrived and observed the suspect to be **intoxicated**. The suspect told officers he was at BOMBSHELLS and drank approximately **4 to 6 Dos Equis brand beer and then he drank a shot mixed with Red Bull**. The suspect was arrested for **Driving While Intoxicated**. (HPD #545046-18);

102. On May 12, 2018, at approximately 12:03 a.m., a Harris County Constable Precinct 4 deputy was passing the parking lot of BOMBSHELLS when he saw a car coming out of the parking lot **driving on the grass and rolling into the moving lanes of traffic**. The deputy began to follow the car and observed it to **rapidly increase in speed and hit a curb while making a U-turn**. The deputy conducted a traffic stop and observed the driver (suspect) to have **red glossy eyes, low slurred speech, a strong odor of alcohol, and to be uncoordinated in his movements**. The passenger in the vehicle appeared to be **even more intoxicated**. The suspect admitted to drinking but refused to do any field sobriety tests and refused to provide a sample of his breath or blood so the deputy obtained a search warrant for a blood draw. The suspect was arrested for **Driving While Intoxicated**. (Pct.4 #18-75172);

103. On May 16, 2018, TABC received a **complaint** against BOMBSHELLS for **Sell/Deliver to Intoxicated Person**;

104. On May 17, 2018, at approximately 2:00 a.m., an HPD officer observed a driver (suspect) driving **93 mph in a 60 mph zone** on Gulf Freeway and change lanes without using a turn signal. The officer conducted a traffic stop on the suspect and observed him to have **blood shot eyes** and a **strong odor of alcohol** coming from his breath. The suspect stated he was coming from BOMBSHELLS and admitted to drinking 2 to 3 beers. The suspect exhibited clues on the field sobriety tests, provided a breath sample of **.088/.092**, and was arrested for **Driving While Intoxicated**. (HPD #621978-18);

105. On May 20, 2018, at approximately 2:20 a.m., a driver (suspect) crashed into an HPD patrol officer who was blocking traffic for another accident that had occurred on Gulf Freeway. The incident, captured on the officer's body camera, shows the suspect's vehicle striking the officer and breaking both of his wrists. The suspect exited his vehicle after the crash and **ran from the scene**, but officers were able to locate the suspect soon after. The suspect was exhibiting signs of **intoxication** and stated that he was coming home from Galveston. The officer asked the suspect about the wrist band on his wrist and the suspect stated it was from BOMBSHELLS and he had gotten it there prior to going to Galveston. The suspect was arrested and charged with **Felony Intoxicated Assault on a Peace Officer** and **Felony Failure to Stop and Render Aid**. It should be noted that the location where the suspect crashed his vehicle was 12300 Gulf Freeway; BOMBSHELLS is located at 12810 Gulf Freeway. (HPD #636759-18).

ABATING DEFENDANTS' COMMON NUISANCE  
Under the Texas Alcoholic Beverage Code

106. Defendants sell and serve alcohol to minors and intoxicated individuals contrary to the Code. Tex. Alco. Bev. Code §§ 106.03; 101.63. By selling alcohol in violation of the Code, BOMBSHELLS is by definition a common nuisance. Tex. Alco. Bev. Code § 101.70(a). As outlined in the previous paragraphs, these are not just a few isolated incidents but are repeated throughout the years of its operation. Regarding Sale to Minors, in October 2015 there were two reported incidents involving minors consuming alcohol at BOMBSHELLS, one of whom was arrested for Public Intoxication.<sup>6</sup> BOMBSHELLS was on notice of the issue at this point. In January 2017, TABC agents issued the on-duty manager an Administrative Citation for an employee serving a minor alcohol and the manager asked the agents not to issue the citation

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<sup>6</sup> See paragraphs #20, #21.

and instead let him use this incident as a training tool.<sup>7</sup> However in each the following months February through May 2017, BOMBSHELLS either received a complaint or was issued a violation for serving to minors.<sup>8</sup> In August 2017, TABC agents again observed a minor was consuming alcohol at the business, and even worse that the minor was extremely intoxicated.<sup>9</sup> The on-duty manager told agents that BOMBSHELLS has policies in place directing employees what to do if a minor or intoxicated person asks to purchase alcohol.<sup>10</sup>

107. However at this point BOMBSHELLS was not only on notice they had an issue with serving minors, but that they had an even bigger issue with serving to intoxicated patrons. BOMBSHELLS had dozens of reported cases of intoxicated individuals on their premises prior to being sued in April 2016 for over-serving a patron who suffered serious bodily injury.<sup>11</sup> Yet least 5 intoxicated individuals were reported at BOMBSHELLS in the months following the lawsuit filing and at minimum 30 intoxicated individuals have been reported at BOMBSHELLS since the manager told TABC agents about their employee policies.<sup>12</sup> Texas Alcoholic Beverage Code § 106.14(a), Actions of Employee, provides that actions of employees regarding the sale and delivery of alcohol to a minor or intoxicated person shall not be attributable to the employer if:

- a. the employer requires its employees to attend a commission-approved seller training program,
- b. the employee actually attends the training program,
- c. the employer has not directly or indirectly encouraged the employee to violate such law.

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<sup>7</sup> See paragraph #22

<sup>8</sup> See paragraphs #23, #24, #25, #26, and #27.

<sup>9</sup> See paragraph #28.

<sup>10</sup> *Id.*

<sup>11</sup> See paragraph #49.

<sup>12</sup> See paragraphs #60 - #105.

It is impossible to look at the number of times minors and intoxicated individuals have been served at BOMBSHELLS throughout the years and allow Defendants to stand behind a curtain and claim they have done their part to educate their employees on how to responsibly serve alcohol.

108. Because defendants have repeatedly been put on notice for their violations and continue to abuse their privilege to sell alcohol to the public, **the only way to abate the nuisance is to order that Defendants immediately be enjoined from selling, serving or allowing consumption of alcoholic beverages on their property.** Plaintiff seeks a temporary restraining order and an injunction **prohibiting BOMBSHELLS from possessing, serving, or selling alcohol** to prevent further violations of the Tex. Alco. Bev. Code that put Harris County's residents' safety at risk every time a minor or an intoxicated person is served alcohol at BOMBSHELLS.

