IN SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA,	
Plaintiff,	**Case No: 2008 CA 6897 B** **Calendar No. 7**
v.	**Judge Jeanette J. Clark**
GEORGE THANOS, *et al.*,	**CLOSED CASE**
Defendants.	
DISTRICT OF COLUMBIA,	
Plaintiff,	**Case No: 2011 CA 856 B** **Calendar No. 7**
v.	**Judge Jeanette J. Clark**
GEORGE THANOS, *et al.*,	
Defendants.	

ORDER FOLLOWING REMAND AND GRANTING PLAINTIFF'S BRIEF IN SUPPORT OF AN AWARD OF DISGORGEMENT OF REVENUE AND PROFITS FROM DEFENDANTS GEORGE THANOS, DEBORAH POINDEXTER, AND VIP THERAPY

This matter is before the Court on remand from the District of Columbia Court of Appeals, which stated that "we reverse the trial court's denial of the District's request for income disgorgement and remand for a determination whether such a remedy is appropriate in this case if so, in what amount. We affirm the trial court's findings and conclusions on all other grounds." *Thanos v. District of Columbia*, 109 A.3d 1084, 1095 (D.C. 2014).

Upon consideration of Plaintiff's Brief in Support of an Award of Disgorgement of Revenue and Profits from Defendants George Thanos, Deborah Poindexter, and VIP Therapy ("Plt's Brief") that was filed on July 17, 2015, Defendants' Brief in Opposition to

Plaintiff's Brief in Support of an Award of Disgorgement of Revenue and Profits and Defendants George Thanos, Deborah Poindexter, and VIP Therapy ("VIP & Poindexter Opposition") that was filed on August 18, 2015, Defendant Thanos' Brief in Opposition to an Award of Disgorgement from Defendant George Thanos ("Thanos' Opposition") that was filed on August 31, 2015, Plaintiff's Reply Brief to Defendants' Opposition to Plaintiff's Brief in Support of an Award of Disgorgement of Revenue and Profits from Defendants George Thanos, Deborah Poindexter, and VIP Therapy ("Reply") that was filed on September 25, 2015, the evidence and arguments presented at the Show Cause Hearing that was held on January 8, 2016, and the record herein, the District of Columbia is entitled to an award of income disgorgement from each Defendant.

I. BACKGROUND

Judge Hedge concluded after a March 22, 2010 trial that "defendants Thanos, VIP and Poindexter allowed the property to be used for prostitution-related activities." Findings of Fact, Conclusions of Law and Order, at 19, Mar. 11, 2011.

On February 10, 2012,[1] Judge Hedge issued a Permanent Injunction Against Defendants George S. Thanos, VIP Therapy, Inc., and Deborah Y. Poindexter, ("Permanent Injunction") which stated, in relevant part:

> ORDERED that, pursuant to D.C. Code § 42-3110(a), defendant George S. Thanos must obtain written consent from the District of Columbia Office of Attorney General to any rental or lease agreement that George S. Thanos, directly or indirectly, seeks to enter into for any part of 1331/1333 Connecticut Avenue, NW, Washington, D.C. 20036, with any person or entity for the remainder of George S. Thanos's ownership, directly or indirectly, of 1331/1333 Connecticut Avenue, NW, Washington, D.C. 20036; and it is further

[1] Also, on February 10, 2012, Judge Hedge issued the following additional orders: (1) Memorandum Opinion Regarding Relief ("the Court den[ied] the District's request for monetary relief as not being supported by the Statute . . . and enter[ed] injunctive relief to ensure the continued abatement of any prostitution-related activity in the commercial building owned by defendant Thanos and by the other defendants anywhere in the District.") *Id.* at 3, (2) February 10, 2011 Order, and (3) a Final Judgment.

ORDERED that, pursuant to D.C. Code § 42-3110(a), defendant George S. Thanos must obtain written consent from the District of Columbia Office of Attorney General to sell 1331/1333 Connecticut Avenue, NW, Washington, D.C. 20036, to any person or entity for the remainder of George S. Thanos's ownership, directly or indirectly, of 1331/1333 Connecticut Avenue, NW, Washington, D.C. 20036; and it is further

ORDERED that defendant George S. Thanos shall notify the District of Columbia, in writing, before defendant George S. Thanos, his agents or those acting on his behalf, directly or indirectly, sign any rental or purchase agreement for any portion of 1331/1333 Connecticut Avenue, NW, Washington, D.C. 20036, and it is further

. . .

