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CITY OF LONG BEACH,
 Plaintiff,
 v.
 LIVE BAIT, aka GILLIAM and WALES
 of DUBLIN, INC., dba THE PIER (AKA
 LIVE BAIT) 6251 East Pacific Coast
 Highway (District 3).
 Defendant.

Hugh R. Burns, Hearing Officer

FINDINGS AFTER ADMINISTRATIVE
HEARING PURSUANT TO LONG BEACH
MUNICIPAL CODE CHAPTERS 2.93, 3.80,
5.06 AND 5.72

Hearing Dates: December 11, 2003, January
27, 2004, February 10, 2004, February 11,
2004, March 1, 2004, March 10, 2004 and
March 11, 2004

This matter was heard on December 11, 2003, January 27, 2004, February 10, 2004,
February 11, 2004, March 1, 2004, March 10, 2004 and March 11, 2004 and City Hall, located at
333 West Ocean Boulevard, Long Beach, California, before Administrative Hearing Officer,
Hugh R. Burns, appointed pursuant to Chapter 2.93 of the Long Beach Municipal Code
(hereinafter referred to as "LBMC.")

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PARTIES AND REPRESENTATIONS

City of Long Beach

Michelle Gardener, Esq.
Deputy City Attorney

Live Bait, aka Gilliam and Wales
of Dublin, Inc., dba The Pier
(Aka Live Bait)

Robert L. Kennedy, Esq.
J. Kelso Lindsay, Esq.
Law Offices of Robert L. Kennedy & Assoc.

STATEMENT OF ISSUES

Whether the business license (BU86026130)(herein referred to as the “Business License”) and Entertainment Permit (BU86020290) (herein referred to as the “Entertainment Permit”) for Gilliam & Wales of Dublin, Inc., dba The Pier (aka Live Bait)(hereinafter referred to as “Respondent” or “Live Bait”), located at 6251 East Pacific Coast Highway, Long Beach, California, should be revoked.

DOCUMENTARY EVIDENCE

For the City of Long Beach:

1. Color aerial photo of Live Bait taken from internet on 7/7/03.
2. Video tape of Live Bait, July 3rd through 4th, 2003, taken by Detective Eaton.
3. LBPD Police Report #03-53949, incident of urinating in public on 7/3/03, by Detective Eaton.
4. LBPD Poilce Report #03-54445, incident of live entertainment without permit on 7/5/03, by Detective Eaton.
5. Certified Docket of Case #3LM04239, plea of no contest by Philip Reynolds, incident of loud/unreasonable noise on 3/23/03.
6. Certified Docket of Case #3LM08177, plea of no contets by Philip Reynolds, incident of loud/unreasonable noise on 7/5/03.
7. Certified Docket of Case #3LM06228, plea of no contest by Philip Reynods, incident of loud/unreasonable noise 9/6/03.

1 8. Memo and Letter Requesting Revocation of Business License and Entertainment
2 by City, dated 09/11/03 and 10/14/03.

3 9. Six color photos of trash/debris at Live Bait parking lot, taken by Officer
4 Solomita in late August/September 2003.

5 10. Several colored small flyers/advertisements found in Live Bait parking lot,
6 collected by Officer Solomita in late August/September 2003.

7 11. Binder of police data collected and analyzed by Detective Anderson regarding
8 investigation into revocation of business licenses (i.e., Calls for Service, Arrest Reports, License
9 Applications, ABC documents, Correspondence between City, Live Bait and neighbors).

10 12. Second binder of police data collected and analyzed by Detective Anderson
11 regarding investigation into revocation of business licenses (i.e., Calls for Service, Arrest
12 Reports, License Applications, ABC documents, Correspondence between City, Live Bait and
13 neighbors).

14 13. Partial Entertainment Permit information (duplicated from originals in binders
15 (Exhibits 12 and 13).

16 14. Updated Calls for Service information from 8/19/03 to 2/10/04 (partially
17 duplicated from originals in binders (Exhibits 12 and 13).

18 15. LBPD Police Report #03-68536, incident of public intoxication 8/23/03, by
19 Officer Ashabi.

20 16. LBPD Police Report, #03-72871, incident of loud/unreasonable noise 9/5/03, by
21 Officer Ashabi.

