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FRANK ZIMMERMAN COLLECTIVE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

FRANK ZIMMERMAN COLLECTIVE,

Petitioner/Plaintiff,

vs.

CITY OF VISTA; RIVERSIDE COUNTY DISPENSARY AND DELIVERY, INC., a California corporation; and DOES 1-50, inclusive,

Respondents/Defendants.

CASE NO. 37-2019-00029400-CU-WM-NC

NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that on August 3, 2021, the Court entered and filed "Judgment Granting in Part and Denying in Part Petition for Writ of Mandate" ("Judgment") in the above-entitled action.

A copy of the entered Judgment is attached to this Notice.

DATED: August 5, 2021

LAW OFFICE OF JEFF AUGUSTINI

By: Jeff Augustini
JEFF AUGUSTINI

Attorneys for FRANK ZIMMERMAN COLLECTIVE

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Respondents/Defendants.

CASE NO. 37-2019-00029400-CU-WM-NC

JUDGMENT GRANTING IN PART AND DENYING IN PART PETITION FOR WRIT OF MANDATE

Complaint Filed: June 5, 2019
Dept.: N-31

On May 14, 2021, Petitioner Frank Zimmerman Collective's ("FZC") First Amended Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition") in the above-captioned matter was set for hearing on the merits in Department N-31 of the above-entitled Court.

In advance of the hearing, on May 13, 2021, the Court published its Tentative Ruling. FZC, represented by Jeff Augustini of the Law Office of Jeff Augustini, and the City of Vista ("City"), represented by Alena Shamos of Colantuono, Highsmith & Whatley, PC, met and conferred and agreed to submit on the Court's Tentative Ruling without oral argument. FZC and the City notified the Court of the same, and no hearing took place on May 14, 2021.

The Court, having fully considered the evidence and written arguments of counsel, entered its final Ruling on FZC's Petition, granting it in part and denying it in part. A true and correct copy of the Court's May 14, 2021, Ruling on the Petition, adopting the Tentative Ruling with modifications, is attached hereto as Exhibit "A."

In accordance with the Court's May 14, 2021, Ruling, **THE COURT ORDERS, ADJUDGES,** and **DECREES** that:

FZC's Petition is **GRANTED** as to:

(1) the request to strike paragraph 6 of the March 7, 2019 regulation, which denies applicants the right to an appeal, as it formally implements a rule, regulation, or procedure that is *in direct conflict* with the appeal provision of the Initiative (VMC[1] § 5.94.120; see also ROA 235, Ex. J, pp. VISTA000655-000656, Item 6),

(2) the request to order the City Manager to comply with the mandate of VMC § 5.94.170 that "[t]he City Manager or a designee thereof ***shall*** promulgate any other rules, regulations and procedures necessary and consistent with this Chapter in order to implement and administer the *intent* of this Chapter..." by promulgating rules, regulations, and/or procedures for an administrative appeal consistent with the intent of VMC § 5.94.120 (the appeal provision of the Initiative) within 30 days, and

(3) the request to order the City Council to hear an appeal from the denial of Petitioner's application for registration under the Initiative,

[1] Vista Municipal Code

but **DENIED** as to:

(4) the request for an order regarding whether the City violated its ministerial duties, abused its discretion, and/or failed to legally comply with VMC § 5.94.060(F) when it proclaimed that there was no longer a "priority list" after it issued the 11 NCRs authorized by VMC Chapter 5.94, because the request for such an order is time-barred under Government Code § 65009(c)(1)(E)[2] and the present procedural posture of this case, and

(5) the request for an order regarding whether the City violated its ministerial duties, abused its discretion, and/or failed to legally comply with VMC § 5.94.090(D) when it denied Petitioner's application because its proposed location was within 500 feet of Riverside Delivery's[3] proposed location when both Riverside Delivery and Petitioner were merely applicants and no dispensaries had been licensed to operate because the request for such an order is time-barred under Government Code § 65009(c)(1)(E) and the present procedural posture of this case.

This Judgment effectively disposes of all causes of action alleged in the Petition.

IT IS SO ORDERED, ADJUDGED, and **DECREED.**

The Clerk is ordered to enter this Judgment.

DATED: 08/03/2021

Hon. Blaine K. Bowman,
Judge of the Superior Court

[2] Some portions of the Ruling contain a clerical error reversing the order of numbers in Government Code, section 65009(c)(1)(E) as "56009(c)(1)(E)." The Court's intent in citing Government Code, section 65009(c)(1)(E) is unambiguous.

[3] Defendant and Respondent, Riverside County Dispensary and Delivery, Inc.

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY

MINUTE ORDER

DATE: 05/14/2021 TIME: 01:30:00 PM DEPT: N-31

JUDICIAL OFFICER PRESIDING: Blaine K. Bowman
CLERK: Amy Wagoner
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2019-00029400-CU-WM-NC** CASE INIT.DATE: 06/05/2019
CASE TITLE: **FRANK ZIMMERMAN COLLECTIVE vs CITY OF VISTA [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Hearing on Petition

APPEARANCES

All parties submit(s) on the Court's tentative ruling.

The Court MODIFIES the tentative ruling as follows:
The *Verified First Amended Petition for Writ of Mandamus* brought by petitioner/plaintiff Frank Zimmerman Collective (**Petitioner** or **Plaintiff**) is **GRANTED in part** and **DENIED in part** in accordance with the guidance set forth below.

Evidentiary Objections (by City) (ROA 241)
The *Objections to Evidence* filed by respondent City of Vista (the **City**) are disposed as follows:

Objection No. 1: **Sustained** as to "obtained its license long before RCDD did," but otherwise overruled
Objection No. 2: **Sustained** as to "Specifically, I believe FZC would have even beat the first NCR holder to a license... and would have been eligible for a license long before RCDD..." and as to "...long before RCDD, which in turn had submitted rudimentary and insufficient plans with its application...," but otherwise overruled
Objection No. 3: Overruled
Objection No. 4: Overruled
Objection No. 5: Overruled
Objection No. 6: Overruled
Objection No. 7: **Sustained**

Evidentiary Objections (by Petitioner) (ROA 248)
Objection No. 1: Overruled
Objection No. 2: Overruled

Objection No. 3: Overruled
Objection No. 4: Overruled
Objection No. 5: Overruled
Objection No. 6: Overruled
Objection No. 7: Overruled
Objection No. 8: Overruled
Objection No. 9: Overruled
Objection No. 10: Overruled
Objection No. 11: Overruled
Objection No. 12: Overruled

Background

This case previously came on for hearing before this Court on an initial demurrer (ROA 115) and on a subsequent demurrer to Petitioner's *First Amended Petition* (ROA 225). Those prior rulings had at least two major impacts on the status of the case presently before this Court: (1) they addressed several points of law that are now re-raised in the briefing on the present matter, and (2) they *shaped* some of the nature of the case that is actually before this Court. Though this Court previously ruled on several of the legal concepts being re-raised now, what is different at this stage is the legal standard – unlike the previous demurrers, which called upon this Court to indulge the facts as alleged in favor of Petitioner, the procedural posture of the present motion provides the Court with the opportunity to *weigh* the evidence and make necessary factual findings to resolve the dispute.