ORDERED that, pursuant to D.C. Code § 42-3110, defendant Thanos shall reconfigure the fourth floor premises to remove the walls of the separate rooms, except for the walls bordering the current kitchen and one bathroom; and that this shall be completed within 45 days of this order . . . .

Permanent Injunction Order, at 2-3, Feb. 10, 2012.

Quoting the trial court, the Court of Appeals, ruled that

> "[T]he record and the Court's Findings of Fact are replete with examples. . . [showing] that defendant Thanos has flagrantly and arrogantly chosen to ignore the law, despite repeated notice that prostitution activities were occurring on his premises . . . . The evidence is overwhelming that [Mr.] Thanos will not abide by the law if left to his own word." These findings are not clearly erroneous and we therefore reject Mr. Thanos's contention that a permanent injunction was unnecessary to abate the nuisance and prevent its recurrence.

Thanos, supra at 1091.

The Court of Appeals went on to remark:

> [w]hile the trial court was correct in concluding that it could not award damages as a legal remedy beyond those authorized in § 42-3111, it does have the broad authority to fashion *equitable* relief for the purposes of enjoining, abating, and preventing the continuation or recurrence of a prostitution-related nuisance. *See* D.C. Code § 42-3110. [2]

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[2] D.C. Code § 42-3110 states:

> (a) If the existence of a drug-, firearm-, or prostitution-related nuisance is found, the court shall enter an order permanently enjoining, abating, and preventing the continuance or recurrence of

the nuisance. In order to effectuate fully the equitable remedy of abatement, such order may include damages as provided in § 42-3111. The court may grant declaratory relief or any other relief deemed necessary to accomplish the purposes of the judgment. The court may retain jurisdiction of the case for the purpose of enforcing its orders. A drug-, firearm-, or prostitution-related nuisance is a nuisance per se requiring abatement as provided under subsection (b) of this section.

(b) Any order issued under this section may include the following relief:

(1) Assessment of reasonable attorney fees and costs to the prevailing party;

(2) Ordering the owner to make repairs upon the property;

(3) Ordering the owner to make reasonable expenditures upon the property, including the installation of secure locks, hiring private security personnel, increasing lighting in common areas, and using videotaped surveillance of the property and adjacent alleys, sidewalks, or parking lots;

(4) Ordering all rental income from the property to be placed in an escrow account with the court for up to 90 days or until the drug-, firearm-, or prostitution-related nuisance is abated;

(5) Ordering all rental income for the property transferred to a trustee, to be appointed by the court, who shall be empowered to use the rental income to make reasonable expenditures related to the property in order to abate the drug-, firearm-, or prostitution-related nuisance;

(6) Ordering the property vacated, sealed, or demolished; or

(7) Any other remedy which the court, in its discretion, deems appropriate.

(c) In fashioning an order under this section, the court shall consider, without limitation, the following factors:

(1) The extent and duration of the drug-, firearm-, or prostitution-related nuisance and the severity of the adverse impact on the community;

(2) The number of people residing at the property;

(3) The proximity of the property to other residential structures;

(4) The number of times the property has been cited for housing code or health code violations;

(5) The number of times the owner or tenant has been notified of drug-, firearm-, or prostitution-related problems at the property;

(6) Prior efforts or lack of efforts by the defendant to abate the drug-, firearm-, or prostitution-related nuisance;

(7) The involvement of the owner or tenant in the drug-, firearm-, or prostitution-related nuisance;

(8) The costs incurred by the jurisdiction or by the community-based organization in investigating, correcting, or attempting to correct the drug-, firearm-, or prostitution-

Id. at 1093.

II. APPLICABLE STANDARD

The Court of Appeals informed that:

