

# San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

February 3, 2017

**TO:** Enforcement Committee Members

**FROM:** Larry Goldzband, Executive Director, (415/352-3653; larry.goldzband@bcdc.ca.gov)  
Marc Zeppetello, Chief Counsel, (415/352-3655; marc.zeppetello@bcdc.ca.gov)  
Adrienne Klein, Chief of Enforcement (415/352-3609; adrienne.klein@bcdc.ca.gov)

**SUBJECT: Executive Director’s Recommended Enforcement Decision  
Proposed Cease and Desist and Civil Penalty Order No. CDO 2017.01  
Scott’s Jack London Seafood, Inc. and the Port of Oakland  
(For Committee consideration on February 16, 2017)**

## Executive Director’s Recommendation

### Table of Contents

I. SUMMARY OF BACKGROUND TO THE ALLEGED VIOLATIONS .....	2
II. SUMMARY OF THE ESSENTIAL ALLEGATIONS IN THE COMPLAINT.....	4
III. SCOTT’S USES THE PAVILION FOR PRIVATE EVENTS WHENEVER THE PAVILION IS NOT AVAILABLE FOR UNRESTRICTED PUBLIC ACCESS .....	5
IV. SUMMARY OF A LIST OF ALL ESSENTIAL ALLEGATIONS EITHER ADMITTED OR NOT CONTESTED BY RESPONDENTS .....	11
V. DEFENSES AND MITIGATING FACTORS RAISED BY RESPONDENTS; STAFF’S REBUTTAL EVIDENCE AND ARGUMENTS .....	12
A. Potential Defenses to Liability .....	12
B. Potential Mitigating Factors .....	22
VI. SUMMARY AND ANALYSIS OF UNRESOLVED ISSUES: APPROPRIATE CIVIL PENALTY.....	29
VII. RECOMMENDATION .....	38

## I. SUMMARY OF BACKGROUND TO THE ALLEGED VIOLATIONS

On February 13, 1996, the Commission issued BCDC Permit No. 1985.019.08B, as amended through October 7, 1997 ("the Permit"), to Scott's Jack London Seafood, Inc. ("Scott's") and the Port of Oakland ("Port"). The Permit authorizes Scott's to construct, use, and maintain a 4,400-square-foot open air pavilion within the public open space at Jack London Square for shared public and private use at a ratio of 80 percent public (during which the pavilion would be open to the air) to 20 percent private (during which temporary fabric panels would be in place enclosing the pavilion). The Permit also authorizes the installation of public access site furnishings within the pavilion and the adjacent Franklin Street Plaza.<sup>1</sup>

In December 2011, Scott's representatives contacted the BCDC staff to propose modifications to the pavilion, including replacing its labor-intensive canvas wall system with a steel and plastic retractable wall panel system that would transform the open public space into an enclosed private space, and vice-versa, more quickly. Between December 2011 and November 2012, the BCDC staff and Scott's representatives discussed, evaluated, and modified the panel wall proposal without resolution.

In December 2012, BCDC staff learned that Scott's had commenced construction of a large fixed, metal-framed doorway, the proposed panel wall system surrounding the doorway, and other ancillary elements without obtaining BCDC approval. The unauthorized construction continued for approximately four months and was completed in March 2013.

On May 16, 2013, after a site visit by the Executive Director and pursuant to the Commission's regulations, BCDC issued an enforcement letter to Respondents describing a number of alleged violations of the Permit and the McAteer-Petris Act (MPA). The letter

---

<sup>1</sup> BCDC authorized Scott's to construct and use the pavilion in 1996 by an amendment to a permit first issued to the Port in 1986 (BCDC Permit No. 1985.019) to authorize certain development activities along a six-block section of the Port's waterfront property between Jefferson and Harrison Streets at Jack London Square. On July 8, 1997, the Commission split BCDC Permit No. 1985.019, as amended, into two permits – one issued solely to the Port for all of Jack London Square except for the pavilion ("the Port Permit"), and the other issued jointly to Scott's and the Port for the pavilion. The current Port Permit is BCDC Permit No. 1985.019.020A, as amended through April 10, 2008.

directed Respondents to take specific actions that would preserve their opportunity to resolve the alleged violations with standardized fines. Scott's chose to not remove the unauthorized pavilion modifications and, instead, continued to use the pavilion as a venue for private events for approximately two years. During this time, Respondents engaged in discussions with BCDC staff regarding the possibility of obtaining after-the-fact approval of some or all of the unauthorized pavilion modifications but Scott's declined to move forward with any substantive changes.

Upon learning of Scott's unauthorized construction activities in a dedicated public access area, BCDC staff activated an enforcement investigation. That investigation revealed numerous additional alleged violations, including Scott's extensive unauthorized use of the pavilion for private events during an approximately eleven-year period.

On October 20, 2016, the Enforcement Committee held a public hearing and adopted the staff recommendation that the Commission issue a proposed stipulated cease and desist and civil penalty order that staff had negotiated with Respondents. However, at its November 3, 2016 meeting, the Commission rejected the Enforcement Committee's recommended enforcement decision (*i.e.*, adoption of the proposed stipulated order). The Commission provided comments on certain issues raised by the alleged violation and directed the staff to commence a formal enforcement proceeding if the staff and Respondents were unsuccessful in returning to the Enforcement Committee within two months with a different proposed stipulated order that responded to the direction provided by the Commission.

In mid-December, BCDC staff determined that it would not be possible to reach an agreement with Respondents on a revised proposed stipulated order that would be acceptable to the Commission. On December 19, 2016, the Executive Director commenced a formal enforcement proceeding by mailing a Violation Report/Complaint for the Imposition of Administrative Civil Penalties ("Complaint") to Respondents.

## II. SUMMARY OF THE ESSENTIAL ALLEGATIONS IN THE COMPLAINT

Following is a summary of the essential allegations of the Complaint:

A. Unpermitted development by unauthorized construction in public access areas of a metal-framed entry doorway, wood and metal-framed walls, multiple moveable wall panels and ceiling tracks in the pavilion; storage area and stage; roof extension.

B. Non-Permit compliant use of the pavilion, in violation of Permit Special Condition II.B.2.c, Event Schedule Reporting, including Permit Exhibit A, Guidelines for Private Use of Public Pavilion, during the period 2004-2015:

1. Providing fewer than 292 public use days per year;
2. Providing, on average per month during winter season, fewer than five (5) public use weekend days and nights;
3. Holding, on average per month during winter season, more than four (4) private use weekend days and nights;
4. Holding, on average per month during summer season, more than three (3) private use weekend days and nights;
5. Providing fewer than three (3) public use weekend days and nights per month; and
6. Holding more than two consecutive private use days.

C. Unpermitted use of the Franklin and Broadway Street plazas by placing tents and stanchions, storing event related equipment (including planters), and displaying promotional vehicles;

D. Untimely submittal of private event schedules as required by Permit Special Condition II.B.2.c, Event Schedule Reporting, including Permit Exhibit A, Guidelines for Private Use of Public Pavilion;

E. Failure to record a public access legal instrument for the pavilion, as required by Permit Special Condition II.B.3, Permanent Guarantee;

F. Failure to provide all required public access improvements during public use days, as required by Permit Special Condition II.B.5, Improvements Within the Public Access Area; and

G. Failure to obtain plan approval prior to installation of public access improvements, as required by Permit Special Condition II.A, Specific Plans and Plan Review.

### **III. SCOTT'S USES THE PAVILION FOR PRIVATE EVENTS WHENEVER THE PAVILION IS NOT AVAILABLE FOR UNRESTRICTED PUBLIC ACCESS**

Because many of the violations arise from Scott's overuse of the pavilion for private events, staff addresses at the outset Scott's erroneous and novel claim that: (1) the Permit allows 73 days for private events without defining the term private, and, therefore, (2) charitable, non-profit events are public use events that do not count against the Permit's limitations on private events. Scott's Statement of Defense ("Scott's SOD") at 2:14-18 (*i.e.*, page 2, lines 14 to 18); 7:3-5; 14:12-21.

The fundamental flaw in Scott's argument is that it fails to recognize that in the absence of the authorization granted by the Permit, the state tidelands that the pavilion occupies would be available for use by the general public at all times as unrestricted public access space. Moreover, if Scott's interpretation of the Permit were correct, it could bar public access to the pavilion for an unlimited number of days per year provided that it held only so-called charitable non-profit events in the pavilion on those days.

Contrary to Scott's assertions, the Permit is clear and unambiguous. Public use is when the pavilion is "made available to the public for unrestricted public access for walking, sitting, viewing, picnicking, and related purposes." Permit Special Condition II.B.1. Private use is when Scott's erects "a tent to house private banquets and other private events" or operates "the fabric panels enclosing the private events beneath the pavilion." *Id.* at Special Condition II.B.2.a and II.B.2.b. *See also* Permit Exhibit A, footnote 6 (fabric curtains to be lowered no more than one hour before and retracted no more than one hour after a private event); Special Condition II.B.2.c (tent-covered event schedule) and Special Condition II.B.2.d (prohibiting holding an unscheduled banquet or other private event "within the pavilion").

Thus, the Permit's findings state that it authorizes construction of the pavilion:

*to be used for public access purposes eighty percent of each year (292 days) and for private events hosted by Scott's Restaurant twenty percent of each year (73 days). The periodic, private use of the public access space for private events will eliminate the public's access to a significant portion of the plaza for approximately 20 percent of each year.*

Permit Findings and Declarations III.C (Public Access) at 7-8. The findings further state that the pavilion will be situated to provide an unobstructed 34-foot wide view corridor from Water Street to the estuary "approximately 80 percent of the time when the facility is open for public use." *Id.* at 9.

The Permit's terms as to pavilion usage are based on the application submitted jointly by Scott's and the Port, which provides, in part:

*Private Usage: Scott's Restaurant will be granted private use of the pavilion.... Public use of the Pavilion will be available during 80% of the time and private use will be limited to 20%.... During private functions, a series of panelized fabric curtains will be draped from the edge of the pavilion to enclose the structure.... The fabric curtains are all temporary enclosures and selected fabric curtain will include view panels which will permit the general public to see the event occurring within.... They will be disassembled immediately after the private function and the space will again be open to the general public.*

BCDC Application Form, Attachment A, Box 5, Project Information at 4 (March 30, 1994) ("Permit Application, Attachment A"). Similarly, the letter transmitting the application to BCDC states, in part, that the:

*application is for the construction and combined public and private use of a sheltered outdoor area for special events at Jack London Square. The area is currently dedicated public access and would remain open to the public 80% of the time. The other 20% of the time would be available to the project sponsor (Scott's) for scheduled catered events.*

Letter to BCDC from the Port Environmental Department (March 30, 1994).

There is no merit to Scott's false distinction that "the term 'private' means 'for profit, purely private' events" Scott's SOD at 2:17-18, in contrast to "community based, charitable events hosted by Scott's in which members of the public are invited com[ing] within any normal definition of 'public.'" *Id.* 7:8-10. A so-called community-based, charitable event held in the enclosed pavilion is still a private event open only to those members of the public that happen to belong to or are invited by the entity holding the event, and not open to the general public. Scott's implicitly recognizes as much when it argues that it made unauthorized modifications to the pavilion to enhance its "guests' experience." *Id.* at 26:22-23. A guest is a person who is invited to an event; whether from Scott's perspective the event is for-profit or charitable, as far as the general public is concerned, the event is private.

In arguing that use of the pavilion for events that it characterizes as community-based or charitable does not count against the Permit's private use limits, Scott's relies on the reference to "public events" in footnote 5 in Exhibit A to the Permit. *Id.* at 14:13-14. This footnote provides: "Scott's will coordinate with the Port's Marketing Director to eliminate conflicts between private events and any public events." The public events referred to by this footnote include events scheduled by or through the Port or its Jack London Square property manager such as "the Farmers' Market, art shows, product displays, boat show displays." Permit Findings and Declarations III.C (Public Access) at 8; *see also* Permit Application, Attachment A, at 3. Thus, the Permit requires Scott's to coordinate with the Port to eliminate conflicts between Scott's use of the pavilion for private events and any public events. There would be no need for such coordination between Scott's and the Port – or for footnote 5 in Exhibit A -- if the term "public events" referred to charitable events held by Scott's in the pavilion. Similarly, the Permit requirements for Scott's to provide the Port with schedules for private events would be of little value if these schedules included only "for-profit" events and omitted so-called community-based charitable events. *See* Permit Special Conditions II.B.2.c and II.B.2.d and Exhibit A, footnotes 1 and 2 (private event schedules/calendars).

