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8 FRANK ZIMMERMAN COLLECTIVE

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**04/21/2021** at 03:10:47 PM  
Clerk of the Superior Court  
By Veronica Navarro, Deputy Clerk

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN DIEGO

12 FRANK ZIMMERMAN COLLECTIVE,

13 Petitioner/Plaintiff,

14 vs.

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

19 Respondents/Defendants.

CASE NO. 37-2021-00017596-CU-WM-NC

**VERIFIED PETITION FOR WRIT OF  
MANDAMUS AND COMPLAINT FOR:**

- (1) PEREMPTORY WRIT OF  
MANDATE; AND  
(2) INJUNCTIVE RELIEF.



1 to RCDD, and the City never should have issued a cannabis business license to RCDD, since pursuant to  
2 VMC §5.04.145(c), RCDD did not satisfy, and legally could not establish that it had satisfied, all of the  
3 requirements of Chapter 5.94 necessary to obtain an NCR (let alone a license). As such, the City’s  
4 decision to issue RCDD a renewed NCR and cannabis business license was erroneous and must be  
5 reversed. Because of its failure to satisfy the requirements for licensure set forth in VMC Chapters 5.94  
6 and 5.04, RCDD’s cannabis business license should be, and indeed must be, denied/revoked, and FZC,  
7 as the next in line on the priority list, should be permitted to move forward in the application process and  
8 try to satisfy the requirements necessary for and NCR and licensure.

9 5. Via this Action, FZC seeks to vindicate and compel the City to honor its appellate rights  
10 – rights it again has wrongfully denied to FZC -- and to require the City to deny/revoke RCDD’s license  
11 and NCR and permit FZC an opportunity to move forward in the application process.

12 **PARTIES AND VENUE**

13 6. FZC is and at all relevant times was a California Nonprofit Mutual Benefit Corporation.  
14 FZC is the lessee of real property located at 1215 S. Santa Fe Avenue, Vista, CA 92083 (the “FZC  
15 Property”). FZC applied for a medical marijuana dispensary license in the City of Vista, and participated  
16 in the City’s license registration process as set forth in the governing ordinance and associated City rules  
17 and regulations. FZC was sixth on the City’s priority list – which ordinarily would have entitled FZC to  
18 license registration as the City ultimately provided eleven such registrations, and in that process selected  
19 the seventeenth applicant on the City’s priority list for the final registration – but its application was  
20 deemed “buffered out” by RCDD under the City’s erroneous interpretation of the 500-foot buffer zone  
21 exclusion requirement. *See* VMC §5.94.090(D) (“Medical cannabis businesses are prohibited within five  
22 hundred (500) feet of any other *permitted* medical cannabis dispensary”) (emphasis added).

23 7. The City is and at all relevant times was a municipality located within the State of  
24 California, County of San Diego.

25 8. RCDD is and at all relevant times was a California Nonprofit Mutual Benefit Corporation.  
26 RCDD is the lessee of real property located at 1275 S. Santa Fe Avenue, Vista, California 92803. As  
27

1 noted above, RCDD received a #2 ranking for priority purposes, received (improperly) an NCR and then  
2 ultimately a business license from the City to operate a medical marijuana dispensary.

3 9. FZC is ignorant of the true names and capacities of the Defendants/Respondents sued  
4 herein as DOES 1 through 50, inclusive, and therefore sues such Defendants/Respondents by fictitious  
5 names. FZC will amend its claims to allege the true names and capacities of DOES 1-50 when they have  
6 been ascertained. FZC is informed and believes and on that basis alleges each of the fictitiously named  
7 Defendants is responsible in some manner for the acts, omissions, events and occurrences herein alleged,  
8 and that FZC's damages herein alleged were proximately caused in some way by such DOE Defendants.

9 10. Jurisdiction and venue are proper in this Court.

10 **FACTS RELEVANT TO ALL CAUSES OF ACTION**

11 11. As noted above, this action arises from the City's issuance of a renewed NCR to RCDD  
12 to which it legally was not entitled, and the City's issuance of a cannabis business license to RCDD for  
13 which it also legally was not qualified.

14 12. The cannabis dispensary application process was/is governed by Chapter 5.94 *et seq.* of  
15 the Vista Municipal Code, as well as by the City's various applicable policies, procedures and rules.