> income disgorgement is widely viewed as an equitable remedy. *So v. Suchanek*, 670 F.3d 1304, 1310, 399 U.S. App. D.C. 374 (D.C. Cir. 2012) ("Disgorgement is an equitable remedy entrusted to the sound discretion of the district court."); *Cnty. of Essex v. First Union Nat'l Bank*, 186 N.J. 46, 891 A.2d 600, 609 (N.J. 2006) ("It is obvious that the County's cause of action for unjust enrichment/disgorgement is an equitable claim."); *King Mountain Condo. Ass'n v. Gundlach*, 425 So.2d 569, 572 (Fla. App. 1982) ("[T]he disgorgement of secret profits . . . is an equitable remedy. . . ."). Instead of compensating victims, as damages do, income disgorgement serves to prevent unjust enrichment. *Cnty. of Essex*, 891 A.2d at 609 (the equitable remedy of disgorgement is "grounded in the theory that a wrongdoer should not profit from its wrongdoing regardless of whether the innocent party suffered any damages"); *United States v. Lane Labs-USA, Inc.*, 324 F. Supp. 2d 547, 576 (D.N.J. 2004) ("Disgorgement differs from restitution in that it . . . does not turn on compensating the victims."). Under § 42-3110, which relates to equitable remedies (as opposed to § 42-3111, which relates to damages), the court does have the authority to order income disgorgement—not as a punishment or as victim compensation, but to deprive Mr. Thanos and VIP of their ill-gotten revenues on the theory that the cross-appellees should not be permitted to retain the spoils from a prostitution-related nuisance.

The trial court's authority to award disgorgement is not unlimited, however. Disgorgement still must be "necessary" in the specific case at issue to "enjoin[], abat[e], and prevent[ ] the continuance or recurrence of the nuisance." D.C. Code § 42-3110 (a). Moreover, disgorgement assessed under the Act cannot be punitive in nature. D.C. Code § 42-3113. *See also Sec. & Exch. Comm'n v. Blatt*, 583 F.2d 1325, 1335 (5th Cir. 1978) ("The court's power to order disgorgement

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related nuisance;

(9) Whether the drug-, firearm-, or prostitution-related nuisance was continuous or recurring;

(10) The economic or financial benefit accruing or likely to accrue to the defendant as a result of the conditions constituting the drug-, firearm-, or prostitution-related nuisance; or

(11) Any other factor the court deems relevant.

(d) In fashioning an order under this section, the court shall not consider the lack of action by other property owners, tenants, or third parties to abate the drug-, firearm-, or prostitution-related nuisance.

> extends only to the amount with interest by which the defendant profited from his wrongdoing. Any further sum would constitute a penalty assessment."). And, specifically relevant to Mr. Thanos in this case, disgorgement under the catch-all provision in subsection (c)(11) cannot be used to collect rental income from the property—the statute lays out specific procedures for collecting rental income in subsections (c)(4) and (5), and a court cannot use the general catch-all provision to circumvent the Council's explicit instructions. *See Odeniran v. Hanley Wood, LLC*, 985 A.2d 421, 427 (D.C. 2009).

Id. at 1093-94.

Moreover,

> [d]isgorgement is an equitable remedy whereby a wrongdoer is forced to give up the benefits obtained as a result of his wrongdoing. *See S.E.C. v. Huffman,* 996 F.2d 800, 802 (5th Cir. 1993) ("Disgorgement wrests ill-gotten gains from the hands of a wrongdoer."). The remedy may not be used punitively, and thus a causal connection must exist between the breach and the benefit sought to be disgorged. *See S.E.C. v. UNIOIL,* 293 U.S. App. D.C. 37, 951 F.2d 1304, 1306 (D.C. Cir. 1991) ("The touchstone of a disgorgement calculation is identifying a causal link between the illegal activity and the profit sought to be disgorged."); *Wellman v. Dickinson,* 682 F.2d 355, 368 (2d Cir. 1982) ("[T]he loss complained of must proceed *directly* and proximately from the violation claimed and not be attributable to some supervening cause."); *S.E.C. v. Blatt,* 583 F.2d 1325, 1335 (5th Cir. 1978) ("Disgorgement is remedial and not punitive. The court's power to order disgorgement extends only to the amount . . . by which the defendant profited from his wrongdoing."). The decision whether to order a defendant to disgorge profits and the amount of profits to be disgorged rests within the sound discretion of the trial court. *See United Props. Ltd. v. Walgreen Props., Inc.,* 2003 NMCA 140, P 7, 134 N.M. 725, 82 P.3d 535 ("[T]he issue of how the district court uses its equitable powers to provide an appropriate remedy is reviewed only for abuse of discretion." (emphasis added) (quoted authority omitted)).

Peters Corp. v. N.M. Banquest Investors Corp., 144 N.M. 434, 443-44 (N.M. 2008).