**B. DEFENDANTS MAINTAIN A COMMON NUISANCE IN VIOLATION OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE**

109. The Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

110. Chapter 125 of the Texas Civil Practice & Remedies Code governs common and public nuisances. Section 125.0015(a) provides that anyone who maintains a property to which persons habitually go for the purposes listed below, knowingly tolerates the activity, and fails to make reasonable attempts to stop the activity – maintains a common nuisance:

- (1) discharge of a firearm in a public place as prohibited by the Penal Code;
- (2) reckless discharge of a firearm as prohibited by the Penal Code;
- (3) engaging in organized criminal activity as prohibited by the Penal Code;
- (4) delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481, Health & Safety Code;

- (5) gambling, and gambling-related crimes as prohibited by the Penal Code;
- (6) prostitution, and prostitution-related crimes as prohibited by the Penal Code;
- (7) compelling prostitution as prohibited by the Penal Code;
- (8) commercial uses of obscene material as prohibited by the Penal Code;
- (9) aggravated assault as described by Section 22.02, Penal Code;
- (10) sexual assault as described by Section 22.011, Penal Code;
- (11) aggravated sexual assault as described by Section 22.021, Penal Code;
- (12) robbery as described by Section 29.02, Penal Code;
- (13) aggravated robbery as described by Section 29.03, Penal Code;
- (14) unlawfully carrying a weapon as described by Section 46.02, Penal Code;
- (15) murder as described by Section 19.02, Penal Code;
- (16) capital murder as described by Section 19.03, Penal Code;
- (17) continuous sexual abuse of young child as described by Section 21.02, Penal Code;
- (18) massage therapy related crimes in violation of Chapter 455, Occupations Code;
- (19) employing a minor at a sexually oriented business as defined by Section 243.002, Local Government Code;
- (20) trafficking of persons as described by Section 20A.02, Penal Code;
- (21) sexual conduct/performance by a child as described by Section 43.25, Penal Code;
- (22) employment harmful to a child as described by Section 43.251, Penal Code.
- (23) criminal trespass as described by Section 30.05, Penal Code;
- (24) disorderly conduct as described by Section 42.01, Penal Code;
- (25) arson as described by Section 28.02, Penal Code;
- (26) criminal mischief as described by Section 28.03, Penal Code, that causes a pecuniary loss of \$500 or more; or
- (27) a graffiti offense in violation of Section 28.08, Penal Code.

111. **The following activities have taken place at BOMBSHELLS since it opened in 2014, organized by the Section 125.0015(a) list of common nuisances:**

DISCHARGE OF FIREARM IN A PUBLIC PLACE  
Tex. Civ. Prac. & Rem. Code § 125.0015(a)(1)

112. On March 13, 2015, at approximately 2:00 a.m., a patron of BOMBSHELLS saw his friend having words with a large group of males in the business' parking lot and went to go assist him. The group began to approach the patron in a manner that caused the patron to fear for his safety, so he **took his gun** from his vehicle and **fired two shots into the air**. The group of males ran away after the second shot. (HPD #313871-15);

113. On June 14, 2015, at approximately 11:30 p.m., HPD officers were dispatched to a **shooting** at BOMBSHELLS. Officers made contact with a BOMBSHELLS' security guard who stated a patron (suspect) was **drinking and being loud and belligerent**. As the suspect was leaving the business, the security guard asked the suspect if he was okay. The suspect continued out to the parking lot, got into his vehicle and drove to the front of the business where the security guard was standing, **pointed a pistol** out of the driver's side window into the air and **fired out six rounds**, and then drove off. Officers collected six fired .40 caliber casings from the parking lot. (HPD #771160-15);

114. On February 18, 2017, at approximately 2:03 a.m., after two patrons left BOMBSHELLS after having an argument, one of the patrons (suspect) **grabbed his gun** from his vehicle and **shot a couple of rounds inside of the parking lot**, and then some more rounds as they were leaving the parking lot. The suspect was arrested for **Discharging a Firearm, Resisting Arrest, and Failure to ID to Police Officer**. (HPD #216374-17);

POSSESSION OF A CONTROLLED SUBSTANCE  
Tex. Civ. Prac. & Rem. Code § 125.0015(a)(4)

115. On November 23, 2014, at approximately 1:30 a.m., security guards at BOMBSHELLS followed two male patrons (suspects) into the men's bathroom after it had

become obvious that **traffic going into the bathroom was heavier than the traffic coming out**. The security guards watched as the suspects **entered into a bathroom stall together**. As a guard knocked on the door, one of the suspects dropped a **bag with a visible white substance** on the ground. The security guards detained both suspects and flushed the bag down the toilet, not realizing they were destroying evidence. HPD officers were dispatched but no charges were filed due to the disposed evidence. (HPD #1492358-14);

116. On January 8, 2015, at approximately 11:45 p.m., a customer alerted a BOMBSHELLS security officer that **a drug deal was going on in the men's restroom**. The security officer and an HPD officer entered the men's restroom and saw **four men inside one stall**. One of the men was seen putting **.40 grams of cocaine** into his pocket and was subsequently arrested for **Possession of Controlled Substance**. (HPD #34334-15);

117. On May 23, 2015, at approximately 10:00 p.m., security officers at BOMBSHELLS flagged down an HPD officer to assist with detaining a male who was **trespassing** on business property. The male was arrested for **Possession of Controlled Substance** after the HPD officer found **.14 grams of cocaine** in the male's pocket during a systematic search. (HPD #662012-15);

118. On August 20, 2015, at approximately 11:41 p.m., a security guard at BOMBSHELLS saw two patrons get into a **physical altercation** inside the business. Upon arrest, **.05 grams of cocaine** was found inside of one of the male's pockets and he was arrested for **Possession of Controlled Substance**. (HPD #1082498-15);

