

THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division

DISTRICT OF COLUMBIA,  
a municipal corporation,  
441 Fourth Street, N.W.,  
Suite 630 South  
Washington, D.C. 20001,

Plaintiff,

v.

DIGI MEDIA COMMUNICATIONS LLC  
812 6<sup>th</sup> Street, N.E.  
Washington, D.C. 20002

**SERVE**

EDWARD L. DONOHUE, ESQ.  
Donohue & Stearns PLC  
117 Oronoco Street  
Alexandria, VA 22314  
E-Mail: edonohue@donohuestearns.com

and

JEMAL'S DARTH VADER LLC  
111 Massachusetts Ave., N.W.  
Washington, D.C. 20001

**SERVE**

CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
E-Mail: info@cscglobal.com

and

DOUGLAS DEVELOPMENT CORP.  
702 H Street, N.W.  
Suite 400  
Washington, D.C. 20001

**COMPLAINT**  
**FOR INJUNCTIVE RELIEF**

Case No.:  
Calendar No.:  
Judge

**SERVE**

CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
E-Mail: info@cscglobal.com

and

THOMAS CIRCLE CF LLC  
1 Thomas Circle, N.W.  
Washington, D.C. 20005

**SERVE**

CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
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LYLE BLANCHARD, ESQ.  
Greenstein, Delorme & Luchs P.C.  
1620 L Street, N.W., #900  
Washington, D.C. 20036  
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and

UBS REAL ESTATE INVESTMENTS  
INC.  
1101 Vermont Ave., N.W.  
Washington, D.C. 20005

**SERVE**

CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
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and

NH STREET PARTNERS HOLDINGS  
LLC.  
1200 New Hampshire Ave., N.W.  
Washington, D.C. 20036

**SERVE**

C T CORPORATION SYSTEM  
1015 15<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, D.C. 20005  
E-Mail: CT-  
StateCommunications@wolterskluwer.com

and

1350 CONNECTICUT AVENUE  
LIMITED PARTNERSHIP  
1350 Connecticut Ave., N.W.  
Washington, D.C. 20036

**SERVE**

VERON SMITH  
1350 Connecticut Ave., N.W.  
Washington, D.C. 20036  
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StateCommunications@wolterskluwer.com

and

2100 M STREET, LP  
C/O LINCOLN PROPERTY TRUST  
2100 M Street, N.W.  
Washington, D.C. 20037

**SERVE**

C T CORPORATION SYSTEM  
1015 15<sup>th</sup> Street, N.W.  
Suite 1000  
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E-Mail: CT-  
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and

WESTERN WASHINGTON DC

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CORPORATE CENTER LLC  
2850 New York Ave., N.E.  
Washington, D.C. 20002

**SERVE**  
CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
E-Mail: info@cscglobal.com

and

CLPF-CC PAVILION  
C/O CLARION PARTNERS LLC  
5335 Wisconsin Ave., N.W.  
Washington, D.C. 20015

**SERVE**  
CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
E-Mail: info@cscglobal.com

Defendants.

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### INTRODUCTION

The District of Columbia (the District) brings suit against defendants for injunctive relief under D.C. Official Code § 6-1407 (2001) for illegal construction and states as follows:

Defendant Digi Media Communications LLC and defendant building owners have erected numerous light-emitting diode (LED) signs throughout the District, despite having no sign permits to do so and in clear violation of the District's subsequent orders to stop. These LED signs tower over and above pedestrians, causing substantial and significant risk to public safety. This Court must step in

and order defendants to stop their illegal conduct and allow the District to fulfill its responsibility to protect the public safety and welfare.

### JURISDICTION

1. This Court has subject matter jurisdiction over the claims and allegations in the Complaint. *See* D.C. Official Code § 11-921(a) (2001). This Court has personal jurisdiction over defendants. *See* D.C. Official Code §§ 13-422 and 13-423 (2001).

2. The actions from which this case arose took place within the District of Columbia.

### THE PARTIES

3. Plaintiff is the District of Columbia, a municipal corporation that is empowered to sue and be sued, and sues here in performance of its municipal function to protect and vindicate the public interest.

4. Defendant Digi Media Communications LLC (Digi Media) is an entity that is licensed to do business in the District of Columbia.

5. Defendant Jemal's Darth Vader LLC, owns or operates a property in the District of Columbia at 111 Massachusetts Ave., N.W., Washington, D.C. 20001.

6. Defendant Douglas Development, Corp., owns or operates a property in the District of Columbia at 111 Massachusetts Ave., N.W., Washington, D.C. 20001.

7. Defendant Thomas Circle CF LLC, owns a property in the District of Columbia, at 1 Thomas Circle, N.W., Washington, D.C. 20005.

8. Defendant UBS Real Estate Investments Inc., owns a property in the District of Columbia at 1101 Vermont Ave., N.W., Washington, D.C. 20005.

9. Defendant NH Street Partners Holdings LLC, owns a property in the District of Columbia at 1350 Connecticut Ave., N.W., Washington, D.C. 20036.

10. Defendant 2100 M Street, LP c/o Lincoln Property Trust, owns a property in the District of Columbia at 2100 M Street, N.W., Washington, D.C. 20005.

11. Defendant Western Washington DC Corporate Center LLC, owns a property in the District of Columbia at 2850 New York Ave., N.E., Washington, D.C. 20002.

12. Defendant CLPF-CC Pavilion LP C/O Clarion Partners LLC, owns a property in the District of Columbia at 5335 Wisconsin Ave., N.W., Washington, D.C. 20005.

#### RELEVANT FACTS

13. The Department of Consumer and Regulatory Affairs (DCRA) is the District agency responsible for regulating construction and business activity in the District of Columbia. DCRA is charged with protecting the health, safety, economic interests, and quality of life of residents, businesses and visitors in the District of Columbia by ensuring compliance with the District of Columbia Construction Codes, which includes the Building Code.

14. The Building Code regulates the installation of signs in the District, *see* 12A DCMR Appendix N, and specifies that “no sign [...] that exceeds 1 square

foot in area [...] shall be erected, made part of a building, [...] hung, re-hung, altered, repaired structurally, [...] made to flash, or maintained without a permit issued in accordance with this section by the code official.” 12A DCMR § N101.3.

15. An application for a sign permit “shall be made upon a form provided by the code official. Application for a permit to install a sign shall be accompanied by drawings in triplicate, drawn to scale showing details of construction dimensions, lettering, and method of attachment of the sign.” 12A DCMR § N101.3.1.

16. According to the Building Code, a “revolving sign” includes “a sign that displays 3-D, moving, animated, or periodically-changing images or text” and “[n]o revolving sign may be installed or maintained if the Department of Transportation has determined that the sign location, size, or height above grade is objectionable with regard to vehicular traffic safety.” 12A DCMR §§ N101.7.11, N101.7.11.8.

17. The Building Code also restricts the location of some signage, and states that “[r]evolving signs shall not be permitted on the roofs of buildings or structures.” 12A DCMR § N101.7.11.1.

18. The Building Code also governs the attachment of signs to roofs, and provides that “[c]omplete structural plans indicating roof construction, method of attachment, and sign framing shall be provided with all applications for roof sign permits.” 12A DCMR § N101.7.2.1.

19. The Building Code requires that all signs be designed and constructed to withstand wind pressure, earthquake loads, and working stress. 12A DCMR §§ N101.11.1-3.

20. According to the Construction Codes, a DCRA building permit is required to construct, alter, or repair a building or other structure, or to “[u]ndertake any other activity regulated by the Construction Codes.” 12A DCMR §§ 105.1.1, 105.1.4.

21. Among other requirements, a permit application must:

- “Clearly identify and describe the work to be covered by the permit for which application is made”;
- “Provide sufficient information clearly distinguishing existing versus proposed use”;
- “Indicate the use and occupancy for which the proposed work is intended”; and
- “Be accompanied by a fully completed intake form and supporting submittal documents as required by Section 106.”

12A DCMR § 105.3.

22. Submittal documents for the permit application include construction documents, such as documents relating to the structural, fire protection, electrical, and mechanical aspects of the proposed construction. 12A DCMR §§ 106.1, 106.1.4, 106.1.5, 106.1.7, 106.1.9.

23. Structural Documents must show “the complete design, with sizes, sections, and relative locations of various structural members, floor elevations, column, or bearing wall centers, and beam or joint sizes and spacings.” 12A DCMR § 106.1.4.

24. The design loads and other information pertinent to the structural design—such as the actual weights of all construction materials and fixed service equipment, the use and occupancy load, and environmental loads—must be indicated on the construction documents. 12A DCMR §§ 1603.1, 1606-1613.