22 17. LBPD Police Report #03-75021, incident of public intoxication 9/12/03, by
23 Officer Ashabi.

24 18. LBPD Police Report #04-884, incident of fight/large crowd 1/31/04, by Officer
25 Ashabi.
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- 1 19. LBPD Police Report #03-26549, incident of possession of alcohol by minor
2 4/4/03, by Sgt. Colbert.
- 3 20. LBPD Police Report #03-26522, incident of public intoxication 4/4/03, by Sgt.
4 Colbert.
- 5 21. LBPD Police Report #03-30587, incident of disabled placard violation 4/17/03,
6 by Sgt. Colbert.
- 7 22. LBPD Police Report #03-30592, incident of false/fake I.D. by minor 4/18/03, by
8 Sgt. Colbert.
- 9 23. LBPD Police Report #03-53970, incident of fight in public place 7/4/03, by Sgt.
10 Colbert.
- 11 24. LBPD Police Report #03-23140, incident of loud/unreasonable noise 3/23/03, by
12 Officer Tom.
- 13 25. LBPD Police Report #03-24888, incident of loud/unreasonable noise 3/29/03, by
14 Officer Tom.
- 15 26. LBPD Police Report #03-25140, incident of loud/unreasonable noise 3/30/03, by
16 Officer Tom.
- 17 27. LBPD Police Report #03-27099, incident of robbery 4/6/03, by Officer Tom.
- 18 28. LBPD Police Report #03-30907, incident of urinating in public 4/19/03, by
19 Officer Tom.
- 20 29. LBPD Police Report #03-35196, incident of possession of illegal paraphernalia
21 5/3/03, by Officer Tom.
- 22 30. LBPD Police Report #03-37122, incident of urinating in public 5/10/03, by
23 Officer Tom.
- 24 31. LBPD Police Report #03-37407, incident of large crowd/public intoxication
25 5/11/03, by Officer Tom.
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- 1 32. LBPD Police Report #03-39460, incident of public intoxication 5/18/03, by
2 Officer Tom.
- 3 33. LBPD Police Report #03-41349, incident of public intoxication 5/24/03, by
4 Officer Tom.
- 5 34. LBPD Police Report, #03-56340, incident of vandalism 7/11/03, by Officer Tom.
- 6 35. LBPD Police Report, #03-58736, incident of live entertainment without permit
7 7/20/03, by Officer Tom.
- 8 36. LBPD Police Report #03-62862, incident of live entertainment without permit
9 8/3/03, by Officer Tom.
- 10 37. LBPD Police Report #03-97679, incident of live entertainment without permit
11 11/29/03, by Officer Tom.
- 12 38. LBPD Police Report #03-99250, incident of dispute/possession of marijuana
13 12/6/03, by Officer Tom.
- 14 39. LBPD Police Report, #03-103354, incident of threaten to harm on another
15 12/22/03, by Officer Tom.
- 16 40. LBPD Police Report, #04-652, incident of live entertainment without permit
17 1/4/04, by Officer Tom.
- 18 41. LBPD Police Report, #02-99130, incident of indecent exposure 12/29/02, by
19 Officer Deis.
- 20 42. LBPD Police Report #03-100973, incident of live entertainment without permit
21 12/1-2/03, by Officer Deis.
- 22 43. LBPD Police Report #03-102871, incident of live entertainment without permit
23 12/19/03, by Officer Deis.
- 24 44. LBPD Police Report, #03-60539, incident of live entertainment without permit
25 7/25/03, by Officer Bell.
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1 45. LBPD Police Report #03-62828, incident of live entertainment without permit
2 8/2/03, by Officer Bell.

3 46. 24 x 18 sample piece of foam insulation given to Rita Hooker by Live Bait
4 managers (Phil Reynolds and Khai Lequang) on 9/14/02 nuisance meeting had with Detective
5 Eaton and Officer Solomita.

6 47. Letter from Phoenix Productions, LLC, dated 9/26/02, to employees regarding
7 changes in management of Live Bait.

8 48. Letter dated 5/29/03, from City Attorney to Graham Gilliam by certified receipt
9 regarding LBMC 9.37 nuisance hearing.

10 49. Email dated 2/21/03, from Khai Lequang to Rita Hooker regarding Live Bait.