Indeed,

> "The paramount purpose of . . . ordering disgorgement is to make sure that wrongdoers will not profit from their wrongdoing." *SEC v. Tome*, 833 F.2d 1086, 1096 (2d Cir. 1987). . . . the disgorgement amount only needs to be a "reasonable approximation of profits causally connected to the violation." *SEC v. First City Fin. Corp., Ltd.*, 890 F.2d 1215, 1231, 281 U.S. App. D.C. 410 (D.C. Cir. 1989). Further, "any risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty." *Id.* at 1232. In other words, the [District] only needs to offer a *prima facie* reasonable approximation of profits connected to the . . . violation, and then the burden of proof shifts to the defendants to rebut

> the presumption that all profits gained while the defendants were in violation of the law constituted ill-gotten gains. *Bilzerian*, 814 F. Supp. at 121.

SEC v. Whittemore, 691 F. Supp. 2d 198, 204-05 (D.D.C. 2010), *aff'd*, *SEC v. Whittemore*, 659 F.3d 1, 9-10 (D.D.C. 2011)[3].

III. ANALYSIS

The Court of Appeals cautioned that "the court does have the authority to order income disgorgement—not as a punishment or as victim compensation, but to deprive Mr. Thanos and VIP of their ill-gotten revenues on the theory that the cross-appellees should not be permitted to retain the spoils from a prostitution-related nuisance." *Thanos*, *supra*, at 1094. Furthermore, "[d]isgorgement still must be 'necessary' in the specific case at issue to 'enjoin[ ], abat[e], and prevent[ ] the continuance or recurrence of the nuisance.' D.C. Code § 42-3110 (a)." *Id.* "As the trial court recognized, it is not enough to say that 'any monetary award will help abate crime because it takes the profit out of the activity.' Disgorgement is only 'necessary' as a deterrent to prevent a recurring nuisance if there is factual support for a conclusion that the nuisance would recur without disgorgement." *Id.* at 1094, n.16.

This Court finds that income disgorgement is an appropriate remedy in this case, and the District is entitled to such relief from Defendants.

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[3] "[A] disgorgement order pertains to 'a sum equal to the amount wrongfully obtained, rather than a requirement to replevy a specific asset,' and 'establishes a personal liability, which the defendant must satisfy regardless [of] whether he retains the selfsame proceeds of his wrongdoing.' *Id.* (citing *SEC v. Shapiro*, 494 F.2d 1301, 1309 (2d Cir. 1974))." *Whittemore*, 659 F.3d at 9-10. As the Ninth Circuit similarly conclude in *Platforms Wireless*, "[a] person who controls the distribution of illegally obtained funds is liable for the funds he or she dissipated as well as the funds he or she retained." *SEC v. Platforms Wireless*, 617 F.3d 1072, 1098 (9th Cir. 2010).

A. Defendants' conduct prior to the February 10, 2012 Permanent Injunction Order supports a finding that income disgorgement is appropriate to prevent the continuance or recurrence of the nuisance.

1. **Defendant Thanos**

The trial court found that "Defendant Thanos . . . received notice of prostitution-related activities in the Property as early as 2001." Findings of Fact, Conclusions of Law and Order, at 2, Mar. 11, 2011. "By a letter dated May 19, 2008, and sent by certified mail, defendant Thanos was provided statutory notice that his tenant Supra Spa was involved in prostitution-related activities." *Id.* at 5.

Also, the trial court found:

> By letter dated August 19, 2008, the District of Columbia formally notified defendant Thanos of the July 2008 arrests[4] and asked that he abate the nuisance.
>
> Between August 19 and September 17, 2008, the District followed up with defendant Thanos. He was called by LaTonya James of the Office of Attorney General and asked to evict Super [sic] Spa. . . . ; Defendant Thanos refused because they had licenses and he did not know about them breaking any laws.
>
> By letter dated September 17, 2008, the District again notified defendant Thanos of his obligation to abate any prostitution-related nuisance at his Property and stated that if it were not done, suit would be filed.
>
> . . .
>
> By letter dated September 29, 2008, Mr. Thanos responded to the letters contending that the Property was vacant and that a new tenant was paying rent.
>
> . . .
>
> On June 30, 2009, arrests for prostitution-related activities were made at the Property. . . .
>
> Defendant Thanos did not take meaningful steps to abate the prostitution-related nuisance. . . Thanos . . . did not take steps to evict VIP.
>
> . . .

[4] The arrests involved Defendant Thanos' previous tenants, Supra Spa.

> After learning of the October 28, 2009 arrests, defendant Thanos took no steps to evict VIP because the trial of this case was already scheduled and because he thought he had "no grounds" to evict them.
>
> Defendant Thanos testified that he believed that he had no grounds to evict a tenant unless they are adjudged guilty of criminal behaviors. . . . His statements with respect to this belief lacked credibility.