Scott's first raised the distinction between use of the pavilion for "for-profit" versus "charitable" events last year in the course of settlement discussions with BCDC staff. Scott's made this distinction in seeking staff's support for a permit amendment to authorize increased use of the pavilion for private events on the grounds that some of its pavilion usage was for charitable events. However, the proposed stipulated order rejected by the Commission on November 3, 2016 demonstrates that the parties clearly understood that the term "private events" includes both "for-profit" and "charitable" events. See Proposed Stipulated Order at Section V.A.1 (Scott's could have requested authorization for 104 for-profit and 20 "community-based charitable events" per year "*for a total maximum of 124 private events per calendar year*")(emphasis added). Contrary to Scott's claim that it has always considered use of the pavilion for charitable events to comply with the Permit requirement for "public use days" (L. Gallagher Declaration at ¶ 21), It was not until Scott's hired its current legal counsel, in December 2016, that it claimed for the first time that the Permit is unclear and that community-based, charitable events constitute public use of the pavilion that are not subject to the Permit limits.<sup>2</sup>

---

<sup>2</sup> Contrary to Scott's claim that BCDC never expressed any concerns regarding Permit violations prior to preparing for enforcement proceedings in 2013, Scott's SOD at 11:26-27, as far back in July 2000, BCDC wrote to Respondents citing public access violations consisting of excess weekend events and asking them to ensure that future events scheduled at the pavilion are consistent with the guidelines in Exhibit A of the Permit. Letter from Lisa Bennett, BCDC, to the Port, copied to Scott's, dated July 26, 2000. The following year, Scott's submitted a letter to BCDC requesting: (1) to increase private use of the pavilion from 73 to 110 days per year; (2) unlimited weekend use; and (3) to increase the setup and breakdown times. Letter from Michael Stagg, Scott's, to BCDC (June 1, 2001). In response, BCDC staff stated that "[b]ecause the proposed amendment would significantly increase the private use of the public access area and consequently would significantly decrease the public's use of the pavilion," the request would be processed as a material permit amendment that would require a public hearing and vote by the Commission. Letter from Andrea Gaut, BCDC, to Scott's, dated June 26, 2001. Scott's did not pursue the permit amendment by providing the additional information requested by staff to file the amendment request as complete. However, at no time following BCDC's July 2000 letter, providing notice of public access violations, or during the subsequent discussions with staff regarding its proposal to request an increase in private use of the pavilion did Scott's ever claim that charitable events were exempt from the Permit's limits on private-use days.

In assessing the pavilion overuse violations, the determining factor is that the pavilion is in private use when the pavilion is enclosed, whether by fabric panels or the unauthorized moveable walls, and is in public use when it is not enclosed and is available to the public for unrestricted public access for walking, sitting, viewing, picnicking, and related purposes.

Nevertheless, Scott's argues that the public receives a "tremendous benefit...from the numerous non-profit/charitable events Scott's hosts at the pavilion annually," Scott's SOD at 5:15-16, and further claims that Scott's "earns no money" from these charitable, non-profit events. *Id.* at 15 n.1. To assess these claims, staff has reviewed and analyzed the pavilion events statements (*i.e.*, invoices) for 2014- 2016 that Scott's produced in response to a subpoena issued by the Executive Director. A summary chart of staff's analysis of these event statements is attached hereto as Exhibit A.

Staff found that it is sometimes but not always clear from the name of an event as shown on an invoice whether Scott's would characterize the event as "for-profit" or "charitable, non-profit." For this reason, staff did not attempt to determine how many events came within one category or the other, or to compare the number of invoices for each year with Scott's claims as to the number of "private use days" versus "charitable use days" per year.

The pavilion invoices show that of the 219 events Scott's reportedly held in the pavilion over the three-year period 2014-2016, it charged a facility rental fee for 198 events, or for approximately 90% of the events, with the amount of the rental fee roughly proportional to the duration of the event. While it appears that Scott's did not charge a facility rental fee for certain events that it would characterize as charitable, non-profit, it also appears that Scott's did charge a facility rental fee in some amount for other events that it would characterize in the same way.

The invoices also show that Scott's provided various discounts for many events which, depending on the event, may have included such items as a reduced facility rental fee, a waiver of setup fees, a discounted corkage fee, or an unspecified "savings" or "discount" of an amount stated on the invoice. Of the 219 events, Scott's provided some form of discount for 56 events,

or for approximately 26% of the events. It appears that Scott's provided various discounts for both events that it would characterize as "for-profit" and those it would characterize as "charitable, non-profit."

The invoices do not include the revenues Scott's earned from beverages for no-host bar events, at which customers paid directly for beverages, because such charges do not appear on the invoices. The invoices show that pavilion events included a full or partial no-host bar approximately 53% of the time, and, thus, the invoices substantially understate the payments Scott's received from events with a no-host bar, whether the event was for-profit or charitable.

Finally, the invoices show that Scott's received payments as billed for 217 of the 219 events (and that no food or drink was served at one of the two events for which no payment was received). The invoices do not indicate that Scott's provided food or beverages at cost for any event, or that it donated food or beverages for any event. Although not reflected on the invoices, it is possible that Scott's donated food, beverages, or services for certain charitable, non-profit events; if so, it presumably also claimed a charitable deduction for income tax purposes for such donations. In any case, the invoices suggest that Scott's generated revenue, and earned some level of profit, even from charitable, non-profit events, particularly in light of the additional revenues generated from events with a no-host bar. The invoices certainly do not support Scott's claim that it "earns no money" from such events.

In summary, Scott's uses the pavilion for a private event, whether it characterizes the event as "for-profit" or "charitable, non-profit," whenever the pavilion is enclosed and unavailable for unrestricted public access. While Scott's may provide a benefit to some community organizations and non-profit entities by allowing them to hold events at the pavilion, Scott's must do so in compliance with and subject to the Permit's limitation on private use of the pavilion.

#### **IV. SUMMARY OF A LIST OF ALL ESSENTIAL ALLEGATIONS EITHER ADMITTED OR NOT CONTESTED BY RESPONDENTS**

Scott's generally admits or does not contest that it performed most of the acts or activities that are alleged in the Complaint to constitute violations of the Permit. However, Scott's generally denies that those acts or activities violated the Permit or instead seeks to justify its actions on other grounds.

For example, Scott's admits that it "constructed a metal-framed entry doorway, storage area and stage, metal-framed wall, multiple moveable wall panels and ceiling tracks in the pavilion and a roof extension, but denies that any such improvements were unauthorized." Scott's SOD at 16:23-25. Similarly, Scott's admits that from time to time it placed tents and stanchions, stored event-related equipment, and a promotional vehicle in the Franklin or Broadway Street Plazas. *Id.* at 16:27- 17:1. However, as to the occasional installation of an overflow tent, Scott's claims that it was "forced" to do so "due to customer demands and event circumstances." *Id.* at 37:14.

The Port generally admits or does not contest the essential allegations of the Complaint, but argues that Scott's, and not the Port, performed the unauthorized construction, over-used the pavilion, and engaged in the other acts or activities that violated the Permit. The Port provides additional factual background to show that the Port investigated, documented, and reported the violations to BCDC. The Port also presents evidence that certain of the violations constitute violations of Scott's lease with the Port, and that the Port made certain efforts to have Scott's come into compliance with both the Permit and its lease.

Neither Respondent contests the allegation that the permanent public access guarantee required by the Permit has not been recorded. Scott's claims that it is not obligated to perform this task because it does not own the pavilion or the underlying land. The Port claims, incorrectly, that it is legally prohibited from complying with this Permit requirement. In the following section, staff responds to these arguments and to the other defenses and mitigating factors raised by Respondents

## **V. DEFENSES AND MITIGATING FACTORS RAISED BY RESPONDENTS; STAFF'S REBUTTAL EVIDENCE AND ARGUMENTS**

Respondents' arguments fall into two broad categories. First, they raise potential defenses that challenge the principal allegations in the Complaint as to their liability or that dispute the Commission's authority to impose administrative civil penalties for the violations. Second, Respondents make numerous arguments that do not contest their liability, but rather, urge that even they violated their Permit, there are mitigating factors that make it unfair, unreasonable, or inequitable to hold them responsible for the violations through the assessment of civil penalties. Each of these categories of arguments is discussed below.

### **A. Potential Defenses to Liability**

**1. Scott's Argument That It Is Not Subject To Penalties And No Permit Amendment Is Required Because It Has Not Substantially Changed Use of the Pavilion.** Scott's makes a number of arguments to the effect that because it did not substantially change the use of the pavilion it both is not liable for violating the Permit and was not required to obtain a Permit amendment before making various unauthorized "pavilion improvements." SOD at 35-40. There is no merit to any of Scott's arguments.

At the outset, whether Scott's unauthorized construction amounts to a "substantial change in use" is irrelevant to determining whether Scott's violated the Permit and is liable for civil penalties. The Permit specifically authorizes construction of a pavilion that is required to generally conform to the architectural plans prepared and modified in 1995 that are expressly referenced in the Permit. Permit Special Condition II.A.4. Furthermore, the Permit provides: "No material changes shall be made thereafter to these plans without first obtaining written approval of the change(s) by or on behalf of the Commission." *Id.*

Therefore, any material changes Scott's has made to the pavilion, as previously approved by the Commission, violate the Permit and Respondents are subject to civil penalties for those violations. Moreover, if any proposed changes could not be authorized at the staff

level through plan review, to comply with Permit Special Condition II.A.3, Respondents would be required to seek approval from the Commission for any such changes through an application to amend the Permit.

Even if a "substantial change in use" analysis applied to determining whether Respondents violated the Permit, which it does not, the issue is not whether Scott's has substantially changed the pavilion, but rather, whether there has been a substantial change in the use of the state tidelands occupied by the pavilion, including the balance of unrestricted public access and limited private use of the pavilion authorized by the Permit.

In considering whether there has been a substantial change in use, or the placement of fill, the baseline is the pavilion and the limitations on unrestricted public access to state tideland authorized by the existing Permit. As described generally in the Permit and shown in detail in the approved plans referenced in the Permit, the pavilion as authorized consisted of: (1) a roof structure and tower providing a covered, open outdoor area supported by columns; (2) an open-truss structural system allowing for longer spans with less intermediate supports, thus preserving views of the Bay; and (3) operation of fabric panels for enclosing private events beneath the pavilion. Permit Special Condition II.B.2.b; Findings and Declarations III.C (Public Access) at 8-9; and Exhibit A. Moreover, the Permit and approved plans specify the footprint of the public access area occupied by the pavilion. *Id.* at Exhibit A.

Scott's unauthorized construction includes: (1) a roof extension between the restaurant building and pavilion; and (2) a storage shed and stage also located between the restaurant building and pavilion. The roof extension and shed are not within the pavilion footprint and the shed is within a dedicated public access area. Therefore, Scott's substantially changed the use of these areas by making them permanent private spaces and integral parts of its restaurant. Construction of these permanent structures also constituted the unpermitted placement of fill in the shoreline band in violation of the McAtteer-Petris Act ("MPA").

In place of the authorized fabric panels formerly used to enclose the pavilion for private events, Scott's has constructed a permanent retractable wall panel system that, even when in the open position, includes two solid, ground-to-roof sets of panels – one that occupies 60 feet of the 80-foot long west wall (when open) and the other that occupies 40 feet of the 70-foot long north wall (when open).<sup>3</sup> Scott's also constructed an unauthorized metal entry doorway on the east side of the pavilion structure. These modifications constitute the unauthorized placement of fill in the shoreline band in violation of the Permit and the MPA. In addition, these improvements, individually, cumulatively, and together with the roof extension, storage shed and stage, substantially changed the use of the public access area by: (1) physically occupying and creating boundaries on the use of public access areas; (2) reducing the free flow of pedestrian traffic in and around the pavilion; (3) obstructing views of the bay; and (4) reducing the amount of daylight that enters the pavilion.

In brief, the pavilion is no longer the covered but fully outdoor open space authorized by the Permit. Scott's has substantially changed the use of the public access area and the pavilion itself by making the pavilion a substantially more confined and less open and airy space that is now open to views and access on only two sides (with a permanent metal frame door on one of those sides) – rather than open on all four sides.

**2. The Complaint States a Claim Against the Port.** Virtually every one of the Port's "affirmative defenses" set forth in Section II of its Statement of Defense makes the assertion that the Port bears no responsibility for the violations alleged in the Complaint on the ground that "the Port was not involved in any way" in such violations, and that Scott's was "solely responsible" for such violations. These assertions misconstrue and reflect a serious misunderstanding both of the allegations of Complaint against the Port and of the Port's legal

---

<sup>3</sup> Scott's incorrectly claims that the movable wall panels are "specifically allowed by a BCDC permit." SOD, at 39:13-14.

status under the permit. In essence, the Port argues that the liability or responsibility for compliance with the requirements of the permit is "several," as opposed to "joint," as between the Port and Scott's as co-permittees.

However, the Port points to nothing in the language of the Permit that supports this allocation of responsibility between the Port and Scott's for compliance with the Permit's requirements. Moreover, the Port's assertions conflict with generally applicable standards of contract interpretation in California under which, where "an obligation [is] imposed on several persons," it "is presumed to be joint and not several...." Cal. Civil Code § 1431. *See also* Civil Code §§ 1659 ("Where all parties who unite in a promise receive some benefit from the consideration, ...their promise is presumed to be joint and several.") and 1660 ("A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.")

Contrary to its assertions, the Port is not merely a "nominal" co-permittee. In 1996, Scott's was added as a co-permittee to the BCDC permit the Commission had originally issued solely to the Port for certain development activities along a six-block section of the Port's waterfront property at Jack London Square. Although the Commission later split that permit into two separate permits, the Port, as the holder the state tidelands occupied by the pavilion, remains a jointly responsible co-permittee, together with Scott's, on the Permit for the pavilion.