The facts of this case begin with the passage of local ballot initiative known as "Measure Z." It regulated the establishment and operation of medical cannabis dispensaries within the City of Vista and was passed in November 2018. It amended the Vista Municipal Code (hereinafter, **VMC**) by adding an entire chapter known as Chapter 5.94 (hereinafter, the **Initiative**). The evidence describes, and the Court **FINDS**, that there was some urgency written into the implementation of the Initiative. Indeed, the Initiative itself provides that: "The City shall, within 15 days of the date of the adoption of this Article, create registration application forms and instructions that strictly require only the information required pursuant to Sec. 5.94.50 of this Article, and shall begin accepting applications on a published date within 30 calendar days of the date of the adoption of this Article." VMC 5.94.060(A). It goes on to provide that: "Seven calendar days after the date the City begins accepting applications, the City shall stop accepting applications and shall that day establish a priority list..." VMC 5.94.060(D). "Following establishment of the priority list, the City shall begin processing, as a ministerial duty, the registration application for medical cannabis businesses in the order established by the priority list." VMC 5.94.060(G). The Initiative became effective on December 21, 2018.

The Petitioner in this case was number 6 on the priority list, and it is undisputed between the parties that there was a limit of 11 total medical dispensaries allowed within the City. At face value, it would thus appear that Petitioner was in a position to successfully move forward with the process. However, when the City was completing the "ministerial duty" of processing Petitioner's application, it ran into a snag – one of the other dispensaries that was higher on the priority list had identified a location for its proposed dispensary that was within 500 feet of the location at which Petitioner proposed to establish its dispensary.

To add some clarity, though the Initiative describes processing an application as a "ministerial duty," it also describes in other sections that there are certain restrictions on medical marijuana dispensaries. One of those restrictions reads as follows: "Medical cannabis businesses are prohibited within five hundred (500') feet of any other permitted medical cannabis dispensary. The distance is measured from

front door to front door, without regard to intervening structures." VMC 5.94.090(D).

The Initiative also enumerates the grounds upon which a registration may be denied, as follows:

*A. Upon receipt of an application for registration, the City shall, as a ministerial duty, complete the processing and issue a Notice of Completed Registration and place the applicant on the registration list within 30 calendar days, to be **tolled** if, and only if, requested by the applicant to allow processing time **unless**:*

...

*3. The application seeks registration for a medical cannabis business that is located within 1000 feet of a school, as herein defined, or is not located in an allowable zone or **outside the required buffer zones listed in this Article**; or*

...

VMC 5.94.070(A) (bold added). It further provides as follows regarding denial of an application:

*B. If the City fails to either issue a Notice of Completed Registration or **deny** the application for registration **in writing stating the reasons for denial**, within 30 calendar days of receipt of the application, the registration shall be deemed complete, the Notice of Completed Registration deemed issued, and the medical cannabis business deemed to be on the registration list, and thus deemed eligible for a Certificate of Occupancy and business license as below.*

VMC 5.94.070(B) (bold added). With all of this in the background, the City sent a letter denying Petitioner's application on February 13, 2019. It read as follows:

*On January 22, 2019, Frank Zimmerman Collective ('Applicant') submitted an application to the City of Vista seeking an approval to operate a medical cannabis business in the City of Vista pursuant to VMC Chapter 5.94, to receive a Notice of Completed Registration, and to be placed on a City-maintained Registration List. This letter is issued pursuant to VMC § 5.94.070 and advises you that the application has been **DENIED**. The reasons for the denial are set forth in Exhibit A, Grounds for Denial of Application, which is attached hereto and incorporated herein by this reference.*

ROA 235, Ex. H (emphasis in original). The exhibit referenced in this letter reads, in pertinent part, as follows:

The above Applicant for a medical cannabis business has been denied by the City of Vista because the application seeks registration for a medical cannabis business that does not satisfy applicable buffer requirements imposed by Chapter 5.94.

VMC § 5.94.090D provides: '[quoting language from VMC § 5.94.090D]' Based on its lawful and published priority list, the City has already approved the application of Riverside County Dispensary and Delivery, Inc. for a medical cannabis business to be located as 1275 S. Santa Fe Avenue, Suites 101 and 102 ('Prior Approval').

The location that Applicant proposes for its medical cannabis business is 1215 S. Santa Fe Drive which fails to satisfy the buffer requirements set by VMC § 5.94.090.D with respect to the Prior Approval, and hence must be denied pursuant to VMC § 5.94.070.B because the proposed location 'is not located...outside the required buffer zones...'

ROA 235, Ex. H. Petitioner takes issue with this denial on grounds that, *inter alia*, it is based upon Petitioner being "buffered out" by a *potential* dispensary that would have been within 500 feet – not by an *actual* dispensary that was presently open and operating on-site. Petitioner's position is that its application should have been registered right alongside that of the competitor who was higher on the priority list and then the two registrants should have *raced* to see who could complete all the steps in the full process and actually open a dispensary, with the first to fully open being the one who would "buffer out" the other. Incidentally, that competitor was known as Riverside County Dispensary and Delivery, Inc. (**Riverside Delivery**). It held the number 2 slot on the priority list, and was previously a defendant in this lawsuit.