Findings of Fact, Conclusions of Law and Order, at 5, 6, 7, & 8, Mar. 11, 2011.

The District of Columbia requests "the other monies received by Defendant Thanos. In addition to the monthly $3,500 rent checks, VIP's bank records show that it made periodic payments to Thanos, in addition to rent, in amounts ranging from $500 to $2,500 from August 2009 to February 2011, and totaling an additional $21,965." Plt.'s Brief, at 27; *see also* Ex. 4, Tr. 21:11-14, May 18, 2011; Ex. 5. Furthermore, "Defendant Thanos also received $14,316 in cash payments from VIP." Plt.'s Brief, at 27; Ex. 4, Tr. 21:25-22:2; Ex. 6.

Contrarily, Defendant Thanos contends that "[t]he record is quite clear that those were 'rental income' payments under the triple net Lease terms. These were payments required under the Lease for a portion of the building's water and utilities bills and a portion of the building's property taxes." Thanos' Opp'n at 8. The Court is not persuaded by Defendant Thanos' arguments that the additional $36,281.00 was rental income because, as the District of Columbia argued, Defendant Thanos' Rental Income Spreadsheets, Ex. 8, fails to account for the additional money he received from VIP Therapy.

Furthermore, as noted by the Court of Appeals, "[t]he evidence is overwhelming that [Mr.] Thanos will not abide by the law if left to his own word." *Thanos*, *supra* at 1091. The Court of Appeals found that the Permanent Injunction Order was necessary

to abate the nuisance and prevent the recurrence. *Id.* Accordingly, this Court finds income disgorgement of Defendant Thanos' profits is also necessary to abate the prostitution-related nuisance and prevent its recurrence.

The multiple arrests, eviction of a previous tenant for engaging in illegal activity, and the multiple lawsuits filed were not enough to cause Defendant Thanos to abate the prostitution nuisance and prevent the recurrence of such activity. He continuously refused to cooperate with the Metropolitan Police Department's detectives and the District of Columbia, including investigating what was occurring at his property and evicting tenants engaged in illegal activities. *See infra* Findings of Fact and Conclusions of Law and Order, *supra*.

Therefore, the Court finds that the payments totaling $36,281.00 which were not identified in Defendant Thanos' Rental Income Spreadsheets were profits Defendant Thanos received from the illegal prostitution-related activities. Income disgorgement is necessary to prevent Defendant Thanos' unjust enrichment and the recurrence of the prostitution-related nuisance. Accordingly, the District of Columbia is entitled to income disgorgement from Defendant Thanos in the amount of $36,281.00.

2. Defendants VIP Therapy, Inc. and Deborah Poindexter

The trial court found that "[s]ince March 2008, there have been 15 arrests for prostitution or operating a house of prostitution. Defendant Poindexter was arrested for operating a house of prostitution in June 2009. Her company, VIP Therapy, Inc.[5], continued to be involved in prostitution-related activities in October 2009, June and September 2010, and January 2011." Findings of Fact, Conclusions of Law and Order, at 2, Mar. 11, 2011.

[5] Defendant VIP Therapy, Inc. entered its lease agreement with Defendant Thanos on December 1, 2008.

> Detective Gilkey testified that defendant Poindexter appeared to be in control "one hundred percent" because of her mannerisms and the fact that she was directing clients to rooms, asking "have you been here before," offering to get someone for the clients, and asking whether the girls were "okay."
>
> On October 28, 2009, two more arrests were made for solicitation and prostitution-related acclivities on the Property.

Id. at ¶¶ 53-54. Furthermore,

> [o]n June 16, 2010, two months after the trial in the underlying case, MPD made an arrest for solicitation of prostitution at the Property. In addition, 1000 used condoms were found in a salt container and a number of new ones were stashed inside a flashlight on the premises.
>
> On September 22, 2010, two more arrests were made for the same conduct. In addition, $6,000 in cash was seized. . . .
>
> On January 11, 2011, two more arrests occurred. One was for solicitation of prostitution and the other for operating an illegal massage parlor. . . . In the course of executing a search warrant, $14,000 in cash was seized.

Id. at ¶¶ 62-64.

