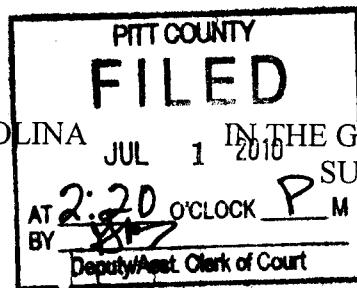


STATE OF NORTH CAROLINA  
COUNTY OF PITT



JUL 1 2010

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
10 - CVS- 1833

PITT COUNTY HEALTH DIRECTOR,  
Dr. John H. Morrow,  
Plaintiff,

vs.

MATTHEW BLACKMAN and  
CHARLES McNEIL, Owners of  
OTHER PLACE,  
Defendants.

**CONSENT ORDER**

(Preliminary Injunction)  
N.C. Gen. Stat. §130A-18  
N.C. Gen. Stat. §1A-1, Rule 65

THIS MATTER coming on to be heard before the Honorable James C. Cole, Superior Court Judge presiding, pursuant to a Complaint filed on June 28, 2010 seeking injunctive relief for the operation of a nightclub in violation of N.C. Gen. Stat. §130A-496.

Upon the call of this matter for hearing, Lisa Overton, counsel for the Plaintiff, informed the Court that the parties had reached a resolution of this matter. Therefore, based upon the Court's examination of the matters of record, the representations of counsel, and the stipulations of the parties as reflected by their signatures below, the Court makes the following:

**FINDINGS OF FACT**

1. That the Plaintiff, Pitt County Health Director Dr. John H. Morrow, is authorized by the State of North Carolina to ensure the health and wellbeing of the citizens of Pitt County through directing the efforts of the Pitt County Health Department under the provisions of Chapter 130A of the North Carolina General Statutes.

2. That the Plaintiff, Pitt County Health Director Dr. John H. Morrow, manages the Pitt County Public Health Center, a local health department operating in Pitt County, North Carolina.

3. That the Defendants, Matthew Blackman and Charles McNeil, are the owners of Other Place nightclub located at 207 East 5<sup>th</sup> Street in Greenville, Pitt County, North Carolina, 27858.

4. That this action was instituted upon the Plaintiff's filing of a Complaint on June 28, 2010 seeking injunctive relief and a restraining order against the Defendants for the operation of a nightclub in violation of N.C. Gen. Stat. §130A-496.

5. That the Defendants were each personally served with a copy of the Complaint and Temporary Restraining Order in this cause on June 28, 2010 by Pitt County Deputy Sheriff Marty Burroughs.

6. That the Defendants herein acknowledge proper service of the Complaint and Temporary Restraining Order and specifically waive any defect in service of process and notice which may be prescribed by law.

7. That N.C. Gen. Stat. §130A-496, et. seq., also known as the Act to Prohibit Smoking in Certain Public Places and Places of Employment, went into effect as law on January 2, 2010 and that under this new law, smoking is prohibited in enclosed areas of bars and restaurants.

8. That N.C. Gen. Stat. §130A-497 requires bar owners and managers to take the following steps:

- a. Conspicuously post signs clearly stating that smoking is prohibited;
- b. Remove all indoor ashtrays and other smoking receptacles; and
- c. Direct a person who is smoking to extinguish the lighted tobacco product.

9. That pursuant to N.C. Gen. Stat. §130A-22(h1), the local health director is authorized to enforce the provisions of N.C. Gen. Stat. §130A-497 through the imposition of administrative penalties.

10. That notwithstanding the enforcement remedies available in N.C. Gen. Stat. §130A-22(h1), the local health director is also authorized to seek injunctive relief pursuant to N.C. Gen. Stat. §130A-18 for violation of any public health law.

11. That complaints were received on January 10 and February 21, 2010 that the Other Place nightclub was violating the smoking prohibition law and alleging that employee(s) and/or customer(s) were observed smoking inside and that ash trays or similar tobacco ash receptacles were present.

12. That on January 29, 2010, a representative of the Pitt County Health Department conducted an unannounced on-site inspection at the Other Place and noncompliance with the law was verified and subsequently, on February 1, 2010, a "First Violation" letter was issued.

13. That on February 6, 2010, a representative of the Pitt County Health Department made another on-site inspection at the Other Place and noncompliance with the law was again verified and subsequently, on February 15, 2010, a "Second Violation" letter was issued.

14. That on March 6, 2010, a representative of the Pitt County Health Department made a third on-site visit and verified continued noncompliance with the law and subsequently, on March 9, 2010, a "Third Violation" letter was issued. Additionally, an ongoing administrative penalty of \$200.00 per day was imposed upon the owners of Other Place night club pursuant to N.C. Gen. Stat. §130A-22(h1).

15. That the "Third Violation" letter issued to Other Place advised the owners, Matthew Blackman and Charles McNeil, that this administrative penalty would continue to accrue at a rate of \$200.00 per day until 1) the owners provided notice to the Pitt County Health Department that the violation(s) had been corrected; 2) the owners provided the Pitt County Health Department staff access to the Other Place during the establishment's operating hours; and 3) the health department staff certified that the Other Place was in compliance with the law. This letter also detailed the process to appeal the administrative penalty pursuant to N.C. Gen. Stat. §130A-24.

