

FILED
CIVIL BUSINESS OFFICE 8
CENTRAL DIVISION

14 JUL -9 PM 6:40 GC \$6103

CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

JUL 9 2014 2:41

FILED
Clerk of the Superior Court

JUL 09 2014

By: _____ Deputy

1 JAN I. GOLDSMITH, City Attorney
MARLEA DELL'ANNO, Assistant City Attorney
2 MARSHA B. KERR, Deputy City Attorney
California State Bar No. 171159
3 Office of the City Attorney
Community Justice Division/Code Enforcement Unit
4 1200 Third Avenue, Suite 700
San Diego, California 92101-4103
5 Telephone: (619) 533-5500
6 Fax: (619) 533-5696
MKerr@sandiego.gov

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 CITY OF SAN DIEGO, a municipal
corporation,
11 Plaintiff,
12
13 v.
14 PRESIDENTIAL COLLECTIVE, a California
corporation;
THOMAS NAEMI, an individual;
15 MISSION VALLEY CORNERSTONE
PROPERTY, LLC, a California Limited
16 Liability Company;
CHERYL HANLEY, an individual;
17 CHRISTEN HANLEY, an individual; and
DOES 1 through 50, inclusive,
18 Defendants.
19

Case No. 37-2014-00022681-CU-MC-CTL

UNLIMITED JURISDICTION

COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIONS,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF

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

23 JURISDICTION AND VENUE

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

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

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

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

10 THE PARTIES

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

14 5. By Assignment of Lease recorded August 1, 2007, as Document No. 2007-0515515 in
15 the office of the San Diego County Recorder, MISSION VALLEY CORNERSTONE
16 PROPERTY, LLC, a California limited liability company (MV CORNERSTONE) was granted
17 possession and control of "a ground lease interest as well as for improvements, which created a
18 leasehold interest and interest in the building and other improvements on the real property" at
19 2425 Camino del Rio South, San Diego, California (PROPERTY), where the acts described in
20 this Complaint occurred.

21 6. MV CORNERSTONE is strictly liable for all code violations occurring at the
22 PROPERTY pursuant to SDMC section 121.0311 and applicable California law.

23 7. Defendant CHERYL HANLEY is an individual and resident of the County of San
24 Diego, State of California, and at all times relevant to this action was a Member and/or Manager
25 of MV CORNERSTONE.

26 8. Defendant CHRISTEN HANLEY is an individual and resident of the County of San
27 Diego, State of California, and at all times relevant to this action was a Member of MV
28 CORNERSTONE.

1 9. Defendant PRESIDENTIAL COLLECTIVE (PRESIDENTIAL) is a California
2 corporation organized and existing under the laws of the State of California, according to the
3 records of the California Secretary of State.

4 10. Defendant THOMAS NAEMI (NAEMI) is an individual and resident of the County of
5 San Diego, State of California. JOHNSON is the agent for service for PRESIDENTIAL
6 COLLECTIVE. Plaintiff is informed and believes NAEMI is selling and distributing marijuana
7 from Suite 130 at the PROPERTY.

8 11. Defendants are "Responsible Persons"¹ under SDMC section 11.0210, as each is
9 allowing or maintaining violations of the SDMC at the PROPERTY.

10 12. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the
11 provisions of California Code of Civil Procedure section 474, their true names and capacities
12 being unknown to Plaintiff. The City is informed and believes that each of the Defendants DOES
13 1 through 50 is in some manner responsible for conducting, maintaining or directly or indirectly
14 permitting the unlawful activity alleged in this Complaint. Plaintiff will ask leave of the court to
15 amend this Complaint and to insert in lieu of such fictitious names the true names and capacities
16 of DOES 1 through 50 when ascertained.

17 13. At all relevant times mentioned in this Complaint, all Defendants were and are agents,
18 principals, servants, lessors, lessees, employees, partners, associates and/or joint venturers of each
19 other Defendant and at all times were acting within the course, purpose and scope of said
20 relationship and with the authorization or consent of each of their co-defendants.

21 **PROPERTY**

22 14. The legal address of the PROPERTY is 2425 Camino del Rio South, San Diego,
23 County of San Diego, State of California. The PROPERTY is identified as Assessor's Parcel
24 Number 438-320-01-00 according to records of the San Diego County Treasurer-Tax Collector.
25 The Legal Description of the PROPERTY is:
26

27 ¹ SDMC section 11.0210 defines "Responsible Person" as "[a] person who a Director determines
28 is responsible 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 Lot 1 of Valley Center Plaza, in the City of San Diego, County of San
2 Diego, State of California, according to Map thereof No. 7582, filed in the
office of the County Recorder of San Diego County, January 23, 1974.

3 15. The PROPERTY is located in a Commercial Office zone in the Mission Valley
4 Planned District (MV-CO) in the City of San Diego.

5 **FACTUAL AND ZONING BACKGROUND**

6 16. SDMC section 1514.0305 and corresponding Table 1514-03J list the permitted uses
7 for the MV-CO zone where the PROPERTY is located.

8 17. As of April 24, 2014, Table 1514-03J lists medical marijuana consumer cooperatives
9 as requiring a conditional use permit (CUP) to be a permitted use within the MV-CO zone.