16 13. Section 5.94.050 of the VMC, in clear language, mandates that each applicant "shall"  
17 submit an application to the City which "shall" contain, *inter alia*, "A site plan describing the property  
18 with **fully dimensioned interior and exterior floor plans including: electrical, mechanical,**  
19 **plumbing, and disabled access compliance** pursuant to Title 24 of the State of California Code of  
20 Regulations and the Americans with Disabilities Act." VMC §5.94.050(B)(7) (emphasis added).

21 14. Once submitted, the City, as a ministerial duty, was required to process the applications  
22 in the order set forth in the priority list – *i.e.*, in the order they were submitted and date/time stamped.  
23 According to the VMC, processing of the applications "shall consist of verification of the information  
24 required by Sec. 5.94.50 as complete and accurate." VMC §5.94.060(G). Stated differently, only  
25 accurate and complete applications that fully complied with VMC Section 5.94.050 were/are eligible for  
26 an NCR, and, equally as important, the determination that an application was/is complete and accurate  
27 was expressly made a ministerial duty of the City. *Id.*

1           15.     As noted above, the City deemed RCDD’s application complete and accurate, and based  
2 on its priority rank (#2), the City issued an NCR to RCDD as one of the eleven available medical cannabis  
3 registrations that were permitted under the VMC. *See* Exh. B. However, RCDD’s application was *not*  
4 accurate or complete, and did not comply with the provisions of VMC §5.95.050 as required.

5           16.     Specifically, the VCM required RCDD to submit a detailed site plan containing fully  
6 dimensioned interior and exterior floor plans, including plans for electrical, mechanical, plumbing, and  
7 disabled access compliance pursuant to Title 24 of the California Code of Regulations (essentially the  
8 Building Standards Code) and the ADA. *Id.* at §5.94.050(B)(7). Title 24 in turn requires all building  
9 plans that are submitted to be “construction ready.” Yet the plans RCDD submitted were expressly  
10 stamped “NOT FOR CONSTRUCTION,” thereby facially establishing that the plans submitted by  
11 RCDD with its application did not comply with Title 24 as required, and significantly they contained no  
12 construction-level detail whatsoever. Further, despite being required both by Title 24 and the ADA,  
13 RCDD’s site plans failed to provide details for proposed occupancy and exiting, electrical load  
14 calculations and a single line diagram, mechanical plans (including hood and HVAC information), energy  
15 compliance information, disabled access compliance information, and also failed to provide a complete  
16 hazardous materials checklist. Notably, these requirements are mandated by City policy vis-à-vis  
17 proposed tenant improvements at commercial/industrial sites.

18           17.     Thus, RCDD’s application as a matter of fact and law was both inaccurate and incomplete,  
19 and as such it should never have received an NCR let alone have been selected above FZC’s application.  
20 Rather, the City had a ministerial duty to reject RCDD’s application, yet it failed to do so. As a direct  
21 and proximate result of the City’s failure comply with its ministerial duty to follow the express  
22 requirements of the VMC as well as its own building code policies and procedures, it improperly issued  
23 an NCR to RCDD and in turn improperly denied FZC’s application on the improper ground that FZC’s  
24 proposed location was within 500 feet of RCDD’s proposed location. VMC §5.94.090(D).

25           18.     To the extent the City argues it had discretion in the creation, implementation,  
26 interpretation and/or alteration of the requirements set forth in the VMC and/or the City’s own policies,  
27 procedures, rules and regulation, FZC contends its abused that discretion, its actions and determinations  
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1 on such matters were/are arbitrary, capricious, unfair, unlawful, in violation of the governing ordinances,  
2 against the overwhelming weight of facts and evidence available to the City at the time, and/or were the  
3 result of “unreasonable” policies and procedures that were not legally permissible.

4 19. VMC Section 5.04.210 provides that anyone aggrieved by the decision of the City vis-à-  
5 vis business licensing decisions may appeal such decision to the City Manager by filing a written notice  
6 of appeal with the City Clerk within 30 days after notice has been given of the City’s decision.

7 20. Similarly, VMC §5.94.120 provides for an appeal to the City Council of “any decision  
8 regarding approval, conditional approval, denial, suspension, or revocation” of an NCR and/or cannabis  
9 license. The City repeatedly has refused to comply with this provision and has wrongfully denied  
10 appellate rights to FZC – a denial which is currently the subject of pending litigation. Via this Action,  
11 FZC seeks appellate rights relating to the City’s decision to: (1) issue a cannabis business license to  
12 RCDD on or about February 2, 2021; and (4) renew RCDD’s NCR on or about February 13, 2021.