16. That on March 27, 2010, a representative of the Pitt County Health Department made an unannounced on-site visit and verified continued noncompliance with the law in that the establishment had no signage posted, ash trays were present and there were people smoking within the establishment who were not directed to extinguish their lighted tobacco product.

17. That on March 29, 2010, a "Reminder Notice" letter was issued reminding the bar owners that an administrative penalty of \$200.00 per day had been imposed against them and that they could appeal the imposition of the administrative penalties by providing written notice to the Pitt County Health Department.

18. That, after receiving a notice and reminder of the process and right of appeal, the Defendants did not appeal the administrative penalties imposed by the local health director pursuant to N.C. Gen. Stat. §130A-22(h1) and as such, their right to appeal expired on April 8, 2010.

19. That on April 11, 2010, a representative of the Pitt County Health Department made an unannounced on-site visit and again verified continued noncompliance with the law in that the establishment had no signage posted, ash trays were present and there were people smoking within the establishment who were not directed to extinguish their lighted tobacco product.

20. That on April 14, 2010 an invoice letter and demand for payment was issued to the Other Place requesting payment of the administrative penalties in the amount of \$7,400.00.

21. That on April 17, 2010, a representative of the Pitt County Health Department attempted an unannounced on-site visit but the bar establishment was closed. The representative made contact with an employee and left her business card requesting that the owners contact the Pitt County Health Department, however, no contact was made by the owners as a result of this attempt.

22. That on April 18, 2010, a representative of the Pitt County Health Department made an unannounced on-site visit and again verified continued noncompliance with the law in that the establishment had no signage posted, ash trays were present and there were people smoking within the establishment who were not directed to extinguish their lighted tobacco product.

23. That on May 6, 2010, the Pitt County Legal Department sent a letter to the Defendants advising that the noncompliance of their establishment had been brought to its

attention and referred for legal action. The letter explained that the daily accruing penalties then totaled \$11,600.00 and detailed that several warning letters had been sent by the Pitt County Health Department regarding their noncompliance and that they should immediately comply with the law to avoid formal legal action.

24. That on June 5, 2010, Pitt County Health Director Dr. John H. Morrow made an unannounced on-site visit to the Other Place to verify compliance with the law. After identifying himself as the local health director, Dr. Morrow was refused admittance to inspect the establishment.

25. That on June 20, 2010 Pitt County Health Director Dr. John H. Morrow made another unannounced on-site visit to the Other Place to verify compliance with the law. Again after identifying himself as the local health director, he was not allowed to enter and inspect the establishment.

26. That up until June 30, 2010, the Defendants Matthew Blackman and Charles McNeil failed to comply with N.C. Gen Stat. §130A-496, et. seq. and the directives of the Pitt County Health Department to comply with the law by prohibiting smoking in the inside areas of their nightclub.

27. That the numerous attempts made by the Pitt County Health Department to provide educational materials and violation warning letters to garner compliance with the law were ignored by the Defendants except that the Defendants have communicated their intentions to comply with the law since being served with the Complaint and Temporary Restraining Order in this action on June 28, 2010.

28. That the Defendants' violation subjects them to the injunctive relief provisions of North Carolina General Statutes Sections 130A-18, and Pitt County is entitled to equitable relief to prevent, restrain, correct or abate the violations noted above.

Based upon the foregoing Findings of Fact, the Court makes the following:

#### **CONCLUSIONS OF LAW**

1. This Court has jurisdiction over the parties and the subject matter of this action.

2. The Defendants been properly served, and have herein waived any defect in service or notice as may be required by law and this matter is properly before this Court.

3. The parties have consented to the entry of this order.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** as follows:

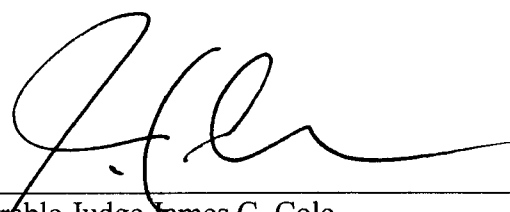
1. The Defendants shall be and are hereby restrained from continued operation of their nightclub, the Other Place, in violation of N.C. Gen. Stat. §130A-496, et. seq.

2. The Defendants shall immediately comply with N.C. Gen. Stat. §130A-497 by taking the following actions:

- a. Conspicuously post signs clearly stating that smoking is prohibited;
- b. Remove any ashtrays or similar tobacco ash receptacles from inside the business establishment; and
- c. Direct all persons smoking to extinguish any cigarette, cigar or other lighted tobacco product.

3. That the Defendants shall provide the Pitt County Health Department ongoing access to the Other Place <sup>nightclub</sup> upon request and during regular operating hours so that representatives of the <sup>§1</sup> health department may verify compliance with the law.

This the 1 day of July, 2010.

  
\_\_\_\_\_  
The Honorable Judge James C. Cole  
Superior Court Judge Presiding

J. CARTON

To the foregoing, we knowingly, freely and voluntarily CONSENT:




Stephanie Hart, Representative  
Pitt County Health Department



Lisa Woodard Overton, Attorney for Plaintiff



Matthew Blackman, Defendant



Charles McNeill, Defendant