25. A permit issued by DCRA “shall be an authorization to proceed with the work for which the permit was issued and shall not be construed as authority to violate, cancel or set aside any of the provisions of the [District’s] Construction Codes, except as specifically stipulated by modification[.]” 12A DCMR § 105.4.

26. DCRA may revoke a building permit “[w]here there is a false statement or misrepresentation of fact, or other significant inaccuracy, in the application or on the plans on which a permit or approval was based, that substantively affected the approval[.]” 12A DCMR § 105.6.1.

27. DCRA may issue a Stop Work Order for violations of the Construction Codes, including the sign regulations in Appendix N of the Building Code, or if work is being performed in an unsafe or dangerous manner. 12A DCMR § 114.1.

28. Anyone who continues to work in or about a premises posted with a Stop Work Order issued by DCRA is subject to penalties and injunctive relief. 12A DCMR § 114.10; D.C. Official Code §§ 6-1406, 6-1407 (2001).

29. A DCRA Stop Work Order for illegal construction under 12A DCMR § 113.7 requires that “any and all work at the premises or portion thereof” be stopped whether or not the work requires building permits. *See* 12A DCMR § 114.6.

30. DCRA may issue a Notice of Infraction to a building owner for any violation of the Construction Codes. *See* 12A DCMR §§ 113.2, 113.6.

31. Upon inspection, DCRA may issue a Correction Order to correct any conditions found in violation of the Construction Codes. 12A DCMR § 113.2.

### DEFENDANTS' VIOLATIONS OF THE D.C. CONSTRUCTION CODES

32. Digi Media's sales and marketing promotional brochure identifies 20 locations for the installation of 52 electronic/digital signs for the purpose of displaying commercial advertising to pedestrians and vehicular traffic. (*See* Ex. 1, Digi Media Brochure.)

33. Digi Media's promotional brochure claims "[t]his large format digital network will fill the biggest OOH [out-of-home] media void in [the] DC Market." (*See* Ex. 1, Digi Media Brochure, at 6; Ex. 2, Mockup picture of 1200 New Hampshire Ave., N.W.)

34. Digi is acting in concert with defendant building owners to perform or allow the performance of illegal construction at the following properties:<sup>1</sup>

#### 111 MASSACHUSETTS AVE., N.W., WASHINGTON, D.C. 20001

35. The property at 111 Massachusetts Ave., N.W., Washington, D.C. 20001 (Mass. Ave. Property), is owned and operated by Defendant Jemal's Darth Vader LLC and Defendant Douglas Development, Corp.

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<sup>1</sup> The identified properties represent the known locations of illegal activity at the time of filing this Complaint and do not constitute an exhaustive list of Defendants' unpermitted and illegal construction. Defendant Digi Media has identified other properties in its Media Brochure, which constitute additional locations where unpermitted construction is occurring or will occur. (*See* Ex. 1, Digi Media Brochure.)

36. The Mass. Ave. Property is one of the locations identified in Digi Media's sales and marketing promotional brochure for installation of an electronic/digital sign. (*See Ex. 1, Digi Media Brochure.*)

37. On November 20, 2014, Douglas Development Corp, through its agent Interagency Consultants, filed an application with DCRA for a building permit.

38. Based on the representations in the application, DCRA issued Permit No. B1501800 on November 21, 2014, for the installation of interior brackets. (*See Ex. 3, Permit No. B1501800.*)

39. On November 18, 2015, Jemal's Darth Vader LLC, the then-applicant owner, applied for a renewal of Building Permit No. B1501800.

40. Based on the representations in the application, DCRA issued Permit No. B1601929 on November 18, 2015. (*See Ex. 4, Permit No. B1601929.*)

41. On May 20, 2016, Jemal's Darth Vader LLC, applied for a renewal of Building Permit No. B1601929.

42. Based on the representations in the application, DCRA issued Permit No. B1608499 on May 20, 2016. (*See Ex. 5, Permit No. B1608499.*)

43. Upon information and belief, Digi Media installed brackets on the exterior of the Mass. Ave. Property. (*See Ex. 6, Photographs of Mass. Ave. Property.*)

44. The exterior bracket installation was not within the scope of work allowed by Permit No. B1608499.

45. The exterior bracket installation has not been inspected or approved by DCRA.

46. The exterior bracket installation is an illegal construction because the scope of work allowed by Permit No. B1608499 only included installation of interior brackets. (*Compare Exs. 3, 4, 5 with Exs. 6, 9, 10.*)

47. On August 15, 2016, DCRA issued a Notice to Revoke Permit based on a false statement or misrepresentation of fact or other significant inaccuracy in the application on which the permit was based that substantially affected the approval, citing 12A DCMR § 105.6, *et seq.*

48. Upon information and belief, on or about August 15, 2016, Digi Media began installing large LED signs on the building exterior of the Mass. Ave. Property using the previously installed exterior brackets. (*See Ex. 6, Photographs of Mass. Ave. Property.*)

49. Neither Digi Media nor Jemal's Darth Vader LLC or Douglas Development Corp. applied for or obtained a sign permit for the LED signs.

50. On August 16, 2016, DCRA issued a Stop Work Order for the Mass. Ave. Property, noting a violation of 12A DCMR §105.1, which prohibits working without a sign permit and ordered that all LED signs be removed. (*See Ex. 7, Stop Work Order for Mass. Ave. Property.*)

51. On August 16, 2016, DCRA issued a Correction Order for the Mass. Ave. Property, noting a violation of 12A DCMR § 105.1, which prohibits working

without a sign permit, and ordered all LED signs be removed. (*See* Ex. 8, Correction Order for Mass. Ave. Property.)

52. Despite receiving the Notice to Revoke Permit, Stop Work Order, and Correction Order, Digi Media and Jemal's Darth Vader LLC, did not stop work but instead proceeded to undertake further work at the Mass. Ave. Property.

53. On or about August 19, 2016, Clarence Whitescarver, DCRA Program Manager for District Construction Inspections and Enforcement, visited the Mass. Ave. Property and met with Donald MacCord, who identified himself as the co-founder of Digi Media. During this conversation, Mr. Whitescarver advised Mr. MacCord that the LED signs reflected a commercial intent because they were pointed towards the general public and were not viewable from the interior of the property. Mr. MacCord acknowledged Mr. Whitescarver's statement, and then told Mr. Whitescarver that Digi Media was under a "work schedule" because of contracts and stated he would not stop work on installing the LED signs. (*See* Ex. 9, Photographs of Mass. Ave. Property.)

54. On August 24, 2016, at approximately 6:45 a.m., Mr. Whitescarver visited the Mass. Ave. Property again and observed three individuals performing work related to installation of LED signs. The individuals were using a mobile crane, a transport trailer, and welding equipment to perform the installation. (*See* Ex. 10, Photographs of Mass. Ave. Property.)

55. The LED signs at the Mass. Ave. Property are illegal signs under 12A DCMR §§ 105.1 and Appendix N, because neither Digi Media nor Douglas

Development Corp. or Jemal's Darth Vader LLC applied for or obtained a sign permit and DCRA did not approve the installation of a sign, which constitutes illegal construction.

1 THOMAS CIRCLE, N.W., WASHINGTON, D.C. 20005

56. The property at 1 Thomas Circle, N.W., Washington, D.C., 20005 (Thomas Cir. Property) is owned by Defendant Thomas Circle CF LLC.

57. The Thomas Cir. Property is one of the locations identified in Digi Media's sales and marketing promotional brochure for installation of an electronic/digital sign. (*See Ex. 1, Digi Media Brochure.*)

58. Thomas Circle CF LLC, through its agent Interagency, applied for a building permit on June 15, 2016 for the installation of interior brackets.

59. Based on the representations in the application, DCRA issued Permit No. B1609425 on June 17, 2016, for the installation of interior brackets. (*See Ex. 11, Permit No. B1609425.*)

60. Upon information and belief, Digi Media installed brackets on the exterior of the Thomas Cir. Property. (*See Ex. 12 at 2, Photographs of Thomas Cir. Property.*)

61. The exterior bracket installation was not within the scope of work allowed by Permit No. B1609425.

62. The exterior bracket installation has not been inspected or approved by DCRA.

63. The exterior bracket installation is an illegal construction because the underlying application for an interior bracket, rather than an exterior bracket, constituted a false statement, misrepresentation of fact, or other significant inaccuracy in the application or on the plans on which a permit or approval was based. That false statement, misrepresentation, or inaccuracy substantively affected the approval. 12A DCMR § 105.6.1.