13 21. Based on the foregoing, FZC seeks the issuance of a writ of mandate compelling the City  
14 to do the following things: (1) permit FZC to appeal the issuance of the renewed NCR and business  
15 license to the City Council as expressly authorized in Chapter 5.94, and, if necessary, to establish via  
16 ordinance, rule, regulation or otherwise all procedures necessary to implement and conduct the required  
17 administrative appeal to the City Council; (2) deem FZC’s application to still be on the “priority list,”  
18 and to confirm it will remain thereon and eligible to potentially proceed in the licensing process until this  
19 action has been finally determined; and (3) compelling the City to properly interpret and apply the “buffer  
20 zone” prohibition of VMC Section 5.94.090(D). Each of these matters is addressed in more detail below,  
21 is independently actionable, and in the alternative must be addressed vis-à-vis any administrative appeal  
22 because it is clear the City is not properly interpreting several critical provisions that will come into play  
23 during any appeal to the City Council.

24 **FIRST CAUSE OF ACTION**  
25 **PETITION FOR PEREMPTORY WRIT OF MANDATE**  
26 **(AGAINST ALL RESPONDENTS)**

1           22.     FZC incorporates as though set forth herein in full the allegations contained in Paragraphs  
2 1-21 above.

3           23.     VMC Section 5.94.120 provides: “Any decision regarding approval, conditional approval,  
4 denial, suspension or revocation may be appealed to the city council in accordance with the provisions  
5 of the Vista Municipal Code.” VMC Section 5.94.170(B) further provides: “The City Manager or any  
6 designee thereof shall promulgate any other rules, regulations, and procedures necessary and consistent  
7 with this Chapter[.]” See VMC §§5.94.120 (emphasis added), 5.94.170(B); *Lazan v. County of Riverside*,  
8 140 Cal. App. 4<sup>th</sup> 453, 460 (2006) (“The word ‘shall’ indicates a mandatory or ministerial duty”).

9           24.     On March 11, 2021, the City wrongfully denied Chapter 5.94 appellate rights to FZC,  
10 despite the fact that issuance of both the renewed NCR and license issuance were appealable under  
11 Section 5.94.120.

12           25.     VMC 5.04.210 provides in relevant part that: “[A]ny person aggrieved by any decision  
13 of the collector made pursuant to this Chapter may appeal such decision to the City Manager by filing a  
14 written notice of appeal with the City Clerk within 30 days after notice of said decision has been given  
15 by the collector. The City Clerk shall give notice to such person of the time and place of hearing . . . .  
16 The City Manager shall have authority to determine all questions raised on such appeal. The City  
17 Manager shall consider all evidence produced, shall make findings thereon and shall render a decision,  
18 Such decision shall be final and conclusive. No such decision shall conflict with any substantive  
19 provisions of this Chapter.”

20           26.     VMC Section 5.04.145 provides that to be eligible to receive a cannabis business license,  
21 the applicant first must “establish[] that all requirements have been met for issuance of a license that are  
22 contained in Chapter 5.94 and State law.” As discussed both above and below, RCDD did not establish,  
23 and could not establish, that it met all of the requirements of Chapter 5.94, and thus the City had a  
24 ministerial duty to deny it a license and a renewed NCR. FZC is an aggrieved party because it was  
25 prevented by RCDD’s application from moving forward with its own application, and it remains on the  
26 priority list established by Chapter 5.94 and is potentially eligible to move forward in the application  
27 process if RCDD’s license and renewed NCR are revoked or denied.

28

1           27.     Based on the foregoing, the City’s refusal to provide the appeal expressly set out in VMC  
2 §5.94.120 constitutes a failure to perform a ministerial duty, and abuse of discretion, and an intentional  
3 act designed to undermine, contradict and fundamentally alter the plain meaning and intent of VMC  
4 §5.94.120. As Chapter 5.94 was a voter-driven ballot initiative, the City must enforce it as written, and  
5 not as it desires. Rather, it was and is required to provide appellate rights to parties such as FZC, and  
6 was given both the mechanism and ministerial duty in VMC §5.94.170(B) to “fill in” any holes in the  
7 ordinance needed to effectuate the purpose and intent of Chapter 5.94.