The same day that Petitioner's application was denied via letter, Petitioner's counsel reached out to the City via email asking: "Is there any right within the City to appeal the 'Denial of Application for Registration...' or is [the] next avenue of recourse the California Court System...?" ROA 235, Ex. I. Though this inquiry seems to have been commingled with similar inquiries made on behalf of other applicants, the City responded to Petitioner's counsel as follows: "I believe the recent posting on the City's Measure Z webpage (Measure Z Implementation) related to a request to appeal will be of interest to you." Lodgments (of City), Ex. 2, Bates No. VISTA000928-000929. That related request was a request made on behalf of another applicant – Survivormedz, a Cooperative Corporation dba Releaf Meds (**Survivormedz**). Lodgments (of City), Ex. 4; see also ROA 242, ¶ 11. What the City posted on its publicly-available website regarding the request from Survivormedz reads as follows:

02/13/19: The City received a request from Survivormedz to appeal the denial of its application for registration. A letter responding to that request may be found here. The letter reaches the following conclusion: 'Since the authors of Measure Z did not create a substantive appeal process and none is found elsewhere in the VMC, no further administrative review of the determination is possible. If further review of the matter is required, it must occur in a court of competent jurisdiction.' Interested parties are directed to the letter itself for further analysis.

Lodgments (of City), Ex. 3. Thus, as a factual matter, Petitioner knew as of February 13, 2019 that the *City's position* was that no appeals were available from its denials of applications. That position, however, was somewhat informal in that it was contained in a letter to a different applicant that was posted on a publicly-available website during the rather tight time frame of the implementation of a brand new ordinance.

The City previously argued to this Court that somewhere in the aftermath of this time frame of when the City sent its official denial letter to Petitioner, Petitioner also accepted back the deposit that it had made when it first submitted its application. See ROA 207, p. 11:11-12 ("In fact, [Petitioner] requested, and was provided, a return of the $100,000 deposit that accompanied its application, thereby knowingly terminating its submission.") (citations omitted); see also ROA 225, pp. 3-4 (under heading "Merits of Demurrer – Application Refund Issue"). However, that issue was not argued in the briefing on the present matter. While the Court notes that some evidence has been provided as to the City sending out notice that applicants who had been denied could seek return of their un-deposited cashier's checks if they provided a properly notarized *Request for Return*, the evidence does not make clear whether Petitioner actually did so; and, in any event, the City's opposition brief does not argue this issue. ROA 236, Ex. K. Accordingly, the Court makes no factual findings as to the return of any deposit and does not base its determination of any statute of limitations and/or exhaustion of administrative remedies issues on the return of any deposit (or lack thereof).

In its operative allegations in this case, after discussing the City's above referral to a website response to another applicant's request about the appeal procedure, Petitioner alleges: "But the City never directly responded to [Petitioner]'s inquiry regarding the requested appeal; nor did the City ever directly or formally deny [Petitioner]'s request for an appeal to the City Council." ROA165, ¶ 17. The Court **FINDS** this to be true: while the City responded to inquiries made by other applicants *who were represented by the same counsel as Petitioner at the time*, those responses were not, in a highly technical sense, made directly to *Petitioner's* inquiry and there was no *formal* or *direct* response denying an appeal.

From the standpoint of a fact-finder, however, the Court notes that this was occurring in the midst of a brand-new ordinance that had to be implemented under tight timelines. As such, the Court's view of these events is that all parties were in what might colloquially be called "uncharted territory" where rules were being developed around the implementation of the new ordinance. With that in mind, two additional provisions of the Initiative became important – the first is a provision in the Initiative that specifically provides for appeals to be taken to the City Council, and the second is a provision allowing the City Manager to promulgate rules in order to administer the overall scheme set forth in the Initiative. Those provisions read as follows:

Section 5.94.120 Appeals

Any decision regarding approval, conditional approval, denial, suspension or revocation may be appealed to the city council in accordance with the provisions of the Vista Municipal Code.

...

Section 5.94.170 Amendments and Administration

...

B. The City Manager or any designee thereof shall promulgate any other rules, regulations, and procedure necessary and consistent with this Chapter in order to implement and administer the intent of this Chapter, including any rules and regulations necessary to ensure the efficient and timely collection of the tax imposed by this Chapter.

From the evidence provided, it appears that the number of requests from several applicants regarding the appeal process led the City Manager to promulgate a formal written regulation on March 7, 2019. ROA 235, Ex. J. Citing the authority quoted above that gave the City Manager authority to promulgate rules, regulations, and procedures, the City issued a "Regulation" for the stated purpose of "establish[ing] rules to guide City actions on medical cannabis business applications, the documentation of those actions, and the finality of those actions," which stated, amidst other things:

6. DENIED APPLICATIONS ARE NOT REVIEWABLE BY APPEAL. The Vista Municipal Code does not establish a general process through which the City Council can review the determinations of the City Manager by appeal. An appellate review procedure is not found in Chapter 2.20 which identifies the role, functions and powers of the City Manager, nor in Chapter 2.12 which identifies the role, functions, and powers of the City Council. Since an appellate process is not established by Vista's Municipal Code, it is not possible to administratively appeal the City Manager's decision to deny, disapprove, or disqualify an application 'in accordance with the provisions of the Vista Municipal Code'. See, VMC § 5.94.120.

ROA 235, Ex. J, pp. VISTA000655-000656.

Procedural History

Petitioner eventually did seek review of the denial of its application by filing the instant action on June 5,

2019. In that original filing, Petitioner's primary focus was on seeking review of the decision to deny *its application* – not on the denial of any *appeal* to the City Council. Together with the petition that was filed at that time, Petitioner also brought a civil complaint, as a plaintiff in this action, against the competing dispensary (again, Riverside Delivery) since part of the relief being sought was "an injunction requiring the City to deny/revoke the license registration issued to [Riverside Delivery]..." ROA 1, ¶ 22. Riverside Delivery has since been dismissed from this action pursuant to an anti-SLAPP motion, and further detail regarding that dismissal is not critical to the outcome of the present motion.

What is important, however, is that the City brought a demurrer to that original Petition largely on statute of limitations grounds. See ROA 10. Specifically, the City argued that Government Code § 56009(c)(1)(E) provided a 90-day statute of limitations for seeking a writ of mandate when the underlying decision pertains to zoning. The Court extensively analyzed that theory and concluded that that statute did apply – particularly under the authority of Weiss v. City of Del Mar (2019) 39 Cal.App.5th 609, which was quite recent authority at the time. See ROA 115. In that analysis, this Court noted that though the facts as alleged were too unclear to state it outright at the time, there were "kernels" in the original petition that suggested a potentially meritorious claim – not with regard to the actual denial of the application (since that was time-barred from being reviewed via writ), but with regard to denial of the right to appeal to the City Council. ROA 115, pp. 17-18. Noting that leave to amend must be liberally granted if it appears that *some* valid cause of action can be stated, the Court granted Petitioner leave to amend.