The District of Columbia requests that "[w]ith respect to the VIP Defendants, the District . . . seeks all of the monies they received from their illegal enterprise. First, this Court has already found that the Property was a prostitution-related nuisance." Plt's Brief, at 15, Findings of Fact, Conclusions of Law and Order, at 14-15, Mar. 11, 2011. Furthermore, the District of Columbia contends that "the Court is empowered to disgorge the Defendants of the equivalent of the revenues enjoyed by virtue of the operation of VIP Therapy as a brothel, and such disgorgement is wholly appropriate and profoundly necessary." Plt's Brief, at 16.

The record is clear that Defendant Deborah Poindexter was aware of the illegal prostitution-related activities; she was the manager of VIP Therapy during the relevant time period; she was on the premises during when the prostitution-related activities

were taking place; she was arrested in June 2009 for her involvement with the prostitution-related activities; and additional arrests were made at the property in October 2009, June and September 2010, and January 2011. Although Defendant Poindexter was aware of the illegal prostitution-related activities and the numerous arrests, she still continued to operate VIP Therapy, Inc. Consequently, Defendant Poindexter and VIP Therapy, Inc. were unjustly enriched by their illegal prostitution-related activities.

Notably, the District asserts that "this Court [ ] will never know how much money VIP made because it operated an illegal cash business, regularly destroyed its business records, created misleading bank statements, and falsified its tax returns." Plt's Brief at 28. Indeed, Defendant Poindexter testified that she destroyed the ledger on a weekly basis upon learning of the case against her. Plt's Ex. 4, Tr. 47:24-48:22. Also, Defendant Poindexter testified that her bank statements were not an accurate depiction of VIP Therapy's income. Plt's Ex. 4, Tr. 54:8-19.

Therefore, the most persuasive evidence regarding VIP Therapy's and Poindexter's income is the undisputed affidavit of MPD Detective Steven Schwalm, "which was admitted into evidence at the May 18, 2011 Hearing without objection." Plt's Brief, at 30; Ex.7. Moreover,

> "any risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty." *Id.* at 1232. In other words, the [District] only needs to offer a *prima facie* reasonable approximation of profits connected to the . . . violation, and then the burden of proof shifts to the defendants to rebut the presumption that all profits gained while the defendants were in violation of the law constituted ill-gotten gains. *Bilzerian*, 814 F. Supp. at 121.

Whittemore, 691 F.Supp. 2d at 205.

According to Detective Schwalm:

> Based on my experience investigating VIP Therapy, clients of VIP Therapy, or "johns," typically pay at least $60 at the door, and an additional $100 for sex acts, but sometimes even more than that.
>
> Based on my experience investigating VIP Therapy, VIP Therapy employs between three and six women a given day.
>
> Based on my experience investigating VIP Therapy, VIP Therapy was open for business from 10:00 a.m. to 2:00 a.m., or 16 hours a day.
>
> Based on my experience investigating Property and VIP Therapy, a single VIP Therapy employee provides illegal sex acts to at least ten customers (commonly referred to as "johns") on a given day, sometimes more on the weekend days, which are busier.

Ex.7, Schwalm's Affidavit at ¶¶ 11-14, Feb. 25, 2011.

Based on Detective Schwalm's Affidavit, using low-end estimates for each input, the District estimated VIP Therapy's profits as follows: (1) employing at least 3 employees, who performed services for 10 clients, totaling 30 clients a day; (2) operating for 96 weeks between April 2009 to February 9, 2011 with 210 clients per week, totaling 20,160 clients for that same time period; and (3) charging $160 per client for 20,120 clients, totaled $3,225,600.

Therefore, the Court finds that the District's methodology for computing Defendant VIP Therapy's profits from the illegal activity is a reasonable approximation of the profits causally connected to the prostitution nuisance, for which Defendant VIP Therapy, Inc. engaged. Income disgorgement is necessary to prevent Defendants VIP Therapy, Inc.'s and Poindexter's unjust enrichment from the illegal profits of the prostitution-related activity. Furthermore, income disgorgement is appropriate to prevent the recurrence of the prostitution-related nuisance.

Accordingly, the District of Columbia is entitled to income disgorgement from Defendants VIP Therapy and Poindexter, jointly and severally, in the amount of $3,225,600.

B. Defendant George Thanos'[6] conduct after the February 10, 2012 Permanent Injunction Order supports a finding that income disgorgement is appropriate to prevent the continuance or recurrence of the nuisance.