11 50. Letters dated 6/24/03, from Rita Hooker to Graham Gilliam and managers
12 regarding LBMC 9.37 nuisance hearing.

13 51. Letters dated in May, June and July 2003, from Graham Gilliam regarding LBMC
14 9.37 nuisance notice.

15 52. Letters from neighbors dated in September and October 2003 regarding LBMC
16 9.37 nuisance hearing.

17 53. Findings After Administrative Hearings (Pursuant to LBMC 9.37), dated
18 November 24, 2003, by Lynn E. Moyer, Administrative Hearing Officer.

19 54. Letter from Billy Nguyen dated 9/8/03, to City representatives regarding notice
20 that he is new manager and of proposed changes.

21 55. Color photo of Live Bait's door, showing "Medusa", taken by Rita Hooker a
22 couple of months prior to this testimony.

23 56. Email dated 10/17/03, from James Goodin to Jeannine Montoya regarding
24 conversation with Billy Nguyen.

25 57. Letter dated 10/6/03, from James Goodin to Gilliam & Wales of Dublin, Inc.
26 regarding requested revocation by Chief of Police.
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1 58. Letter dated 10/22/03, from Attorney Mark Shoemaker indicating he represents
2 Live Bait.

3 59. Letter dated 4/25/03, from Graham Gilliam to Philip Reynolds and Khai Lequang
4 regarding parking by patrons at the Bahia Marina.

5 60. Letter dated March 9, 2004, from Michelle Gardner to Kelso Lindsay and Robert
6 Kennedy objecting to some witnesses' testimony.

7 61. Request for Investigation and Application for Pool Hall License made by Gilliam
8 & Wales of Dublin, Inc. on 4/19/90.

9 62. Secretary of State Articles of Incorporation for Gilliam & Wales of Dublin, Inc.

10 63. Four color photos of trash and debris in Bahia Marina parking lot, taken by Mike
11 Lewis on 3/5/04.

12 64. Fountain Valley Police Department Crime Report #04-00193, insurance
13 fraud/false info. report made by Billy Nguyen on 1/13/04.

14 65. Email from Dean Mike Hostetler, CSULB Student Services, regarding upcoming
15 "Step Show" hip hop entertainment at Live Bait, 6251 E. Pacific Coast Highway, on 4/3/04.
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18 For Respondent:

- 19 A. Submitted document.
20 B. Building plans.
21 C. Construction estimates dated February 2003.
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24 WITNESSES

25 For the City of Long Beach:

- 26 1. Aaron Eaton, Detective, East Division, LBPD
27 2. Anthony Batts, Chief of Police, LBPD
28 3. Mike Solomita, Officer, East Division, LBPD

- 1 4. Chris Anderson, Detective, Vice Detail, LBPB
- 2 5. Ebrahim Ashabi, Officer, East Division, LBPB
- 3 6. Rick Colbert, Sergeant, East Division, LBPB
- 4 7. Blayne Tom, Officer, East Division, LBPB
- 5 8. Brandon Deis, Officer, East Division, LBPB
- 6 9. Brian Bell, Officer, East Division, LBPB
- 7 10. Rita Hooker, Nuisance Abatement Officer, City Manager's Office
- 8 11. Jim Goodin, Business Services Officer, Financial Management
- 9 12. Jeannine Montoya, Supervisor, Business Licensing, Financial Management

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11 For Respondent:

- 12 1. Billy Nguyen
- 13 2. Sean Fenison
- 14 3. Richard Gonzalez

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17 Public comment was received both in support and against Respondent.

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19 **NOTICE**

20 Pursuant to LBMC § 2.93.050 (B(1)), the City Clerk gave adequate notice of
21 commencement of this hearing to counsel for Respondent. Testimony of Billy Nguyen.

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23 **FACTUAL AND LEGAL FINDINGS**

24 The hearing officer makes the following findings:

- 25 1. On November 24, 2003, Administrative Hearing Officer, Lynn E. Moyer, found,
26 by a preponderance of the evidence, that Respondent was a public nuisance pursuant to LBMC
27 §§ 9.37.090(a), 9.37.090(g), 9.37.090(h), 9.37.090(m), 9.37.090(u).