119. On August 21, 2015, at approximately 2:00 a.m., a patron notified a female security guard at BOMBSHELLS that a female **in the women's restroom was asking if anyone wanted "a bump" of a controlled substance**. The security guard went inside the women's

restroom and coincidentally a female asked the security guard if she wanted any drugs. The female **admitted to having cocaine in her bra** and was subsequently arrested for **Possession of Controlled Substance**. (HPD #1082860-15);

120. On July 23, 2016, at approximately 9:40 p.m., security guards at BOMBSHELLS detained a patron who was in possession of **3.18 grams of cocaine** and freely stated he had been snorting cocaine. HPD officers arrived and arrested the patron for **Possession of Controlled Substance**. (HPD #945933-16);

121. On August 9, 2016, at approximately 1:40 a.m., the DJ at BOMBSHELLS alerted a security guard that he suspected a patron was **snorting cocaine** after seeing the patron **put his head down on a table**. The security guard searched the patron and **located cocaine on his person**. The cocaine field tested positive but no charges were filed due to the security guard's invalid search. (HPD #1017866-16);

122. On October 2, 2016, at approximately 11:30 p.m., a patron at BOMBSHELLS was washing his hands in the men's restroom when he saw a bag containing a white powdered substance. Officers arrived and collected the **.45 grams of cocaine** to be destroyed. (HPD #1262774-16);

123. On March 29, 2017, at approximately 12:52 a.m., a security guard at BOMBSHELLS overheard what appeared to be a **narcotics transaction in one of the stalls in the men's restroom**. The security guard then saw a male in the stall **snort cocaine** and shove a small bag into his pocket. The bag contained **.17 grams of cocaine** and the male was arrested for **Possession of Controlled Substance**. (HPD #390717-17);

124. On May 6, 2017, at approximately 12:58 a.m., a security guard at BOMBSHELLS observed a patron **snorting cocaine inside a stall in the men's restroom**. The

patron was asked to exit the stall and was found in possession of **.27 grams of cocaine**. Charges were not filed due to the security guard viewing the patron over the top of the bathroom stall. (HPD #565750-17);

125. On July 9, 2017, at approximately 7:49 p.m., a security guard at BOMBSHELLS saw that **two men were inside the handicap stall** in the men's restroom and also heard a **snorting noise** coming from inside. The security guard asked the men to step out and saw one of them putting something in his pocket, which turned out to be **.11 grams of cocaine**. The male was arrested for **Possession of Controlled Substance**. (HPD #867385-17);

126. On December 14, 2017, at approximately 1:10 a.m., an employee at BOMBSHELLS approached three male patrons who had not paid their bar tab. As the employee approached the patrons, he **observed what looked to be a drug transaction** between them. He observed two of the patrons pass a white powdery substance in a bag by shaking each other's hands. Then one of the patrons dropped the bag underneath a bar table. HPD officers arrived and observed **all three patrons to be intoxicated**, and arrested one for **Possession of Controlled Substance** for the **.55 grams of cocaine** recovered. (HPD #1563505-17);

127. On April 14, 2018, at approximately 3:25 a.m., HPD officers were in the process of transporting an **intoxicated** patron at BOMBSHELLS to the **sobering center** when they found **.28 grams of cocaine** in his pocket. The patron was subsequently charged with **Possession of Controlled Substance**. (HPD #466806-18);

128. On April 15, 2018, at approximately 2:03 a.m., a security officer at BOMBSHELLS was breaking up a fight between two patrons when a bag containing **.18 grams of cocaine** fell out of the pocket of one of the patrons. (HPD #471158-18);

129. **There have been at least 14 reported incidents involving cocaine at BOMBSHELLS since it opened in 2014.**

AGGRAVATED ASSAULT  
Tex. Civ. Prac. & Rem. Code § 125.0015(a)(9)

130. On January 16, 2015, at approximately 1:30 a.m., a patron alerted BOMBSHELLS security guards that **a man in the parking lot had a gun**. The man was part of one of two groups of individuals security guards had just kicked out of BOMBSHELLS for **fighting**. One of the security guards, an off-duty police officer, went outside into the parking lot and saw a man holding a gun. The security guard repeatedly ordered the man to drop his weapon. The man did not comply and **pointed his gun towards the security guard**. The security guard raised his own weapon and shot the man multiple times. The man was transported to the hospital but later died from the gunshot wounds.<sup>13</sup>

131. On April 15, 2016, at approximately 7:13 p.m., HPD officers were dispatched to BOMBSHELLS due to a complaint that a patron threatened a man by **displaying a firearm and threatening to fill the man with holes**. A security guard at BOMBSHELLS detained the man he believed displayed the weapon when the male's friends surrounded the security guard, **causing the security guard to fear for his safety and let the male go** before HPD arrived. (HPD #481228-16);

132. On July 11, 2016, at approximately 11:30 p.m., a security guard at BOMBSHELLS went to the side parking lot of the business in response to **two males fighting and causing a disturbance**. The males became **aggressive towards the security guard** when he told them to leave the property. Both males got into the same car and drove around to the

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<sup>13</sup> Exhibit 5: Houston Chronicle Article, "HPD shoots, kills armed man outside SE Houston bar," January 16, 2015.

building to where the security guard was and one of the males **displayed a glock pistol to the security officer** before driving away. (HPD #893724-16);

133. On August 6, 2016, at approximately 2:00 a.m., patrons were leaving BOMBSHELLS and heading to their cars in the parking lot when a patron **pulled out a gun** from his vehicle and threatened a man for hitting on the patron's girlfriend. (HPD #1004930-16);

134. On October 21, 2016, at approximately 1:40 p.m., a security guard at BOMBSHELLS was investigating **two patrons causing a disturbance** when a third patron (suspect) came up to the security guard and **grabbed the handle of the guard's holstered weapon around his waist**. The suspect attempted to pull out the weapon by shaking it out of the holster repeatedly, while shouting, "Bang! Bang! Bang!" The security guard stated he was in **fear for his life**. The suspect was arrested for **Attempt to Disarm Officer - Bodily Force**. (HPD #1343813-16);

135. On October 29, 2016, at approximately 12:45 a.m., a patron (suspect) at BOMBSHELLS was asked to leave by management due to previous encounters with him in the past. A security guard watched the suspect walk towards the back of the business and assumed he had left. The security guard then saw the suspect in his vehicle approaching the guard with the car window down. The suspect **told the security officer that he better watch out** because the suspect was a known criminal, and the suspect began to reach under his leg as if to get a weapon. The security guard saw a flash of yellow object before the suspect sped away in his vehicle and then turned around and **drove towards the security guard**. The suspect kept driving straight towards the guard before a patrol unit activated its lights and took the suspect into custody. As the suspect was being taken from the scene, he asked to speak with the security guard and told the guard to watch out because **when he got out of jail he was going to get him**.