10 18. SDMC section 141.0614 describes the requirements for a marijuana dispensary to be
11 considered for and obtain a CUP in zones such as the MV-CO zone.

12 19. SDMC section 126.0306 makes it unlawful for any person to maintain, use or develop
13 any premises without obtaining a required CUP.

14 20. No CUP has issued for the operation of a marijuana dispensary at the PROPERTY.

15 **FACTUAL ALLEGATIONS**

16 21. On May 20, 2014, Land Development Investigators Cameron Clark, Leslie Sennett
17 and Building Inspector Robert Cervantes went to the PROPERTY based upon citizen complaints
18 about a marijuana dispensary operating at the PROPERTY. There was a green and white sign in
19 front of a parking space near Suite 130 which read, "Presidential Greens Patient Parking Only –
20 Violators Will be Towed at Owner's Expense." There were five security cameras mounted on the
21 building near Suite 130. A uniformed security guard escorted the investigators into the lobby of
22 Suite 130. There was a strong odor of marijuana and one male customer in the lobby. A male
23 seated behind a desk identified himself as THOMAS "Tommy" NAEMI. NAEMI confirmed that
24 he is the owner of the marijuana dispensary, Presidential Greens, operating at the PROPERTY.
25 NAEMI denied the inspectors' request to conduct an inspection of the premises.

26 22. On June 5, 2014, Clark sent a Notice of Violation (NOV) to MV CORNERSTONE,
27 CHERYL HANLEY, PRESIDENTIAL GREENS and NAEMI. The NOV ordered the property
28

1 owner and the dispensary to immediately cease maintaining and operating the dispensary
2 business, as the use violated zoning laws of the City of San Diego.

3 23. Health & Safety Code section 11362.768(b) prohibits medical marijuana cooperatives,
4 collectives, dispensaries, operators, or establishments from operating within a 600 foot radius of a
5 school. In addition, SDMC section 141.0614 prohibits medical marijuana consumer cooperatives
6 within 1,000 feet of a school.

7 24. Marjorie Cook Education Center is located at 2255 Camino del Rio South, San Diego,
8 California. Marjorie Cook Education Center is the type of school listed in Health & Safety Code
9 section 11362.768(h) and is located within a 600 foot radius of the PROPERTY. Warren-Walker
10 School, a middle school at 2231 Camino del Rio South, is located within 1,000 feet of the
11 PROPERTY.

12 25. Plaintiff is informed and believes that Defendants are blatantly and willfully violating
13 state and local laws and will continue to maintain the unlawful code violations in the future unless
14 the Court enjoins and prohibits such conduct. Absent injunctive relief, the City will be irreparably
15 harmed and the ongoing violations will continue to harm the health, safety, and welfare of the
16 citizens of San Diego.

17 **I**

18 **FIRST CAUSE OF ACTION**

19 **VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE**
20 **ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST**
21 **ALL DEFENDANTS**

22 26. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1
23 through 25 of this Complaint as though fully set forth here in their entirety.

24 27. SDMC section 121.0302(a) states, "It is unlawful for any person to maintain or use
25 any premises in violation of any of the provisions of the Land Development Code,² without a
26 required permit, contrary to permit conditions, or without a required variance."
27

28 ² Chapters 11, 12, 13, 14, and 15 of the City of San Diego Municipal Code shall be known collectively, and may be referred to, as the Land Development Code. SDMC §111.0101 (a).

1 28. SDMC section 1514.0305 and corresponding Table 1514-03J list the permitted uses
2 for the MV-CO zone where the PROPERTY is located. SDMC section 1514.0305(b)(1) states:

3 No building or improvement, or portion there of, shall be erected,
4 constructed, converted, established, altered or enlarged, nor shall any
5 premises be used except for one or more of the uses listed for applicable
6 zones in Table 1514-03J. The predominant land use shall be consistent
7 with the community plan land use designation.

8 Table 1514-03J specifies medical marijuana consumer cooperatives in zone MV-CO require a
9 CUP.

10 29. SDMC section 126.0306 makes it unlawful for any person to maintain, use, or develop
11 any premises without a conditional use permit if such permit is required under the applicable
12 zoning regulations.

13 30. Beginning on an exact date unknown to Plaintiff but since at least May 20, 2014,
14 Defendants have maintained and used the PROPERTY for a use requiring a CUP under SDMC
15 section 1514.0305 without a CUP, in violation of SDMC sections 121.0302(a) and 126.0306.

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

21 32. Absent immediate injunctive relief, the justifiable expectation by citizens that state
22 law and local zoning laws be enforced and their safety and quality of life be protected remains
23 frustrated. Plaintiff has no adequate remedy and seeks an immediate injunction to prohibit
24 Defendants from violating the law.

25 II

26 SECOND CAUSE OF ACTION

27 VIOLATION OF THE CALIFORNIA HEALTH AND 28 SAFETY CODE AS ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST ALL DEFENDANTS

33. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1
through 32 of this Complaint as though fully set forth here in their entirety.

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

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

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

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

17 d. Maintaining signage on the PROPERTY advertising a medical marijuana
18 dispensary;

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

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

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

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


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

Dated: July 9, 2014.

JAN I. GOLDSMITH, City Attorney

By 

Marsha B. Kerr
Deputy City Attorney

Attorneys for Plaintiff