Petitioner filed its *First Amended Petition* on June 29, 2020. ROA 165. The City again demurred. ROA 206. This Court overruled that demurrer addressing many of the theories that are now raised in the instant briefing. ROA 225. As the facts do not appear to have significantly changed, the Court will cite heavily from that ruling in addressing the legal issues raised in the instant matter.

Merits of Matter – Whether the City Properly Denied Petitioner's Application

One of the issues presently placed before this Court by the parties is the question of whether it was proper for the City to deny Petitioner's application in the first instance. That issue is set forth in the operative pleading ("[Petitioner] seeks the issuance of a writ of mandate compelling the City to permit [Petitioner] to proceed in the licensing process *along with [Riverside Delivery]* and to secure a medical cannabis business license if it completes the process *before* [Riverside Delivery] (as in that event [Petitioner] would *buffer out [Riverside Delivery]*)...") and in the briefing ("the Court should issue a writ of mandate that the City *at least* allow [Petitioner] to proceed with the application process. At a minimum, it should rule the City erred in denying [Petitioner]'s application on buffer zone grounds, so that in connection with the appeal, the City must comply with the Court's binding legal ruling on that issue."). ROA 165, ¶ 45 (emphasis in original); ROA 234, p. 19:17-21 (emphasis in original). Petitioner's request misses the mark. This Court has not issued a "binding legal ruling" on the underlying issue of whether the underlying application was properly denied. On the contrary, as this Court previously held, that issue *cannot be reached* via the present writ of mandamus procedure because the 90-day statute of limitations applicable to writ review of zoning decisions (again, see Government Code § 56009(c)(1)(E) and Weiss v. City of Del Mar (2019) 39 Cal.App.5th 609 as well as ROA 115) prohibits such a substantive ruling. Under the current procedural posture of this case, **this Court cannot review the decision to deny Petitioner's application because review of that decision is time-barred**.

This is a tricky assertion to make because it can easily be misconstrued. Just because the decision to deny the application (a decision which was issued to Petitioner via a letter dated February 13, 2019) cannot presently be reviewed in the instant petition for writ of mandate, does not mean from a res judicata standpoint that it cannot *ever* be subjected to review. As will be addressed in greater detail

below, there is a major issue in this case as to whether the matter was appealable *to the City Council*. It is possible that if the matter is appealed *to the City Council*, future review might be brought to a court of competent jurisdiction to review the decision of the City Council. While much of that depends upon the status of any appeal to the City Council, the Court simply notes it here so that the language above that this Court cannot review the decision to deny Petitioner's application due to a statute of limitations not be improperly misconstrued to preclude later review if, indeed, an appeal is taken to the City Council.

Merits of Matter – Whether Petitioner Was Properly Denied an Appeal to the City Council

With regard to the issue of an appeal to the City Council, there is some difficulty in parsing what Petitioner is asking this Court to review as the underlying facts lend themselves to arguments that are both "on the face" of the legal rules that have been promulgated and "as applied" to Petitioner's specific application. As set forth above, the facts of this case pertain to implementation of a brand new ordinance, along with the statutory scheme it provided, over a relatively tight timeline. Commonly, when a distinction can be made between how a statute is worded *on its face* and how it is *applied* in a particular instance, the *existence* of the statute or rule predates the manner in which it is *applied*. The unique facts of this case present an unusual reversal of that more common scenario.

Here, though the Initiative itself provided that "[a]ny decision regarding... denial... may be appealed to the city council...," the City *applied* the law by indicating (in a fairly roundabout manner by pointing Petitioner to a website and letter issued as to another applicant) that "no further administrative review of the determination is possible." VMC 5.94.120 (Appeals); Lodgment (by City), Ex. 3. Though this *application* of the law happened on February 13, 2019, the facts are quite fuzzy as to whether this rule was *directly* applied to Petitioner's application. Indeed, no *formal* action or response was taken as to Petitioner's inquiry about the appeal process. This referral to the website and a letter to another applicant came about by a response to Petitioner's counsel *while representing other applicants*. As such, the Court **FINDS**, factually, that this was not the moment of any formal denial of an appeal process.

The City notably argues that the applicable statute of limitations remains Government Code § 65009(c)(1)(E) and that it began to run as of that date – February 13, 2019. ROA 240, p. 28:10-18 (citations omitted). For this proposition, the City cites 1305 Ingraham, LLC v. City of Los Angeles (2019) 32 Cal.App.5th 1253, 1262-1263 (hereinafter, **Ingraham**), arguing that "[t]he 'application of Section 65009 does not require an administrative appeal hearing or determination.'" ROA 240, p. 28:15-18 (citation omitted). What distinguishes Ingraham, however, is that there was an existing statutory scheme in place when the denial occurred:

Appellants assert that under that provision, 'a prerequisite to any decision is the mandate that a hearing be conducted.' Thus, 'there could be no determination by the Planning Commission (final or otherwise) until after Appellant's appeal was heard.'

We are not persuaded by this argument. Los Angeles Municipal Code section 16.05.H.4, a later provision entitled 'Decision' within the same 'Appeals' subsection as Los Angeles Municipal Code section 16.05.H.1, states: 'The Area Planning Commission shall render its decision in writing within 15 days after completion of the hearing. The Area Planning Commission may sustain or reverse any decision of the Director... The decision shall be in writing and based upon evidence in the record, including testimony and documents produced at the hearing before the Area Planning Commission... ***If the Area Planning Commission fails to act within the time specified, the action of the Director shall be final.' This section, by its plain terms, states that the commission's failure to act in a timely fashion renders the director's decision the final one****. Here, appellant alleges the commission failed to adjudicate appellant's appeal and render its own written decision. The director's determination – which no one*

disputes constitutes a 'decision' – thus became the final 'decision' from which the statute of limitations began running 15 days after the scheduled July 28, 2016 hearing date.