The Port also claims that it lacks "police power" authority and that therefore it is powerless to require Scott's to meet its obligations under the permit. Thus, according to the Port, it "turns to enforcement agencies such as the BCDC," Port's SOD at 16, to enforce the legal obligations of the Port's tenants such as Scott's. Contrary to this assertion, the Port's own correspondence with Scott's identifies the authority that the Port as landlord has the ability to exercise over Scott's as the Port's lessee or tenant, which authority is at least as powerful, if not more so, than the BCDC's regulatory authority. Finally, there is no merit to the Port's attempt, in in disregard of the well established principles of the law of agency, to disclaim responsibility

for the acts or omissions of its agent, Cushman and Wakefield, the property management firm with which the Port contracted to oversee and manage Scott's performance of certain of its obligations under the Permit.

**3. Respondents' Failure To Record The Required Public Access Guarantee.** The Port argues that it did not violate the Permit condition that requires Respondents to record a public access dedication instrument. Port's SOD at 13-15. The Port does not dispute that the subject instrument was never recorded. Instead, the Port asserts that it has and during all times relevant to this enforcement proceeding has had a lawful excuse for failing to record the subject instrument. This excuse is based on the argument that Permit Special Condition II.B.3 requires the recordation of a "permanent" public access restriction against the Port's property.

The term "permanent" as it is used in Special Condition II.B.3 cannot be read in isolation, as the Port does, but must be read together with the terms and provisions of the standard form dedication instrument that the Commission employs to implement public access dedication conditions like Special Condition II.B.3 and that Commission staff provided to the Port to execute in order to satisfy its obligations under this condition. That standard form instrument clearly states, in the final "FURTHER RECOGNIZED" clause, that "pursuant to sections 10503(c)...of the Commission's regulations and Standard Condition IV.F...to this permit, this agreement and deed restriction is a covenant...*for so long as the terms and conditions of the permit remain in effect or for so long as any use or construction authorized by this permit exists, whichever is longer*, and shall bind the co-permittees..." (Emphasis added.)

Thus, under the quoted language and under the terms of related provisions of the Permit and of the Commission's regulations, the durational term of 1) the authorization by the permit of activities subject to the Commission's regulatory authority, and 2) any conditions to or requirements associated with that authorization, are to be identical. The authorization set forth in Section I of the Permit is not subject to any durational limit. Unless and until revoked by the Commission the authorization is, in effect, indefinite, unlimited in duration, or, to state it differently, permanent. Under the above-quoted provision of the Commission's standard form

dedication instrument and related provisions of the permit and the Commission's regulations, the durational term of the dedication must be the same as that for the authorization that the permit provides.<sup>4</sup>

The Port asserts that it is prohibited by law from recording any restriction against its property for a duration of time in excess of 66 years. BCDC staff is well aware of the restrictions on alienability of tidelands conveyed by the State to local governmental bodies such as the Port contained in the Civil Code (Section 718) as well as in the legislation that effectuated these conveyances. The question is whether these restrictions constitute actions to "grant, convey, give or alien" the lands in question, and, if so, whether the restrictions apply to actions that the BCDC finds are necessary to comply with the requirements of the law that the BCDC administers, the McAteer-Petris Act ("MPA").

The Legislature enacted the MPA in furtherance of the same public trust needs and values that the Port claims it is seeking to vindicate. In the case of *People ex rel. SFBCDC v. Town of Emeryville* 69 Cal.2d 533, 549 (1968), the California Supreme Court held that the Legislature's enactment of the MPA "amends, in effect, the terms of the tideland grant" at issue in that case. By necessary implication, the same can be said of the tidelands grants under which the Port administers the tidelands on which Scott's restaurant is located. The Port cites no dispositive legal authority in support of its position that it lacks the power to dedicate its land in the manner required by the Permit, referring vaguely only to "recent discussions with the State Lands Commission and the Attorney General's office," discussions to which no one from the BCDC was a party. It is clearly foreseeable that the result that the course of action

---

<sup>4</sup> There are two corollaries to the foregoing. The first is that, although Special Condition II.B.3 requires the dedication of public access to be "permanent," under the terms of the Permit and the Commission's regulations there is the possibility, however remote, that the improvements and uses authorized by the Permit will at some future time be completely removed and/or terminated. In that unlikely eventuality the Permit and its conditions would no longer apply to the property. (In its Statement of Defense the Port claims BCDC staff never informed the Port of this interpretation of the Commission's regulations. In point of fact staff conveyed this interpretation to the Deputy Port Attorney assigned to this matter, among others, in an email dated April 25, 2014.) The second corollary is that if the authorization of the Permit were to be made subject to a time limit that same time limit will also apply to any and all conditions of approval of the Permit, including but not limited to any condition requiring the dedication of a property interest.

that the Port insists on (limiting the term of the dedication, but not the Permit) will be perpetual authorization by the Permit, which runs with the land, of the originally authorized uses and improvements but with no associated public access requirement after its expiration. In the absence of dispositive legal authority that compels such a result, it is one that is not allowed by the Permit.<sup>5</sup>

In any case, the Port's argument that it is prohibited by law from recording a public access guarantee for a duration of time in excess of 66 years amounts to an assertion by the Port that a permittee of a BCDC permit possesses the authority to make unilateral determinations as to which permit conditions are or are not feasible for the permittee to comply with. This assertion reflects a serious misunderstanding of California law.

It is a universally accepted principle of California land use law that once an applicant for a land use permit executes that permit and accepts its benefits by proceeding with the activity that the permit authorizes that applicant has by those actions waived whatever right it may at one time have had to challenge the legality or validity of the conditions to or requirements of that permit. *Rosco Holdings, Inc. v. State*, 212 Cal.App.3d 642, 654 (1989), citing *County of Imperial v. McDougal*, 19 Cal.3d 505, 510-511 (1977).<sup>6</sup> Therefore, as a result of the Port having signed the Permit in this matter and accepted its benefits (including rental income from Scott's) it became bound by the burdens or requirements of the Permit, including the requirement to record a public access dedication instrument.<sup>7</sup>

---

<sup>5</sup> Moreover, the interpretation of its obligations that the Port advances in its Statement of Defense are completely at variance with the past practice and policy of the Port in making similar dedications for public access as required by other Commission permits, including but by no means limited to the dedication of other areas associated with Scott's restaurant under Permit No. 1985.019.00(A) (Instrument No. 2008187449) and the dedication of other areas of Jack London Square under Permit No. 2004.003.00 (Jack London Sq. Ventures, LLC and Ellis Partners, LLC). It is also at variance with the practices of all other grantees of tidelands within San Francisco Bay to which the Commission has granted permits that require public access dedications, including but by no means limited to dedications by the Port of San Francisco as required by permits for the Exploratorium and for AT&T Park.

<sup>6</sup> *Accord: Ojavan Investors v. Cal. Coastal Comm'n*, 26 Cal.App.4<sup>th</sup> 516, 527 (1994). See also Cal. Civil Code § 3521 ("He who takes the benefit must bear the burden.").

<sup>7</sup> As absolute as the above-described principle may seem to be, it is not. In the event that a permittee determines that compliance with a condition of approval is infeasible, it has the ability under Chapter 8 of the BCDC's

Finally, Scott's asserts that it is not obligated to dedicate the public access area required by Special Condition II.B.3 because "Scott's is not the owner of the pavilion or the underlying land." Scott's SOD at 19:11-12; *see id.* at 27:19-21. Although it is true that the area required to be dedicated for public access is "owned" by the Port of Oakland, that fact does not relieve Scott's of any obligation under this special condition. Scott's is also the holder of an ownership interest in this property by virtue of the leasehold granted to it by the Port. In effect, the Port alienated a portion of its ownership of the property when it granted a lease thereof to Scott's. It is well established under California law that all holders of ownership interests in property subject to conveyance must join in that conveyance in order for it to be fully valid. *See Willard v. First Church of Christ, Scientist* 7 Cal.3d 473 (1972) (grant deed subscribed by less than all owners conveys only the interests of the subscribing owners). Accordingly, on the basis of its leasehold interest in the property that the Permit requires to be dedicated for public access, Scott's is and always has been required to join in the dedication of that property.

**4. The Statute of Limitations Has Not Run.** Scott's argues that the statute of limitations has run on almost all of the violations because California Code of Civil Procedure ("CCP") Section 340(b) establishes a one-year limitations period for "[a]n action upon a statute for a forfeiture or penalty to the people of this state." CCP § 340(b). However, the term "action" as defined in the CCP includes a civil action and a special proceeding in the nature of a

---

regulations to apply for an amendment to the permit to modify or even delete the condition or requirement. In its email communications with the Port in 2014, staff informed the Port that it had the option of applying for a permit amendment that would impose a time limit on the public access dedication, with the qualification that in order for such an amendment to be approvable an identical time limit would need to be placed on the authorization section of the Permit. This guidance included policy reasons, such as extra workload upon the expiration of the time limit, as to why pursuit of such an option was in the opinion of Commission staff inadvisable. Nevertheless, staff made it clear to the Port that absent such an amendment proceeding Commission staff was without power or authority to place a time limit on the Port's public access dedication that was not consistent with the Permit. Notwithstanding this clear admonition, the Port has to this day failed to either record a public access dedication consistent with the Permit or to apply for an amendment to the Permit reflecting the reasons why the Port believes compliance with the permit's public access requirements as currently written is infeasible. Accordingly, the Port has no excuse or reason in mitigation for its failure to comply with the Permit's public access dedication requirement. The Commission's issuance of an order compelling the Port to comply with SC II.B.3 and further imposing civil penalties for the Port's past noncompliance is fully justified.

civil action, but does not include an administrative proceeding. *Id.* §§ 22, 23, 363; *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 165, 169 (“An administrative proceeding is neither a ‘civil action’ nor a ‘special proceeding of a civil nature.’”).

Thus, courts have consistently held that the limitations periods established by the CCP do not apply to administrative proceedings. *City of Oakland* 95 Cal.App.4th at 165 (statute of limitations did not bar administrative claim for reclassification of employee; a ‘civil action’ under CCP applies only to proceedings in courts, not administrative hearings); *Robert F. Kennedy Medical Center v. Department of Health Services* (1998) 61 Cal.App.4<sup>th</sup> 1357, 1362. (statute of limitations in CCP did not apply to agency’s demand for repayment of liability in an administrative action); *Little Co. of Mary Hosp. v. Belshe* (1997) 53 Cal.App.4th 325, 329. (“Statutes of limitations found in the [CCP] ... do not apply to administrative actions.”); *Bernd v. March Fong EU* (1979) 100 Cal.App.3d 511, 516 (“A statute of limitations barring a civil action brought by an aggrieved party long has been inapplicable to a disciplinary proceeding of a state administrative agency.”).<sup>8</sup>

Scott’s cites *Pineda v. Bank of America, N.A.*, 50 Cal.4th 1389 (2010) for the proposition that a one-year statute of limitations should apply to administrative penalties under Government Code Section 66641.5(d) because the one-year limitation period established by CCP 340(b) would apply to penalties that can be imposed by a court. However, *Pineda* did not involve an administrative proceeding. Rather, the issue in *Pineda* was which of two statutes of limitation applied to a court action by an employee to recover penalties for wrongfully withheld wages, and the Supreme Court held that the applicable statute of limitations was the longer three-year statute on an action for the wages from which the penalties accrued, and not the one-year statute on a penalty. *Id.* at 1398.

---

<sup>8</sup> See also *State Water Resources Control Board*, In the Matter of Administrative Civil Liability Complaint No. OE-2011-0038 against Rodeo Owner Corp., Order No. WQ 2013-0055 (the statutes of limitations contained in the CCP apply to judicial proceedings, not administrative proceedings.) *State Water Resources Control Board*, (2013) Cal. ENV LEXIS 124.

The one-year limitation period established by CCP 340(b) for an "action" for a penalty is inapplicable. Administrative penalties for the violations are "not barred by the mere passage of time." *See Bernd* (1979) 100 Cal.App.3d at 516.

**5. A Hearing Will Held Before Enforcement Committee Within 60 Days of Issuance of the Complaint.** Scott's argues that any penalty will be invalid because a hearing will not be held before the Commission within 60 day of issuance of the Complaint as required by Government Code Section 66641.6(b). Scott's SOD at 42-43. However, BCDC's regulations provide that the Commission shall comply with Section 66641.6(b) "by either (1) hearing the matter itself within 60 days of service of the complaint or (2) by having the enforcement committee hold a hearing within 60 days of service of the complaint." 14 C.C.R. § 11381(a).

The Complaint was served on December 19, 2016, and the 60<sup>th</sup> day after mailing will be February 17, 2016. Therefore, the Enforcement Committee hearing scheduled for February 16, 2017 will be timely under Government Code Section 66641.6(b).

**6. There Has Been No Due Process Violation.** Scott's argues that the enforcement procedure violates due process because the Executive Director both issued the Complaint and prepared the recommended enforcement decision. Scott's is correct that the Executive Director is part of the prosecution team. However, it does not follow – and Scott's provides no support for its claim – that preparation of a recommended enforcement decision "is the province of the advisory team and the decision-makers." Scott's SOD at 45:11-13.

The Executive Director prepared the recommended enforcement decision in accordance with BCDC's regulations that require him to do so and that also specify the content of a recommended enforcement decision. 14 C.C.R. § 11326. The Executive Director did not violate separation of functions requirements because he is not a decision-maker and has not advised (and will not advise) the Enforcement Committee regarding the recommended enforcement decision or any questions or issues that may arise during the Committee's consideration of the recommended decision.

