

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA  
EX REL STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY OF ALLEGHENY  
COUNTY

Plaintiff,

vs.

CIVIL DIVISION

NO: GD 13 - 144100

MARK G. HEUER, JOSEPH MOLINARO,  
DINO PIETRANTONI, DREW ZICCARDI  
d/b/a THE 2<sup>ND</sup> STRING LLC d/b/a LEVELZ  
1825 E CARSON STREET, PITTSBURGH,  
PENNSYLVANIA 15203-1707

Defendant.

CODE: 020-EQUITY

COMPLAINT IN EQUITY,  
PETITION FOR EMERGENCY  
PRELIMINARY INJUNCTION

Filed on behalf of the  
Commonwealth.

STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY of  
ALLEGHENY COUNTY  
PA I.D. # 41254

BY

KEVIN FRANCIS MC CARTHY  
Assistant District Attorney  
PA I.D. #47254

District Attorney's Office  
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(412) 388-5300

2013 SEP 2 11:14 AM

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

PENNSYLVANIA

COMPLAINT IN EQUITY

NOW COMES Commonwealth of Pennsylvania by STEPHEN A. ZAPPALA, JR., District Attorney, and Kevin McCarthy, Assistant District Attorney, and brings the complaint in equity pursuant to 47 P.S. § 6-611 and respectfully requests this Honorable Court permanently enjoin the operation of The 2<sup>nd</sup> String LLC d/b/a Levelz, located at 1825 E Carson Street, Pittsburgh, PA 15203 as a common nuisance and in support of the request for both a temporary and permanent injunction respectfully represents as follows:

1. That the plaintiff is the Commonwealth of Pennsylvania acting by and through its statutorily authorized representative, STEPHEN A. ZAPPALA, JR., District Attorney of Allegheny County, (hereinafter "Commonwealth").
2. That Commonwealth is proceeding pursuant to 47 P.S. § 1-101 et seq., 47 P.S. § 4-491(1), 4-492(2), 4-493(3), 47 P.S. § 6-611, common law and pursuant to Rule of Civil Procedure 1531 in requesting that this Honorable Court issue a preliminary or special injunction to have The 2<sup>nd</sup> String LLC d/b/a Levelz (hereinafter referred to as Levelz) closed and padlocked. Additionally, the Commonwealth requests a hearing subsequent to the granting of a temporary injunction to have Levelz permanently enjoined from operation pursuant to 47 P.S. § 6-611 and the common law and the Commonwealth requests a hearing be set within five (5) days of the issuance of the Decree.
3. That unless this Honorable Court issues a preliminary or special

injunction the public will suffer immediate and irreparable injury as defined in Rule of Civil Procedure 1531.

4. That Levelz, 1825 E Carson Street, Pittsburgh, PA 15203 is located within the County of Allegheny.
5. That the owners of Levelz are Mark G Heuer, Joseph Molinaro, David Pietrantonio and Drew Ziccardi d/b/a 'The 2<sup>nd</sup> String LLC (hereinafter referred to as Levelz)
6. That beginning in December 3, 2010, Levelz, began to operate at 1825 E Carson, Pittsburgh, PA 15203, and has been selling and/or providing alcohol with License # R-12915, LID#64071. (Board Attestation/Certification of Official Records from the Pennsylvania Liquor Control Board is attached hereto, incorporated herein and marked as Commonwealth Ex. 1).
7. The conduct of the bar, its owners, employees, and patrons and others attracted to the neighborhood by the bar involves criminal activity **including attempted homicide, aggravated assault, simple assault, fights, thefts, resisting arrest, indecent assault, sales to minors, public drunkenness, obstruction of streets, gambling, disorderly conduct and possession of narcotics**, all of which are contrary to the laws of the Commonwealth of Pennsylvania.
8. The owners of the bar, their employees, and their patrons are responsible for this violence including **fighting, assaults and other boisterous conduct and vulgar language** inside and outside the bar and in the immediate vicinity surrounding the bar.
9. That in a period of time from January 2011 through July 2013 the Pittsburgh Police Department have responded to approximately **thirty-three (33) criminal incidents** at Levelz that resulted in Police reports. These incidents all involved **violence, narcotics, public intoxication or disorderly and obscene conduct**. The incidents are briefly summarized as follows: (Reports by the Pittsburgh Police Department are attached hereto, incorporated herein and marked as Commonwealth Exhibit 2).
  - A.1. **January 15, 2011**- Theft from the purse of a patron while inside of the bar. (0130 hours)
  - A.2. **February 20, 2011**- Unruly patron is removed during a fight inside of the bar and assaulted by one of the security guards. (0100 hours)

