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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

CITY OF SAN DIEGO, a municipal
corporation,

Plaintiff,

v.

LIVING GREEN COOPERATIVE, INC., a
California corporation;
CARY WEAVER, an individual;
BRADLEY BROWN, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. **37-2014-00037716-CU-MC-CTL**

UNLIMITED JURISDICTION

COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF

Plaintiff City of San Diego, appearing through its attorneys, Jan I. Goldsmith, City Attorney, by Marsha B. Kerr, Deputy City Attorney, alleges the following, based on information and belief:

JURISDICTION AND VENUE

1. Plaintiff, City of San Diego, by this action and pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311 and California Code of Civil Procedure section 526, seeks to enjoin Defendants from using or maintaining a property in violation of the San Diego Municipal Code as alleged in this Complaint, and seeks a preliminary injunction and a permanent injunction prohibiting Defendants from operating or maintaining a marijuana dispensary,

1 cooperative, collective or other distribution or sales business; and also seeks to obtain civil
2 penalties, costs and other equitable relief for the Defendants' violations of law.

3 2. The omission or commission of acts and violations of law by Defendants as alleged in
4 this Complaint occurred within the City of San Diego, State of California. Each of the Defendants
5 at all times mentioned in this Complaint has transacted business within the City of San Diego or
6 is a resident of San Diego County, or both.

7 3. The property where the business acts and practices described in this Complaint are or
8 were performed is located in the City of San Diego.

9 **THE PARTIES**

10 4. At all times mentioned in these pleadings, Plaintiff, City of San Diego, was and is a
11 municipal corporation and a chartered city, organized and existing under the laws of the State of
12 California.

13 5. Defendant LIVING GREEN COOPERATIVE, INC. (LIVING GREEN) is a
14 California corporation, which, at all times relevant to this action, is and was operating a marijuana
15 dispensary at 4417 Rainier Avenue, San Diego, California 92120 (PROPERTY) within the City
16 of San Diego.

17 6. Defendant CARY WEAVER (WEAVER) is an individual and resident of the County
18 of San Diego who, at all times relevant to this action, was the president of LIVING GREEN and
19 was doing business at the PROPERTY.

20 7. Defendant BRADLEY BROWN (BROWN) is an individual and resident of the
21 County of San Diego and owner of the PROPERTY.

22 8. BROWN is strictly liable for all code violations occurring at the PROPERTY pursuant
23 to SDMC section 121.0311 and applicable California law.

24 9. Defendants are "Responsible Persons"¹ within the meaning of SDMC section 11.0210,
25 as each is allowing or maintaining violations of the SDMC at the PROPERTY.

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27
28 ¹ Section 11.0210 defines "Responsible Person" as "[a] person who a Director determines is responsible
SDMC for causing or maintaining a public nuisance or a violation of the Municipal Code or applicable state codes.
The term "Responsible Person" includes but is not limited to a property owner, tenant, person with a Legal
Interest in real property or person in possession of real property."

1 10. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the
2 provisions of California Code of Civil Procedure section 474, their true names and capacities
3 being unknown to Plaintiff. The CITY is informed and believes that each of Defendants DOES 1
4 through 50, is in some manner responsible for conducting, maintaining or directly or indirectly
5 permitting the unlawful activity alleged in this Complaint. Plaintiff will ask leave of the court to
6 amend this Complaint and to insert in lieu of such fictitious names the true names and capacities
7 of DOES 1 through 50 when ascertained.

8 11. At all relevant times mentioned in this Complaint, all Defendants were and are agents,
9 principals, servants, lessors, lessees, employees, partners, associates and/or joint ventures of each
10 other and at all times were acting within the course, purpose and scope of said relationship and
11 with the authorization or consent of each of their co-defendants.

12 **PROPERTY**

13 12. By Grant Deed recorded January 26, 1998, as Document No. 1998-0036368 in the
14 office of the San Diego County Recorder, BROWN and Laura Brown were granted title to the
15 PROPERTY, where the acts described in this Complaint occurred. By Quitclaim Deed recorded
16 December 17, 2013, as Document No. 2013-0724412, Laura Brown released her interest in the
17 PROPERTY to BROWN.

18 13. The PROPERTY is identified as Assessor's Parcel Number 458-521-26-00, according
19 to records in the office of the San Diego County Assessor.

20 14. The legal description of the PROPERTY is:

21 Parcel 1:

22 Lots 4 and 5, Block 13, in the City of San Diego, County of San
23 Diego, State of California, according to Map thereof of Grantville
24 and outlots as shown by the Junipero Land and Water Company's
25 amended Map No. 1, filed in the Office of the County Recorder of
San Diego County, February 16, 1894, said map being known as
No. 776.

26 Parcel 2:

27 An easement for ingress and egress for parking purposes over,
28 along and across all of Lot 6, in Block 13, , in the City of San
Diego, County of San Diego, State of California, according to Map
thereof of Grantville and outlots as shown by the Junipero Land and
Water Company's amended Map No. 1, filed in the Office of the

1 County Recorder of San Diego County, February 16, 1894, said
2 map being known as No. 776.

3 This easement is hereby declared to be appurtenant to and for the benefit of all
4 present and future owners of Lots 4 and 5 in Block 13, according to said map of
5 Grantville as described above.

6 15. The PROPERTY is located in an Industrial-Light zone (IL-3-1) in the City of San
7 Diego.

8 **FACTUAL ALLEGATIONS**

9 16. SDMC section 131.0620, 131.0622 and corresponding Table 131-06B list the
10 permitted uses in an IL-3-1 zone where the PROPERTY is located. Medical marijuana consumer
11 cooperatives (MMCCs) could be a permitted use in that zone under the current ordinance with a
12 conditional use permit (CUP); however, no CUP has been issued pertaining to the PROPERTY.