Scott's also argues that the Executive Director violated separation of functions requirements by issuing an administrative subpoena for records to Scott's. Government Code Section 11181(e) authorizes "the department head" to issue such a subpoena in connection with any investigation or action, and BCDC's regulations expressly authorize the Executive Director to issue a subpoena as part of any enforcement investigation. 14 C.C.R. § 11320. The Executive Director's issuance of a subpoena does not give the prosecution team "the unfair advantage of acting on behalf of the Commission." Scott's SOD at 46:1. Rather, the subpoena was issued in the course of the prosecution team's enforcement investigation. Moreover, although Scott's does not have the authority to issue a subpoena to BCDC staff, Scott's has the ability to request, subject to certain exemptions, that BCDC disclose any agency records identified pursuant to the Public Records Act.

## **B. Potential Mitigating Factors**

**1. The Equitable Defenses of Laches, Unclean Hands, and Waiver Do Not Bar the Commission from Imposing Civil Penalties.** Both Scott's and the Port argue that alleged staff delays in initiating enforcement bar the Commission from imposing civil penalties under the equitable doctrines of laches and unclean hands. Scott's SOD at 34-35; Port's SOD at 17-19. Scott's also argues that the Commission has waived the right to seek administrative civil penalties for violations prior to staff's commencement of the enforcement action in 2013. Scott's SOD at 34. However, these "equitable defenses" generally do not apply to claims brought by government agencies to enforce environmental regulations on public policy grounds, and, thus, do not bar the Commission from assessing civil penalties in this proceeding.

Before responding to Respondents' equitable arguments, it is important to recognize that their claims as to BCDC staff's alleged delay in enforcement relate primarily to a portion of the pavilion overuse violations. The majority of the violations alleged in the Complaint, resulting in the majority of the proposed penalty, relate to Scott's unauthorized construction of

the pavilion modifications commenced in December 2012 and to Respondents' continued failures to comply with various Permit requirements since staff initiated its enforcement investigation in May 2013.

As to the pavilion overuse violations, staff acknowledged at the November 3, 2016 Commission meeting that it had been aware "anecdotally" of Scott's overuse of the pavilion. However, staff was certainly not aware of the full extent of the pavilion overuse violations until it initiated an enforcement investigation following Scott's unauthorized construction of the pavilion modifications. An enforcement investigation generally leads to a comprehensive review by staff of the applicable permit and permit file, as well as one or more site visits, and typically results in staff discovering various additional violations beyond those that staff was aware of at the start of the investigation. That is what happened in this case.

In particular, through its enforcement investigation, staff's discovered, among other violations, that Scott's had failed to submit all required pavilion quarterly event calendars, and that the Port has failed to submit all required annual summary of scheduled pavilion events, for a five-year period, from 2008 through 2012. Respondents finally submitted pavilion event reports for these five years on June 18, 2013, in response to staff's May 16, 2013, enforcement letter. Complaint at 21 n.18. Thus, between 2008 and 2012, Respondents, by their own violations of the Permit's reporting requirements, prevented staff from having the necessary information to determine the extent of Scott's pavilion overuse violations and from possibly initiating an earlier enforcement action for those violations. Under these circumstances, Respondents cannot complain that BCDC improperly delayed enforcement.

**Laches and Waiver Are Inapplicable.** "The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." *Feduniak v. Cal. Coastal Comm'n*, 148 Cal.App.4th 1346, 1381 (2007); *Albert R. Conti v. Board of Civil Service Commissioners of the City of Los Angeles*, 1

Cal.3d 351, 360 (1969). "In the absence of prejudice or acquiescence, delay does not establish a defense [of laches]." *Conti*, 1 Cal. 3d at 362. Respondents' arguments reflect a clear failure to satisfy the foregoing mandatory tests for the successful assertion of the defense of laches.

First, Respondents fail to cite any evidence of "acquiescence" on the part of the Commission staff in the Respondents' noncompliance with the Permit. To the contrary, staff's communications with the Respondents with regard to the Permit and its requirements have repeatedly expressed the staff's nonacquiescence in the conditions of the Pavilion and in the Respondents' overuse and/or oversight of that facility.<sup>9</sup>

Second, since the courts do not presume prejudice, *Conti*, 1 Cal. 3d at 355, and since Respondents have not established prejudice, the defense of laches fails. In fact, neither Scott's nor the Port refers to any evidence of prejudice that has resulted from the alleged delays in the BCDC's enforcement action. To the contrary, particularly to the extent that Scott's pavilion overuse violations have allowed it to sponsor a greater number of income-producing private events in the pavilion, Respondents have benefitted economically from such illegal conduct.

Finally, courts have consistently held that the doctrine of laches does not apply if it would nullify a rule of policy adopted for public benefit. *Feduniak*, 148 Cal.App.4th at 1381 (laches is not applicable despite delay in enforcement action for 18 years); *see also W. Washington Properties, LLC v. Dept. of Transp.*, 210 Cal.App.4th 1136, 1148 (2012) (laches did not bar state agency from citing owner for illegal outdoor advertising display despite 20-year pre-existence of display); *Golden Gate Water Ski Club v. Contra Costa Co.*, 165 Cal.App.4th 249, 263 (2008) (laches did not bar county from issuing nuisance abatement order against club that

---

<sup>9</sup> Similarly, the mere fact that BCDC staff knew anecdotally of Scott's overuse of the pavilion and did not initiate an enforcement investigation until Scott's unauthorized construction of the pavilion modifications does not establish that staff waived, either intentionally or by implication, the right to enforce the overuse violations. In particular, staff could not have knowingly waived the right to seek civil penalties for the pavilion overuse violation because, as a result of Respondents' failure to submit the pavilion event reports required by the Permit for the five-year period 2008-2012 until after staff had commenced its enforcement investigation, staff was not aware of the full extent of Scott's pavilion overuse violations.

built structures in violation of open space restrictions despite 35-year delay in issuance of order); *San Francisco v. Ballard*, 136 Cal.App.4th 381, 392 (2006) (laches did not bar city's claim that sprinkler system violated fire prevention regulation for commercial structures).

**Unclean Hands Is Inapplicable.** As in the case of the equitable doctrine of laches, the unclean hands doctrine is inapplicable when conduct against public policy is involved. *Salas v. Sierra Chemical Co.*, 59 Cal.4th 407, 432 (2014) ("Equitable defenses such as unclean hands may not ... be used to wholly defeat a claim based on a public policy..."); *Jomicra, Inc. v. California Mobile Home Dealers Association*, 12 Cal.App.3d 396, 402 (1970) ("The maxim 'he who comes into equity must come with clean hands' should not be invoked when the act sought to be enjoined is against public policy.").

Moreover, "[n]ot every wrongful act constitutes unclean hands." *Kendall-Jackson Winery v. Superior Court*, 76 Cal.App.4th 970, 979 (1999)(conduct sufficient to invoke unclean hands if it "violates conscience, or good faith, or other equitable standards of conduct"); *James A. DeRosa v. Transamerica Title Insurance Co.*, 213 Cal.App.3d 1390, 1395 (1989) ("Under the unclean hand doctrine, a party is barred from relief if he has engaged in any unconscionable conduct directly related to the transaction or matter before the court"). Thus, all the cases that Scott's cites in support of its unclean hands defense involved private plaintiffs that committed wrongful acts prior to the relevant judicial proceeding, such as medical malpractice (*Blain v. Doctor's Co.*, 222 Cal.App.3d 1048 (1990)); patents and contracts infringement (*Precision Co. v. Automotive Co.*, 324 U.S. 806 (1945)), and fraud and conspiracy (*Burton v. Sosinsky*, 203 Cal.App.3d 562 (1988)).

A party who invokes the unclean hands doctrine has a duty to identify some misconduct on the part of the party against whom the defense is asserted that violates some applicable statutory, regulatory, or common law standard of conduct. In contrast to the plaintiffs in the cases cited by Scott's, it does not identify any such misconduct on the part of the Commission

or BCDC staff. Moreover, Scott's does not cite any case in which the unclean hands doctrine has been successfully invoked in either administrative enforcement actions or in cases between a private party and a government agency.

Finally, as in the case of the doctrine of laches, the defense of unclean hands will not lie in the absence of a showing of prejudice to the party invoking the defense. *Jade Fashion v. Harkham Ind.*, 229 Cal.App.4th 635, 653 (2014). As discussed above in response to Respondents' arguments regarding the doctrine of laches, Respondents have not established any prejudice from the alleged delay in enforcement.

**2. The Violations Have Not Been Overcounted.** Noting that Government Code Section 66641.5(e) provides that the Commission may not administratively impose a penalty of more than \$30,000 for a single violation, Scott's claims that, "[i]n an obvious attempt to run up the penalty number, BCDC staff have counted each asserted violation as many violations." Scott's SOD at 40:9-10. Scott's is incorrect.

Exhibit B to the Complaint is a two-page table summarizing the violations and the proposed penalties, including the daily proposed penalty and total proposed penalty amount for each violation or category of violations. (A corrected, revised version of the two-page table is attached hereto as Exhibit B.) The table shows that the daily penalties for four of the violations or categories of violations are capped at the \$30,000 maximum authorized by statute for a single violation, and the daily penalties for one of the violations -- failure to obtain plan approval -- did not reach the \$30,000 maximum. The table also shows that for two of the categories of violations -- non-compliant use of the pavilion and unauthorized use of the public Franklin and Broadway Street Plazas -- each occurrence of these violations is deemed to be a separate violation.

A violation occurs as the result of a discrete act or omission by a permittee, or by any person or entity in the absence of a permit where one is required (although in some cases a single act or activity can constitute more than one violation). Thus, Scott's unauthorized construction of each modification to the pavilion is a single violation subject to the \$30,000 per

violation maximum penalty, regardless of how long the unauthorized structure remains in place. Similarly, failure to submit a report required by Permit, to permanently dedicate the public access area, or to install required public access improvements are each a single violation subject to the \$30,000 per violation maximum regardless of how long each violation continues. However, Scott's unauthorized construction of four separate and discrete pavilion modifications constitute four separate and discrete violations, each subject to the \$30,000 per violation maximum. Similarly, Respondents' failures to submit a series of separate and discrete reports required by the permit, each due at a different time and containing different information, constitute a series of separate and discrete Permit violations.

Scott's claims that, of most significance, staff has over-counted its pavilion overuse violations because the Permit authorizes the pavilion for public access purposes 80% of the time. Scott's SOD at 40:10-12. Scott's apparently believes it should be subject to only a single overuse violation if it exceeds the authorized percentage of private use days, regardless of the extent of its non-complaint use of the Permit. Scott's fails to acknowledge that Exhibit A to the Permit, in addition to specifying percentages of public and private use, establishes a number of different parameters for public and private use, each subject to different daily limits.

As noted above, a violation occurs as the result of a discrete act or omission by a permittee. Therefore, considering, for example, the annual limit of 73 days of private use of the pavilion, the first day that Scott's exceeds that limit, its 74<sup>th</sup> day of private use, is a single violation, and the next day it exceeds the annual daily limit for a second time, its 75<sup>th</sup> day of private use, is a second separate and discrete violation. Such repeated violations of the Permit's daily limits are subject to daily penalties of not less than \$10 nor more than \$2,000 per day established by Government Code Section 66641.5(e), but because each discrete violation did not persist for a long period of time, these violations are not subject to the \$30,000 per violation maximum.

Similarly, each instance of Scott's unauthorized use of the public Franklin and Broadway Street plazas resulted from discrete actions by Scott's on different dates, and, therefore, each constitutes a separate and discrete violation -- in this case violations of the McAteer-Petris Act and the Port's Permit for Jack London Square. Contrary to Scott's claim that "BCDC staff is plainly alleging a continuing violation," Scott's SOD at 41, because each unauthorized use of the public plazas was of limited duration and did not continue for long periods of time, these violations, like the pavilion overuse violations, are subject to daily penalties but not to the \$30,000 per violation maximum.

**3. The Complaint Does Not Retaliate Against the Port.** The Port makes the conclusory argument that the Complaint unlawfully retaliates against the Port. Port's SOD at 17. The Port cites no evidence of retaliation by BCDC staff and there is none. BCDC is not retaliating against the Port by pursuing an enforcement action for many long-standing violations of the Permit on which the Port is a joint co-permittee together with Scott's.

**4. The Complaint Does Not Improperly Demand That The Port Make A Gift Of Public Funds To Scott's.** The Port asserts that an assessment of civil penalties against it would constitute an impermissible "gift of public funds" from the Port to Scott's under Article XVI, Section 6 of the California Constitution. Port's SOD at 19-10. As quoted by the Port, in order for a transaction to constitute a "gift of public funds" under this Constitutional provision it must be paid to or inure to the benefit of an "individual, association, municipal, or other corporation...." The Port's assertion amounts to a claim that any civil penalty that the Commission may choose to assess against the Port would represent the "payment of liabilities" of Scott's. This assertion reflects a clear misunderstanding of the grounds on which the BCDC would base any assessment of civil penalties against the Port.