- A.3. **May 22, 2011-** Intoxicated male patron assaulting female patrons inside of the bar. Male becomes disorderly and resists arrest. (0110 hours)
- A.4. **July 1, 2011-** Citation issued to a highly intoxicated patron that was causing a disturbance inside of the bar. (0040 hours)
- A.5. **July 1, 2011-** Citation issued for a patron that exited the bar with beer bottles in his hands. (0145 hours)
- A.6. **August 26, 2011-** Minors, that admitted drinking at the bar, get into a fight that starts inside and ends outside of the bar. These minors went back inside and continued drinking. Leave the bar for the night and get into another altercation. When asked how they got into the bar, they said 'they just let me in'. (0205 hours)
- A.7. **October 2, 2011-** Large fight inside of the bar on the second floor. As Police try to disburse patrons, the patrons turn on the Police. (0130 hours)
- A.8. **October 9, 2011-** Fight inside of the bar between a group of patrons. Unruly patron assaults Police and resists arrest. Patron was intoxicated. ( 0140 hours)
- A.9. **February 18, 2012-** Unruly patrons were fighting inside and were being removed from the bar. Continued to fight outside and resisted arrest. (0200 hours)
- A.10. **March 10, 2012-** Patron had her wallet stolen while inside of the bar and credit card was used without her permission. (not sure what time the incident took place)
- A.11. **March 17, 2012-** Patron's purse was stolen and her credit card was used without her permission ( 2130 hours)
- A.12. **March 17, 2012-** Patron admitted to finding a debit card inside of the bar that did not belong to her and making purchases. (2130 hours)
- A.13. **April 7, 2012-** An extremely intoxicated patron is removed from inside of the bar and continues to fight outside. (2345 hours)
- A.14. **April 13, 2012-** A female patron's purse was stolen from inside of the bar. (0150 hours)
- A.15. **May 26, 2012-** A female patron's debit card was stolen while inside of the bar and was used without her permission. She admits in Police report that she was at the bar until 0300 hours. (not sure what time the incident took place)
- A.16. **May 27, 2012-** A female patron had her purse stolen while inside of the bar. (0130 hours)
- A.17. **June 2, 2012-** A citation is issued to a patron who refused to leave the bar and then caused a disturbance on the sidewalk alarming people that were walking by. (0100 hours)
- A.18. **June 2, 2012-** A patron was removed by security for smoking a cigarette in the club. When he was thrown out of the bar, he argued with security and was punched in the face several times by one of the guards. (0200 hours)

- A.19. **June 16, 2012-** Fight started in front of the bar (0200)
- A.20. **July 15, 2012-** A citation was issued to an intoxicated patron that was removed from the bar and caused a disturbance outside. (0100 hours)
- A.21. **August 26, 2012-** Citations were issued to two patrons that started a fight at the bar and were combative with Police. (0155 hours)
- A.22. **September 16, 2012-** A citation was issued to an intoxicated, disorderly patron. (0100 hours)
- A.23. **October 21, 2012-** Large fight started inside of the bar and continued out onto the sidewalk. Disorderly patrons continued fighting outside and began fighting with Police. They then knocked over signs outside (2345 hours)
- A.24. **November 4, 2012-** Female patron had purse stolen from inside bar. (0100 hours)
- A.25. **December 1, 2012-** During a bar compliance check, an arrest is made for a disorderly, intoxicated male. Marijuana is found on this male after being removed from the bar. (0011 hours)
- A.26. **December 3, 2012-** Police respond to a fight inside of the bar. Police smell a strong odor of marijuana and hear the music blocks away. Manager was told to turn down the music and said he would do so when the party was over. (0138 hours)
- A.27. **December 5, 2012-** Pittsburgh Police and LCE Officers execute search warrant for illegal gambling devices inside of the bar. (1508 hours)
- A.28. **December 7, 2012-** A citation was issued to an intoxicated, disorderly patron that was removed from the bar. ( 0100 hours)
- A.29. **April 18, 2013-** After exiting the bar to smoke a cigarette, a female patron was assaulted by two male patrons that she had spoken to inside of the bar. (0106)
- A.30. **April 27, 2013-** Patrons refusing to leave the bar at closing time, two males arrested. One of the males had marijuana on their person. (0210 hours)
- A.31. **May 5, 2013-** Call for a disorderly crowd that had come out of the bar. Patrons came out of the bar with drinks in their hands. One of the disorderly males was an employee of the bar and was highly intoxicated. Police inform owner that music is too loud and to turn it down and shut the door. 10 minutes after warning the owner, the music was turned back up to a high level. Owner cited. (2342 hours)
- A.32. **June 2, 2013-** Large crowd was standing in front of the bar obstructing the sidewalk, noise level too high. Informed the owner who said that he would take care of the issue. Police drove by minutes later and the situation was still out of control. (0143 hours)