64. The exterior bracket installation is an illegal construction because the scope of work allowed by Permit No. B1609425 only included installation of interior brackets. (*Compare Ex. 11 with Ex. 12.*)

65. On July 18, 2016 and August 2, 2016, DCRA issued two Notices to Revoke Permit. 12A DCMR § 105.6.

66. On August 1, 2016, DCRA received correspondence from Lyle Blanchard, Esq., counsel for Thomas Circle CF LLC, advising that Building Permit No. 1609425 was applied for by its tenant, Digi Media. Mr. Blanchard requested that any actions brought by DCRA be directed to Digi Media through its counsel. (*See Ex. 13, Correspondence from Lyle E. Blanchard, August 1, 2016.*)

67. Upon information and belief, on or about August 19, 2016, Digi Media began installing large LED signs to the building exterior of the Thomas Cir. Property using the previously installed exterior brackets. (*See Ex. 14, Photographs of Thomas Cir. Property.*)

68. Neither Digi Media nor Thomas Circle CF LLC, applied for or obtained a sign permit from DCRA for the LED signs.

69. On August 19, 2016, DCRA issued a Stop Work Order for the Thomas Cir. Property, for working without a permit and ordering that all LED signs and systems be removed. *See* 12 DCMR § 105.1. (*See* Ex. 15, Stop Work Order for Thomas Cir. Property.)

70. On August 23, 2016, DCRA issued a Correction Order for the Thomas Cir. Property, ordering removal of the LED signs and brackets to correct the conditions found by the DCRA inspector. (*See* Ex. 16, Correction Order for Thomas Cir. Property)

71. The LED signs at the Thomas Cir. Property are illegal signs under 12A DCMR §§ 105.1 and Appendix N, because neither Digi Media nor Thomas Circle CF LLC applied for or obtained a sign permit and DCRA did not approve the installation of a sign, which constitutes illegal construction.

72. Sometime thereafter, the LED signs and brackets at the Thomas Cir. Property were removed; however, the metal bracing for the brackets remains in place.

**1101 VERMONT AVE., N.W., WASHINGTON, D.C. 20005**

73. The property at 1101 Vermont Ave., N.W., Washington, D.C., 20005 (Vermont Ave. Property) is owned by Defendant UBS Real Estate Investments, Inc.

74. The Vermont Ave. Property is one of the locations identified in Digi Media's sales and marketing promotional brochure for installation of an electronic/digital sign. (*See* Ex. 1, Digi Media Brochure.)

75. UBS Real Estate Investments Inc., through its agent IAC, applied for a building permit on May 17, 2016 for the installation of interior brackets at the Vermont Ave. Property.

76. Based on the representations in the application, DCRA issued Permit No. B1608314 on May 18, 2016, for the installation of interior brackets. (*See Ex. 17, Permit No. B1608314.*)

77. Upon information and belief, Digi Media installed brackets on the exterior of the Vermont Ave. Property. (*See Ex. 18, Photographs of Vermont Ave. Property.*)

78. The exterior bracket installation was not within the scope of work allowed by Permit No. B1608314.

79. The exterior bracket installation has not been inspected or approved by DCRA.

80. The exterior bracket installation is an illegal construction because the underlying application for an interior bracket, rather than an exterior bracket, constituted a false statement, misrepresentation of fact, or other significant inaccuracy in the application or on the plans on which a permit or approval was based. That false statement, misrepresentation, or inaccuracy substantively affected the approval. *See 12A DCMR § 105.6.1.*

81. The exterior bracket installation is an illegal construction because the scope of work allowed by Permit No. B1608314 only included installation of interior brackets. (*Compare Ex. 17 with Ex. 18.*)

82. On July 18, 2016, DCRA issued a Notice to Revoke Permit.

83. Upon information and belief, on or about August 19, 2016, Digi Media began installing large LED signs to the building exterior of the Vermont Ave. Property using the previously installed exterior brackets. (*See Ex. 19, Photographs of Vermont Ave. Property.*)

84. On August 24, 2016 DCRA issued a Stop Work Order for the Vermont Ave. Property, for installing a sign without a permit. (*See Ex. 20, Stop Work Order for Vermont Ave. Property.*)

85. Neither Digi Media nor UBS Real Estate Investments, Inc. applied for or obtained a sign permit for the LED signs.

86. The LED signs at the Vermont Ave. Property are illegal signs under 12A DCMR §§ 105.1 and Appendix N, because neither Digi Media nor BS Real Estate Investments, Inc. applied for or obtained a sign permit and DCRA did not approve the installation of a sign, which constitutes illegal construction.

**1200 NEW HAMPSHIRE AVE., N.W., WASHINGTON, D.C. 20036**

87. The property at 1200 New Hampshire Ave., N.W., Washington, D.C. 20036 (New Hampshire Ave. Property) is owned by NH Street Partners Holdings LLC.

88. The New Hampshire Ave. Property is one of the locations identified in Digi Media's sales and marketing promotional brochure for installation of an electronic/digital sign. (*See Ex. 1, Digi Media Brochure.*)

89. NH Street Partners Holdings LLC, through its agent Interagency, applied for a building permit for the installation of interior brackets at the New Hampshire Ave. Property on May 17, 2016.

90. Based on the representations in the application, DCRA issued Permit No. B1608313 on May 18, 2016, for the installation of interior brackets. (*See Ex. 21, Permit No. B1608313.*)

91. Upon information and belief, Digi Media installed brackets on the exterior of the New Hampshire Ave. Property. (*See Ex. 22, Photographs of New Hampshire Ave. Property.*)

92. The exterior bracket installation was not within the scope of work allowed by Permit No. B1608313.

93. The exterior bracket installation has not been inspected or approved by DCRA.

94. The exterior bracket installation is an illegal construction because the underlying application for an interior bracket, rather than an exterior bracket, constituted a false statement, misrepresentation of fact, or other significant inaccuracy in the application or on the plans on which a permit or approval was based. That false statement, misrepresentation, or inaccuracy substantively affected the approval. *See 12A DCMR § 105.6.1.*

95. The exterior bracket installation is an illegal construction because the scope of work allowed by Permit No. B1608313 only included installation of interior brackets. (*Compare Ex. 21 with Ex. 22.*)

96. On July 18, 2016, DCRA issued a Notice to Revoke Permit.

97. Upon information and belief, on or about August 19, 2016, Digi Media began installing large LED signs to the building exterior of the Vermont Ave. Property using the previously installed exterior brackets. (*See Ex. 23, Photograph of New Hampshire Ave. Property.*)

98. Neither Digi Media nor UBS Real Estate Investments, Inc. have applied for or obtained a sign permit for the LED signs.

99. A rendering from the Digi Media promotional brochure reflects that Digi Media intends to install at least three LED signs to the illegal exterior brackets at the New Hampshire Ave. Property. (*See Ex. 1 at 27, Digi Media Brochure; Ex. 2, Mockup picture of 1200 New Hampshire Ave., N.W.*)

100. The LED sign at New Hampshire Ave. Property is an illegal sign under 12A DCMR §§ 105.1 and Appendix N, because neither Digi Media nor NH Street Partners Holdings LLC applied for or obtained a sign permit and DCRA did not approve the installation of a sign, which constitutes illegal construction.

**1350 CONNECTICUT AVE., N.W., WASHINGTON, D.C. 20036**

101. The property at 1350 Connecticut Ave., N.W., Washington, D.C. 20036 (Conn. Ave. Property) is owned by 1350 Connecticut Avenue Limited Partnership.

102. The Conn. Ave. Property is one of the locations identified in Digi Media's sales and marketing promotional brochure for installation of an electronic/digital sign. (*See Ex. 1, Digi Media Brochure.*)

103. 1350 Connecticut Avenue Limited Partnership, through its agent IAC, applied for a building permit for the installation of interior brackets on May 17, 2016.