Contrary to the Port's argument, any such assessment would not be for the purpose of requiring the Port to relieve Scott's of civil penalties that the Commission may choose to assess against Scott's. Rather, such an assessment would be for the purpose of penalizing the Port for both 1) its independent, joint responsibility, as co-permittee under the Permit, for

violations thereof, regardless of by whom committed, and 2) for its own noncompliant actions, most notably its failure to make and record the dedication of public access required by the permit. In neither case would such an assessment constitute "payment of liabilities" of Scott's, and therefore would not constitute a "gift of public funds" under Cal. Const. Art. XVI, Sec. 6. Moreover, the Port is protected against the payment of civil penalties that the Commission may assess against it by virtue of the requirement in section 3.2 of the lease between the Port and Scott's which obligates Scott's to indemnify the Port against any and all penalties and assessments arising out the activities authorized by the lease that may be assessed against the Port.

#### **VI. SUMMARY AND ANALYSIS OF UNRESOLVED ISSUES: APPROPRIATE CIVIL PENALTY**

The primary unresolved issue is the appropriate amount of civil penalties for Respondents' violations of the Permit, the Port's Permit, and the MPA. To determine the amount of administrative civil liability, Government Code Section 66641.9(a) requires the Commission to consider:

*the nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.*

The Complaint includes a detailed analysis of the facts associated with each of the statutory civil penalty factors. Complaint at 27-46. Below staff summarizes and responds to various arguments made by Respondents regarding certain of the penalty factors.

**A. Nature, Circumstance, Extent and Gravity of Violations.** Scotts claims that the nature of its violations “are quite modest and fall into categories relating to non-substantial improvements to an existing structure...hosting too many events... and paperwork.” Scott’s SOD at 21:27-22:1. Scott also asks rhetorically whether it has blocked public access to the waterfront, and responds with an unqualified “no.” SOD at 1:1-18. Staff disagrees.

Whenever Scott’s used the pavilion for private events in excess of the private use limitations authorized by the Permit, Scott’s blocked physical access to the state tidelands occupied by the pavilion, as well as both unrestricted access to and views of the waterfront. In addition, as discussed above, Scott’s has substantially changed the use of the public access areas on which the pavilion is located. The storage shed substantially changed the use of a public access area outside the pavilion footprint by converting that area from a permanent unrestricted public access area to permanent private space and an integral part of its restaurant. Similarly, in place of the authorized fabric panels formerly used to enclose the pavilion, Scott’s has constructed a permanent retractable wall panel system that, even when in the open position, includes two solid, ground-to-roof sets of panels – one that occupies 60 feet of the 80-foot long west wall (when open) and the other that occupies 40 feet of the 70-foot long north wall (when open). Scott’s also constructed an unauthorized metal entry doorway on the east side of the pavilion structure.

Individually and cumulatively these improvements substantially changed the use of the public access area by: (1) physically occupying and creating boundaries on the use of public access areas; (2) reducing the free flow of pedestrian traffic in and around the pavilion; (3) obstructing views of the bay; and (4) reducing the amount of daylight that enters the pavilion. As a result of Scott’s unauthorized actions in violation of the Permit, the pavilion is no longer the covered but fully outdoor open space authorized by the Permit. Scott’s has made the pavilion a substantially more confined and less open and airy space that is now open to views and access on only two sides (with a permanent metal frame door on one of those sides) – rather than open on all four sides.

Thus, the Commission's Design Review Board ("DRB") found that the as-built pavilion modifications have compromised the physical and visual public access as required; that the permanent metal entry door frame should be removed in part because it makes the public space feel private and creates a physical and visual obstruction; that views through the pavilion to the Bay should be maintained such as by shortening or removing the 40 foot long north wall (though one member recognized its screening function between the public access and delivery areas); that the storage area and west side wall extension block public access and represent a restaurant extension; and that the pavilion walls should be more transparent to allow for greater visibility into the pavilion when it is in private use. DRB meeting minutes, Feb. 10, 2014. These comments by the DRB indicate the adverse impacts to public access resulting from the unauthorized construction.

Scott's seeks to minimize its pavilion overuse violations by asserting that it "has considered public/community charitable non-profit events in excess of 73 total usage days to still be compliant with the permit requirement of 'Public Use Days.'" SOD at 28:7-9. For reasons discussed above, there is no merit to Scott's new and novel interpretation of the Permit, just as there is no merit to its incredible claim that it "did not exceed its 73 annual allotment" of private use days for the last six years." *Id.* at 2:24-25.

There are two different sources of information regarding the number of days that Scott's used the pavilion for private events over the past six years: (1) a summary chart included in Scott's Statement of Defense (and presumably based on Scott's pavilion event

invoices); and (2) pavilion usage reports provided to staff by the Port and that are the basis for the pavilion overuse allegations in the Complaint). There are some discrepancies in the data from these two sources as shown below:

<b>Private Use Days/Year</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Scott's Summary (L. Gallagher Declaration, Ex. C)	80	82	93	86	69	76
Complaint (based on Port pavilion usage reports)	85	194	158	94	73	

Staff has been unable to determine the reason or reasons for these discrepancies between the information reported by the Port and Scott's, respectively. However, staff believes that it is likely that the probable source for most if not all of the discrepancies is that the Port reports the pavilion as being used for a private event on any day in which Port security observes that the pavilion walls are closed. Thus, if Scott's fails to open the pavilion walls promptly after an evening event, and Port security observes that the walls are closed the following morning, the Port may properly report two days of pavilion usage whereas Scott's would report only one day of private use.

In any case, the important point here is that even looking solely at Scott's data, it exceeded the annual private use limit of 73 days in five of the past six years. Moreover, since staff commenced its enforcement investigation in 2013, Scott's exceeded the annual private use limit 20 times in 2013, 13 times in 2014, and 3 times in 2016. Putting aside Scott's disingenuous claim that it considers use of the pavilion for charitable events to be exempt from the Permit's use limitation – which, as noted previously, it made for the first time in December 2016 – Scott's pavilion overuse violations can only be characterized as knowing and intentional.

On a different issue, Scott's admits that "a promotional vehicle was occasionally parked in the Franklin or Broadway Street Plazas." Scott's SOD at 16:28-17:1. However, Scott's regular display of a car for 30 days per year over an 11-year-period (Complaint at 18) is not an occasional use of the Broadway Street Plaza. Moreover, the Complaint cites evidence of an additional 34 times when Scott's placed event-related materials in the Franklin Street plaza.<sup>10</sup>

**B. Degree of Culpability; Voluntary Removal or Resolution Efforts.** Scott's incorrectly claims that the movable wall panels it installed unilaterally "are specifically allowed by the BCDC permit." Scott's SOD at 39:13-14. Similarly, Scott's mischaracterizes its unauthorized construction as nothing more than "minor modifications to a previously permitted structure." Id. at 39:10. Nowhere does Scott's acknowledge that it knowingly and intentionally commenced and completed construction of its pavilion enclosure system in complete disregard of the direction provided by Commission staff and without the necessary staff or Commission approval.

To put Scott's conduct in context, after it contacted staff to inquire about replacing the fabric curtains, between December 4, 2011, and November 20, 2012, BCDC staff conducted five site visits, reviewed five sets of plans, prepared three design review letters and exchanged additional information with Scott's via emails and telephone calls. By November 20, 2012, Scott's proposal had been significantly improved as a result of staff input, but still included a permanent metal entry doorway among other features that staff stated were inconsistent with the Permit, could not be authorized by plan approval, and required review by the Commission. Thus, at the time Scott's commenced construction of the replacement pavilion enclosure system, Scott's was well aware that its construction required but lacked authorization from BCDC. In fact, Scott's representative Mr. Hanson concedes in a letter to Ms. Miramontes of

---

<sup>10</sup> In discussing unpermitted use of the Franklin and Broadway Street plazas, the Complaint mistakenly cites R Hirata's 3/31/2005 letter and accompanying photographs. Complaint at Section VII.G.3.b. The correct citation should be to Joyce Washington's April 23, 2004 letter and attachments.

BDCC, dated January 16, 2013, that Scott's had proceeded absent the necessary BCDC plan review and approval. Nevertheless, Scott's continued construction after being contacted by staff by telephone and in writing that its project was not authorized.

In 2013, BCDC staff continued to work with Respondents on their applications to amend the Permit to seek after-the-fact authorization for certain aspects of the unpermitted construction (while continuing to request removal of the metal entry doorway). In both its application filing letter and its enforcement letter, each dated May 16, 2013, staff outlined in detail the information required from Respondents to file their pending applications as complete and the schedule that should be followed to avoid a formal enforcement proceeding. Staff subsequently extended its initial time frame to commence a formal enforcement proceeding by more than two years. Yet, despite this additional time, Respondents fulfilled only one of five directives from staff by submitting six years of past-due pavilion event reporting. However, Respondents did not: (1) remove the metal entry doorway, storage area, and planters from the Commission's jurisdiction; (2) submit and obtain staff approval of plans for the retractable wall panel system; (3) submit and obtain staff approval of a legal instrument to dedicate the pavilion as public access; or (4) install all of the required public access improvements. In other words, Scott's failed to make a good faith effort to resolve the alleged violations, ultimately causing staff to elevate this enforcement matter to the Commission.

Scott's now claims that the unauthorized construction violations can be easily remedied because in December 2016, it obtained a permit from the City of Oakland to replace the metal entry door frame with a retractable door frame. However, for over four years, from December 2011, when Scott's first contacted BCDC about replacing the fabric curtains, through early 2016, Scott's insisted that the metal entry doorway was necessary and falsely cited alleged City of Oakland requirements as the reason. On February 5, 2016, City of Oakland Building and Planning Department officials informed BCDC's Adrienne Klein that, contrary to

Scott's claims, the City could approve a pavilion enclosure system without the metal entry doorway. Thus, Scott's could have obtained approval at any time from the City of plans that did not include the metal frame entry doorway, but failed to do so until December 2016.

Scott's complains that "BCDC never asked for private event schedules for years yet now seeks to penalize Scott's for not providing them." Scott's SOD at 27:17-18. Scott's fails to acknowledge that it is Scott's obligation to comply with the Permit's requirements – in this case, to provide quarterly event schedules in the manner and on the dates specified in Permit Special Condition II.B.2.c – not BCDC staff's obligation to request required documentation.

Finally, as discussed in detail above, Respondents have failed to record the public access guarantee required by the Permit despite the fact that BCDC staff provided all the information necessary to achieve compliance with this requirement in a letter dated December 12, 2013.

**C. Whether the Proposed Penalty Will Impact Scott's Ability to Remain in Business.**

The statutory factors to be considered in determining the amount of an administrative civil penalty include "with respect to the violator, the ability to pay, [and] the effect on ability to continue in business." Gov't Code § 66641.9(a). With its Statement of Defense, Scott's has provided "profit/loss" financial statements that include an annual net profit figure for each of the years 2008 through 2016 (and it also provided such statements for 2014 and 2015 in response to the subpoena issued by the Executive Director). Of the net profit figures provided by Scott's, those of the most recent years, 2014-2016, are the most relevant for evaluating

Scott's ability to pay and the effect of a penalty on its ability to continue in business. Although there are some discrepancies in the figures in Scott's documents, the annual and average net profits earned by Scott's for the past three years are as follows:

2014	\$664,199
2015	\$578,375 <sup>11</sup>
2016	\$403,074 <sup>12</sup>
<b>Annual Average Net Profit, 2014-2016</b>	<b>\$548,549</b>

Scott's claims it has earned an average annual net profit of only \$30,751 from use of the pavilion from 2008 through 2016. Scott's SOD, at 13:18-19. Scott's calculated this figure from pavilion event statements (*i.e.*, invoices) for this period that it submitted with its Statement of Defense. Staff suggests that Scott's claimed average annual net profit from use of the pavilion is not an appropriate measure of Scott's ability to pay or the effect of any penalty on its ability to remain in business. Staff believes that average annual net profit from use of the pavilion is too narrow a consideration in that it relates only to the potential economic benefits realized by Scott's from the pavilion, but not to ability to pay. Moreover, Scott's pavilion event statements do not include the revenues earned by Scott's for no-host bar events, at which customers paid directly for beverages and, therefore, such charges do not appear on the event statements. From staff's analysis of the event statements for 2014-2016, pavilion events included a full or partial no-host bar approximately 53% of the time, and, thus, the event invoices substantially understate Scott's revenues (and therefore net profits) from use of the pavilion.

---

<sup>11</sup> The summary chart provided by Scott's (L. Gallagher Declaration, Ex. C) shows an annual net profit of \$445,004 for 2015, but this figure does not include an upward adjustment for depreciation shown on the December 2015 year-end profit/loss statement. (An upward adjustment for depreciation is also shown in calculating the 2014 net profit figure on the December 2015 year-end profit/loss statement).

<sup>12</sup> The summary chart provided by Scott's (L. Gallagher Declaration, Ex. C) shows an annual net profit of \$404,310 for 2016, but the December 2016 year-end profit/loss statement shows \$403,074. Both of these figures do not appear to include an upward adjustment for depreciation (as was made for 2014 and 2015) and, therefore, likely understate Scott's net profit for 2016.