8           28.     Similarly, as an applicant who was wrongfully denied an NCR and who should be deemed  
9 to remain on the priority list pending determination of FZC’s appeal challenging RCDD’s legal  
10 qualifications and eligibility for a license and NCR renewal, the City’s refusal to permit an appeal of its  
11 issuance of a cannabis business license also constitutes a failure to perform a ministerial duty and a gross  
12 abuse of discretion. Specifically, the City falsely withheld appellate rights to FZC on the false and  
13 improper ground that FZC was not an “aggrieved party” under VMC §5.04.210, claiming that regardless  
14 of its decision vis-à-vis RCDD, FZC would still be in the “same position” and presumably would not be  
15 eligible for a license or to move forward in the application process even if RCDD’s license was revoked.  
16 That simply is not true and is based on a purposeful misreading and misinterpretation of VMC Chapter  
17 5.94. Specifically, until FZC’s claim that RCDD was/is not qualified for a license is determined, FZC  
18 remains on the “priority list” and is eligible potentially to proceed with the application process if RCDD  
19 is eliminated. Thus, it clearly was and is an “aggrieved party,” had and has a direct and substantial  
20 interest in the licensure of RCDD, and thus should have been permitted to appeal the issuance of RCDD’s  
21 license pursuant to VMC §5.04.210. *See* VMC §5.94.060(F).

22           29.     In addition to vindicating and enforcing its appellate rights, FZC also substantively alleges  
23 that RCDD failed to satisfy the requirements of Chapter 5.94, and as a result it never should have received  
24 a business license or renewed NCR. As such, while the primary thrust of this action seeks to vouchsafe  
25 its appellate rights, FZC also substantively challenges RCDD’s underlying eligibility and qualifications  
26 to receive a license and renewed NCR pursuant to VMC Chapters 5.04 and 5.94. *See* ¶¶15-18 above.





**Second Cause of Action**

1. For the granting of injunctive relief as requested above; and
2. For such other or different relief as deemed necessary or appropriate by the Court.

DATED: April 21, 2021

LAW OFFICE OF JEFF AUGUSTINI

By: *Jeff Augustini*  
JEFF AUGUSTINI

Attorneys for Petitioner/Plaintiff  
FRANK ZIMMERMAN COLLECTIVE

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# EXHIBIT A

<b>Business Name</b>	<b>CEO/Chairman's Name</b>	<b>Medical Cannabis Business Storefront Address</b>	<b>Received City Notice of Completed Registration</b>	<b>Received City business license; eligible to operate</b>	<b>Issue Date of Renewed Registration</b>	<b>Delivery Permit Issued</b>
Hillside Hollistic DBA: Hello Cannabis	Jesse Ruger	1017 Sycamore	2/13/2019	2/1/2021	2/13/2021	
Riverside County Dispensary and Delivery	Paul Tossonian	1275 S Santa Fe Ave, Ste 101/102	2/13/2019	2/2/2021	2/13/2021	
Calgen Trading Inc. DBA: Urbn Leaf	Willie Senn	909 W. Vista Way	2/13/2019	1/15/2021	2/13/2021	
Coastal Wellness	Mike Mellano	1044 La Mirada, Unit 4A	2/13/2019	2/27/2020	2/13/2021	
Monex Place Wellness, Inc.	Joseph Martin	1080 Joshua Way	2/13/2019	7/30/2020	2/13/2021	2/25/2021
Red Rhino Remedies DBA: Flora Verde	Justin Christman	954 S. Santa Fe Ave	2/13/2019	10/11/2019	2/13/2021	5/7/2020
Honey Oil Collective DBA: March and Ash	Breton Peace	2465 Dogwood Way	2/13/2019	11/22/2019	2/13/2021	3/2/2020
Dr. GreenRX	Jon Jessee	1406 S. Santa Fe Ave	2/13/2019	11/26/2019	2/13/2021	6/8/2020
TERP, Inc. DBA: Stiizy	Patrick Shannon	415 La Tortuga Dr.	2/13/2019	2/3/2021	2/13/2021	
SCZZ Collective, Inc DBA: Off the Charts	Norman Yousif	1745 E. Vista Way, Ste 7-10	2/13/2019	2/5/2020	2/13/2021	4/22/2020
Tradecraft Farms - Vista	Brent Walker	732 E. Vista Way	2/13/2019	10/11/2019	2/13/2021	6/8/2020