Ingraham, supra, 32 Cal.App.5th at 1261-1262 (emphasis added). Here, there is no similar statutory scheme providing that a letter denial was the final step in the administrative process. In fact, *quite to the contrary*, the Vista Municipal Code (specifically, the language of the newly-enacted Initiative) clearly contained a provision for appealing to the City Council:

Section 5.94.120 Appeals

Any decision regarding approval, conditional approval, denial, suspension or revocation may be appealed to the city council in accordance with the provisions of the Vista Municipal Code.

As such, in this unique fact pattern, there were no equivalent rules like in Ingraham that rendered the letter denying Petitioner's application (a decision which was signed by the City Manager [see ROA 235, Ex. D]) "final" in terms of exhausting administrative remedies.

Looking for a moment when a decision to deny access to an appeal procedure became "final," the Court again notes that any issues about Petitioner accepting a return of its rather substantial application deposit of $100,000.00 was not addressed in the briefing and so will not be addressed herein.

Beyond those events (the letter denial itself, the referral of counsel to a public website and a letter to *another* applicant, and the return of any deposit funds), the next major event in the factual record is the official promulgation of a formal "Regulation" by the City Manager that applications that are denied "are not reviewable by appeal." ROA 235, Ex. J, pp. VISTA000655-000656. That decision was issued on March 7, 2019. ROA 235, Ex. J, pp. VISTA000655-000656. The Petition giving rise to the instant case was filed *exactly* 90 days later on June 5, 2019. ROA 1.

Though the City makes some reference to the promulgation of this rule (i.e. the rule that no appeals to the City Council would be permitted) as also being subject to the 90-day statute of limitations set forth in Government Code § 65009(c)(1)(E), it is not clear that that statute applies to such an action (i.e. the action of rule-making). The action in question has to do with the promulgation of rules regarding whether and how to appeal to the City Council. Such rules appear to be procedural rules about City process rather than zoning decisions even under the liberal standard set forth in Weiss v. City of Del Mar (2019) 39 Cal.App.5th 609. In any event, that issue is not heavily addressed in the briefing *as it applies to the City Manager's promulgation of the regulation on March 7, 2019*; and, even if it was, the Petition is precisely within that 90-day statute. To the extent that any other statute of limitations may apply to a procedural decision of this nature, neither party has raised it and thus it will not be considered here.

Beyond the statute of limitations issue, the City offers numerous arguments as to why an appeal to the City Council cannot be taken. The Court will address those, in turn, below. The Court first notes, however, that some of these arguments were previously addressed in this Court's ruling on the City's *Demurrer to First Amended Petition*. ROA 225. Thus, where applicable, the Court will cite that previous ruling. Moreover, the Court notes that certain arguments made at the time of that previous ruling do not appear to be argued in the briefing for the present matter, but the analysis applied at that time remains applicable and informs the context in which the Court views the present issues. Those arguments included multiple statutory parsing arguments, a severability clause argument, and a timeliness argument. See ROA 225. The Court thus turns to the remaining arguments made in the present briefing. First, the City argues that it has "no ministerial duty to provide a mechanism to appeal the denial of [Petitioner's application]." ROA 240, p. 15:2-3 (formatting omitted). It is relatively undisputed between the

parties (and a view shared by the Court) that the Initiative is neither a model of statutory drafting, nor an example of clarity. Building upon this shared view, the City argues that it is under no obligation to *fix* this lack of clarity by promulgating rules to support or "fill-in" those areas that are ambiguous. That argument, strictly speaking, is not exactly true. The voters enacted the entire Initiative and, with it, the following clause:

*B. The City Manager or any designee thereof **shall** promulgate any other rules, regulations, and procedures necessary and consistent with this Chapter in order to implement and administer the intent of this Chapter...*

VMC 5.94.170 (emphasis added). It would thus appear that the City Manager *is* under a legal obligation to promulgate rules – at least where "necessary and consistent with this Chapter." Perhaps more importantly here, however, the instant case is less about compelling the City Manager *to* promulgate certain rules, and more about *striking* a rule he has promulgated that is *inconsistent* with the Initiative. In other words, even if the City did not have any *obligation* to promulgate rules clarifying the appeal procedure, it certainly cannot promulgate rules that *contravene* the Initiative. The City Manager promulgated a rule stating, in part, that "it is not possible to administratively appeal the City Manager's decision to deny, disapprove, or disqualify an application 'in accordance with the provisions of the Vista Municipal Code'" (ROA 235, Ex. J, pp. VISTA000655-000656) despite the provision in the Initiative that states "Any decision regarding... denial... may be appealed to the city council in accordance with the provisions of the Vista Municipal Code." VMC 5.94.170(B).

Second, bolstering the argument above, the City argues that it is "powerless to amend or modify the Measure without a vote of the people." ROA 240, pp. 15:24-16:5. The City cites many legal authorities for this proposition. However, at the outset, the City's argument is somewhat self-defeating. Much of the City's interpretation of the appeal clause in the Initiative turns on the language "in accordance with the provisions of the Vista Municipal Code" – with the City arguing that there is no provision in the Vista Municipal Code that provides for an appeal to the City Council. In this sense, the City is essentially arguing that the appeal clause is either ambiguous or in conflict with itself because it calls for two diametrically opposed things: (1) an appeal process to the City Council, and (2) an appeal process that is "in accordance with" the Vista Municipal Code (which, itself, according to the City, does not actually have any procedure in place for making appeals to the City Council). The City is arguing that it is "powerless to amend or modify" this conflict, *and yet the City Manager promulgated a rule elevating one of these provisions over the other*. If, indeed, the City's position that it is powerless to amend or modify the Measure without a vote of the people is meritorious, then the City Manager was powerless to wholesale strike the appeal provision.