Finally, Scott's claims that from 2008 through 2016 it has earned a total net profit of only \$2,968 from use of the pavilion for private events in excess of 73 days in a calendar year. *Id.* at 32:15-18. The Enforcement Committee should flatly reject any consideration of this figure because Scott's calculated that figure based on Scott's erroneous and novel view that only "for-profit" events count against the Permit's use limitations. Moreover, as with annual net profit from use of the pavilion (discussed above), Scott's claimed net profits from overuse of the pavilion, is too narrow a consideration that does not relate to ability to pay and is based on event statements that do not include revenues and profits earned by Scott's for no-host bar events. Furthermore, the incremental profits that Scott's made from overusing the pavilion relate only to the overuse violations, but not to any of its other violations of the Permit or the MPA as alleged in the Complaint.

In addition to the profit/loss statements showing annual net profit for the restaurant, Scott's has produced balance sheets for Scott's Jack London Seafood, Inc. for 2014 and 2015 in response to the subpoena issued by the Executive Director. Those balance sheets include the following figures that are relevant to Scott's ability to pay and the effect of any penalty on its ability to continue in business:

<b>Balance Sheet Description</b>	<b>2014</b>	<b>2015</b>
Inter Company Account Receivable (Current Asset)	\$6,048,315	\$6,646,394
Total Current Assets	6,847,473	\$7,229,226
Retained Earnings	\$4,996,157	\$5,394,308
Total Stockholders Equity	\$5,975,582	\$6,245,857

It seems clear from these balance sheet figures that Scott's has the ability to pay the penalty proposed by staff in the Complaint or any alternative penalty amount that the Commission may impose in the exercise of its discretion.

## **VI. RECOMMENDATION**

The Executive Director recommends that the Enforcement Committee adopt the accompanying proposed Cease and Desist and Civil Penalty Order No. CDO 2017.01 ("Order") to Scott's Jack London Seafood, Inc. and the Port of Oakland.

BCDC Staff Summary and Analysis of Scott's Jack London Seafood, Inc. Event Invoices for the Years 2014 - 2016

Date	Name	Duration (in hours)	Facility Rental Fee	Total Payments Received	No Host Beverage - Paid for by Guest of Client (yes or no)	Remarks	Discounts (yes or no)	Remarks
1/11/14	Brown and Caldwell	5:45	\$350.00	\$13,260.00	no		no	
1/19/14	Laurie and Ariel's Wedding Reception	6:15	\$750.00	\$22,500.00	no		no	
1/25/14	Natassia and Ryan's Wedding Reception	8:00	\$1,300.00	\$12,417.00	yes	3.00, 5.00, 9.00	yes	Discounted corkage fee (wine on own)
2/8/14	Energy Recovery Inc.	5:45	\$375.00	\$17,676.00	yes	no host cash bar for all additional beverages	no	
3/8/14	Circus Theater	5:30	\$650.00	\$5,197.99	no		yes	\$900 savings
3/8/14	Bar Mitzvah	7:00	\$1,250.00	\$16,960.79	no		no	
3/14/14	Williams Chapel 75th Anniversary	5:45	\$500.00	\$7,728.54	yes	\$9.00 and \$3.00	no	
3/17/14	Masquerade Ball	4:00	\$250.00	\$5,376.00	yes	No drink prices listed. Guests limited to 3 drinks/person via a wrist band	no	
3/22/14	Serenity House Cotillon Fundraiser	6:30	\$500.00	\$8,950.00	yes	3.00 non alcoholic only;	yes	Room rental reduced - savings of \$750. Waived bar set up fee: \$200. Waived dance floor set up fee: \$300. Waived audio visual: \$450. total savings \$1,700
3/29/14	Medical Fundraiser	7:25	\$500.00	\$16,709.32	no		yes	Special Corkage Fee. \$1,250 room rental, 200 bar set up, special entrée price 3.00 pp \$900, AV \$200, total one time discounts \$2,550
4/17/14	Safe Passages	3:00	\$375.00	\$4,830.88	yes	3.00, 5.00, 9.00		\$1,250 room charge lowered to \$373 and \$100 bar charge waived. \$975 savings
4/24/14	Women in Logistics	5:00	\$500.00	\$6,267.50	yes	3.00, 5.00, 9.00 (Says it's for 200 during lunch)	yes	\$750 room rental, \$100 bar set up fee - total discounts \$850
4/26/14	Alcosta Who	3:00	\$1,250.00	\$12,358.26	yes	no drinks prices listed	no	
4/26/14	SSF LLP Annual Dinner Dance	6:00	\$1,250.00	\$144,551.50	yes	partial	no	
4/27/14	Home Swett Alpha Gamma Delta	5:30	\$250.00	\$10,134.82	yes	3.00, 5.00, 9.00	yes	1000 room rental, \$825 iced tea, \$100 bar set up fee - total discounts \$1,925
4/29/14	League of Women Voters of Oakland	6:00	\$500.00	\$18,069.56	yes	no drinks prices listed	yes	\$1,700 savings
5/3/14	Harbor House Gala	8:00	\$1,000.00	\$12,192.30	yes	no drinks prices listed	no	
5/3/14	D and A's Wedding Reception	6:00	\$500.00	\$11,833.04	yes		3 yes	\$1,650 savings
5/10/14	Kevin and Emily's Wedding	3:30	\$500.00	\$11,198.66	no		no	
5/10/14	CSUEB & MSW 10 Year Celebration	4:00	\$1,250.00	\$14,578.03	yes	3.00, 5.00, 9.00	no	
5/21/14	Touro U Reception	3:30	\$1,250.00	\$7,197.27	yes	No drink prices listed. Guests limited to 2 drinks tix per person	no	
5/24/14	E and E's Wedding Reception	6:45	\$650.00	\$14,942.16	yes		3 no	
5/25/14	Naval Academy Parents club	6:30	\$0.00	\$5,019.67	yes	no drinks prices listed	yes	one glass wine/person hosted by scott's
6/5/14	Alameda County Public Health	4:00	\$500.00	\$10,025.38	yes	3.00, 5.00, 10.00	yes	\$1,100 savings
6/7/14	Lighthouse community Charter	5:45	\$500.00	\$4,508.24	yes	3.00 non alcoholic only;	yes	\$950 savings
6/10/14	St Mary's college HS	5:00	\$550.00	\$7,860.21	yes	partial; as in for add'l drinks beyond what's hosted 1 drink / person	yes	\$275 savings
6/17/14	A Gathering of Leaders Welcome Reception	5:45	\$1,250.00	\$20,993.52	yes	3.00, 5.00, 10.00. partial; as in for add'l drinks beyond what's hosted 1 drink / person	no	
6/21/14	S and H's Wedding	5:30	\$300.00	\$4,475.98	no		no	
6/21/14	L and M's Wedding	6:30	\$1,550.00	\$14,691.02	yes	3.00, 5.00, 9.00	yes	\$1,080 savings
6/24/14	Celebrating Faith's 20 Years	5:00	\$375.00	\$15,874.50	no		no	
8/2/14	JM and TS Wedding	8:15	\$750.00	\$11,651.66	yes	partial; 3.00, 5.00, 9.00	yes	\$2,455 in one time discounts
8/3/14	T and P Wedding	3:40	\$900.00	\$21,810.00	no		yes	\$2,300 Southern Family Discounts

BCDC Staff Summary and Analysis of Scott's Jack London Seafood, Inc. Event Invoices for the Years 2014 - 2016

Date	Name	Duration (in hours)	Facility Rental Fee	Total Payments Received	No Host Beverage - Paid for by Guest of Client (yes or no)	Remarks	Discounts (yes or no)	Remarks
8/9/14	Garner Wedding	9:30	\$850.00	\$22,601.45	no		yes	\$300 pavilion fee waived
8/23/14	S Bat Mitzvah	3:00	\$1,250.00	\$8,029.38	no		yes	\$250 savings - dance floor and bar set up waived
9/4/14	Reception with Congressmembers Lee and Ellison	3:00	\$500.00	\$7,791.76	yes	partial; 3.00, 5.00, 10.00	yes	\$950 savings- reduced room rental, waived bar and AV set ups
9/13/14	Emilio's Celebration of Life	4:00	\$0.00	\$0.00	no			
9/13/14	E S Wedding	8:00	\$1,250.00	\$6,332.03	yes	3.00, 5.00, 9.00	no	
9/15/14	PUBLIC HEALTH INST.	3:00	\$750.00	\$10,260.17	NO		NO	
9/22/14	CHAPEL OF THE CHIMES	3:00	\$0.00	\$9,251.49	NO		YES	DISCOUNT = \$1575
9/26/14	KPLA ANNIVERSARY	4:30	\$625.00	\$1,345.28	YES	3, 5, 9, 9	NO	
9/27/14	WEDDING	10:00	\$1,250.00	\$19,746.00	NO	NO HOST AFTER 10:45 PM - 3, 5, 10, 10	YES	DISCOUNT = \$2475
10/3/14	SF HISPANIC AFFAIRS COUNCIL	2:30	\$500.00	\$7,483.50	YES	3, 5, 10, 10	YES	DISCOUNT = \$950
10/9/14	TUOLUMNE RIVER TRUST	5:00	\$1,250.00	\$8,597.54	NO		YES	DISCOUNT = \$65
10/10/14	WEDDING RECEPTION HAYWARD HIGH	6:15	\$500.00	\$14,556.30	NO	NO HOST AFTER 10 PM - 10, 5, 10	YES	DISCOUNT = \$950
10/11/14	REUNION	8:15	\$1,250.00	\$9,779.64	YES	3, 5, 9, 9	NO	
10/16/14	WOMAN LAWYERS OF ALAMEDA CTY	7:00	\$500.00	\$6,873.98	YES	3, 5, 10, 10	YES	DISCOUNT = \$2000
10/17/14	HOLY NAMES HIGH	7:00	\$250.00	\$8,709.10	YES	3, 5, 10, 10	YES	DISCOUNT = \$1100
10/18/14	WEDDING	5:00	\$1,250.00	\$18,057.71	NO		NO	
10/23/14	KAISER PERMANENTE DINNER	5:30	\$1,250.00	\$29,653.45	NO		NO	
11/8/14	WEDDING RECEPTION	4:30	\$650.00	\$16,149.22	NO		YES	DISCOUNT = \$600
11/9/14	CELEBRATION OF LIFE NAT'L LATINO PEACE OFFICERS ASSOC.	5:00	\$0.00	\$5,788.65	NO		YES	DISCOUNT = \$1350
11/10/14		7:45	\$0.00	\$1,497.66	YES		YES	DISCOUNT = \$1800
11/12/14	NFBPA	5:00	\$500.00	\$5,932.56	NO		YES	DISCOUNT = \$750
11/15/14	AHC GALA	5:00	\$500.00	\$12,145.07	NO		YES	DISCOUNT = \$1150
11/19/14	BOXING EVENT	14:30	\$0.00	\$0.00	NO		YES	BAL. DUE = \$22,112.22 DISCOUNT = \$2975
11/21/14	KAPPA GAMMA DELTA DINNER	4:30	\$300.00	\$4,202.17	YES	3, 5, 9, 9	YES	DISCOUNT = \$500
11/22/14	BIRTHDAY PARTY	8:45	\$1,250.00	\$9,123.30	YES	3, 5, 9, 9	NO	
12/5/14	AMC, LLC	3:00	\$500.00	\$5,384.60	NO		YES	DISCOUNT = \$850
12/5/14	EBPMG PARTY	6:45	\$650.00	\$22,432.63	NO	HOST UNTIL 10 PM. BEER/WINE = 5/10 THEREAFTER	NO	
12/6/14	RETIREMENT PARTY	3:00	\$0.00	\$4,813.44	YES	3, 5, 10, 10	YES	DISCOUNT = \$750
12/6/14	MIZUHO	5:15	\$1,650.00	\$42,598.89	NO	2 DRINKS/PERSON. 3, 5, 9, 9 AFTER LIMIT REACHED	YES	BAR SET-UP FEE WAIVED, \$ UNKNOWN
12/7/14	HOME DEPOT HOLIDAY PARTY	5:00	\$625.00	\$10,203.49	YES	3, 5, 10, 10	YES	DISCOUNT = \$1450
12/10/14	STEM CELL ENERGETICS	5:00	\$750.00	\$12,514.16	NO		YES	DISCOUNT = 600
12/11/14	PREMIER NUTRITION	5:45	\$650.00	\$16,096.68	NO		NO	
12/12/14	BIG FISH GAMES	5:30	\$1,250.00	\$19,215.86	NO		NO	
12/13/14	BAY AREA BEVERAGE WASTE MGT	6:00	\$0.00	\$14,325.87	NO		YES	\$200 CORKAGE FEE HOSTED BY SCOTT'S
12/15/14	RETIREMENT	4:00	\$400.00	\$13,541.51	NO		YES	DISCOUNT= \$850
12/16/14	COST PLUS	2:45	\$0.00	\$21,900.11	NO		YES	SPECIAL CORKAGE FEE \$5/BTL, BAR-SET-UP CHARGE HOSTED BY SCOTT'S - SAVINGS \$ UNKNOWN.
12/17/14	ALTA BATES SUMMIT	7:00	\$250.00	\$5,277.20	NO		YES	DISCOUNT= \$1150
12/18/14	BISHOP O'DOWD	4:00	\$600.00	\$5,445.64	NO		YES	WAIVED CORKAGE FEE, \$ UNKNOWN. OTHER DISCOUNT = \$600
12/20/14	SAN RAMON VALLEY FD	5:45	\$900.00	\$6,559.62	NO	2 DRINKS PP	YES	BAR SET-UP FEE WAIVED
1/8/15	Calypso Technology	4:30	\$1,250.00	\$16,230.00	NO		No	
1/10/15	La Terra Fina	6:00	\$1,250.00	\$18,722.28	No		No	
1/17/15	Mid Labs	6:00	\$850.00	\$8,817.20	No		Yes	