Updated 3/10/2021

# EXHIBIT B



- COURT • PROCESS
- DELIVERY • DISCOVERY
- DEPOSITION OFFICER

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Law Office of Jeff Augustini  
 20 Pacifica  
 Irvine, CA 926183371  
 P (949) 336-7847  
 Contact: Jeff Augustini (949) 336-7847  
 Email Address:  
 Reference: FZC/Vista

Date Ordered: 2/26/2021  
 Case Name: vs  
 Case Number:

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 CITY OF VISTA, CA

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*CK*

**Special Instructions:**

Please print out the attached pdf and deliver it today to the City Clerk's Office in Vista, California, Attn: Kathy Valdez, City Clerk. Kathy Valdez City Clerk 200 Civic Center Drive, 2nd Floor Vista, CA 92084760-639-6125 If there is a filing fee, please advance it. Please also obtain a file stamp of the first page and return it to me showing submission date and time. The client/matter references is FZC/Vista.

**PICKUP FROM:**

Pickup Date/Time: 2/26/2021 11:27 AM - 11:27 AM  
 DDS Legal  
 2900 Bristol St Suite: e-106  
 Costa Mesa, CA 92626

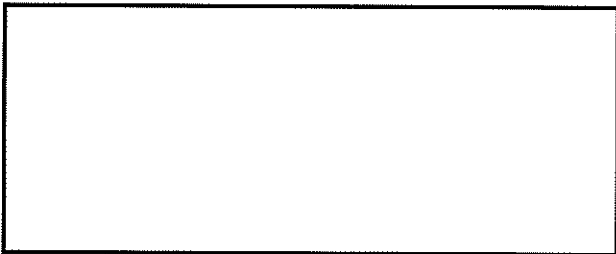
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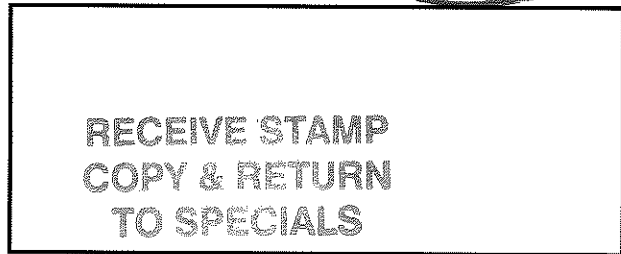
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 200 Civic Center Dr Fl 2  
 Vista CA 92084-6275  
 (760) 639-6125

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7 Attorneys for Appellant  
8 FRANK ZIMMERMAN COLLECTIVE

9 CITY OF VISTA

10 APPEAL TO CITY MANAGER AND CITY COUNCIL

11 FRANK ZIMMERMAN COLLECTIVE,  
12 Appellant,  
13 v.  
14 CITY OF VISTA  
15 Respondent.

**APPEAL FROM CITY OF VISTA'S  
FEBRUARY 3, 2021 ISSUANCE OF AN NCR  
AND CANNABIS BUSINESS LICENSE TO  
RIVERSIDE COUNTY DISPENSARY AND  
DELIVERY, INC.**

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23 Pursuant to Vista Municipal Code ("VMC") Chapter 5.94 (including VMC §§ 5.94.050-070 and  
24 5.94.120) and VMC Chapter 5.04 (including VMC §§5.04.145 and 5.04.210), Appellant FRANK  
25 ZIMMERMAN COLLECTIVE ("FZC"), hereby appeals from and challenges the CITY OF VISTA's  
26 ("the "City") issuance of a cannabis business license to RIVERSIDE COUNTY DISPENSARY AND  
27 DELIVERY, INC. ("RCDD") and the issuance of a new NCR to RCDD in or around February 13, 2021.  
28

1  
2 **INTRODUCTION**

3 1. These appeals arise out of a medical marijuana dispensary license procedure conducted  
4 by the City of Vista (“City” or “Vista”) in or around February 2019. In that process, the City selected  
5 RCDD (#2 on the priority list) for a Notice of Completed Registration (“NCR”) before FZC (#6 on the  
6 priority list), and in doing so improperly selected RCDD for an NCR and in turn improperly  
7 disqualified FZC from obtaining an NCR and from continuing on with the application process.