104. Based on the representations in the application, DCRA issued Permit No. B1608315 on May 18, 2016, for the installation of interior brackets. (*See Ex. 24, Permit No. B1608315.*)

105. Upon information and belief, Digi Media installed brackets on the exterior of the Conn. Ave. Property. (*See Ex. 25, Photograph of Conn. Ave. Property.*)

106. The exterior bracket installation was not within the scope of work allowed by Permit No. B1608315.

107. The exterior bracket installation has not been inspected or approved by DCRA.

108. The exterior bracket installation is an illegal construction because the underlying application for an interior bracket, rather than an exterior bracket, constituted a false statement, misrepresentation of fact, or other significant inaccuracy in the application or on the plans on which a permit or approval was based. That false statement, misrepresentation, or inaccuracy substantively affected the approval. *See 12A DCMR § 105.6.1.*

109. The exterior bracket installation is an illegal construction because the scope of work allowed by Permit No. B1608315 only included installation of interior brackets. (*Compare Ex. 24 with Ex. 25.*)

110. On July 18, 2016, DCRA issued a Notice to Revoke Permit.

111. Upon information and belief, on or about August 22, 2016, Digi Media began installing large LED signs to the building exterior of the Conn. Ave. Property using the previously installed exterior brackets. (See Ex. 26, Photograph of Conn. Ave. Property.)

112. Neither Digi Media nor 1350 Connecticut Avenue Limited Partnership applied for or obtained a sign permit for the LED signs.

113. On August 22, 2016, DCRA issued a Stop Work Order for the Conn. Ave. Property, ordering that sign permits must be obtained and posted. (See Ex. 27, Stop Work Order for Conn. Ave. Property.)

114. On August 23, 2016, DCRA issued a Correction Order requiring that all brackets associated with the installation of signs and digital signs be removed. (See Ex. 28, Correction Order for Conn. Ave. Property; Ex. 29, Photograph of Stop Work Order/Correction Order.)

115. The LED signs at the Conn. Ave. Property are illegal signs under 12 DCMR §§ 105.1 and Appendix N, because neither Digi Media nor 1350 Connecticut Avenue Limited Partnership applied for or obtained a sign permit, and DCRA did not approve the installation of a sign, which constitutes illegal construction.

**2100 M STREET, N.W., WASHINGTON, D.C. 20037**

116. The property at 2100 M Street, N.W., Washington, D.C. 20037 (M Street Property) is owned by Defendant 2100 M Street, LP C/O Lincoln Property Trust.

117. The M Street Property is one of the locations identified in Digi Media's sales and marketing promotional brochure for installation of an electronic/digital sign. (*See Ex. 1, Digi Media Brochure.*)

118. 2100 M Street, LP C/O Lincoln Property Trust, through its agent IAC, applied for a building permit for the installation of interior brackets at the M Street Property on May 17, 2016.

119. Based on the representations in the application, DCRA issued Permit No. B1608312 on May 18, 2016, for the installation of interior brackets. (*See Ex. 30, Permit No. B1608312.*)

120. Upon information and belief, Digi Media installed brackets on the exterior of the M Street Property. (*See Ex. 31, Photographs of M Street Property.*)

121. The exterior bracket installation was not within the scope of work allowed by Permit No. B1608312.

122. The exterior bracket installation has not been inspected or approved by DCRA.

123. The exterior bracket installation is an illegal construction because the underlying application for an interior bracket, rather than an exterior bracket, constituted a false statement, misrepresentation of fact, or other significant inaccuracy in the application or on the plans on which a permit or approval was based. That false statement, misrepresentation, or inaccuracy substantively affected the approval. *See 12A DCMR § 105.6.1.*

124. The exterior bracket installation is an illegal construction because the scope of work allowed by Permit No. B1608312 only included installation of interior brackets. (*Compare Ex. 30 with Ex. 31.*)

125. On July 18, 2016, DCRA issued a Notice to Revoke Permit.

126. Neither Digi Media nor 2100 M Street, LP C/O Lincoln Property Trust, applied for or obtained a sign permit for an LED sign.

127. On August 22, 2016, DCRA issued a Stop Work Order for the M Street Property, noting that the brackets were installed with the intent of installing signs that are not engineered or permitted. (*See Ex. 32, Stop Work Order for M Street Property.*)

128. On August 23, 2016, DCRA issued a Correction Order for the M Street Property, which ordered that bolts and brackets associated with the sign installation be removed. (*See Ex. 33, Correction Order for M Street Property; Ex. 34, Photograph of Stop Work Order/Correction Order.*)

**5335 WISCONSIN AVE., N.W., WASHINGTON, D.C. 20015**

129. The property at 5335 Wisconsin Ave., N.W., Washington, D.C. 20015 (Wisconsin Ave. Property) is owned by defendant CLPF-CC Pavilion LP C/O Clarion Partners LLC.

130. The Wisconsin Ave. Property is one of the locations identified in Digi Media's sales and marketing promotional brochure for installation of an electronic/digital sign. (*See Ex. 1, Digi Media Brochure.*)

131. CLPF-CC Pavilion LP C/O Clarion Partners LLC, through its agent Interagency, applied for a building permit for the installation of interior brackets at the Wisconsin Ave. Property on June 15, 2016.

132. Based on the representations in the application, DCRA issued Permit No. B1609427 on June 17, 2016, for the installation of interior brackets. (*See Ex. 35, Permit No. B1609427*).

133. Upon information and belief, Digi Media installed brackets on the exterior of the Wisconsin Ave. Property. (*See Ex. 36, Photographs of Wisconsin Ave. Property.*)

134. The exterior bracket installation was not within the scope of work allowed by Permit No. B1609427.

135. The exterior bracket installation has not been inspected or approved by DCRA.

136. The exterior bracket installation is an illegal construction because the underlying application for an interior bracket, rather than an exterior bracket, constituted a false statement, misrepresentation of fact, or other significant inaccuracy in the application or on the plans on which a permit or approval was based. That false statement, misrepresentation, or inaccuracy substantively affected the approval. *See 12A DCMR § 105.6.1.*

137. The exterior bracket installation is an illegal construction because the scope of work allowed by Permit No. B1609427 only included installation of interior brackets. (*Compare Ex. 35 with Ex. 36.*)

138. Neither Digi Media nor CLPF-CC Pavilion LP C/O Clarion Partners LLC applied for or obtained a sign permit an LED sign.

139. On August 19, 2016, DCRA issued a Stop Work Order for the Wisconsin Ave. Property, for violating the Code by working without a sign permit and ordering that all LED sign/systems be removed. *See* 12A DCMR § 105.1. (*See* Ex. 37, Stop Work Order for Wisconsin Ave. Property.)

140. On August 23, 2016, DCRA issued a Correction Order, requiring removal of all signs and brackets associated with sign installation at the Wisconsin Ave. Property. (*See* Ex. 38, Correction Order for Wisconsin Ave. Property.)

**2850 NEW YORK AVE., N.E., WASHINGTON, D.C. 20002**

141. The property at 2850 New York Ave. N.E., Washington, D.C. 20002 (N.Y. Ave. Property) is owned by Western Washington DC Corporate Center LLC.

142. The N.Y. Ave. Property is the former Washington Times building. (*See* Ex. 39, Google Maps photographs of 2850 New York Ave., N.E.)

143. The N.Y. Ave. Property is identified in Digi Media's sales and marketing promotional brochure for installation of an electronic/digital sign. (*See* Ex. 1, Digi Media Brochure.)

144. Western Washington DC Corporate Center LLC applied for a building permit for the replacement of "in kind" existing roof display support at the N.Y. Ave. Property on July 26, 2016.

145. Based on the representations in the application, DCRA issued Permit No. B1611092 on August 18, 2016, for replacement in kind of existing roof display support. (*See Ex. 40, Permit No. B1611092.*)

146. Upon information and belief, Digi Media installed brackets on the roof of the N.Y. Ave. Property. (*See Ex. 41, Photographs of N.Y. Ave. Property.*)

147. The roof bracket installation was not within the scope of work allowed by Permit No. B1611092.

148. The roof bracket installation is not a replacement “in kind” of the prior roof display support.

149. The roof bracket installation has not been inspected or approved by DCRA.

150. The roof bracket installation is an illegal construction because the underlying application for the replacement of an in kind existing roof display support, rather than a roof bracket, constituted a false statement, misrepresentation of fact, or other significant inaccuracy in the application or on the plans on which a permit or approval was based. That false statement, misrepresentation, or inaccuracy substantively affected the approval. *See 12A DCMR § 105.6.1.*

151. Upon information and belief, on or about August 19, 2016, Digi Media began installing large LED signs on the roof of the N.Y. Ave. Property using the previously installed roof brackets. (*See Ex. 41, Photographs of N.Y. Ave. Property.*)

152. Neither Digi Media nor Western Washington DC Corporate Center LLC applied for or obtained a sign permit for the LED sign.

153. On August 23, 2016, DCRA issued a Stop Work Order for the N.Y. Ave. Property, for working without a sign permit and ordered that permits be obtained. (See Ex. 42, Stop Work Order for N.Y. Ave. Property.)