The suspect was arrested for **Felony Retaliation** and had been in possession of a yellow **box cutter** in his vehicle. (HPD #1379417-16);

#### ROBBERY

Tex. Civ. Prac. & Rem. Code § § 125.0015(a)(12)

136. On May 11, 2017, at approximately 11:58 p.m., a patron (suspect) at BOMBSHELLS ordered \$158.00 worth of food and drinks and then fled the business without paying. A security guard caught up to the suspect and grabbed him. The suspect began **fighting the security guard**, causing the guard to fall to the ground and feel pain. The suspect was arrested for **Robbery**. (HPD #592465-17);

137. On June 1, 2017, at approximately 11:00 p.m., a female (complainant) in the parking lot of BOMBSHELLS was standing outside her car holding her bag when a car pulled up next to her. The male passenger (suspect) exited the car and **punched the complainant on her right cheek before taking her bag** and driving away. An HPD **Robbery** Investigation officer made contact with the security guard at BOMBSHELLS to view their surveillance camera. The security guard advised he had checked the cameras and found they were on a timed loop and had taped over the robbery. (HPD #690571-17);

#### AGGRAVATED ROBBERY

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(13)

138. On June 2, 2016, at approximately 11:55 p.m., a male patron was walking his female friend to her car in the BOMBSHELLS parking lot when they were **robbed at gunpoint** by two male suspects. A suspect **pointed a gun to the male patron's neck**, demanding his wallet and keys. The second suspect yelled at the female to give him her purse and began to pull at the purse wrapped around her shoulder. Meanwhile the first suspect told the male patron to get down on his knees, and then **pointed the gun directly to the patron's head**. The patron

reported that he was **in fear for his life** and **thought he was going to be killed**. The second suspect finally was able to take the female's purse and both suspect left the scene in a Mercedes. HPD officers arrived on scene and noted that although there were surveillance cameras in the area, it was unknown at this time if they had caught the incident on video. Officers however were able to track the female patron's phone and eventually locate the suspects who were both charged with **Aggravated Robbery – Deadly Weapon**. (HPD #708831-16);

139. On May 15, 2016, at approximately 11:00 p.m., a patron of BOMBSHELLS was walking towards her car parked on the side of the business' building. A dark-colored SUV passed the patron and a male exited the SUV and **pointed a gun at the patron and demanded she give him her purse**. (HPD #623377-16);

UNLAWFULLY CARRYING A WEAPON  
Tex. Civ. Prac. & Rem. Code § 125.0015(a)(14)

140. On August 17, 2016, at approximately 10:30 p.m., HPD officers were dispatched to BOMBSHELLS after a security guard saw a patron in the restroom holding a key up to his nostril and inhaling. The patron, in possession of **.31 grams of cocaine** and a **.40 glock pistol** in the front waistband of his jeans, was arrested for **Possession of Controlled Substance and Felony Unlawful Carry of Weapon on Licensed Premise**. (HPD #1056471-16);

CRIMINAL TRESPASS  
Tex. Civ. Prac. & Rem. Code § 125.0015(a)(23)

141. On November 23, 2014, at approximately 12:19 a.m., a **16 year old waitress** at BOMBSHELLS informed a female (suspect) standing outside the business that there was a wait to get in because they were at capacity. The suspect **grabbed the waitress by the hair and struck the waitress in the face several times with her fist**. The suspect's husband later

**threatened to kill a security guard.** The suspect was arrested for **Assault** and her husband was arrested for **Criminal Trespass** and **Terroristic Threat**. (HPD #1492009-14);

142. On January 29, 2015, at approximately 10:13 p.m., a security officer at BOMBSHELLS saw a patron urinating outside in front of the business and told him to leave the premises. Approximately two hours later, the patron had returned and was sitting inside the business. The security officer approached the patron and told him again to leave when the patron **struck the security officer in the chest and face.** The patron was arrested for **Criminal Trespass** and **Assault**. (HPD #125102-15);

143. On September 5, 2015, at approximately 8:17 p.m., a security guard at BOMBSHELLS detained a man after seeing him **jump the fence from the rear of the building to enter the property.** The man had previously been given a verbal warning not to enter BOMBSHELLS anymore because he always caused a disturbance. The man was arrested for **Criminal Trespass**. (HPD #1155565-15);

144. On December 5, 2015, at approximately 3:30 a.m., security guards at BOMBSHELLS reported that an **intoxicated** male (suspect) kept returning to the property despite being told repeatedly to leave. The suspect **refused to sign a trespass affidavit** and was detained when he returned again to the property. The suspect was arrested for **Criminal Trespass**. (HPD #1555522-15);

145. On January 9, 2016, at approximately 3:19 p.m., a patron (suspect) was ordered to leave BOMBSHELLS after he **tried to pick a fight** with another patron. The suspect left the property, but returned a few minutes later and was told again to leave. The suspect left and then **returned to the property a third time** and was detained and subsequently arrested for **Criminal Trespass**. (HPD #36949-16);

146. On January 24, 2016, at approximately 7:13 p.m., a patron (suspect) the BOMBSHELLS' staff had given a **trespass warning** to a few days ago came back to the business. The suspect had been approaching women inside BOMBSHELLS and **asking if they liked ISIS and wanted to be a part of the organization**. The suspect was arrested for **Criminal Trespass** and the case was further reviewed by HPD's Criminal Intelligence Division of Joint Terrorism due to the suspect mentioning the terrorist organization ISIS. (HPD #103223-16);