BCDC Staff Summary and Analysis of Scott's Jack London Seafood, Inc. Event Invoices for the Years 2014 - 2016

Date	Name	Duration (in hours)	Facility Rental Fee	Total Payments Received	No Host Beverage - Paid for by Guest of Client (yes or no)	Remarks	Discounts (yes or no)	Remarks
1/24/15	Albert's 70 B'day	2:30	\$1,250.00	\$14,367.07	No		No	
1/31/15	Greg Peyton 10 Anniv.	6:00	\$1,250.00	\$5,504.50	No		No	Non-alcoholic bev. Only
2/26/15	Scott's Bridal Faire	4:30	\$0.00	\$1,843.00	Yes		Yes	no host, exc. Champagne
2/27/15	St. Vincent Day Home	7:00	\$0.00	\$9,648.27	Yes		Yes	no host, exc. Dinner wine
3/5/15	KP Executive Present'n	5:00	\$500.00	\$18,294.00	No		Yes	Non-alcoholic bev. Only
3/7/15	Prescott Circus Theat.	5:30	\$650.00	\$4,863.58	No		Yes	Non-alcoholic bev. Only
3/7/15	Van Curen Wedding	6:00	\$1,550.00	\$9,574.56	Yes		No	Wine but otherwise NA
3/14/15	Serenity House Cotillion	6:30	\$500.00	\$8,916.20	Yes		Yes	Non-alcoholic bev. Only
3/15/15	Sopia's Bat Mitsvah	6:30	\$650.00	\$7,888.42	No		Yes	
3/22/15	Bay Nature	7:30	\$0.00	\$18,768.68	Yes		Yes	
3/28/15	Yoshii/Nguyen Luncheon	3:30	\$926.50	\$15,924.46	Yes	Partial	No	
3/28/15	Bill's 50th Birthday	8:30	\$1,090.00	\$7,697.14	Yes	Partial	No	
4/11/15	Cindy and Bernardo's Wedding	6:45	\$1,090.00	\$14,103.29	Yes	Partial	No	
4/18/15	Alcosta WHO	3:00	\$1,362.50	\$13,851.15	Yes	Partial	No	
4/20/15	Crocker Highlands Fundraiser	15:00	\$1,798.50	\$21,758.58	Yes	Partial	Yes	Room rental and A/V setup reduced; Bar set up waived.
4/25/15	Trenza 20th Anniversary Dinner	6:00	\$1,362.50	\$7,955.04	Yes	All	No	
5/2/15	Harbor House Ministries	7:00	\$1,362.50	\$12,119.49	Yes	All	Yes	A/V and bar set up waived.
5/7/15	Safe Passages 20th Anniversary	4:30	\$1,090.00	\$6,570.52	Yes	Partial	No	
5/8/15	Steve Rayburn Retirement Party	6:30	\$708.50	\$8,898.54	Yes	All	No	
5/9/15	Anderson and Bezaitis Wedding	8:45	\$681.12	\$15,512.23	Yes	Partial	Yes	Room rental and corkage fee reduced; dance floor, bar set up and cake cutting fee waived.
5/21/15	ACBA VLSC Justice for All: Celebrating Pro Bono	6:00	\$1,362.50	\$1,764.40	Yes	Partial	No	
5/23/15	Herbet and Amerae's Wedding	5:45	\$1,362.50	\$9,907.66	Yes	Partial	No	
5/30/15	Katharine and Vic's Wedding	6:30	\$1,090.00	\$16,954.73	No		No	
6/11/15	Marcus Johnson Celebration of Life	3:00	\$545.00	\$11,510.40	No		Yes	room rental reduced, bar set up fee waived, av mic waived
6/18/15	Sungevity Townhall Meeting	3:00	\$1,362.50	\$1,445.25	No	No food or beverage, just meeting	No	
6/18/15	Mechanical Contractors	3:30	\$408.75	\$6,620.26	No		No	
6/20/15	See Jane Run	5:30	\$1,689.50	\$2,680.31	Yes		No	
6/26/15	The Arc of Alameda County Awards Banquet	6:45	\$545.00	\$7,494.40	Yes		Yes	room rental reduced, bar set up fee waived, av fee waived
6/27/15	Wedding Reception	6:00	\$926.50	\$9,517.44	No	Non-alcoholic (included in total)	yes	Bar set up fee waived (\$100)
7/3/15	Wedding Reception	5:45	\$272.50	\$19,224.88	No		yes	room charge lowered, bar set up waived, dance floor waived (\$1200 savings)
7/4/15	Wedding Reception	7:00	\$1,362.50	\$22,397.76	No		yes	waived bar setup and reduced dancefloor setup (\$300)
7/29/15	Sungevity Townhall Meeting	3:30	\$1,368.75	\$1,450.88	No	No food or beverage, just meeting	No	
7/29/15	Ecco Summer Week	3:00	\$711.75	\$20,264.07	No	Non-alcoholic (included in total)	No	
8/8/15	Wedding	6:00	\$1,368.75	\$21,125.18	Yes	partial- no host bar after 10PM, so the majority of cost is included in total	Yes	bar setup, dance floor fee, ceremony, cake cutting (\$1100 total)
8/13/15	Award Ceremony	5:00	\$1,697.25	\$21,113.79	No		Yes	2 bar setups waived, all AV rental fees waived (\$750 total)
9/14/15	Chapel of the Chimes	4:15	\$547.50	\$9,710.46	No	Non-alcoholic (included in total)	Yes	room charge lowered, bar setup fee waived, av fee waived (\$1574 total)
9/21/15	Wine and Spirit Trade show	8:30	\$1,432.50	\$21,511.28	No	Client provided all alcohol	No	
9/26/15	Celebration of Life	4:00	\$985.50	\$5,256.00	Yes	Partial. Hosted non-alcohol, no host alcohol	Yes	waived av rentals (\$300 total)
10/3/15	Birthday	5:00	\$0.00	\$8,584.80	Yes		No	No discount listed but no facility rental fee
10/9/15	High School Fundraiser	7:00	\$547.50	\$10,330.23	Yes	Partial- wine included with dinner	Yes	room charge lowered, bar set up fee waived (\$850 total)
10/17/15	High School Reunion	5:00	\$1,368.75	\$8,371.49	Yes		No	
10/24/15	Wedding	6:15	\$1,095.00	\$8,930.38	No	hosted non-alcoholic bar and client brought wine and paid corkage fee	no	

BCDC Staff Summary and Analysis of Scott's Jack London Seafood, Inc. Event Invoices for the Years 2014 - 2016

Date	Name	Duration (in hours)	Facility Rental Fee	Total Payments Received	No Host Beverage - Paid for by Guest of Client (yes or no)	Remarks	Discounts (yes or no)	Remarks
10/28/15	Women lawyers of alameda county	7:00	\$547.50	\$7,036.91	Yes		Yes	discount on venue, av and bar setup fee (\$1400 total)
11/4/15	Amateur Boxing	15:00	\$0.00	\$12,833.20	Yes		Yes	room rental fee, bar setup fee, av fee (\$2975 savings)
11/5/15	Sungevity Townhall Meeting	4:15	\$1,368.75	\$1,450.88	No	No food or beverage, just meeting	no	
11/7/15	Wedding	7:00	\$0.00	\$8,394.27	No	Client provided wine, paid corkage fee	Yes	room charge, bar setup, dance floor waived (\$1550 savings)
11/21/15	Birthday	6:00	\$547.50	\$6,333.04	Yes	Client provided non-alcoholic	Yes	room charge lowered, bar set up fee waived (\$850 total)
11/27/15	Memorial	3:00	\$0.00	\$7,665.00	Yes		Yes	invoice says Gallagher hosted pavillion, food, av however the \$7665 charge is for food. Maybe there was a discount?
12/3/15	Chamber of Commerce	5:30	\$273.75	\$12,658.20	Yes		Yes	room charge lowered, bar setup fee waived (\$1100 savings)
12/4/15	Holiday Lunch	3:00	\$1,368.75	\$12,651.63	No		No	
12/4/15	Memorial	3:30	\$547.50	\$4,724.93	Yes		Yes	room charge lowered, bar set up fee waived (\$850 total)
12/5/15	Holiday Party	5:00	\$1,368.75	\$48,707.72	No		No	
12/7/15	Dinner Meeting	4:00	\$657.00	\$13,462.81	No	Hosted beer and wine	No	
12/11/15	Memorial	3:00	\$273.76	\$7,166.78	Yes	Hosted non-alcoholic	Yes	(\$1000 off room charge, \$100 bar setup fee waived (\$1100 total)
12/11/15	Holiday Dinner	5:00	\$1,368.75	\$16,142.38	No		Yes	\$200 dance floor waived
12/12/15	Holiday Party	4:45	\$1,368.75	\$12,882.47	Yes		No	
12/17/15	Sungevity Townhall Meeting	3:15	\$1,368.75	\$1,450.88	No	No food or beverage, just meeting	No	
12/17/15	Holiday Party	6:00	\$410.63	\$25,299.98	No	Hosted beer and wine	Yes	room charge lowered, bar set up fee waived (\$975 total)
12/18/15	Holiday Party	3:00	\$547.50	\$6,398.30	Yes	Hosted non-alcoholic	No	
12/18/15	Holiday Party	4:30	\$547.50	\$8,368.70	Yes	Hosted non-alcoholic and wine	Yes	lowered room charge by \$750, waived bar setup and dance floor (\$1050 total)
12/19/15	Wedding Reception	4:30	\$547.50	\$16,864.10	No	Hosted beer and wine, no alcohol available	Yes	waived cake cutting and dance floor set up; reduced pavillion rental by \$1k (Savings of \$1600)
1/2/16	Jan's 53 & FREE Retirement Celebration	6:00	\$383.25	\$11,076.58	Yes	No host/cash bar for all additional beverages	Yes	Room rental waive (\$650 saving) Champagne Toast Waived (\$1,500 savings) via Christmas Tree Promo
1/9/16	Teresa's Quinceanera	7:00	\$0.00	\$6,953.25	Yes	Offer all beverage (guests responsible for charges) Sodas \$3 Beer \$5 cocktails \$10	No	
1/16/16	La Terrra Fina Holiday Event	5:45	\$1,368.75	\$20,890.52	Yes	No host/cash bar for all additional beverages. Drink tickets (two drink tickets per person) "estimate" total \$5,581.20	No	
2/6/16	Yaminah & Benjamin's wedding	2:25	\$1,095.00	\$12,996.99	Yes	No host beverages with exception of champagne toast. Soda \$4, Beer \$6, Scott's \$12, Coacktails \$12	No	
2/13/16	Sandre Swanson for Senate 2016 Red & White Gala	3:45	\$1,095.00	\$11,633.28	Yes	Soda \$3, Beer \$5, Scott's \$10, Coacktails \$10	No	
2/24/16	Oakland military institute fundraiser luncheon	4:30	\$0.00	\$5,840.73	No		No	
2/25/16	Scott's 2016 Wedding Faire	4:30	\$0.00	\$1,542.86	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	No	
2/27/16	Prescott Circus Theatre	6:30	\$547.50	\$6,018.12	No		No	
2/27/16	Super Star Literacy 4th annual Gala	9:00	\$1,697.25	\$20,116.17	No		No	
2/29/16	SF Geotechnical Institute	2:30	\$273.75	\$1,730.10	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	No	
3/11/16	Mills College	3:45	\$273.75	\$5,475.00	Yes	Beer, wine, soda and champagne	No	
3/19/16	Trish's 50th Birthday	2:45	\$410.63	\$3,283.91	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	No	
3/26/16	Serenity House Cottillion Fundraiser Dinner	6:30	\$547.50	\$8,957.10	Yes	but no alcoholic beverage served at this event	No	
4/2/16	Cernoria's retirement celebration	1:00	\$1,368.75	\$12,968.36	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	No	
4/6/16	Sungevity Twonhall Meeting	4:15	\$2,025.75	\$3,750.38	No		No	
4/9/16	Brendan & Kelly's Wedding Reception	7:00	\$1,368.75	\$12,695.87	No	all non alcoholic beverage*	No	
4/9/16	Escuela Bilingue International LA Aventura Excelente	8:30	\$2,080.50	\$25,172.11	No		No	

BCDC Staff Summary and Analysis of Scott's Jack London Seafood, Inc. Event Invoices for the Years 2014 - 2016