8 2. Simply put, RCDD from Day One failed to comply with the requirements of Chapter  
9 5.94 in connection with its application. RCDD’s application never should have been deemed complete  
10 and accurate, the City never should have issued an NCR (or renewed NCR) to RCDD, and the City  
11 never should have issued a cannabis business license to RCDD, since pursuant to VMC §5.04.145(c),  
12 RCDD did not satisfy, and legally could not establish that it had satisfied, all of the requirements of  
13 Chapter 5.94 necessary to obtain an NCR (let alone a license) in the first instance. As such, the City’s  
14 decision to issue RCDD an NCR (and to deny FZC’s application in favor of RCDD’s application), was  
15 erroneous and must be reversed. FZC respectfully requests that, because of its failure to satisfy the  
16 requirements for licensure set forth in VMC Chapters 5.94 and 5.04, RCDD’s cannabis business license  
17 should be, and indeed must be, denied/revoked, and FZC, as the next in line on the priority list, should  
18 be permitted to move forward in the application process, be issued an NCR, and be allowed to satisfy  
19 the requirements necessary for licensure pursuant to VMC §5.04.145. It appeals the issuance of the  
20 license to the City Manager under Chapter 5.04, and the issuance of the original and renewed NCR to  
21 the City Council pursuant to Chapter 5.94.

22 3. As noted above, FZC applied for a medical marijuana dispensary license from the City  
23 of Vista, and participated in the City’s application process as set forth in the governing ordinance and  
24 associated City rules and regulations. FZC was sixth on the City’s priority list – which ordinarily  
25 would have entitled FZC to an NCR as the City ultimately issued eleven NCRs, including to applicants  
26 ranked as high as seventeenth on the priority list. As the City has admitted, FZC’s application was  
27  
28



1 denied based on the claim that FZC’s desired location was “buffered out” by RCDD pursuant to the  
2 City’s 500-foot buffer zone restriction. *See* VMC §5.94.090(D); Exh. A attached hereto.

3 4. RCDD was ranked #2 for priority purposes, and improperly obtained an NCR from the  
4 City to operate a medical marijuana dispensary at the RCDD Property. As discussed below, RCDD  
5 never should have received an NCR from the City, and FZC’s application never should have been  
6 denied or “buffered out” by RCDD’s application or proposed location.

7 5. According to City documentation – *see* Exhibit F – RCDD was issued a cannabis  
8 business license on February 2, 2021, and also had its NCR renewed on February 13, 2021. Both of  
9 those actions were improper and should never have occurred.

10 **FACTS RELEVANT TO ALL APPEALS**

11 6. As noted above, this appeal arises from the City’s issuance of an NCR (and renewed  
12 NCR) to RCDD to which it legally was not entitled, the City’s improper denial of FZC’s medical  
13 marijuana dispensary application in favor of RCDD’s application, the, and the City’s issuance in  
14 February 2021 of a cannabis business license to RCDD to which it also legally was not entitled. FZC is  
15 appealing the former issues to the City Council per VMC §5.94.120, and the latter issue to the City  
16 Manager pursuant to VMC §5.02.210.

17 7. The cannabis dispensary application process was/is governed by Chapter 5.94 *et seq.* of  
18 the Vista Municipal Code, as well as by the City’s various applicable policies, procedures and rules.

19 8. Section 5.94.050 of the VMC, in clear language, mandates that each applicant “shall”  
20 submit an application to the City which “shall” contain, *inter alia*, “A site plan describing the property  
21 with **fully dimensioned interior and exterior floor plans including: electrical, mechanical,**  
22 **plumbing, and disabled access compliance** pursuant to Title 24 of the State of California Code of  
23 Regulations and the Americans with Disabilities Act.” VMC §5.94.050(B)(7) (emphasis added).

24 9. Once submitted, the City, as a ministerial duty, was required to process the applications  
25 in the order set forth in the priority list – *i.e.*, in the order they were submitted and date/time stamped.  
26 According to the VMC, processing of the applications “shall consist of verification of the information  
27 required by Sec. 5.94.50 as complete and accurate.” VMC §5.94.060(G). Stated differently, only  
28

1 accurate and complete applications that fully complied with VMC Section 5.94.050 were/are eligible  
2 for an NCR, and, equally as important, the determination that an application was/is complete and  
3 accurate was expressly made a ministerial duty of the City. *Id.*

4 10. As noted above, the City deemed RCDD’s application complete and accurate, and based  
5 on its priority rank (#2), the City issued an NCR to RCDD as one of the eleven available medical  
6 cannabis registrations that were permitted under the VMC. *See* Exh. B. However, RCDD’s application  
7 was *not* accurate or complete, and did not comply with the provisions of VMC §5.95.050 as required.