13 17. The business is located in a two-story commercial building. There are four security
14 cameras mounted on the exterior of the building. The address, "4417," is painted in green on a
15 white background on the front of the building and on a mailbox at the location.

16 18. On July 17, 2014, 2014, a City zoning investigator went to the PROPERTY. There
17 was a buzzer by the door. A security guard opened the door and went to get the manager. A white
18 male in his 20's, who identified himself as "Izzy," came to the outside of the building. He said the
19 owners were in the process of obtaining a CUP from the City to operate a dispensary. The
20 attorney for the dispensary owner came to the PROPERTY and confirmed that LIVING GREEN
21 is applying for a CUP.

22 19. On August 19, 2014, the City sent a Notice of Violation to BROWN, LIVING
23 GREEN and WEAVER demanding that they cease operating and maintaining a marijuana
24 dispensary at the PROPERTY in violation of zoning laws.

25 20. On September 24, 2014, 2014, a San Diego Police Department narcotics detective
26 conducted an undercover buy at the PROPERTY. The detective observed display cases
27 containing marijuana, THC-infused edibles and "wax," which is concentrated cannabis. The
28 detective bought wax and received a free THC-cookie and pre-rolled marijuana cigarette for
being a first-time "patient."

1 21. Plaintiff is informed and believes that Defendants are willfully violating state and
2 local laws and will continue to maintain the unlawful code violations in the future unless the
3 Court enjoins and prohibits such conduct. Absent injunctive relief, the City will be irreparably
4 harmed and the ongoing violations will continue to harm the public health, safety, and welfare of
5 the citizens of San Diego.

6 I

7 FIRST CAUSE OF ACTION

8 VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE
9 ALLEGED BY PLAINTIFF CITY OF SAN DIEGO
AGAINST ALL DEFENDANTS

10 22. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1
11 through 21 of this Complaint as though fully set forth here in their entirety.

12 23. SDMC section 121.0302(a) states, "It is unlawful for any person to maintain or use
13 any premises in violation of any of the provisions of the Land Development Code,² without a
14 required permit, contrary to permit conditions, or without a required variance."

15 24. SDMC section 131.0620(b) states:

16 Within the industrial zones, no structure or improvement, or portion thereof, shall be
17 constructed, established or altered, nor shall any premises be used or maintained except for one or
18 more of the purposes or activities listed in Table 131-06B. It is unlawful to establish, maintain, or
use any premises for any purpose or activity not listed in this section and Section 131.0622.

19 25. SDMC section 141.0614 specifies that medical marijuana consumer cooperatives may
20 operate in certain zones with a CUP. Defendants have not obtained a CUP for the PROPERTY.

21 26. Since at least July 2014, Defendants have maintained and used the PROPERTY in
22 violation of SDMC sections 121.0302, 131.0620(b), 131.0622 and 141.0614.

23 27. Absent the relief requested by Plaintiff, the City is unable to enforce its zoning laws
24 and therefore unable to ensure compatibility between land uses. Irreparable harm will be suffered
25 by Plaintiff in that the City's land use scheme and regulations under the Municipal Code become
26 meaningless and the public is left unprotected from the direct and indirect negative effects
27 associated with unpermitted and incompatible uses in their neighborhoods.

28 ² SDMC §111.0101 (a) Chapters 11, 12, 13, and 14 of the City of San Diego Municipal Code shall be
known collectively, and may be referred to, as the Land Development Code.

1 **PRAYER**

2 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as
3 follows:

4 1. That the PROPERTY be declared in violation of:

5 **San Diego Municipal Code sections**

6 121.0302(a) 141.061415 131.0620(b) 131.0622 Table 131-06B

7 2. That pursuant to SDMC sections 12.0202 and 121.0311, California Code of Civil
8 Procedure section 526 and the Court's inherent equity powers, the Court grant a preliminary
9 injunction and permanent injunction enjoining and restraining Defendants and their agents,
10 servants, employees, partners, associates, officers, representatives and all persons acting under or
11 in concert with or for Defendants, from engaging in any of the following acts:

12 a. Maintaining, operating, or allowing at the PROPERTY any commercial, retail,
13 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of
14 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative
15 organized pursuant to the Health & Safety Code;

16 b. Maintaining, operating, or allowing the operation of any unpermitted use at the
17 PROPERTY;

18 c. Maintaining, operating, or allowing the operation of any unpermitted use
19 anywhere within the City of San Diego, including but not limited to any commercial, retail,
20 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of
21 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative
22 organized pursuant to the Health & Safety Code;

23 d. Maintaining signage on the PROPERTY advertising a medical marijuana
24 dispensary;

25 e. Advertising in any manner, including on the Internet, the existence of any
26 commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or
27 distribution of marijuana, including but not limited to any marijuana dispensary, collective, or
28 cooperative organized pursuant to the Health and Safety Code at the PROPERTY;

1 f. Violating any provisions of the SDMC at the PROPERTY.

2 3. That Defendants allow personnel from the City of San Diego access to the
3 PROPERTY to inspect and monitor for compliance upon 24 hour verbal or written notice.
4 Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m.

5 4. That Plaintiff City of San Diego recover all costs incurred by Plaintiff, including the
6 costs of investigation, as appropriate.

7 5. That pursuant to SDMC section 12.0202(b), Defendants be assessed a civil penalty of
8 \$2,500 per day for each and every SDMC violation maintained at the PROPERTY.

9 6. That Plaintiff be granted such other and further relief as the nature of the case may
10 require and the Court deems appropriate.

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12 Dated: November 3, 2014

JAN I. GOLDSMITH, City Attorney

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By



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Marsha B. Kerr
Deputy City Attorney

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Attorneys for Plaintiff

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