147. On January 15, 2017, at approximately 1:11 a.m., a security guard at BOMBSHELLS called police to report a suspect who had **previously been given a trespass warning** was back at the business and **causing problems** inside. The suspect was arrested for **Criminal Trespass**. (HPD #63025-17);

148. On November 15, 2017, at approximately 1:46 a.m., a suspect was detained at BOMBSHELLS for **trespassing**. (HPD #1438777-17);

149. On November 29, 2017, at approximately 2:00 a.m., a suspect had returned to BOMBSHELLS after being issued a **trespass warning** on a previous date for having **his shirt off and pants down with his penis exposed** while standing in front of a female and within the view of a **small child** sitting at a table. The suspect was arrested for **Criminal Trespass**. (HPD #1497576-17);

150. On December 16, 2017, at approximately 11:15 p.m., HPD officers arrived at BOMBSHELLS due to a suspect returning to the property after being given a **trespass warning**. As the suspect was about to be handcuffed, he **evaded on foot**, running towards another parking lot before slipping and falling. The suspect was arrested for **Criminal Trespass** and **Evading on Foot**. (HPD #1576873-17);

151. On March 11, 2018, at approximately 3:23 a.m., HPD officers arrived at BOMBSHELLS to assist with a suspect **refusing to leave the property** after being asked several times by the security staff. The suspect was arrested for **Criminal Trespass**. (HPD #308202-18);

152. On November 27, 2016 at approximately 3:05 a.m., HPD officers were called to BOMBSHELLS in reference to an **intoxicated** individual (suspect) who was **trespassing** on the property. A security guard informed officers that the suspect was part of **a large group of people** who had been **fighting** at BOMBSHELLS earlier. The security guard broke up the fight and told the suspect to leave. The suspect was **intoxicated and not cooperative** in leaving. The security guard called an Uber for the suspect and told him not to return. At approximately 3:00 a.m., the security guard saw the suspect walking in the business' parking lot. The suspect was arrested for **Criminal Trespass**. (HPD #1507225-16);

153. **Since its opening in 2014, there have been at least 12 arrests for Criminal Trespass at BOMBSHELLS.**

**DISORDERLY CONDUCT**

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(24)

154. On May 22, 2016, at approximately 10:40 p.m., security guards at BOMBSHELLS refused to let three males into the business due to prior incidents. The males left and shortly returned in a vehicle and **shot a BB gun into the crowd**. One BB pellet hit the wall and bounced on the floor and hit a patron in the ankle. (HPD #656417-16);

**CRIMINAL MISCHIEF**

Tex. Civ. Prac. & Rem. Code § 125.0015(a)(26)

155. On December 5, 2015, at approximately 1:20 a.m., security guards at BOMBSHELLS were alerted to a suspect in the parking lot **damaging someone else's car with**

**a tire iron.** When a security guard ordered the suspect to show his hands, the male instead got into his vehicle and began to leave. The security guard deployed pepper spray on the suspect but was unable to stop him from accelerating his car at a high rate of speed out of the parking lot. The suspect was subsequently found and arrested for **Felony Criminal Mischief.** (HPD #1555193-15).

ABATING DEFENDANTS' COMMON NUISANCE  
Under Tex. Civ. Prac. & Rem. Code

156. Under the Texas Civil Practices and Remedies Code, the District Attorney may bring a suit in the name of the State to enjoin and abate a common nuisance against any person who maintains, owns, uses, or is a party to the use of a place for purposes constituting a nuisance, and may bring an action *in rem* against the place itself. §§ 125.002(a)-(b). Verification of the petition or proof of personal injury by the acts complained is not required to be shown. Tex. Civ. Prac. & Rem. Code § 125.002(a).

157. **Proof that an activity described by Section 125.0015(a) is frequently committed at a place, or that the place is frequently used for the activity, is prima facie evidence that a defendant knowingly tolerated the activity.** Tex. Civ. Prac. & Rem. Code § 125.004(a). **Evidence showing that persons have been arrested for or convicted of offenses at a place for an activity described by Section 125.0015(a) is admissible to show knowledge on the part of the defendant with respect to the act that occurred.** Tex. Civ. Prac. & Rem. Code § 125.004(b). **Evidence of the general reputation of a place is also admissible to show the existence of the nuisance.** Tex. Civ. Prac. & Rem. Code § 125.004(c).

158. Due to the frequent, repeated, and continued dangerous criminal activities constituting a common nuisance at BOMBSHELLS, Plaintiff brings this action to request injunctive relief to abate this nuisance and enjoin Defendants from maintaining or participating

in the nuisance. Tex. Civ. Prac. & Rem. Code § 125.002(b). **Nine** different criminal activities classified as a common nuisance by Section 125.0015(a) outlined in detail in this Petition - **discharge of a firearm, possession of a controlled substance, aggravated assault, robbery, aggravated robbery, unlawful carry of a weapon, criminal trespass, disorderly conduct and criminal mischief** - have been repeatedly reported at BOMBSHELLS, and are exclusive of many other criminal activities repeatedly reported there.<sup>14</sup> Between the weekly arrests on business property, TABC investigations, civil petitions filed by private individuals, and local, national and international news article coverage – all in connection of being a common nuisance – it is clear that Defendants, who own, maintain, operate, or use the 12810 GULF FREEWAY location of BOMBSHELLS, have **knowingly tolerated the nuisance activity and have further failed to take reasonable attempts to abate the nuisance activity.**

159. As required by Tex. Civ. Prac. & Rem. Code § 125.002(h), Plaintiff takes under consideration whether Defendants promptly notified the appropriate governmental entity or the entity's law enforcement agency of the occurrence of criminal acts on their property and whether Defendants cooperated with governmental entity's law enforcement investigations of criminal acts occurring at the property. Additionally under Section 125.004(d), evidence that the Defendants' authorized representatives requested law enforcement assistance with respect to the activities taking place is not admissible for the purpose of showing they tolerated, or failed to make reasonable attempts to abate, the activity.<sup>15</sup> However, at BOMBSHELLS the vast majority of crimes reported are committed by individuals who are intoxicated, and the environment BOMBSHELLS has created through their negligence in serving alcohol has made it a place persons habitually go to for criminal activity. **When Defendants constantly request law**

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<sup>14</sup> Assault, Retaliation, Resisting, Burglary of Motor Vehicle, Theft, Terroristic Threat, etc.