8 11. Specifically, the VCM required RCDD to submit a detailed site plan containing fully  
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13 stamped “NOT FOR CONSTRUCTION,” thereby facially establishing that the plans submitted by  
14 RCDD with its application did not comply with Title 24 as required, and significantly they contained  
15 no construction-level detail whatsoever. Exhs. D, F. Further, despite being required both by Title 24  
16 and the ADA, RCDD’s site plans failed to provide details for proposed occupancy and exiting,  
17 electrical load calculations and a single line diagram, mechanical plans (including hood and HVAC  
18 information), energy compliance information, disabled access compliance information, and also failed  
19 to provide a complete hazardous materials checklist. Notably, these requirements are mandated by City  
20 policy vis-à-vis proposed tenant improvements at commercial/industrial sites. Exhs. E, F (City’s  
21 Tenant Improvement – Commercial/Industrial Form).

22 12. Thus, RCDD’s application as a matter of fact and law was both inaccurate and  
23 incomplete, and thus it should never have received an NCR let alone have been selected above FZC’s  
24 application. Rather, the City had a ministerial duty to reject RCDD’s application, yet it failed to do so.  
25 As a direct and proximate result of the City’s failure comply with its ministerial duty to follow the  
26 express requirements of the VMC as well as its own building code policies and procedures, it  
27 improperly issued an NCR to RCDD and in turn improperly denied FZC’s application on the grounds  
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1 FZC’s proposed location was within 500 feet of RCDD’s proposed location. Exh. A (City denied  
2 FZC’s application solely because of buffer zone restrictions with RCDD’s proposed (yet non-licensed)  
3 location); VMC §5.94.090(D).

4 13. The City had and has a ministerial duty to adhere to, follow and enforce the applicable  
5 law. Here, as set forth above, the City violated its duties as set forth in, *inter alia*, VMC §§5.94.050-  
6 060 and its own building code policies, rule and regulations by permitting applicants whose  
7 applications did not comply with applicable requirements to obtain NCRs and later business licenses in  
8 violation of the law and in violation of its ministerial duties to process, review, and to deny/revoke  
9 applications that were non-compliant. *See, e.g.*, VMC §§5.94.060, 5.94.070, 5.04.145.

10 14. To the extent the City argues it had discretion in the creation, implementation,  
11 interpretation and/or alteration of the requirements set forth in the VMC and/or the City’s own policies,  
12 procedures, rules and regulation, FZC contends its abused that discretion, its actions and determinations  
13 on such matters were/are arbitrary, capricious, unfair, unlawful, in violation of the governing  
14 ordinances, against the overwhelming weight of facts and evidence available to the City at the time,  
15 and/or were the result of “unreasonable” policies and procedures that were not legally permissible.

16 15. VMC Section 5.04.210 provides that anyone aggrieved by the decision of the City vis-à-  
17 vis business licensing decisions may appeal such decision to the City Manager by filing a written notice  
18 of appeal with the City Clerk within 30 days after notice has been given of the City’s decision. This  
19 pleading serves as FZC’s Notice of Appeal pursuant to VMC Section 5.04.210 of the decision to issue a  
20 cannabis business license to RCDD pursuant to VMC §5.04.145.

21 16. Similarly, VMC §5.94.120 provides for an appeal to the City Council of “any decision  
22 regarding approval, conditional approval, denial, suspension, or revocation” of an NCR and/or cannabis  
23 business license. While the City has refused to comply with this provision and has wrongfully denied  
24 appellate rights to aggrieved applicants such as FZC, which is currently the subject of ongoing  
25 litigation, this pleading also serves as FZC’s Notice of Appeal to the City Council regarding (1) the  
26 City’s decision to issue an NCR to RCDD; (2) its denial of FZC’s application allegedly due to buffer  
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1 zone violations with RCDD; (3) the issuance of a cannabis business license to RCDD; and (4) the  
2 renewal of RCDD’s NCR on or around February 13, 2021.