That, however, only reveals the infirmity and inconsistency in the City's position. It is not ultimately the basis for resolving the issue because the City's view is, at least in a sense, incorrect that it is "powerless to amend or modify the Measure without a vote of the people." There is ultimately a difference between amending and/or striking provisions of the Initiative and *supplementing* them. The Initiative expressly give the City Manager (and his designees) the power to "promulgate any other rules, regulations, and procedures necessary and consistent with this Chapter in order to implement and administer the intent of this Chapter..." VMC 5.94.170(B). Thus, for starters, it is not contravening the Initiative to use the power that the Initiative itself *provides* to the City Manager. In other words, the City's claim that it cannot promulgate rules about how an orderly appeal may be taken to the City Council is not a claim that is consistent with the terms of the Initiative. While the City Manager must exercise such power in a manner that is "consistent with this Chapter," such that there are certain limits on what the City Manager can do with this power, the City's attempt to frame itself as "powerless" lacks merit with regard to the power to

promulgate rules for an orderly appeal process to the City Council. The City is, however, powerless to contravene the will of the voters for all of the reasons that the City itself cites. ROA 240, pp. 15:24-16:5, citing Elections Code § 9217, also citing Tesoro Logistic Operations, LLC v. City of Rialto (2019) 40 Cal.App.5th 798, 806 (additional citations omitted). These authorities actually countenance *against* what the City did here – promulgating rules that essentially *struck* or "repealed" a part of the Initiative, namely, the part that provides a *right* to appeal to the City Council.

Third, citing Government Code § 65903, the City argues that "a land use appeal process must be created as an *ordinance* amending the municipal code..." ROA 240, p. 16:12-17 (emphasis added). Government Code § 65903 provides, in full, as follows:

*A board of appeals, **if one has been created** and established by local ordinance, shall hear and determine appeals from the decisions of the board of zoning adjustment or the zoning administrator, as the case may be. **Procedures for such appeals shall be provided by local ordinance**. Such board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision, or determination as should be made, and such action shall be final.*

(Emphasis added.) The City has not argued, or produced evidence, that a board of appeals even *exists* within the municipal structure of the City of Vista, though there is some mention in the briefing of an appeals process that takes place from the "Planning Commission" to the City Council. This alone renders application of Government Code § 65903 improper and misplaced on the facts provided here. Moreover, even if a board of appeals does exist, it is not clear on this record that the terms of the Initiative are in conflict with Government Code § 65903. Government Code § 65903 does call for "[p]rocedures for such appeals [to be] provided by local *ordinance*" (emphasis added), but it is not entirely clear that a duly passed local ordinance cannot delegate that authority to another body. Here, *the ordinance* provides the City Manager with the power to "promulgate any other rules, regulations, and procedures necessary and consistent with this Chapter in order to implement and administer the intent of this Chapter..." While there may be arguments that the term "procedures" as used in Government Code § 65903 means that the procedures themselves must be in the municipal code (and thus cannot be delegated to a municipal official to create as some lesser "rule, regulation, [or] procedure") that specific issue is not presently before this Court because the City Manager has not actually produced such rules yet under the facts of this case. In this sense, the arguments made by the City begin to get a bit far afield from the question presented by this lawsuit, which is whether the rule, promulgated by the City Manager and barring any appeals to the City Council, is valid. While not directly before this Court at this time, these issues are raised to point out the alternatives available to the City and show, essentially, that the City had no other choice than to effectively repeal the appeal provision of the Initiative. Hypothesizing about those alternatives in response to the City's own arguments about why it could take no other path than the one it took here, the Court notes that there is at least some possibility to harmonize Government Code § 65903 with the appeal provision set forth in the Initiative, if, indeed, a board of appeals exists at the City. The specific language of the appeal provision in the Initiative indicates that "[a]ny decision... may be appealed *to the city council* in accordance with the provisions of the Vista Municipal Code." (Emphasis added.) The City's argument appears to be that if a board of appeals exists, then an appeal "to the city council" conflicts with the mandates of Government Code § 65903. The Court does not necessarily find that to be true. If, for example, there are provisions in the Vista Municipal Code that require all appeals to first be heard by a "board of appeals" it appears quite possible in this context for the City Manager to establish a process in which appeals to the City Council first go through a preliminary appeal to the "board of appeals" (as long as they can still ultimately be appealed to the City Council) since (at least in the example given) such a preliminary step would be

mandated by other provisions of the municipal code. Again, this argument is a bit far afield because it triggers speculation of the myriad of possibilities that *could* potentially be established for appealing to the City Council and which are not, on this factual record, technically before this Court. Nonetheless, the Initiative charges the City Manager with the *duty* (as it uses the word "shall") to promulgate rules that facilitate and enable, or, to use the Initiative's words, "implement and administer *the intent* of this Chapter" by promulgating rules, regulations, and procedures that are necessary and consistent with the Initiative. The Initiative provides for an appeal to the City Council. On this record the Court **FINDS** that, rather than comply with his legal duty to promulgate rules facilitating an appeal process to the City Council, the City Manager did the exact opposite – *divesting* applicants of any appeal rights and single-handedly repealing the will of the voters.

Fourth, the City argues that there simply was no *time* to promulgate effective appeal rules because "Measure Z required quick action and decision following the November 2018 election." ROA 240, p. 18:19-20. Factually, the record does establish that the implementation time after the November 2018 election was rather quick by normal legislative standards. However, the Court has addressed this argument before in ruling on the City's *Demurrer to First Amended Petition* and begins its analysis now by recitation of analysis on that issue:

...the City argues that, due to the tight timelines for implementing the Ordinance, it was so impracticable as to be impossible to establish an appeal procedure to the City Council. This is a fact-intensive argument that, on demurrer, the Court cannot indulge. If indeed the timelines to implement an appeal procedure were to so impossibly tight that it became necessary to wholesale invalidate a provision of the Ordinance by simply not providing an appeal procedure, such an argument will need to be established with factual evidence of how demanding the timeline was and with detailed evidence of what it would take to implement an appeal procedure. Second, even if that showing could be made, it is not clear that 'tight timelines' are an adequate basis for simply ignoring (or even promulgating rules countermanding) a provision of the Ordinance. Third, no party has presented any judicially-noticeable evidence that, since that initial time-intensive roll-out, the City has promulgated rules to establish an appeal procedure. While that is a question better left for a later stage of litigation, where facts can be presented, the fact than an appeal procedure has not been created or implemented in the nearly two-year time span since the events in question suggests that time *is not the real reason why an appeal was not provided*.

ROA 225, p. 6. Of the three points addressed previously, there is now a sufficient factual record to establish that the timelines were, indeed, tight. However, the Court remains of the opinion that tight timelines alone are not a basis for effectively repealing a provision of a voter initiative, or, for that matter, for ignoring the law and simply denying a right to an appeal. Moreover, as noted in the previous ruling, there is no evidence produced to indicate that in the intervening time frame of over two years the City has made any effort to implement an appeal procedure to the City Council. As such, the "time" argument appears to be disingenuous. To the extent that the instant case has now reached the trial stage at which facts can be found, on the record and evidence before it, this Court **FINDS** that "time" was not the real reason why such rules were never promulgated and is, instead, a pretextual reason.