<sup>15</sup> But such evidence may be permitted for other purposes such as showing a crime constituting a common nuisance occurred. Tex. Civ. Prac. & Rem. Code § 125.004(d).

**enforcement assistance for criminal activity that ensues from their own illegal acts of serving to intoxicated patrons, they cannot claim protection under the law.**

160. **Plaintiff seeks a temporary restraining order requiring BOMBSHELLS to shut down its business at 9:00 p.m. daily and prohibiting BOMBSHELLS from serving alcohol entirely.** In addition to the TABC violations constituting BOMBSHELLS as a common nuisance, and the Texas Civil Practice & Remedies Code violations constituting BOMBSHELLS as a common nuisance, there are **many more concerning incidents that confirm BOMBSHELLS' staff's safety, and the public's safety, is at risk if this business continues to serve alcohol and operate during late night hours:**

161. On January 16, 2015, at approximately 9:30 p.m., a bartender at BOMBSHELLS reported she was serving two males at the bar when they asked her if she had been working the night of an officer-related shooting. After the bartender confirmed she had been working that night, one of the males stated, "Y'all murdered my friend so we are going to murder y'all who work here." Investigating HPD officers learned that **several threats**, verbal and through social media, had been made **towards the employees of BOMBSHELLS due to the shooting** and the two males who threatened the bartender had connections to the **Houstone - Tango Blast Gang**. (HPD #92114-15);

162. On March 1, 2015, at approximately 12:15 a.m., a patron (suspect) was acting rude and **disrespectful towards a waitress** at BOMBSHELLS. After another patron (complainant) approached the suspect and told him to stop being rude to the waitress, the suspect began **punching the complainant repeatedly**, causing the complainant to fall on the ground. The suspect also **punched another patron** who was trying to help the complainant on the

ground and had to be pulled away from the complainant by security guards. The suspect was arrested for **Assault**. (HPD #259677-15);

163. On April 25, 2015, at approximately 1:15 a.m., HPD officers were dispatched to BOMBHELLS to **assist security officers** with breaking up **a fight among a large group of patrons**. Officers made contact with the detained individuals, who reported being **kicked in the mouth, hit in the face with a beer bottle, and being tackled and knocked to the floor**. None of the patrons wanted to press charges. (HPD #519829-15);

164. On August 7, 2015, at approximately 2:00 a.m., a BOMBHELLS security guard approached a patron and his girlfriend for **causing a disturbance** at the business. The patron **punched the security guard two to three times** and was arrested for **Assault on Public Servant**. (HPD #1018944-15);

165. On September 13, 2015, at approximately 3:35 p.m., security guards at BOMBHELLS detained a patron after an assault. HPD arrived and arrested the patron on outstanding municipal warrants. HPD identified the patron as a member of the **Houstone – Tango Blast Gang**. (HPD #1189562-15);

166. On March 5, 2016, at approximately 2:00 a.m., an employee at BOMBHELLS was clearing out the bar at closing time when he saw a male patron holding an open beer bottle walking out of the business. The employee stopped the patron, and another patron (suspect) **hit the employee on the back of the head with a closed fist**. The suspect was arrested for **Class C Assault**. (HPD #286801-16);

167. On March 11, 2016, at approximately 11:45 a.m., a patron (suspect) **assaulted two security officers** at BOMBHELLS after he was asked to leave the property for making threats to another patron. The suspect was arrested for **Assault on Security Officer**. HPD also

identified the suspect as a member of the **Hermanos Pistoleros Latinos (HPL) Gang**. (HPD #318710-16);

168. On March 12, 2016, at approximately 1:32 a.m., a security guard at BOMBSHELLS saw a female patron (suspect) in a heated argument with a male patron. The suspect **slammed a glass onto the bar, breaking the glass**. When the security guard approached the suspect, she **punched the security guard in the face with her fist**. The suspect was arrested for **Assault on Security Officer**. (HPD #319050-16);

169. On April 9, 2016, at approximately 9:53 p.m., a security guard at BOMBSHELLS asked a patron (suspect) to leave after he **caused a disturbance** while arguing with his wife. The suspect **refused to leave** and when the security guard tried to detain the suspect, he **bit the security guard on his arm**. The suspect was arrested for **Felony Assault on Security Officer**. (HPD #454073-16);

170. On April 29, 2016, at approximately 1:15 a.m., an assistant manager at BOMBSHELLS saw a female patron (suspect) **taking several shots of liquor off of a tray at the bar**. The assistant manager confronted the suspect and the suspect started **striking the manager with her fists**. The assistant manager grabbed the suspect in a bear hug to prevent her from assaulting him and **two more patrons began to assault the assistant manager**. All three patrons were issued **Class C Assault** citations and released at the scene. (HPD #542790-16);

171. On May 20, 2016, at approximately 1:45 a.m., a security guard at BOMBSHELLS was assisting a patron out of the bar for causing a disturbance. The patron fell as he was walking out and as the security guard started to help him up, another patron (suspect) **grabbed the security guard and began to punch him in the chest and abdomen numerous times**. HPD officers attempted to ask the suspect what happened and the suspect stated, **“Fuck**

**you, you dick sucking cop” and attempted to spit at the officer.** The suspect also stated that when he would get out of jail he would go back to BOMBSHELLS and “fuck up” all of the security officers if they got in the way. The suspect was arrested for **Felony Assault on Public Servant.** (HPD #642711-16);