A.33. **July 27, 2013**- An altercation between two males escalates to the point where one of the men pulls out a knife and stabs two patrons inside of the bar. (0145 hours)

10. That in a period of time from August 2011 through July 2013, Liquor Control Enforcement have cited the bar approximately **seven (7) times**. The incidents are briefly summarized as follows: (Reports by Liquor Control Enforcement are attached hereto, incorporated herein and marked as Commonwealth Exhibit 3).
  - A.1. **August 29, 2011**- Bar cited for sales to minors, found guilty
  - A.2. **October 7, 2011**- Bar cited for sales to minors, found guilty
  - A.3. **November 7, 2011**- Bar cited for sales to minors, found guilty.
  - A.4. **December 16, 2011**- Bar cited for sales to minors, found guilty.
  - A.5. **July 23, 2012**- Bar cited for after hours violation, found guilty.
  - A.6. **January 25, 2013**- Bar cited for gambling, failed to maintain records, improper license display. Pending.
  - A.7. **July 2013**- Bar cited for loud music, owner cited for disorderly conduct. Pending.
11. The conduct of the bar, its owners, employees and patrons inside of the bar and others attracted to the neighborhood by the bar are a continuous and persistent disruption of the peace and good order of the neighborhood surrounding the bar. The disruption of the peace and good order of the neighborhood surrounding the bar is causally related to the occurrences inside the bar.
12. The conduct of the bar, its owners, employees, and patrons has and will continue to cause local businesses to be disturbed and has created an unattractive economic blight in the area.
13. This office put one of the owners, Drew Ziccardi, on notice that Levelz is on the Allegheny County Nuisance Bar list on July 27, 2012. In this meeting, Ziccardi stated that they patdown all of the patrons that come into the bar. This office has since learned that the patrons are not patted down. This has been verified by an undercover Office with Liquor Control Enforcement, who, on nine (9) occasions entered the bar without being searched.
14. That **36 businesses, local community groups and the area council man** in the immediate vicinity surrounding the bar have signed complaint letters addressing the concern for the safety of their

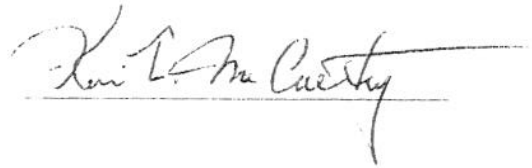
employees and customers and the negative impact that Levelz has had on their businesses. (Copies of the complaint letters are attached hereto, incorporated herein and marked as Commonwealth Exhibit 4.)

15. The conduct of the bar, its owners, employees, and patrons has and will continue to force residents in the immediate vicinity surrounding the bar to live in fear and danger.
16. The Pittsburgh Police Department, especially ZONE 3, has been required to expend disproportionate amounts of resources to investigate the criminal conduct and nuisance behavior described above. (Copies of the complaint letters from Commander McNeilly (Zone 3) are attached hereto, incorporated herein and marked as Commonwealth Exhibit 5.)
17. The Commonwealth, the residents of the area, as well as the visitors to the area, the businesses and police are suffering and will continue to suffer immediate and irreparable harm which cannot be compensated by damages.
18. It is apparent that the bar cannot and will not control the patrons and the persons attracted to the vicinity of the bar to the extent that they terrorize the neighborhood, ruin its peace and safety and good order making it a miserable, fearful and dangerous place to live, visit or work.
19. Greater harm would result by refusing to grant the injunction than by granting the injunction.
20. The Commonwealth has no adequate remedies at law for this problem.