154. On August 23, 2016, DCRA issued a Correction Order, requiring removal of all signs and brackets associated with the roof sign installation at the N.Y. Ave. Property. (See Ex. 43, Correction Order for N.Y. Ave. Property; Ex. 44, Photograph of Stop Work Order/Correction Order.)

155. The LED sign at the N.Y. Ave. Property is an illegal sign under 12 DCMR §§ 105.1 and Appendix N, because neither Digi Media nor Western Washington DC Corporate Center LLC applied for or obtained a sign permit and DCRA did not approve the installation of a sign, which constitutes illegal construction.

#### ADDITIONAL UNPERMITTED PROPERTIES

156. Upon information and belief, Digi Media stated in its media packet that it intends to install LED signs at the following additional locations:

950 L'Enfant Plaza, S.W. Washington, D.C. 20024	1850 New York Ave., N.E. Washington, D.C. 20002	250 E Street, S.W. Washington, D.C. 20024
64 New York Ave., N.E. Washington, D.C. 20002	1020 G Street, N.E. Washington, D.C. 20001	4301 Connecticut Ave., N.W. Washington, D.C. 20008
700 H Street, N.E. Washington, D.C. 20002	601 13th Street, N.E. Washington, D.C. 20005	805 21st Street, N.W. Washington, D.C. 20052
801 N. Capitol Street, N.E. Washington, D.C. 20002	1901 L Street, N.W. Washington, D.C. 20001	1401 New York Ave., N.W. Washington, D.C. 20005

(See Ex. 1, Digi Media Brochure.)

157. Many of these sign locations are in the downtown core and in areas near metro stations and other high-traffic pedestrian areas, such as the 1350 Connecticut Avenue, N.W. location outside the Dupont Circle metro station.

158. Thousands of people pass underneath or alongside defendants' LED signs—which are not permitted or inspected by DCRA—causing a significant risk of death or injury if one of these massive signs were to fall on a passerby.

**OFFICE OF ADMINISTRATIVE HEARINGS APPEALS**

159. On July 29, 2016, Digi Media filed four hearing requests at the Office of Administrative Hearings (OAH) based on the Notice of Revocations issued by DCRA regarding Building Permit Nos. B1608312, B1608315, B1608314, and B1609425. The Building Permits relate to:

- 2100 M Street, N.W.
- 1350 Connecticut Ave., N.W.
- 1101 Vermont Ave., N.W.
- 2850 New York Ave., N.E.

160. On August 19, 2016, Digi Media and Jemal's Darth Vader, LLC also filed a request for a hearing regarding the Notice of Revocation of Building Permit regarding 111 Massachusetts Ave., N.W., Washington, D.C. 20001.

161. On August 22, 2016, the Hon. Paul B. Handy held a status conference and heard from the parties on multiple issues, including Digi Media's request to stay DCRA's enforcement of the Notices of Revocations. (See Ex. 45, OAH No. 2016-DCRA-00079, Order, August 22, 2016.)

162. Following the hearing, Judge Handy issued an order, consolidating these matters into a case captioned 2016-DCRA-00079, *et al.*, and set a briefing schedule for DCRA's amended motion to dismiss.<sup>2</sup> (*Id.*)

163. As to Digi Media's request for a stay, Judge Handy noted that OAH does not have equitable powers but does have regulatory authority under 12A DCMR § 112.6 to stay enforcements. (*Id.*)

164. As a result, Judge Handy stayed enforcement of the Notices of Revocation "only to the extent that the permits authorized installation of brackets" but explicitly did not stay any enforcement actions with regard to the LED signs. (*Id.*) He noted that, "if DCRA has issued a stop work order with regard to a project, the stay is not effective with regard to the stop work order." (*Id.*)

**COUNT I**  
**DEFENDANT DIGI MEDIA: ILLEGAL CONSTRUCTION**  
**UNDER D.C. OFFICIAL CODE § 6-1407 (2001)**

165. Paragraphs 1-164 are incorporated as if repeated in full.

166. Digi Media violated 12A DCMR § 105.1 by not obtaining building permits for construction performed within the District.

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<sup>2</sup> On August 25, 2016, Digi Media filed an appeal at OAH challenging the Stop Work Orders and Correction Orders, Requesting an Emergency Hearing, Requesting a Stay, and Requesting Consolidation of all claims regarding the following properties: 1350 Connecticut Ave., N.W., Washington, D.C. 20036; 700 H Street, N.E., Washington, D.C. 20002; 1 Thomas Circle, N.W., Washington, D.C. 20005; 5335 Wisconsin Ave., N.W., Washington, D.C. 20015; 2850 New York Ave., N.E., Washington, D.C. 20002; and 2100 M Street, N.W., Washington, D.C. 20037. As of the date of filing this Complaint, OAH has not ruled on Digi Media's August 25, 2016 filings.

167. Digi Media violated 12A DCMR Appendix N by not obtaining permits for installation of signs within the District.

168. Digi Media violated D.C. Official Code § 6-1406 (2001) and 12A DCMR § 105.8 by continuing to perform construction after a stop work order was issued.

### COUNT II

#### **DEFENDANT JEMAL'S DARTH VADER LLC: ILLEGAL CONSTRUCTION UNDER D.C. OFFICIAL CODE § 6-1407 (2001)**

169. Paragraphs 1-168 are incorporated as if repeated in full.

170. Jemal's Darth Vader LLC violated 12A DCMR § 105.1 by not obtaining building permits and allowing construction without building permits at the Mass. Ave. Property in the District of Columbia.

171. Jemal's Darth Vader LLC violated 12A DCMR Appendix N by not obtaining permits for the installation of signs or allowing installation of signs without sign permits at the Mass. Ave. Property in the District of Columbia.

172. Jemal's Darth Vader LLC violated 12A DCMR §§ 114.7 & 114.10 by continuing to perform or allowing work to proceed at the Mass. Ave. Property after a stop work order was issued.

### COUNT III

#### **DEFENDANT DOUGLAS DEVELOPMENT CORP.: ILLEGAL CONSTRUCTION UNDER D.C. OFFICIAL CODE § 6-1407 (2001)**

173. Paragraphs 1-172 are incorporated as if repeated in full.

174. Douglas Development Corp. violated 12A DCMR § 105.1 by not obtaining building permits or allowing construction without building permits at the Mass. Ave. Property in the District of Columbia.

175. Douglas Development Corp. violated 12A DCMR Appendix N by not obtaining permits for the installation of signs or allowing installation of signs without sign permits at the Mass. Ave. Property in the District of Columbia.

176. Douglas Development Corp. violated 12A DCMR §§ 114.7 & 114.10 by continuing to perform or allowing work to proceed at the Mass. Ave. Property after a stop work order was issued.

**COUNT IV**  
**DEFENDANT THOMAS CIRCLE CF LLC: ILLEGAL CONSTRUCTION UNDER  
D.C. OFFICIAL CODE § 6-1407 (2001)**

177. Paragraphs 1-176 are incorporated as if repeated in full.

178. Thomas Circle CF LLC violated 12A DCMR § 105.1 by not obtaining building permits or allowing construction without building permits at the Thomas Cir. Property in the District of Columbia.

179. Thomas Circle CF LLC violated 12A DCMR Appendix N by not obtaining permits for the installation of signs or allowing installation of signs without sign permits at the Thomas Cir. Property in the District of Columbia.

**COUNT V**  
**DEFENDANT UBS REAL ESTATE INVESTMENTS INC.: ILLEGAL  
CONSTRUCTION UNDER D.C. OFFICIAL CODE § 6-1407 (2001)**

180. Paragraphs 1-179 are incorporated as if repeated in full.

181. UBS Real Estate Investments, Inc. violated 12A DCMR § 105.1 by not obtaining building permits or allowing construction without building permits at the Vermont Ave. Property in the District.

182. UBS Real Estate Investments Inc. violated 12A DCMR Appendix N by not obtaining permits for the installation of signs or allowing installation of signs without sign permits at the Vermont Ave. Property in the District of Columbia.

**COUNT VI**  
**DEFENDANT NH STREET PARTNERS HOLDINGS LLC: ILLEGAL  
CONSTRUCTION UNDER D.C. OFFICIAL CODE § 6-1407 (2001)**

183. Paragraphs 1-182 are incorporated as if repeated in full.

184. NH Street Partners Holdings LLC violated 12A DCMR § 105.1 by not obtaining building permits or allowing construction without building permits at the New Hampshire Ave. Property in the District of Columbia.