172. On July 2, 2016, at approximately 1:50 a.m., HPD officers arrived to assist security guards at BOMBSHELLS. Upon arrival, HPD officers saw **security guards telling a large group of people to leave BOMBSHELLS because it was closed for the night and if they did not leave they would be arrested for Criminal Trespass.** One of the patrons (suspect) in the front of the **large crowd refusing to leave** was being **verbally combative to the security guards.** The suspect was finally detained and told an officer he had **brass knuckles** in his rear pocket for protection. Another patron ran from an officer and had to be tackled to the ground. This patron **attempted to fight with all officers assisting in detaining him.** The suspect was arrested for **Possession of Prohibited Weapon.** (HPD #848518-16);

173. On August 19, 2016, at approximately 12:46 a.m., HPD was dispatched to BOMBSHELLS in reference to **an assault that had occurred on one of their female staff members** (complainant). The complainant reported that she was standing at the register talking with a customer when a patron (suspect) walked over to her, grabbed her by the waist and **grabbed her right buttocks.** The complainant stated she felt pain from how hard the suspect grabbed her buttocks. The complainant had to push herself off of the suspect to get away from him and then alerted one of the security guards. The suspect was arrested for **Assault** and also found in possession of .52 grams of marijuana and \$594.50 in cash. (HPD #1061313-16);

174. On September 15, 2016, at approximately 11:00 p.m., a **waitress** at BOMBSHELLS was at the register entering an order when she was **assaulted by two female patrons**. The patrons were issued **Class C Assault** citations. (HPD #1186586-16);

175. On October 10, 2016, at approximately 7:00 p.m., a security officer at BOMBSHELLS suspected a female patron (suspect) to be underage and drinking at the business. The **security guard asked the suspect to step outside and she replied that she was not going anywhere**. When the security guard stated he would have to take the suspect outside, the suspect began **striking the security guard with her elbows and fists**. The security guard had to pepper spray the suspect in order to make her stop. The suspect, who was 23 years old, was issued a **Class C Assault** citation. (HPD #1297701-16);

176. On November 6, 2016, at approximately 2:00 a.m., a security officer at BOMBSHELLS was assisting with an investigation on a man who had just hit a police officer with his vehicle. The security officer was outside in the parking lot speaking to witnesses when a patron (suspect) began yelling at the witnesses telling them not to say anything. After the suspect refused to walk away, the officer began to detain him and the suspect **shoved the officer and attempted to punch the officer with a closed fist**. The suspect was arrested for **Resisting Arrest**. (HPD #1416570-16);

177. On February 19, 2017, at approximately 10:34 p.m., HPD officers arrive to BOMBSHELLS to assist security guards detaining a male and female patron. A security guard had detained the female patron for **exposing her breasts** at the bar and the male patron, (female patron's boyfriend) for **attempting to prevent the security guard** from detaining her. (HPD #224448-17);

178. On February 23, 2017, at approximately 1:39 a.m., an off-duty security guard at BOMBSHELLS saw a male and female **having sex in the back of the parking lot**. The security guard detained the male with no incident but the female **became violent and punched the security guard in the chest**. (HPD #238538-17);

170. On June 23, 2017, at approximately 1:13 a.m., a male patron at BOMBSHELLS saw a male (suspect) **choking a waitress** near the business' restrooms. The suspect was later identified as the waitress' boyfriend. The patron confronted the suspect about choking the waitress and the suspect swung at the patron, causing another physical altercation. The suspect was arrested for **Felony Assault Family Member – Impeding Breath**. (HPD #792196-17);

180. On November 24, 2017, at approximately 10:40 p.m., a security officer at BOMBSHELLS asked a patron to leave the business. Once the security guard brought the patron out into the parking lot, the patron **threatened to kill the security officer** before driving away on his motorcycle. (HPD #1480039-17);

181. On December 27, 2017, at approximately 12:12 a.m., a security guard at BOMBSHELLS witnessed **a male and female patron having sex in a stall in the men's restroom**. When the security guard tried to detain the female patron (suspect) she began **resisting and scratching the security guard**. The male patron stated he had just met the suspect that night and she had followed him into the restroom even though he told her she should use the women's restroom. A female manager told HPD officers that the suspect had been bending over in her small dress exposing her underwear repeatedly and she had asked the suspect to stop and to leave several times. (HPD #1620271-17);

182. On April 14, 2018, at approximately 1:56 a.m., a security guard at BOMBSHELLS made contact with two individuals arguing in the parking lot. One of the

individuals (suspect) turned around and **swung at the guard**. The guard was able to detain the suspect but **suffered a broken finger and laceration on his hand**. The suspect was arrested for **Resisting**. (HPD #466571-18).

183. These incidents clearly show BOMBSHELLS is a **crime factory** and is further unable to control the criminal activity that occurs at its business almost daily. **Any potential temporary order, other than prohibiting alcohol entirely**, i.e. limiting the number of drinks served per person, increasing security, ceasing to serve alcohol at a certain time prior to 2 a.m., **would be disregarded by patrons, just as all of the above examples of requests by staff to their patrons have been blatantly disregarded**.

184. Beyond the temporary restraining order, if the Court's judgment is in favor of the Plaintiff, the Court shall grant an injunction ordering Defendants to abate the nuisance and be enjoined from maintaining or participating in the common nuisance. Tex. Civ. Prac. & Rem. Code § 125.002(e). The Court may include in the order reasonable requirements to prevent the use or maintenance of BOMBSHELLS as a nuisance. *Id.* The judgment must order that the location where the nuisance was found be closed for one year. *Id.*

#### REQUEST FOR TEMPORARY RESTRAINING ORDER

185. The Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

186. Defendants have failed or refused to abate the nuisance at BOMBSHELLS. Defendants have demonstrated that they will continue to maintain the Property as a common nuisance and allow the common nuisance to continue unless restrained by an injunctive order of the Court.

187. Plaintiff applies for a temporary restraining order and requests the Court enter a Temporary Restraining Order enjoining Defendants from maintaining or participating in the common nuisance described herein. Plaintiff requests the Court order the BOMBSHELLS establishment at 12810 GULF FREEWAY, HOUSTON, TEXAS 77089 **to close at 9:00 p.m. nightly and be prohibited from selling, serving, and possessing any alcoholic beverage at any time.** Tex. Civ. Prac. & Rem. Code § 125.002(e); Tex. Alco. Bev. Code § 101.70. This is the only remedy reasonably likely to prevent the use of the Property as a common nuisance pending further hearing.