WHEREFORE, the Commonwealth of Pennsylvania, on relation and information of STEPHEN A. ZAPPALA, JR., District Attorney of Allegheny County, Pennsylvania, respectfully requests that this Honorable Court issue a decree ordering such common and public nuisance be abated, and restraining the defendant, Levelz, its agents, servants, employees, successors, assigns, and anyone acting together or with or on

behalf of them from occupying or using its leased premises initially for five days and then for ONE year thereafter, and ordering no liquor, alcohol or malt or brewed beverage be manufactured, sold offered for sale, transported, bartered, or furnished or stored in bond, or store for hire in the licensed premises during the aforesaid period.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kevin Francis Mc Carthy", written over a horizontal line.

KEVIN FRANCIS MC CARTHY  
Assistant District Attorney  
PA I.D. #47254

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436 Grant Street  
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COMMONWEALTH OF PENNSYLVANIA  
EX REL STEPHEN A. ZAPPALA, JR.  
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MARK G. HEUER, JOSEPH MOLINARO,  
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d/b/a THE 2<sup>ND</sup> STRING LLC d/b/a LEVELZ  
1825 E CARSON STREET, PITTSBURGH,  
PENNSYLVANIA 15203-1707,  
Defendant.

DECREE OF COURT AND EMERGENCY PRELIMINARY

INJUNCTION

AND NOW, to-wit, this 2<sup>nd</sup> day of August 2013, upon presentation of  
the within Petition and consideration of the Complaint in Equity filed  
contemporaneously herewith, it is Hereby ORDERED AND DECREED that a  
preliminary emergency injunction shall be issued due to immediate and  
irreparable harm which would otherwise occur. The Defendant, The 2<sup>nd</sup> String  
d/b/a LEVELZ, is hereby enjoined from selling, offering for sale, bartering,

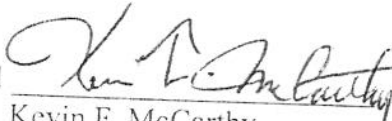
furnishing or storing and liquor, alcohol or malt or brewed beverage on the premises located at 1825 East Carson Street, Pittsburgh, PA 15203, or otherwise opening or operating in Allegheny County, Pennsylvania for a period of at least five (5) days. The Sheriff of Allegheny County shall serve a copy of this Order of Court upon the Defendant. The Sheriff of Allegheny County is hereby ordered to secure the premises from entry by any person except upon order of this court.

The Court shall hear the request for a permanent injunction on the 16<sup>th</sup> day of August, 2013 at 9:45 A.M./~~P.M.~~ if required.  
[Signature], J.

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF ALLEGHENY : SS  
:

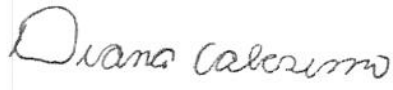
BEFORE ME, the undersigned authority, personally appeared Assistant District Attorney, Kevin F. McCarthy, who, being duly sworn according to law, deposes and says that the statement contained in the foregoing motion are true and correct to the best of her information, knowledge and belief.

Signed   
Kevin F. McCarthy  
Assistant District Attorney

SWORN TO and subscribed

Before me this 2<sup>nd</sup> day

Of August, 2013.

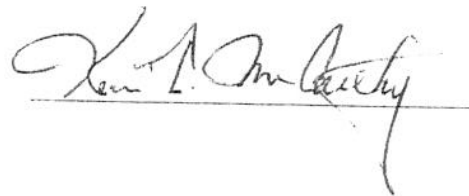
  
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Diana Colosimo, Notary Public  
Dormont Boro, Allegheny County  
My Commission Expires July 23, 2014  
Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I certify that on August 2 2013, a copy of this document was delivered to Defendant's attorney:

Charles Caputo  
204 5<sup>th</sup> Avenue  
Floor 5  
Pittsburgh, PA 15222



KEVIN FRANCIS MC CARTHY  
Assistant District Attorney  
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