Date	Name	Duration (in hours)	Facility Rental Fee	Total Payments Received	No Host Beverage - Paid for by Guest of Client (yes or no)	Remarks	Discounts (yes or no)	Remarks
4/14/16	Sungevity Health Fair	7:15	\$2,025.75	\$3,750.38	No		No	
4/21/16	National Association of Remodeling "Remmies" Industry Award	5:30	\$821.25	\$10,498.86	No		Yes	\$500 room rental discount, \$100 bar set up fee, coffee service \$300. Total discounts \$900
4/23/16	Alcosta WHC	3:00	\$1,368.75	\$13,423.00	No		No	
4/23/16	Sinai Ayala's Quinceanera	3:15	\$0.00	\$8,176.00	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	Yes	Pavilion rental fee waived per Rmiro / Set up charges waived per Ramiro
4/30/16	Katrina and Mikey's Wedding Ceremony & Reception	5:00	\$1,423.50	\$13,262.64	Yes	After \$3,000 hosted bar*	No	
5/1/16	Harbor House Ministries	4:30	\$1,368.75	\$9,506.35	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	Yes	waived AV (except LCD Projector) & bar set up
5/2/16	Women In Logistic	4:30	\$219.00	\$55,997.10	Yes	Soda \$4, Beer \$6, Scott's \$12, Cocktails \$12	No	
5/5/16	ACBA VLSC Justice For All: Celebration Pro Bono	6:00	\$1,478.25	\$12,026.24	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	No	
5/11/16	Sungevity Townhall Meeting	3:30	\$2,025.75	\$3,750.38	No		No	
5/18/16	Austreberta "Bertha" Gomez	4:30	\$547.50	\$8,884.83	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	Yes	Reduced corkage rate by half; Reduced Pavilion rental by \$750
5/19/16	Scott's Seafood Celebrating 40 Years	2:30	\$0.00	\$8,317.79	Yes		No	
5/20/16	OPD Graduation Celebration	4:00	\$602.25	\$9,042.51	No		Yes	Discounted Pavilion by \$700 / Waived Dance Floor Charge
5/28/16	Lyca and Eugene's Wedding Reception	4:00	\$1,368.75	\$12,147.93	Yes	Beer \$5, Cocktails \$10	No	
6/7/16	Joint Annual Award Dinner	4:00	\$876.00	\$9,608.84	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	No	
6/8/16	Sungevity Townhall Meeting	3:30	\$2,025.75	\$3,750.38	No		No	
6/15/16	Chow Wedding Reception	3:00	\$1,368.75	\$11,477.78	No		No	
6/17/16	The Arc of Alameda County Awards Banquet	6:45	\$547.50	\$8,129.28	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	Yes	Room rental lowered saving \$750, Bar set up fee waived saving \$200, Audio visual fee waived saving \$350
6/18/16	Ken & Tina's wedding reception	6:00	\$1,368.75	\$15,500.00	Yes	** no alcoholic beverage	Yes	waived cake cutting fee of \$2, waived bar set up charge. Total saving of \$710
6/29/16	Sungevity Townhall Meeting	4:30	\$2,025.75	\$3,750.38	No		No	
7/9/16	Blanchard Wedding Reception	8:00	\$1,368.75	\$14,294.10	No		No	
7/17/16	Dick's 63 year and retirement celebration	4:00	\$1,368.75	\$20,599.27	No		No	
7/20/16	Sungevity Townhall Meeting	5:00	\$2,025.75	\$3,750.38	No		No	
7/27/16	ECCO 2016 Demonstration of Mastery	6:00	\$711.75	\$18,946.75	No		No	
7/28/16	Larry Blazer's Retirement Dinner	5:00	\$547.50	\$6,154.34	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	No	
7/30/16	Shelby and Evan's wedding	5:00	\$1,368.75	\$12,199.50	No		No	
8/2/16	Theodore Martin's celebration of life	1:30	\$410.63	\$7,657.34	No		No	
8/10/16	Sungevity Townhall Meeting	5:00	\$2,025.75	\$3,750.38	No		No	
8/10/16	SSA Terminals - Mr. Costa's retirement	6:00	\$410.63	\$13,063.30	No		No	
8/12/16	Alameda Health Consortium Awards Ceremony	5:00	\$1,697.25	\$22,526.34	No		Yes	2 Bar set up fee waived., all AV rental fees waived. Total savings of \$725
8/16/16	Anna's Bat Mitzvah	4:00	\$1,368.75	\$13,163.65	No		Yes	waived dance floor set up. Saving of \$200
9/2/16	Lucero & Manuel's wedding reception	5:15	\$547.50	\$13,626.84	No		Yes	dance floor waived savings \$300, cake cutting waived saving \$400 Via Kaitlyn \$700
9/10/16	Jessica's Quinceanera	8:00	\$1,368.75	\$10,700.78	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	Yes	waived dance floor fee savings \$300, waived cake cutting fee of \$2 per person, reduce corkage fee from \$18 to \$9 per bottle. Total savings of \$872
9/14/16	Sungevity Townhall Meeting	5:00	\$2,025.75	\$3,750.38	No		No	
9/19/16	Southern wine and spirit 2016 east bay trade show	8:30	\$1,423.50	\$22,364.19	No		No	
10/1/16	Alameda Hospital foundation gala	8:00	\$876.00	\$13,259.69	Yes	cocktails \$10	No	
10/5/16	WIL/PMSA	4:30	\$410.63	\$5,473.91	Yes	Soda \$4, Beer \$6, Scott's \$12, Cocktails \$12	No	
10/7/16	Oakland African American Chamber of Commerce	5:30	\$547.00	\$12,665.21	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	No	

BCDC Staff Summary and Analysis of Scott's Jack London Seafood, Inc. Event Invoices for the Years 2014 - 2016

Date	Name	Duration (in hours)	Facility Rental Fee	Total Payments Received	No Host Beverage - Paid for by Guest of Client (yes or no)	Remarks	Discounts (yes or no)	Remarks
10/8/16	SF Hispanic Affairs Advisory Council 25th Anniversary	2:30	\$657.00	\$6,641.83	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	Yes	reduced \$650 room rental, dance floor \$200. Total savings of \$850
10/12/16	Sungevity Townhall Meeting	4:30	\$2,025.27	\$3,750.38	No		No	
10/14/16	Cynthia's 25th	6:00	\$1,368.75	\$6,583.36	No		No	
10/20/16	Navis - Town hall	9:45	\$1,971.00	\$13,218.84	No		No	
10/22/16	ABWA - City by the Bay Anniversary celebration and fashion show	5:00	\$109.50	\$2,590.33	Yes	offer all beverage	No	
10/22/16	Valery's sweet 16	4:00	\$1,368.75	\$11,648.83	Yes	Soda \$4, Beer \$6, Scott's \$12, Cocktails \$12	No	
10/28/16	Holy Names High School Fund Her Future Dinner	5:30	\$547.50	\$15,501.15	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	No	
10/29/16	Boss Gala Event	5:00	\$684.38	\$15,638.25	Yes	Sodas \$3, Beer \$5, Scott's \$10, cocktails \$10	Yes	Room rental saving of \$625, dance floor fee waived saving \$200, Bar set up waived saving \$200, AV reduce by half saving \$282.50, Corkage fee reduce by \$9 eac bottle. Total savings \$1,757.50
11/4/16	Harmony Baptist Church	6:30	\$328.50	\$6,012.86	Yes	*no alcoholic beverage	Yes	Room rental saving \$750
11/9/16	Sanofi Genzyme/Relapsing MS	5:00	\$1,368.75	\$11,462.21	No		No	
11/11/16	Mom's 75th Birthday	7:00	\$1,368.75	\$9,262.61	Yes	Partial	No	
11/12/16	Art Ray's 70th Birthday Celebration	6:00	\$1,368.75	\$15,840.27	Yes	Partial	No	
11/17/16	Sungevity Townhall Meeting	4:30	\$2,025.75	\$3,750.38	No		No	
11/17/16	Rear Admiral Robert L. Toney's Memorial Reception	3:45	\$547.50	\$8,315.43	Yes	Partial	No	
11/19/16	Aelion and Boston Wedding Reception	8:00	\$1,368.75	\$13,189.49	No		Yes	Bar and dance floor set up waived
11/26/16	Annonette's 50th Birthday Celebration	7:55	\$1,368.75	\$7,000.77	Yes	Partial	Yes	Dance floor and up-lighting set up waived
12/2/16	Everett Graphics Holiday	5:00	\$438.00	\$12,028.58	Yes	Partial	No	
12/3/16	Affinity Holiday Celebration	7:00	\$657.00	\$13,910.88	Yes	Partial	No	
12/4/16	Burton's 90th Birthday Celebration	4:00	\$1,368.75	\$24,280.53	No		No	
12/7/16	AIDS Healthcare Foundation	5:00	\$684.38	\$14,156.82	Yes		Yes	Reduced rental fee
12/9/16	Alameda County District Attorney's Holiday Luncheon	2:30	\$684.38	\$5,995.13	Yes	All	Yes	Discounted rental fee; cake cutting and bar set up fee waived
12/10/16	Schindler Elevator Holiday Celebration	5:30	\$1,368.75	\$14,867.91	Yes	Partial	No	
12/10/16	Aerotek Holiday Party	6:30	\$1,368.75	\$14,867.91	Yes	Partial	No	
12/14/16	Sungevity Townhall Meeting	3:30	\$2,025.75	\$3,750.38	No		No	
12/15/16	Chef Rainey's Retirement Celebration	5:00	\$1,095.00	\$8,407.41	Yes	Partial	Yes	Holida booking special; bar set up fee waived
12/15/16	A Plus Tree's 5th Annual Wood Awards	7:55	\$1,368.75	\$17,741.85	No		No	
12/16/16	H2C2 and Associates, Inc.	3:00	\$547.50	\$7,184.45	Yes	Partial	No	
12/16/16	Baywood Court	6:45	\$1,368.75	\$12,509.52	Yes	Partial	Yes	Dancefloor set up waived
12/17/16	Pace Supply Holiday Dinner	7:00	\$1,368.75	\$27,817.82	Yes	Partial	Yes	Dancefloor set up waived; bar fee reduced
12/19/16	Holiday Party	5:30	\$1,368.75	\$15,301.75	Yes	Each guest provided two drink tickets (hosted); no-host/cash bar after two drink tickets used	Yes	waived dance floor and bar set up fees (\$400 total)

**Revised Summary of Violations and Proposed Administrative Civil Penalties**  
**Scott's Jack London Seafood In., and the Port of Oakland (BCDC permit No. 1985.019.09B)**  
**Calendar Years 2004-2016**

Page 1 of 2

<b>Violation Category</b>	<b>Duration in Days</b>	<b>Minimum Penalty at \$10/day</b>	<b>Maximum Penalty at \$2,000/day</b>	<b>Daily Proposed Penalty</b>	<b>Total Proposed Penalty</b>
Construction of Unpermitted Development (4 violations)	913	\$9,130	\$120,000 (capped at \$30,000 per violation)	\$1,000/day (capped at 30 days x 4 violations)	\$120,000
Non-compliant Use of the Pavilion (Six different types of private, non-compliant use, each with different levels of daily penalties)	See Page 2	\$10,258* See page 2	\$2,051,600* See page 2	See Page 2	\$439,180* See page 2
Unauthorized Private Uses of the Public Franklin and Broadway Street Plazas (as of 7/1/2015)	394	\$3,940*	\$788,000*	\$250/day	\$98,500*
Untimely Submittal of Private Event Schedules (17 late or missing reports) (as of 7/1/2015 or 7/1/2016)	1,145	\$11,450	\$474,000 (capped)	\$100/day	\$114,500
Failure to Permanently Dedicate the Pavilion Public Access Area (as of 7/1/2015)	5,475 (365 x 15 years)	\$30,000 (capped)	\$30,000 (capped)	\$250/day	\$30,000
Failure to Install the Required Public Access Improvements in the Pavilion (as of 7/1/2015)	4,745 (365 x 13 years)	\$30,000 (capped)	\$30,000 (capped)	\$500/day	\$30,000
Failure to Obtain Plan Approval	90	\$900	\$30,000 (capped)	\$100/day	\$9,000
<b>Total</b>	<b>x</b>	<b>\$95,678</b>	<b>\$3,523,600</b>	<b>x</b>	<b>\$841,180</b>

\* Each occurrence of these violation is deemed a separate violation.

**EXHIBIT B**

**Revised Summary of Non-Complaint Use of the Pavilion and Proposed Administrative Civil Penalties**  
**Scott's Jack London Seafood In., and the Port of Oakland (BCDC permit No. 1985.019.09B)**

Page 2 of 2

<b>Specific Permit Violations</b>	<b>Duration in Days of Violation</b>	<b>Minimum Penalty at \$10/day</b>	<b>Maximum Penalty at \$2,000/day</b>	<b>Proposed Daily Penalty</b>	<b>Total Proposed Penalty</b>
Providing Fewer Than 292 Public Use Days Per Year	374	\$3,740	\$748,000	\$1,000/day	\$374,000
Providing Fewer than a Winter Season Monthly Average of Five (5) Public Use Weekend Days and Nights	2.4	\$24	4,800	\$100/day	\$240
Holding More than a Winter Season Monthly Average of Four (4) Private Events On Weekend Days and Nights	107.4	\$1,074	214,800	\$100/day	\$10,740
Holding More than a Summer Season Monthly Average of Three (3) Private Events On Weekend Days and Nights	183	\$1,830	\$366,000	\$100/day	\$18,300
Providing Fewer than Three (3) Public Use Weekend Days and Nights Per Month	20	\$200	\$40,000	\$100/day	\$2,000
Holding More than Two (2) Consecutive Private Use Days at a Time	339	\$3,390	\$678,000	\$100/day	\$33,900
<b>Total</b>	x	<b>\$10,258</b>	<b>\$2,051,600</b>	x	<b>\$439,180</b>