185. NH Street Partners Holdings LLC violated 12A DCMR Appendix N by not obtaining permits for the installation of signs or allowing installation of signs without sign permits at the New Hampshire Ave. Property in the District of Columbia.

**COUNT VII**  
**DEFENDANT 1350 CONNECTICUT AVENUE LIMITED PARTNERSHIP:  
ILLEGAL CONSTRUCTION UNDER D.C. OFFICIAL CODE § 6-1407 (2001)**

186. Paragraphs 1-185 are incorporated as if repeated in full.

187. 1350 Connecticut Avenue Limited Partnership violated 12A DCMR § 105.1 by not obtaining building permits or allowing construction without building permits at the Conn. Ave. Property in the District of Columbia.

188. 1350 Connecticut Avenue Limited Partnership violated 12A DCMR Appendix N by not obtaining permits for the installation of signs or allowing

installation of signs without sign permits at the Conn. Ave. Property in the District of Columbia.

**COUNT VIII**  
**DEFENDANT 2100 M STREET, LP: ILLEGAL CONSTRUCTION**  
**UNDER D.C. OFFICIAL CODE § 6-1407 (2001)**

189. Paragraphs 1-188 are incorporated as if repeated in full.

190. 2100 M Street, LP violated 12A DCMR § 105.1 by not obtaining building permits or allowing construction without building permits at the M Street Property in the District of Columbia.

**COUNT IX**  
**DEFENDANT WESTERN WASHINGTON DC CORPORATE CENTER LLC:**  
**ILLEGAL CONSTRUCTION UNDER D.C. OFFICIAL CODE § 6-1407 (2001)**

191. Paragraphs 1-190 are incorporated as if repeated in full.

192. Western Washington DC Corporate Center LLC violated 12A DCMR § 105.1 by not obtaining building permits or allowing construction without building permits at the N.Y. Ave. Property in the District of Columbia.

193. Western Washington DC Corporate Center LLC violated 12A DCMR Appendix N by not obtaining permits for the installation of signs or allowing installation of signs without sign permits at the N.Y. Ave. Property in the District of Columbia.

**COUNT X**  
**DEFENDANT CLPF-CC PAVILION: ILLEGAL CONSTRUCTION**  
**UNDER D.C. OFFICIAL CODE § 6-1407 (2001)**

194. Paragraphs 1-193 are incorporated as if repeated in full.

195. CLPF-CC Pavilion violated 12A DCMR § 105.1 by not obtaining building permits or allowing construction without building permits at the Wisconsin Ave. Property in the District of Columbia.

**PRAYER FOR RELIEF**

WHEREFORE, the District requests the Court award it injunctive relief under D.C. Official Code § 6-1407 with respect to all named defendants, and requiring Defendants to:

- 1) Stop all construction activities in the District involving the installation of brackets or LED signs absent the prior written authorization from a DCRA representative to be designated by DCRA;
- 2) Comply with all orders issued by DCRA;
- 3) Identify all locations in the District where defendants have installed brackets and LED signs; and
- 4) Remove all brackets and LED signs that defendants have installed in the District.

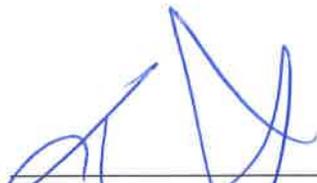
The District also seeks such other and further relief as this Court deems appropriate or is allowed by statute.

Dated: August 31, 2016.

Respectfully submitted,

KARL A. RACINE  
Attorney General for the District of Columbia

ELIZABETH SARAH GERE  
Deputy Attorney General  
Public Interest Division



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**ATTORNEYS FOR THE DISTRICT OF COLUMBIA**

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

DISTRICT OF COLUMBIA,

*Plaintiff,*

v.

DIGI MEDIA  
COMMUNICATIONS LLC, *et al.*,

*Defendants.*

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

Calendar \_\_\_\_\_

Next Event:  
\_\_\_\_\_

**THE DISTRICT OF COLUMBIA'S  
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

The District of Columbia (the District) moves under Super Ct. Civ. R. 65 and D.C. Code § 6-1407 for a temporary restraining order requiring Defendant Digi Media Communications LLC (Digi) and the additional named defendants to:

- Stop all construction activities in the District involving the installation of brackets or LED signs absent the prior written authorization from a Department of Consumer and Regulatory Affairs (DCRA) representative to be designated by DCRA;
- Comply with all orders issued by DCRA;
- Identify all locations in the District where defendants have installed brackets and LED signs; and
- Remove all brackets and LED signs that defendants have installed in the District.

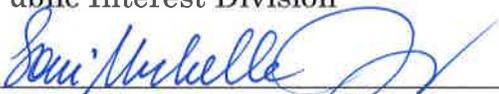
The grounds and the reasons are set forth in the accompanying memorandum of points and authorities. A proposed Temporary Restraining Order is attached.

Dated: August 31, 2016.

Respectfully submitted,

KARL A. RACINE  
Attorney General for the District of Columbia

ELIZABETH SARAH GERE  
Deputy Attorney General  
Public Interest Division

  
\_\_\_\_\_  
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(202) 730-1875 (fax)  
esther.mcgraw@dc.gov

*Counsel for Plaintiff the District of Columbia*

CERTIFICATE OF SERVICE

I certify that on August 31, 2016, a copy of the foregoing Motion, Memorandum of Points and Authorities, and Proposed Temporary Restraining Order were served via first-class mail, postage prepaid, and email (if known) to:

DIGI MEDIA COMMUNICATIONS LLC  
812 6<sup>th</sup> Street, N.E.  
Washington, D.C. 20002

SERVE  
EDWARD L. DONOHUE, ESQ.  
Donohue & Stearns PLC  
117 Oronoco Street  
Alexandria, VA 22314  
E-Mail: edonohue@donohuestearns.com

and

JEMAL'S DARTH VADER LLC  
111 Massachusetts Ave., N.W.  
Washington, D.C. 20001

SERVE  
CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
E-Mail: info@cscglobal.com

and

DOUGLAS DEVELOPMENT CORP.  
702 H Street, N.W.  
Suite 400  
Washington, D.C. 20001

SERVE  
CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
E-Mail: info@cscglobal.com

and

THOMAS CIRCLE CF LLC  
1 Thomas Circle, N.W.  
Washington, D.C. 20005

**SERVE**

CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
E-Mail: info@cscglobal.com

LYLE BLANCHARD, ESQ.  
Greenstein, Delorme & Luchs P.C.  
1620 L Street, N.W., #900  
Washington, D.C. 20036  
E-Mail: lmb@gdllaw.com

and

UBS REAL ESTATE INVESTMENTS INC.  
1101 Vermont Ave., N.W.  
Washington, D.C. 20005

**SERVE**

CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
E-Mail: info@cscglobal.com

and

NH STREET PARTNERS HOLDINGS LLC.  
1200 New Hampshire Ave., N.W.  
Washington, D.C. 20036

**SERVE**

C T CORPORATION SYSTEM  
1015 15<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, D.C. 20005  
E-Mail: CT-StateCommunications@wolterskluwer.com

and

1350 CONNECTICUT AVENUE LIMITED PARTNERSHIP  
1350 Connecticut Ave., N.W.  
Washington, D.C. 20036

**SERVE**

VERON SMITH  
1350 Connecticut Ave., N.W.  
Washington, D.C. 20036  
E-Mail: CT-StateCommunications@wolterskluwer.com

and

2100 M STREET, LP  
C/O LINCOLN PROPERTY TRUST  
2100 M Street, N.W.  
Washington, D.C. 20037

**SERVE**

C T CORPORATION SYSTEM  
1015 15<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, D.C. 20005  
E-Mail: CT-StateCommunications@wolterskluwer.com

and

WESTERN WASHINGTON DC CORPORATE CENTER LLC  
2850 New York Ave., N.E.  
Washington, D.C. 20002

**SERVE**

CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
E-Mail: info@cscglobal.com

and

CLPF-CC PAVILION  
C/O CLARION PARTNERS LLC  
5335 Wisconsin Ave., N.W.  
Washington, D.C. 20015

**SERVE**

CORPORATION SERVICE COMPANY  
1090 Vermont Ave., N.W.  
Washington, D.C. 20005  
E-Mail: info@cscglobal.com



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ESTHER YONG MCGRAW  
Assistant Attorney General

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

<p>DISTRICT OF COLUMBIA,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>v.</p> <p>DIGI MEDIA COMMUNICATIONS LLC, <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>Case No. _____</p> <p>Judge _____</p> <p>Calendar _____</p> <p>Next Event: _____</p>
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**MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF THE DISTRICT OF COLUMBIA'S  
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

**INTRODUCTION**

Defendant Digi Media Communications LLC and defendant building owners have erected numerous light-emitting diode (LED) signs throughout the District of Columbia (the District), despite having no sign permits to do so and in clear violation of the District's subsequent orders to stop. These LED signs tower over and above pedestrians, causing substantial and significant risk to public safety. This Court must step in and order defendants to stop their illegal conduct and allow the District to fulfill its responsibility to protect the public safety and welfare.