Although the Court denied the District of Columbia's Motion to Show Cause as to Why Defendant George Thanos Should Not Be Held in Contempt for Violating the Court's Permanent Injunction Order, under the preponderance of the evidence burden of proof[7], the motion would have been granted. The testimony and affidavit of Tyrone Mabson, an Investigator in the Office of Investigations for the Office of the Attorney General for the District of Columbia, was sufficient evidence for the Court to have found that it is more probable than not that: (1) Defendant Thanos entered into a rental agreement, without the District's consent, with a third-party for the subject property in violation of the February 10, 2012 Permanent Injunction Order. In other words, some if not all of the five bedrooms in the unit were rented to one or more individuals; and (2) Defendant Thanos failed to reconfigure the fourth floor pursuant to the February 10, 2012 Permanent Injunction Order.

1. It Is More Probable Than Not That Defendant Thanos' Is Renting the Fourth Floor to a Third-Party Without the District's Consent and Likely Engaging in Illegal Activity

According to Mabson's testimony and affidavit, which was admitted as Plaintiff's Exhibit 1 at the Show Cause Hearing, on September 18, 2015, during his site visit of the subject property with Defendant Thanos, he observed a man referred to as the "old guy"

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[6] Defendants VIP Therapy, Inc. and Deborah Poindexter are no longer tenants at the subject property.

[7] "[P]reponderance of the evidence is merely that which 'shows that the fact sought to be proved is more probable than not.'" *Morphotrust USA, Inc. v. D.C. Contract Appeals Bd.*, 115 A.3d 571, 586 n.51 (D.C. 2015) citing *In re E.D.R.*, 772 A.2d 1156, 1160 (D.C. 2001). However, for contempt, the standard is clear and convincing, which requires "evidence is that which should 'produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.' *Id.* at 179 n.7 (quoting *In re Estate of Soeder*, 7 Ohio App. 2d 271, 220 N.E.2d 547, 574 (Oh. App. 1966))." *Rose v. United States*, 879 A.2d 986, 990 (D.C. 2005). The District of Columbia failed to prove, by clear and convincing evidence, that Defendant Thanos was in contempt of Court for disobeying the Permanent Injunction.

in the kitchen cooking eggs. During his visit, he observed several bottles of liquor in the kitchen. Mr. Mabson testified that he observed that there were five bedrooms on the fourth floor of the subject property. Mabson's Affidavit at 1, Sept. 21, 2015. According to Mr. Mabson, in a room that Defendant Thanos described as a closet, Mr. Mabson testified that the closet was actually another bedroom with a full or queen-sized bed that was occupied by a woman who immediately covered her face upon his opening the door. In one of the bedrooms, Mr. Mabson observed money taped to the wall, two sets of slippers, a woman's robe, and other clothing, including a winter coat although it was September. Plt. Ex. 2b. Plaintiff's Exhibits 2c, 2d, 2e, and 2f were additional bedrooms.[8] Mr. Mabson testified that one of the bedrooms had female toiletries on the nightstand. Plt. Ex. 2e. He explained that Plaintiff's Exhibits 2g-j show views of the living room. Mr. Mabson observed a male winter coat, a drying rack with male and female clothing, live plants, and both male and female shoes. Plt. Exs. 2g-j. Also, Mr. Mabson testified that in the bathroom there were four boxes of different toiletries for both males and females, as well as toiletries in the shower which were ready to be used. Plt's Ex. 2a. Mr. Mabson's observations are undisputed. Defendant Thanos did not testify to explain or rebut what Mr. Mabson observed, and his attorney's arguments could not be considered evidence at the hearing.

It is more probable than not that Defendant Thanos has tenants occupying the fourth floor. There are five bedrooms, all of which have beds, and some with toiletries on the nightstands. The bathroom area contained an excessive number of both female and male toiletries both inside and outside of the shower area. One of the bedrooms, which was described as a closet, contained a woman in the bed, who covered her face

[8] Mr. Mabson observed that all of the bedrooms had either full or queen size beds.

when Mr. Mabson had entered the space. There were articles of clothing, including winter coats, and shoes throughout the fourth floor. Plaintiff's Exhibit 2i contained a Christmas tree in the right-hand corner. Moreover, although Defendant Thanos' counsel argued that a friend of Mr. Thanos had been living on the fourth floor, Mr. Mabson testified that the mailbox listed the fourth floor as "vacant."

Although there was neither direct evidence nor clear and convincing evidence that Defendant Thanos had rented the unit without the District of Columbia's consent, based on Mr. Mabson's Affidavit and his testimony, including the abundance of toiletries, the excessive liquor in the kitchen, and the five bedrooms, including the bed in the closet occupied by the unknown woman, it is more probable than not to conclude that Defendant Thanos is accepting rent in exchange for the use the fourth floor, and/or engaging in prostitution-related activities.