Fifth, the City argues that "[w]hile the City cannot contradict the plain language of Measure Z, the text itself requires interpretation and clarification to be read in any logical fashion. The City's interpretation is not clearly erroneous, and therefore entitled to *deference*." ROA 240, pp. 24:28-25:3, citing Pac. Gas & Electric Co. v. Public Utilities Comm'n (2015) 237 Cal.App.4th 812, 839 (emphasis added). The City made this argument previously as well and the Court previously addressed it as follows:

Interestingly, the City provides some argument about courts deferring to a city's interpretation of local

laws because of 'special familiarity with satellite legal and regulatory issues.' (Reply, p. 5:26-28, citing *Pacific Gas & Electric Co. v. Public Utilities Com. (2015) 237 Cal.App.4th 812, 839,* also citing *Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 7.) While the City appears to be invoking this concept to seek deference with regard to its conclusion that an appeal process cannot be provided, it is actually somewhat persuasive to the contrary – i.e. all three of the arguments above with regard to how and whether tolling could be implemented, whether to measure buffer-zones by including* potential *businesses and buildings, and how to implement a process by which challenges between applicants can be heard, are all items where the City's special familiarity with its procedures and regulatory issues might play a role. While deference to determinations of the City Manager and City Council are not absolute, the issue in the present case appears to be that neither the City Manager nor the City Council even* heard *these arguments because [Petitioner] was simply denied an appeal process outright. The Court cannot show deference to the City's 'special familiarity with satellite legal and regulatory issues' if the City eschews its obligation under the Ordinance to* hear *those arguments in the first instance.*

ROA 225, p. 8. Since the Court issued the above ruling six months ago, nothing has changed regarding the analysis, and, factually, none of the evidence produced in support of the present matter has altered the facts that were before the Court previously on this issue.

Conclusion

When this case first came to this Court, it represented a bit of a procedural morass, with the parties all acknowledging that the voter drafted Initiative was not a model of clarity, and with Petitioner's counsel making the point that cases of this nature are often argued as being both *premature* (in terms of ripeness) and *late* (in terms of statutes of limitations) at the same time. The parties at that time were disputing the issue of "finality" because the City's letter denying Petitioner's application was only for the *first step* in the process of opening a marijuana dispensary. The argument at that time was that perhaps the competitor that was "buffering out" Petitioner would fail to complete all the steps and never actually open a dispensary; and, if that happened, only *then* would Petitioner have a case.

The passage of time has altered these facts somewhat, with the City now producing evidence that that competitor has, indeed, been issued a Business License by the City on February 2, 2021. Lodgments (by City), Ex. 10. And, as a result, it appears that Petitioner has filed *another* petition – Frank Zimmerman Collective v. City of Vista (21-17596) – to re-raise the issues if, indeed, it is found that they were prematurely raised. In other words, the lack of clarity in the "finality" issue has now triggered two lawsuits regarding essentially the same thing. It is with this in mind, as well as the procedurally layered nature of the first hearing in this matter (when the competitor was still a party) that the Court takes note of the following principles that underlie the "exhaustion of administrative remedies" doctrine that applies in the context of writ of mandamus proceedings:

Efficiency: *One purpose of the exhaustion of administrative remedies doctrine is to promote efficiency. Exhaustion of remedies 'lighten[s] the burden of overworked courts in cases where administrative remedies are available and are as likely as the judicial remedy to provide the wanted relief... Even where the administrative remedy may not resolve all issues or provide the precise relief requested by a plaintiff, the exhaustion doctrine is still viewed with favor because it facilitates the development of a complete record that draws on administrative expertise and promotes judicial efficiency... It can serve as a preliminary administrative sifting process..., unearthing the relevant evidence and providing a record which the court may review.' [*Sierra Club v. San Joaquin Local Agency Formation Comm'n *{(1999) 21 Cal.4th 489,} 501, 87 CR2d at 711 (internal quotes and citations omitted)]*

...

*...**Avoiding 'end-runs':** If exhaustion of remedies and issue exhaustion were not required, litigants would have an incentive to short-circuit agency processes and avoid an agency decision to which a court might later give deference. Such 'end-runs' (often referred to as 'sandbagging') are contrary to the Legislature's intention in creating those agencies. 'Further, creating an agency with particular expertise to administer a specific legislative scheme would be frustrated if a litigant could bypass the agency in the hope of seeking a different decision in court.' [*Plantier v. Ramona Municipal Water Dist. *(2019) 7 C5th 372, 383, 247 CR3d 619, 626;* Tahoe Vista Concerned Citizens v. County of Placer *(2000) 81 CA4th 577, 594, 96 CR2d 880, 892]*

While not all of these concepts are one hundred percent on all fours with the precise background of the instant case, the broad rationales *are*. It is the City – not the Court – that is administering the scheme implemented by the Initiative. The issue of whether or not the denial letter was, in the first instance, a "final" determination or whether it was some sort of interim decision that would be on "hold" or "waitlisted," while the competitor who was buffering Petitioner out based on a *potential* dispensary within 500 feet of Petitioner's proposed location is a question to first be addressed via an administrative appeal to the City Council. In other words, the question of whether the City's agents and the City Manager should be considering *potential* dispensary locations when performing the ministerial duty of granting or denying an application for a marijuana license is a question for the City Council, with its particular expertise in administering municipal licenses, applications, and registrations, to address via the appeal process set forth in VMC 5.94.120. In particular, the density and complexity of the issue as originally briefed by the parties back when this Court ruled on the *Demurrer to Petition* (as well as a related anti-SLAPP motion brought by the competitor dispensary), demonstrates precisely why the "preliminary administrative sifting process" discussed by the Sierra Club court is "viewed with favor." Indeed, the confusion over whether this case was premature, timely, or even late in terms of administrative process was *caused*, to some extent, by the failure of an adequate administrative appeal procedure where issues regarding consideration of a *potential* dispensary location could be addressed and clarified.

