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7 Balboa Ave Cooperative, San Diego United Holdings Group, LLC
And Ninus Malan

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/29/2017 at 12:36:00 PM
Clerk of the Superior Court
By Richard Day, Deputy Clerk

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9 **SUPERIOR COURT OF CALIFORNIA**
COUNTY OF SAN DIEGO, CENTRAL DIVISION

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12 MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION, a
13 California Nonprofit Mutual Benefit
Corporation,

14 Plaintiff,

15 v.

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17 BALBOA AVE COOPERATIVE, a
California corporation; SAN DIEGO
18 UNITED HOLDINGS GROUP, LLC, a
California limited liability company;
19 NINUS MALAN, an individual; RAZUKI
INVESTMENTS, LLC, a California
20 limited liability company; SALAM
RAZUKI, an individual; and DOES 1
21 through 25, inclusive.

22 Defendants.

CASE NO. 37-2017-00019384-CU-CO-CTL

**ANSWER TO COMPLAINT BY
DEFENDANT SAN DIEGO UNITED
HOLDINGS GROUP, LLC**

Complaint Filed: May 26, 2017
Trial Date: Not set

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1 Defendant San Diego United Holdings Group, LLC (“SD United” or "Defendant") hereby
2 submits this answer to the Complaint of plaintiff Montgomery Field Business Condominiums
3 Association (“Montgomery Field” or "Plaintiff"):

4 Pursuant to the provisions of Code of Civil Procedure section 431.30, SD United
5 generally and specifically denies each, every, and all of the allegations in the Complaint,
6 including each and every purported cause of action contained therein. SD United further denies
7 that Plaintiff has or will sustain damages in an amount alleged or in any amount whatsoever.

8 **AFFIRMATIVE DEFENSES**

9 Defendant alleges the following defenses as separate and distinct affirmative defenses to
10 the Complaint, and to each and every cause of action stated therein, but in asserting these
11 defenses, Defendant does not assume the burden of proof as to matters that are Plaintiff's burden
12 to prove.

13 **FIRST AFFIRMATIVE DEFENSE**

14 1. The Complaint, and each and every purported cause of action alleged therein, fails
15 to state facts sufficient to constitute a cause of action against Defendant.

16 **SECOND AFFIRMATIVE DEFENSE**

17 2. Plaintiff's claim for nuisance is barred under Civil Code §3482, because the
18 alleged operation of a properly permitted and legal dispensary is pursuant to an express statutory
19 authority and thus by definition not a nuisance.

20 **THIRD AFFIRMATIVE DEFENSE**

21 3. The Complaint, and each and every purported cause of action alleged therein
22 against Defendant, is barred by the doctrine of laches due to Plaintiff's unreasonable delay in
23 bringing the action and the resulting prejudice to Defendant.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 4. Plaintiff, with actual or constructive knowledge of the facts alleged in the
26 Complaint, was under a duty to mitigate damages, if any, and has failed to fulfill such duty; as a
27 consequence, Defendant was and is exonerated from any liability to Plaintiff, and damages, if
28 any, are the sole and approximate result of Plaintiff's failure to mitigate damages.

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FIFTH AFFIRMATIVE DEFENSE

5. The Complaint, and each and every purported cause of action alleged therein against Defendant, is barred by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

6. The Complaint, and each and every purported cause of action alleged therein against Defendant, is barred by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

7. Defendant alleges that Plaintiff consented to all actions taken in regard to the facts and circumstances alleged in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiff acquiesced by allowing Defendants and non-parties to obtain proper licenses and permits to operate on the Premises, and thus consented to the alleged acts.

NINTH AFFIRMATIVE DEFENSE

9. At the times and places mentioned in the Complaint, Plaintiff acted carelessly, wantonly, recklessly and negligently so as to have itself be the proximate cause of any breach, damage or injury alleged in the Complaint.

TENTH AFFIRMATIVE DEFENSE

10. Defendant is informed and believes and thereon alleges that each and all of the alleged rights, claims and obligations which Plaintiffs seek by way of the Complaint have been released.

ELEVENTH AFFIRMATIVE DEFENSE

11. Defendant is informed and believes and thereon alleges that Plaintiff has unclean hands with respect to matters alleged in the Complaint and is therefore barred from recovering against Defendant.

TWELFTH AFFIRMATIVE DEFENSE

12. Without conceding that any damages are owed to Plaintiff, which supposition is made solely for the purposes of this affirmative defense, Defendant is informed and believes and thereon alleges that any damage or loss proven to have been sustained by Plaintiff is as a direct

1 and approximate result of the independent acts and unlawful conduct of Plaintiff and/or third
2 parties or its agents or employees, not foreseen by any act or admission on the part of Defendant.
3 By reason thereof, any right of recovery of Plaintiff from Defendant should be reduced by that
4 amount which the fault of the persons or entities other than Defendant contributed to any of the
5 damages allegedly sustained by Plaintiff.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 13. Defendant is informed and believes and thereon alleges that Plaintiff is barred
8 from relief sought by the Complaint in that the equities do not preponderate in favor of Plaintiff,
9 but rather in favor of Defendant.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 14. Each and all of the alleged rights, claims and obligations which Plaintiff seeks by
12 way of its Complaint against Defendant is not enforceable pursuant to Civil Code section 1439
13 for Plaintiff's failure to perform all obligations on its part to be performed, including as to
14 contracts or agreements, if any, with Defendant.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 15. Defendant is informed and believes that attorneys' fees and punitive or exemplary
17 damages are not permissible.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 16. Defendant is informed and believes and thereon alleges that it presently has
20 insufficient knowledge or information to form a belief as to whether there are additional, as of yet
21 unstated, affirmative defenses available. Defendant, therefore, reserves the right to assert
22 additional affirmative defenses in the event discovery indicates such would be appropriate.

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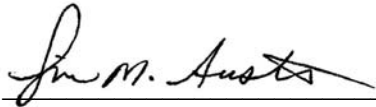
PRAYER

WHEREFORE, having fully answered the Complaint, Defendant prays as follows:

1. That Plaintiff take nothing by way of the Complaint;
2. For reasonable expenses, including attorneys fees;
3. For costs of suit incurred herein;
4. For such other and further relief as the Court may deem just and proper.

DATED: June 28, 2017

AUSTIN LEGAL GROUP, APC

By: 

Gina Austin/Tamara Leetham
Attorneys for San Diego United Holdings
Group, LLC