Accordingly, the Court finds by, a preponderance of the evidence, that Defendant Thanos is renting the fourth floor of the subject property, which further supports the Court's decision that income disgorgement is appropriate to prevent the continuance or recurrence of the prostitution-related nuisance.

2. It Is More Probable Than Not That the Fourth Floor Could Have Been Reconfigured, But Was Not Reconfigured Pursuant to the Order

Mr. Mabson observed that the fourth floor had not been reconfigured to remove the walls of the separate rooms pursuant to the February 10, 2012 Permanent Injunction Order. Mabson's Affidavit, at 1-2. Defendant Thanos did not present any credible evidence that the fourth floor could not be reconfigured pursuant to the February 10, 2012 Order, and the Court does not consider the arguments of Defendant Thanos' counsel as evidence.

Likewise, the Court does not credit the testimony of Stephan Kalivas. Mr. Kalivas testified at the January 8, 2016 Show Cause Hearing that two-and-a-half to three years ago, he had removed the walls from the subject property that he previously had installed. However, in his sworn affidavit dated October 12, 2015, Mr. Kalivas affirmed that "[a]bout three or four years ago, Mr. Thanos hired us to come and take down all the walls we put up and remove the larger shower we had installed, which we did." Kalivas' Affidavit, at ¶ 3, Oct. 12, 2015. The Permanent Injunction was issued in February 2012 and required the fourth floor to be reconfigured "within 45 days of this order." Feb. 10, 2012 Order, at 3. Therefore, Mr. Kalivas' testimony is inconsistent, and it is unclear as to whether the fourth floor was reconfigured within 45 days of the Order.

Additionally, Mr. Kalivas testified that he failed to indicate two supporting walls in the diagram, which was admitted into evidence as Plaintiff's Exhibit 3. The Court does not credit Mr. Kalivas' testimony, who is the President of SCK Contractors, LLC, that he failed to identify, on Plaintiff's Exhibit 3, two supporting walls for the roof—two walls that, otherwise, would have been removed because they were unnecessary, and potentially left the roof unsupported. Mr. Kalivas testified that he has worked for Defendant Thanos for a number of years and expects to obtain work from him in the future, which could color his testimony to favor Defendant Thanos.

Accordingly, the Court finds by, a preponderance of the evidence, that Defendant Thanos' failure to reconfigure the fourth floor of the subject property is evidence further supporting the Court's decision that income disgorgement is appropriate to prevent the continuance or recurrence of a prostitution-related nuisance.

Based on Defendant Thanos' conduct throughout the pendency of this case, the Court finds that the District of Columbia is entitled to income disgorgement for the illegal prostitution-related nuisance in the amount of $36,281.00.

IV. CONCLUSION

For the reasons stated above, the District of Columbia's request for income disgorgement is granted.

WHEREFORE, it is this 19th day of January 2016, hereby,

ORDERED, that the District of Columbia's request for income disgorgement is **GRANTED**; and it is

FURTHER ORDERED, that the District of Columbia is entitled to income disgorgement from Defendant George S. Thanos in the amount of $36,281.00 for the operation of VIP Therapy, Inc. as a prostitution-related nuisance, in which he was unjustly enriched; and it is

FURTHER ORDERED, that Defendant George S. Thanos shall pay the District of Columbia the amount of $36,281.00; and it is

FURTHER ORDERED, that the District of Columbia is entitled to income disgorgement from Defendants VIP Therapy, Inc. and Deborah Y. Poindexter, jointly and severally, in the amount of $3,225,600.00 for the operation of VIP Therapy, Inc. as a prostitution-related nuisance, in which they were unjustly enriched; and it is

FURTHER ORDERED, that Defendants VIP Therapy, Inc., and Deborah Y. Poindexter shall pay the District of Columbia the amount of $3,225,600.00; and it is

FURTHER ORDERED, that the February 26, 2016 Status Hearing is **VACATED**; and it is

FURTHER ORDERED, that for each Motion filed, the parties shall e-mail a copy of the proposed order in Microsoft Word Format to the following e-mail addresses: Clarkjj2@dcsc.gov and Clarkjj3@dcsc.gov.

SO ORDERED.

Jeanette J. Clark

Judge Jeanette J. Clark
D.C. Superior Court

Copies e-filed, e-served, and docketed on this 19th day of January 2016:

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