There is one final question that impacts the outcome of this case, and that is whether the precise question of whether a potential dispensary location can "buffer out" an applicant is still a justiciable issue. The briefing has produced evidence indicating that Riverside Delivery has now received a Business License, rendering the competing application no longer a *potentiality* and, instead, a matter of fact. "Equity will not interpose its remedial power in the accomplishment of what seemingly would be nothing but an idly and expensively futile act, nor will it purposely speculate in a field where there has been no proof as to what beneficial purpose may be subserved through its intervention." Arnolds Management Corp. v. Eischen (1984) 158 Cal.App.3d 575, 579, quoting Leonard v. Bank of America etc. Ass'n (1936) 16 Cal.App.2d 341, 344. Given that the competitor has now opened an actual dispensary, it might appear that an order invalidating the City Manager's regulation denying an appeal process could be characterized as "idly and expensively futile..." The Court rejects this view for two reasons. First, Petitioner had a *legal right* to an appeal to the City Council – a legal right to be *heard*. The exercise of a legal right is distinguishable from the type of "idly and expensively futile" act being discussed in the Arnolds Management case (which was referring to not setting aside a foreclosure sale based upon an irregularity when the plaintiff claiming the irregularity cannot allege that he or she is *able* and *willing* to make payment on any unpaid mortgage debts that have accrued). Second, the argument regarding being buffered-out by a potential dispensary is only one of several arguments that Petitioner has made. Petitioner has, in other instances, argued additional grounds as to why the competitor's application was infirm to begin with. As this Court cannot predict, with the clarity of a proverbial crystal ball, what arguments may be made or how administrative proceedings before the City Council may play

out, this is not a case in which the changed facts (with the competing dispensary now being open) render the issues raised by this case moot.

Finally, to be clear, the Court is not making any affirmative or mandatory rulings today about what kind of rules or regulations the City Manager, in his discretion, must make under the authority provided to him by VMC 5.94.170(B). This Court's ruling is rather narrow and limited, being granted and denied in the following manner:

The Petition is **GRANTED** as to:

(1) the request to strike paragraph 6 of the March 7, 2019 regulation, which denies applicants the right to an appeal, as it formally implements a rule, regulation, or procedure that is *in direct conflict* with the appeal provision of the Initiative (VMC 5.94.120; see also ROA 235, Ex. J, pp. VISTA000655-000656, Item 6),

(2) the request to order that the City Manager comply with the mandate of VMC 5.94.170 that "[t]he City Manager or a designee thereof ***shall*** promulgate any other rules, regulations and procedures necessary and consistent with this Chapter in order to implement and administer the *intent* of this Chapter..." by promulgating rules, regulations, and/or procedures for an administrative appeal consistent with the intent of VMC 5.94.120 (the appeal provision of the Initiative) within 30 days, and

(3) the request to order that the City Council hear an appeal from the denial of Petitioner's application for registration under the Initiative,

but **DENIED** as to:

(4) the request for an order regarding whether the City violated its ministerial duties, abused its discretion, and/or failed to legally comply with VMC § 5.94.060(F) when it proclaimed that there was no longer a "priority list" after it issued the 11 NCRs authorized by VMC Chapter 5.94, because the request for such an order is time-barred under Government Code § 56009(c)(1)(E) and the present procedural posture of this case, and

(5) the request for an order regarding whether the City violated its ministerial duties, abused its discretion, and/or failed to legally comply with VMC § 5.94.090(D) when it denied Petitioner's application because its proposed location was within 500 feet of Riverside Delivery's proposed location when both Riverside Delivery and Petitioner were merely applicants and no dispensaries had been licensed to operate because the request for such an order is time-barred under Government Code § 56009(c)(1)(E) and the present procedural posture of this case.

IT IS SO ORDERED.

Blaine K. Bowman

Judge Blaine K. Bowman

CERTIFICATE OF SERVICE

I, Jeff Augustini, declare as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 9160 Irvine Center Drive, Suite 200, Irvine, California 92618, in said County and State. On July 27, 2021, I served the following document(s):

[PROPOSED] JUDGMENT GRANTING IN PART AND DENYING IN PART PETITION FOR WRIT OF MANDATE

on the following parties:

Alena Shamos
Colantuono, Highsmith & Whatley, PC
440 Stevens Avenue, Suite 200
Solana Beach, CA 92075
AShamos@chwlaw.com
(**via electronic service**)

by the following means of service:

☐ **BY MAIL**: I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE**: I emailed a true copy of this document to a messenger with instructions to personally deliver it to each person[s] named at the address[es] shown before 5:00 p.m. on the above-mentioned date.

☐ **BY OVERNIGHT SERVICE:** On the above-mentioned date, I placed a true copy of the above mentioned document(s), together with an unsigned copy of this declaration, in a sealed envelope or package designated by FedEx with delivery fees paid or provided for, addressed to the person(s) as indicated above and deposited same in a box or other facility regularly maintained by FedEx or delivered same to an authorized courier or driver authorized by FedEx to receive documents.

☒ **BY ELECTRONIC SERVICE:** On the above-mentioned date, I caused each such document to be transmitted by electronically mailing a true and correct copy through OneLegal's electronic service system to the persons set forth above.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 27, 2021, at Irvine, California.

Jeff Augustini

Jeff Augustini

CERTIFICATE OF SERVICE

I, Jeff Augustini, declare as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 9160 Irvine Center Drive, Suite 200, Irvine, California 92618, in said County and State. On August 5, 2021, I served the following document(s):

NOTICE OF ENTRY OF RULING ON FRANK ZIMMERMAN COLLECTIVE'S PETITION FOR WRIT OF MANDATE

on the following parties:

Alena Shamos
Colantuono, Highsmith & Whatley, PC
440 Stevens Avenue, Suite 200
Solana Beach, CA 92075
AShamos @chwlaw.com
(**via electronic service**)

Timothy McCandless
Law Office of Timothy McCandless
26875 Calle Hermosa, Suite A
Capistrano Beach, CA 92624
legalsynch@gmail.com
(**via electronic service**)

by the following means of service:

☐ **BY MAIL**: I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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☒ **BY ELECTRONIC SERVICE:** On the above-mentioned date, I caused each such document to be transmitted by electronically mailing a true and correct copy through One Legal's electronic service function to the e-mail address(s) set forth above.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 5, 2021, at Irvine, California.

Jeff Augustini

Jeff Augustini