In their brief course of conduct with the Department of Consumer and Regulatory Affairs (DCRA) thus far, defendants have consistently defied the District's regulations. Despite DCRA's notice and posting of no fewer than 15 Stop Work Orders and Correction Orders, defendants nonetheless continue to blanket

the District with their massive LED signs in plain violation of the District's Construction Codes, creating public safety hazards in numerous locations. Because of defendants' documented history of ignoring DCRA's administrative orders, a court order—backed by this Court's contempt power—is needed to prevent further irreparable harm.

The Court should require defendants to remove immediately all LED signs and, given defendants' pattern and practice of engaging in illegal construction and violating DCRA's orders, the Court also should bar defendants from installing further brackets and LED signs in the District without adequate safeguards, such as requiring the prior written authorization to do so from a DCRA representative.

#### FACTS

DCRA is charged with protecting the health, safety, and welfare of the citizens of the District. *See* Reorganization Plan No. 1 of 1983, D. C. Code D. I, T. I, Ch. 15, Subch. VI, Pt. A, 1983 Plan 1. Among its many duties, DCRA is responsible for interpreting and enforcing the District's Construction Codes, which includes the District's Building Code and accompanying sign regulations. 12A DCMR §§ 103.1, 104.1; 12A DCMR Appendix N. A building permit is required for all construction, alteration, repair, or addition work on a building or structure. 12A DCMR § 105.1. And all signs must comply with structural and materials requirements. 12A DCMR § N101.11.

DCRA may issue a Stop Work Order (SWO) or Correction Order (CO) for violations of the Construction Codes, including the sign regulations in Appendix N

of the Building Code. 12A DCMR § 114.1. Once DCRA issues an SWO, all work at that address, even work that is properly permitted or requires no permit, must stop until DCRA lifts the SWO. 12A DCMR § 114.6. Property owners are responsible for ensuring compliance with an SWO and are cited for an SWO violation if their subordinate employees, workers, and subcontractors do not comply. 12A DCMR § 114.7. Continuing any kind of work with a pending SWO constitutes Unlawful Continuance and is a violation of the Construction Codes. 12A DCMR § 114.10.

Defendant Digi Media Communications LLC (Digi) seeks to illegally blanket the city with 52 large-scale LED screens for the purpose of displaying commercial advertising to pedestrians and vehicular traffic, as demonstrated by its promotional brochure which claims “[t]his large format digital network will fill the biggest OOH [out-of-home] media void in [the] DC Market.” (Compl. Ex. 1 at 6.) Digi is acting in concert with defendant building owners to accomplish this goal. (Compl. ¶ 34.) Thus far, defendants have erected and installed exterior brackets and/or LED signs at eight buildings in the District:

- 111 Massachusetts Avenue, N.W.
- 1 Thomas Circle, N.W.
- 1101 Vermont Avenue, N.W.
- 1200 New Hampshire Avenue, N.W.
- 1350 Connecticut Avenue, N.W.
- 2100 M Street, N.W.
- 5335 Wisconsin Avenue, N.W.
- 2850 New York Avenue, N.W.

(See Compl. Exs. 10, 14, 19, 23, 26, 31, 36, 41.)

Some of these LED signs are placed on the roof. (Compl. Ex. 41.) No sign permits have been obtained for any of the signs. (Compl. ¶¶ 49, 68, 85, 98, 112, 126,

138, 152.)

Many of these sign locations are in the downtown core and in areas near metro stations and other high-traffic pedestrian areas, such as the 1350 Connecticut Avenue, N.W. location outside the Dupont Circle metro station. (Compl. ¶ 157; *see* Compl. Ex. 26.) Thousands of people pass underneath or alongside defendants' LED signs—which are not permitted or inspected by DCRA—causing a significant risk of death or injury if one of these massive signs were to fall on a passerby. (Compl. ¶ 158.)

DCRA revoked defendants' building permits for the brackets on multiple grounds, and these revocations were appealed to the Office of Administrative Hearings (OAH) at the end of July. (Compl. ¶¶ 159–60.) DCRA issued numerous Stop Work Orders and Correction Orders, some of which were appealed to OAH this month. All of the OAH appeals are only in the initial stages of litigation. (Compl. ¶¶ 159–64.)

In the meantime, defendants have defied DCRA's multiple SWOs and COs and continue to erect brackets and LED signs at these locations in violation of DCRA's orders. (*See, e.g.*, Compl. ¶¶ 50–52.) At some locations, DCRA inspectors have visited multiple times, and each time, illegal construction work is continuing. (*See, e.g.*, Compl. ¶¶ 53–54.)

The District, acting alone, is unable to prevent defendants from continuing their brazen and illegal construction work in violation of the District's Construction Codes and DCRA's SWOs and COs. (*Id.*)

## STANDARD OF REVIEW

The decision to grant or deny a TRO “is committed to the sound discretion of the trial court.” *District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 14 (D.C. 2000) (internal quotation marks omitted). A court should grant a TRO where the movant can show (1) a substantial likelihood of success on the merits; (2) a danger of irreparable harm during the pendency of the action; (3) that it will suffer more harm if the TRO is denied than its opponent will suffer if the TRO is granted; and (4) that the public interest will not be disserved by the TRO. *Id.* Of these factors, the second—irreparable injury—is the most important. *Id.*

In this case, all four factors favor granting the District’s motion for a TRO.

## ARGUMENT

### I. The Likelihood of Success On the Merits Favors the District of Columbia.

The District is substantially likely to succeed on the merits of its claim for injunctive relief under D.C. Code § 6-1407.

D.C. Code § 6-1407 empowers the Office of the Attorney General for the District of Columbia to bring action in the Superior Court for the District of Columbia for injunctive relief against any person or business entity that “has engaged, is engaged, or is about to engage in acts or practices constituting a violation or infraction of any provision or orders issued under the Construction Codes.” D.C. Code § 6-1407(a). The injunctive relief available under this provision is broad, including the cessation of construction activity, the removal of structures already built, and “[a]ny other equitable relief that prevents illegal construction

activity in the District of Columbia.” *See* D.C. Code § 6-1407(b)(2)-(4). This injunction provision also permits the Court to issue a mandatory injunction commanding compliance with any provision or order issued under the Construction Codes. D.C. Code § 6-1407(c).

The standard for granting injunctive relief under this provision requires only that the District make a showing that the injunctive relief sought “will prevent illegal construction activity in the District of Columbia.” D.C. Code § 6-1407(a). The erection, construction, reconstruction, conversion, or alteration of any “building or structure or part thereof” in violation of the Construction Codes constitutes illegal construction. 12A DCMR § 113.7; *see also* 12A DCMR § 113.1 (“It shall be unlawful for any person, firm, or corporation to erect, construct, alter, extend, repair, raze, demolish, use, or occupy any building or other structure or equipment regulated by the Construction Codes or Zoning Regulations, or cause same to be done, in conflict with or in violation of any of the provisions of the Construction Codes or Zoning Regulations.”). The District need not prove irreparable harm to obtain a preliminary injunction under this statute. D.C. Code § 6-1407(a).

Here, the District has shown that defendants have engaged in illegal construction, including erecting signs without first obtaining a permit (12A DCMR § N101.3) and continuing construction activities in violation of an SWO (12 DCMR § 114.10), among other violations.

For example, on August 15, 2016, Digi and the building owner—without first having obtained a sign permit—began installing the first of many large LED signs

to the building exterior of 111 Massachusetts Avenue, N.W. (Compl. ¶ 48.) This act constitutes a violation of 12A DCMR § N101.3. That same day, DCRA issued a Notice of Revocation for the brackets building permit under 12A DCMR § 105.6. (Compl. ¶ 47.) Just a day later, on August 16, DCRA issued a CO and SWO for 111 Massachusetts Avenue, N.W. for working without a sign permit and ordered that all LED signs be removed. (Compl. ¶¶ 50–51.)