1 2. Despite the November 24, 2003 administrative decision, Respondent continued to
2 be a public nuisance and Respondent has failed to adequately and reasonably abate the nuisance
3 as required by the administrative decision. See City of Long Beach Documentary Evidence,
4 Exhibits 2-7, 9, 12-13,15-46, 63-64 and 66; Witness Testimony from Chief of Police Anthony
5 Batts Detective Aaron Eaton, Officer Mike Solomita, Detective Chris Anderson, Officer
6 Ebrahim Ashabi, Sergeant Rick Colbert, Officer Blayne Tom, Officer Brandon Deis, Officer
7 Brian Bell, and Nuisance Abatement Officer Rita Hooker; and Long Beach residents that
8 provided public comment.

9 3. An application for the Business License and Entertainment License (herein
10 referred to as the "Application") was submitted by Gilliam & Wales of Dublin, Inc. to the City of
11 Long Beach for an "Entertainment Cafe." Respondent's principal office was and is located in
12 Houston, Texas. The Application was notarized and signed under penalty of perjury by Robert
13 Gilliam, Respondent's president. The Application represented that the proposed Entertainment
14 Café would be a bona fide eating establishment. Further, the Application represented that the
15 Entertainment Café would offer no "[i]nstrumental [e]ntertainment by more than one [m]usician",
16 no "[s]inging [e]ntertainment, no [v]audeville", "[f]loor show or [c]abaret [e]ntertainment", and
17 no "[a]dult entertainment as defined in Sec. 9120.41" LBMC. However, the Application did
18 state that the Entertainment Café would allow dancing by patrons, guests or customers. As part
19 of the police investigation of the Application, Robert Gilliam advised police investigators that he
20 did not intend to apply for a live entertainment permit and that the music would be provided by a
21 disc jockey type set up. One of the conditions for issuance of the Business License and
22 Entertainment License was that a "liaison be set up between the restaurant and the mobilehome
23 park representatives." City of Long Beach Documentary Evidence, Exhibits 11-12

24 4. Historically, Respondent has been an ongoing source of neighborhood and law
25 enforcement complaints related to noise disturbances, loud music, public intoxication,
26 disturbances to residential areas, criminal activity, lewd behavior, acts of violence, gang activity,
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1 littering and state and municipal code violations. Substantial and disproportionate police
2 department resources have been required to respond to the complaints at Live Bait. See City of
3 Long Beach Documentary Evidence, Exhibits 2-7, 9, 12-13,15-46, 63-64 and 66; Witness
4 Testimony from Chief of Police Anthony Batts, Detective Aaron Eaton, Officer Mike Solomita,
5 Detective Chris Anderson, Officer Ebrahim Ashabi, Sergeant Rick Colbert, Officer Blayne Tom,
6 Officer Brandon Deis, Officer Brian Bell, and Nuisance Abatement Officer Rita Hooker; and
7 Long Beach residents that provided public comment.

8 5. Respondent repeatedly violated the terms and conditions of its Entertainment
9 Permit. Philip Reynolds, Respondent's manager, plead no contest to municipal code violations
10 related to loud/unreasonable noise and live entertainment on March 23, 2003, July 5, 2003 and
11 September 6, 2003. See City of Long Beach Documentary Evidence, Exhibits 5-7, 10-11. Billy
12 Nguyen, a current manager for Respondent, admitted knowingly violating the terms and
13 conditions of the Entertainment Permit by allowing a live band to play at Live Bait. The stated
14 justification for the violation was to avoid potential contractual litigation that may have resulted
15 from cancellation of the live band. See Hearing testimony of Billy Nguyen on March 10-11,
16 2004. Respondent promoted, advertised and presented live bands (live entertainment) which
17 included a singer and multiple musicians in express violation of the terms and conditions of the
18 Entertainment Permit and the representations of Respondent's owner. City of Long Beach
19 Documentary Evidence, Exhibits 10-12; 42-45. Inspections by law enforcement and the ABC
20 determined that Live Bait did not have functioning refrigerators, stoves and other equipment to
21 provide sufficient food for its patrons as a bona fide eating establishment. City of Long Beach
22 Documentary Evidence, Exhibits 10-12. Respondent has made no effective effort to address
23 long term, ongoing and repeated complaints by community members from the mobile home
24 park, Whalers Cove and other surrounding neighborhoods.