188. Plaintiff will likely succeed after trial on the merits because the evidence of criminal activity occurring on the Property constitutes a showing of a common nuisance within the meaning of Tex. Alco. Bev. Code § 101.70 and Tex. Civ. Prac. & Rem. Code § 125.0015.

189. Plaintiff requests pursuant to Tex. Civ. Prac. & Rem. Code § 125.045 and Tex. Alco. Bev. Code § 101.70 the Court include in its temporary restraining order any reasonable requirements to prevent the use and maintenance of BOMBSHELLS as a common nuisance.

#### REQUEST FOR TEMPORARY INJUNCTIVE RELIEF

190. The Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

191. Plaintiff seeks temporary injunctive relief.

192. Pursuant to Tex. Civ. Prac. & Rem. Code § 125.045(a), if, after notice and hearing on a request by a petitioner for a temporary injunction, a court determines that the petitioner is likely to succeed on the merits in a suit brought under this chapter, the court shall require Defendants to post a bond payable to the Plaintiff, in the amount of not less than \$5,000

nor more than \$10,000, have sufficient sureties approved by the Court, and be conditioned that the Defendants will not knowingly maintain a common nuisance at BOMBSHELLS.

193. Because Plaintiff brings this action against the Property *in rem*, the temporary injunction shall be a judgment *in rem* against the Property as well as against the Defendants, according to Tex. Civ. Prac. & Rem. Code §§ 125.002(b) and (e) and Tex. Alco. Bev. Code § 101.70.

REQUEST FOR PERMANENT INJUNCTIVE RELIEF

194. The Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

195. The Plaintiff seeks permanent injunctive relief.

196. As alleged in the foregoing paragraphs, BOMBSHELLS is a place to which persons go to become extremely intoxicated and commit a litany a crimes as set out in Chapter 125 of the Texas Civil Practice and Remedies Code, and Defendants have and continue to knowingly tolerate the activity.

197. Defendants have failed and refused to abate the nuisance and are likely to continue to maintain and use the Property as a common nuisance unless restrained by an injunctive order of the Court. Furthermore Defendants are unable to restrain and control its patrons, as evidenced by the dozens of assaults and threats to security officers by patrons of BOMBSHELLS mentioned in this Petition.

198. Under Tex. Civ. Prac. & Rem. Code § 125.002(e), if judgment is in favor of the Plaintiff, the Court shall grant an injunction ordering Defendants to abate the nuisance and be enjoined from maintaining or participating in the common nuisance existing on the Property. The

Court may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance. Tex. Civ. Prac. & Rem. Code § 125.045; Tex. Alco. Bev. Code § 101.70.

199. Based on Tex. Civ. Prac. & Rem. Code § 125.002(e), because the Plaintiff brings this action *in rem*, if judgment is in favor of the Plaintiff, the Court shall order the Property closed for one year after the date of judgment.

200. Pursuant to Tex. Civ. Prac. & Rem. Code § 125.003(a), should any condition of the bond or any injunctive order by this Court be violated, the whole sum of the bond should be ordered forfeited to Plaintiff and the place where the nuisance exists should be ordered closed for one year from the date of the order of bond forfeiture.

201. Additionally, in accordance with Tex. Civ. Prac. & Rem. Code § 125.002(d), a person who violates a temporary or permanent injunctive order be subject to the following sentences for civil contempt:

- a. fine of not less than \$1,000 or more than \$10,000;
- b. confinement in jail for a term of not less than 10 or more than 30 days;
- c. both a fine and confinement.

202. Pursuant to Tex. Civ. Prac. & Rem. Code § 6.001 and Tex. Alco. Bev. Code § 101.70(c), Plaintiff is not required to post a bond.

203. Pursuant to Tex. Civ. Prac. & Rem. Code § 125.002, Plaintiff is not required to verify the allegations set forth in this petition, nor show any proof of personal injury by the acts complained herein.

#### REQUEST FOR DISCLOSURE

204. Under Tex. R. Civ. P. § 194, Plaintiff requests that Defendants disclose, within 50 days of service of this request, the information described in Rule 194.2.

TRIAL BY JURY

205. Plaintiff requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to Tex. R. Civ. P. § 216 and the Tex. Gov't Code § 51.604.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests:

206. The Court enter a temporary restraining order and temporary and permanent injunction to abate the common nuisance described herein as BOMBSHELLS at 12810 GULF FREEWAY, HOUSTON, TEXAS, and to enjoin Defendants from maintaining, assisting in maintaining, or participating in the nuisance. Tex. Civ. Prac. & Rem. Code §125.002(e); Tex. Alco. Bev. Code § 101.70. Plaintiff requests that the Court abate the nuisance immediately by ordering in its Temporary Restraining order that BOMBSHELLS close at 9:00 p.m. daily and be prohibited from selling or possessing alcohol entirely and further requests that the Court include in its order reasonable requirements to prevent the use or maintenance of BOMBSHELLS as a nuisance as set forth herein;

207. The Court order Defendants to post a bond payable to the Plaintiff pursuant to Tex. Civ. Prac. & Rem. Code § 125.045, in the amount of not less than \$5,000 nor more than \$10,000, have sufficient sureties approved by the Court, and be conditioned that the Defendants will not knowingly maintain a common nuisance at BOMBSHELLS.

208. The final judgment of this Court be a judgment *in rem* against the Property, as well as against the Defendants.

209. Plaintiff have judgment against Defendants for costs of court, attorneys' fees, investigation costs; and

210. Plaintiff have judgment for such other and further relief to which Plaintiff may be justly entitled.

DATED: June 6, 2018

Respectfully submitted,

/s/ Farheen Ansari Roche

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ATTORNEYS FOR PLAINTIFF

Unofficial Copy Office of Criminal Justice District Clerk