Despite the Notice to Revoke Permit, SWO, and CO, Digi and the building owner, Jemal's Darth Vader LLC, continued work, as observed by DCRA inspector Clarence Whitescarver on August 19, 2016. (Compl. ¶¶ 52–53.) Five days later, on August 24, 2016, Mr. Whitescarver inspected the property again and saw Digi and Jemal's Darth Vader LLC using a mobile crane to install LED signs. (Compl. ¶ 54.) These actions violated the SWO and, as such, constituted "Unlawful Continuance" as defined in 12A DCMR § 114.10.<sup>1</sup> Unlawful Continuance, even standing alone, triggers the injunctive relief under D.C. Code § 6-1407 sought by the District.

The other locations identified in the Complaint follow a similar pattern.<sup>2</sup> Digi and defendant building owners erected LED signs without permits at the following

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<sup>1</sup> 12A DCMR § 114.10 provides in full:

Unlawful Continuance. Any *person* who shall continue any work in or about a *premises*, including any *building* or other *structure* after a stop work order has been posted, except such work as that *person* is directed to perform to remove a violation or unsafe condition, shall be subject to the penalties set forth in D.C. Official Code § 6-1406 (2012 Repl.) and the injunctive relief set out in D.C. Official Code § 6-1407 (2012 Repl.).

<sup>2</sup> Digi has filed OAH appeals challenging a number of the Stop Work Orders and Correction Orders. (Compl. ¶¶ 159–60, 162 n.2.)

locations in the District:

- 1 Thomas Circle, N.W.
- 1101 Vermont Avenue, N.W.
- 1200 New Hampshire Avenue, N.W.
- 1350 Connecticut Avenue, N.W.
- 2850 New York Avenue, N.E.

(Compl. ¶¶ 67–68, 83, 85, 97–98, 111–12, 151–52; Compl. Ex. 14, 19, 23, 26, 41.)

Notably, Digi’s media kit demonstrates its apparent intention to continue its illegal construction activity in the District. (Compl. ¶ 32; Compl. Ex. 1.)

Given Digi’s pattern and practice of flouting the District’s Construction Codes and DCRA’s orders and its apparent intention to continue its illegal construction activities, in collusion with defendant building owners, injunctive relief is necessary to prevent illegal construction in the District. The District therefore seeks injunctive relief that would require Digi and defendant building owners to comply with all DCRA orders, stop the installation of brackets or LED signs in the District without prior written approval from a designated DCRA representative, and remove all brackets and LED signs defendants have installed in the District.<sup>3</sup> The TRO requested here is narrowly tailored to prevent illegal construction activity in the District and necessary to ensure the safety of the public and preserve the status quo

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<sup>3</sup> One of the purposes of a TRO is to preserve the status quo pending the outcome of litigation. “The status quo is the last uncontested status which preceded the pending controversy.” *Dist. 50, United Mine Workers of Am. v. Int’l Union, United Mine Workers of Am.*, 412 F.2d 165, 168 (D.C. Cir. 1969) (internal quotation marks and citation omitted). The last uncontested status which preceded the instant dispute was the absence of defendants’ brackets and LED signs. The Court therefore has the authority to order defendants to remove the brackets and LED signs to preserve the status quo. *See id.* The public safety concerns outlined above also weigh in favor of their removal.

pending the outcome of litigation.

II. There is Significant Irreparable Harm for the District and the Public.

As explained by a DCRA inspector, defendants' brackets and LED signs are not properly permitted, have not been inspected by DCRA, and give rise to serious public safety concerns. (Declaration of Clarence Whitescarver, attached as Ex. A, ¶¶ 4-8.) These safety concerns are numerous. *See* 12A DCMR § N101.11. For one, the Construction Codes require that any structure mounted to a building be able to withstand winds up to 90 miles per hour. (Whitescarver Decl. ¶ 9.) Because sign permit applications were not submitted, the DCRA has not been able to review whether these signs can withstand such winds and will not detach, fall, and cause injury to any pedestrians or property. (*Id.*) Similarly, the DCRA has no way to know whether these signs are composed of materials that might shatter and cause injury to persons below. (*Id.* ¶ 11.) In addition, there is no way for DCRA to know whether the location and placement of these signs create fire safety hazards by, for example, impeding the egress of smoke or persons or preventing access by fire and safety personnel in the event of an emergency. (*Id.* ¶ 12.) DCRA also has no way of knowing whether the signs themselves are combustible. (*Id.* ¶ 13.)

In addition, the DCRA permitting process takes into account safety concerns of other departments, including the District's Department of Transportation. (*Id.* ¶ 14.) *See* 12A DCMR § N101.7.11.8 (Vehicular Traffic Safety). The placement of many of these LED signs at the streetscape level creates traffic safety and distraction concerns. (Whitescarver Decl. ¶ 14.) Because no sign permit applications

were submitted, these signs have not been reviewed to ensure that their activation will not create dangerous distractions for drivers and cause traffic accidents. (*Id.* ¶ 14.)

Because the LED signs are placed in high-traffic pedestrian areas, defendants' illegal construction could result in death or serious bodily harm if these unpermitted, uninspected LED signs were to fall, having a direct impact and risk to the general public. Similarly, the streetscape LED signs, many of which are located in major thoroughfares, present a risk of causing traffic accidents due to distracting drivers. These public safety concerns are substantial. If these signs are allowed to remain, the general public is at risk until they are removed.

### III. The Balance of Harms Weighs in the District's Favor.

The potential harm to the District and public outweighs any potential harm to defendants resulting from entry of the requested TRO. As outlined above, the illegal brackets and LED signs defendants have erected pose a serious and significant threat to public safety.

Defendants, on the other hand, have no legitimate interest in continuing to engage in illegal construction activity and thus will not suffer any injury from being enjoined from doing so. The injunctive relief the District seeks requires defendants to remove the illegal brackets and LED signs and prohibits defendants from future installations without prior written approval from a designated DCRA representative. In short, the requested relief requires defendants to comply with the law. This hardly constitutes an unreasonable burden. *See F.T.C. v. Mallett*, 818 F.

Supp. 2d 142, 150 (D.D.C. 2011) (requiring compliance with federal law “cannot give rise to a cognizable burden”). To the extent defendants contend that a TRO will result in economic harm, any such injury pales in comparison to the risk to public safety and welfare. *See Nat’l R.R. Passenger Corp. (Amtrak) v. Ry. Express, LLC*, Civ. No. WDQ-08-1501, 2009 U.S. Dist. LEXIS 61978, at \*9-10 (D. Md. July 17, 2009) (where Amtrak identified safety concerns in inspecting and maintaining tracks and providing access to fire and emergency vehicles, balance of equities favored Amtrak because opposing party would suffer only monetary harm).

#### IV. The Public Interest Weighs in Favor of Granting the TRO.

The public has a strong interest in the District’s enforcement of its Construction Codes to accomplish the statute’s intent, which is to protect the safety, health, and welfare of the public.<sup>4</sup> D.C. Code § 6-1404. As described above, the District has demonstrated the public safety hazards and risks posed by defendants’ LED signs. Conversely, the public could not possibly gain from defendants’ continued illegal construction activities. The public interest does not lie in

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<sup>4</sup> D.C. Code § 6-1404 provides in full:

The Construction Codes shall be construed to secure their expressed intent, which is to ensure public safety, health, and welfare by regulating and governing the conditions and maintenance of premises, buildings, and structures, and mechanical, plumbing, fuel gas and electrical equipment and systems, including by providing standards for structural strength, energy and water conservation, accessibility to persons with disabilities, adequate egress facilities, sanitary equipment, light, ventilation, and fire safety, and the issuance of permits, and, in general, to secure safety to life and property from all hazards incident to the design, construction, erection, repair, removal, demolition, maintenance, use, and occupancy of buildings, structures, and premises, and related equipment and systems.

promoting or protecting defendants' business and financial interests, but in carrying out the Council's will in protecting the public safety and welfare, as required by the Construction Codes. A TRO is in the public interest for the safety reasons identified by the District. *See Amtrak*, 2009 U.S. Dist. LEXIS 61978, at \*10 ("injunction is in the public interest for the safety and maintenance reasons Amtrak has identified").

### CONCLUSION

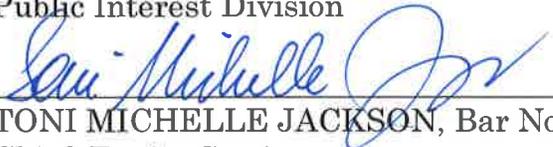
For the foregoing reasons, the Court should grant the District's request for a temporary restraining order, issue the attached proposed order, and provide such other relief as the nature of this cause shall require.

Dated: August 31, 2016.

Respectfully submitted,

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