25 6. Though current management, Phoenix Productions, LLC., has recently taken
26 marginal steps to address many of the law enforcement and community concerns these late and
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1 inadequate efforts merely reflect short term fixes to a long term problem. See Witness testimony
2 of Billy Nguyen, Richard Gonzalez and Sean Fenison; City of Long Beach Documentary
3 Evidence, Exhibits 2-7, 9, 12-13, 15-46, 63-64 and 66; Witness Testimony from Chief of Police
4 Anthony Batts Detective Aaron Eaton, Officer Mike Solomita, Detective Chris Anderson,
5 Officer Ebrahim Ashabi, Sergeant Rick Colbert, Officer Blayne Tom, Officer Brandon Deis,
6 Officer Brian Bell, and Nuisance Abatement Officer Rita Hooker; and Long Beach residents that
7 provided public comment.

8 7. Respondent has effectively transferred the Entertainment Permit from Gilliam &
9 Wales of Dublin, Inc. to current management, Phoenix Productions, in violation of LBMC §
10 5.72.135. Respondent has ceded its non delegable duty to comply with the terms and conditions
11 of the Business License and Entertainment License to Phoenix Productions. Phoenix
12 Productions, has become the de facto, if not actual, owner and operator of Live Bait.
13 Respondent's apparent abandonment of its duties has caused Phoenix Productions, LLC., to take
14 half measures to respond to the findings of the nuisance hearing and more recent developments.
15 See Witness testimony of Jim Goodin, Business Services Officer, Financial Management;
16 Jeannine Montoya, Supervisor, Business Licensing, Financial Management; Billy Nguyen,
17 Richard Gonzalez and Sean Fenison; Respondent's Exhibits B and C.
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21 **RECOMMENDATION**


22 Based on the foregoing, the hearing officer finds that clear and convincing evidence
23 supports the following recommendation:

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25 Respondent violated LBMC §§ 5.06.020(A)(1), (2), (3), and (5). Further, the hearing
26 officer finds that Respondent effectively transferred the Entertainment Permit to Phoenix
27 Productions, LLC in violation of LBMC §5.72.135. Further, Respondent failed to limit its
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1 "activity expressly indicated on the permit application and approved by the City Council," as
2 required by LBMC § 5.72.135.

3 The hearing officer hereby recommends that Respondent's Business License and
4 Entertainment License be revoked. The hearing officer acknowledges that LBMC § 5.06.020(B)
5 provides suspension as a potential remedy. However, given the historical pattern of violations
6 and community complaints over many years, nothing short of revocation will provide any
7 meaningful solution to this long term problem.

8 DATED: April 5, 2004

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10 By: 
11 HUGH R. BURNS, Hearing Officer

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PROOF OF SERVICE BY MAIL

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STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 330 Golden Shore, Suite 410, Long Beach, CA 90802.

On April 5, 2004, I served the foregoing document described as: FINDINGS AFTER ADMINISTRATIVE HEARING PURSUANT TO LONG BEACH MUNICIPAL CODE CHAPTERS 2.93, 3.80, 5.06 AND 5.72 on the interested parties in this action as follows:

Via Facsimile Only (562) 570-5099

Irma Heinrichs, City Clerk
CITY OF LONG BEACH

Via Facsimile (562) 436-1579

Michele Gardner, Esq.
Office of the City Attorney
333 West Ocean Boulevard
Long Beach, CA 90802-4664

Via Facsimile (562) 595-9537

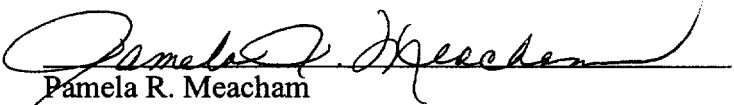
J. Kelso Lindsay, Esq.
Law Offices of Robert L. Kennedy
2201 Cherry Avenue, Suite 500
Signal Hill CA 90755

VIA MAIL. A true and correct copy of the above-stated document was enclosed in a sealed envelope, addressed to each of the above, with postage thereon fully prepaid, and deposited in the United States Mail; and

VIA FAX.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this 5th day of March 2004, at Long Beach, California.


Pamela R. Meacham