3 17. Additional documents that FZC contends supports their respective appeals collectively  
4 are attached hereto as Exhibit F. But to summarize, the main gravamen of FZC’s appeals/challenges is  
5 as follows: (1) RCDD failed to comply with the express provisions of the VMC Chapter 5.94 and City  
6 ordinances and regulations, and as such the City should not have deemed RCDD’s application to be  
7 accurate and complete let alone approved it for an NCR; (2) under the ordinance, the 500-foot “buffer  
8 zone restriction” applied solely when an applicant was seeking a license within 500 feet of another  
9 “permitted medical cannabis dispensary”; at the time the City denied FZC’s application, RCDD was  
10 not a permitted medical cannabis dispensary, and thus the buffer zone restriction upon which the City  
11 relied in denying FZC’s application was legally inapplicable; (3) under the priority list provisions of  
12 Chapter 5.94, *see* VMC §§5.94.060(F), if RCDD’s application is denied or revoked, FZC’s application,  
13 which remains on the priority list, would be eligible to proceed forward in the application process; (4)  
14 the City never should have issued a cannabis business license to RCDD under VMC §5.04.145, since  
15 (as discussed above) it failed to satisfy “all requirements . . . for issuance of a license that are contained  
16 in Chapter 5.94 and state law,” including VMC §§5.94.050(B); and (5) based on the foregoing, it also  
17 should never have renewed RCDD’s NCR on or about February 13, 2021.

18 18. Based on the foregoing and the attached exhibits, FZC respectfully seeks a decision  
19 from both the City Manager and the City Council denying/revoking RCDD’s business license and prior  
20 and recently issued NCR, and deeming FZC’s application “next in line” for consideration for an NCR  
21 and thereafter potentially also a business license.

22 DATED: February 26, 2021

LAW OFFICE OF JEFF AUGUSTINI

23 By: Jeff Augustini  
24 JEFF AUGUSTINI

25 Attorneys for Appellant  
26 FRANK ZIMMERMAN COLLECTIVE

# EXHIBIT C



## City Attorney City Prosecutor

Darold Pieper | City Attorney & City Prosecutor  
Walter C. Chung | Assistant City Attorney & City Prosecutor  
Amanda L. Guy | Deputy City Attorney & City Prosecutor

March 11, 2021

Via Electronic Mail to [Jeff@Augustinilaw.com](mailto:Jeff@Augustinilaw.com)

Jeff Augustini, Esq.  
Law Office of Jeff Augustini  
9160 Irvine Center Drive, Suite 200  
Irvine, CA 92618

Re: **City of Vista's Response to Frank Zimmerman Collective's Appeal**

Dear Mr. Augustini:

On February 26, 2021, your office submitted to the City of Vista an “Appeal from City of Vista’s February 3, 2021 Issuance of a NCR and Cannabis Business License to Riverside County Dispensary and Delivery, Inc.” (“RCDD”) on behalf of your client, Frank Zimmerman Collective (“FZC”). FZC’s appeals of the City’s February 2, 2021 issuance of RCDD’s Business License, erroneously referred to in the appeal as a “Cannabis Business License,” and February 13, 2021 renewal of RCDD’s Notice of Completed Registration (“NCR”) and are denied as set forth below. (Appeal, p. 1)

Additionally, to the extent the FCZ’s appeal also belatedly challenges the City’s February 13, 2019 determinations as to RCDD and FZC, that appeal is also denied. (Appeal, p. 5:16.)

### **A. Request for Appeal of RCDD’s Business License under Chapter 5.04**

The City issued RCDD a Business License on February 2, 2021, pursuant to Vista Municipal Code (“VMC”) Chapter 5.04. (see, VMC § 5.04.145) FZC’s reference to that Business License as a “Cannabis Business License” is erroneous. As provided in the City’s January 7, 2019 “Regulation To Implement VMC § 5.94.050 Which Imposes A Requirement That A Medical Cannabis Business License Be Approved Only If The Medical Cannabis Business Has Been In Existence And Held A Seller's Permit For Six Months” the only “Cannabis Business License” issued under the Vista Municipal Code is the NCR issued pursuant to Chapter 5.94. Accordingly, the appeal of RCDD’s February 2, 2021 Business License will be addressed under Chapter 5.04.

After review of the appeal documents, the City has determined that FZC is not an “aggrieved party” eligible to appeal the issuance of a business license under VMC section 5.04.210.



Jeff Augustini, Esq.  
March 11, 2021  
Page 2

The Vista Municipal Code does not define “aggrieved.” However, Code of Civil Procedure section 902, which governs appeals of trial court rulings, also limits appeal rights to “aggrieved parties.” Thus, case law interpreting that statute can be used to determine whether a person is “aggrieved” and therefore eligible to appeal under VMC section 5.04.210. Controlling Supreme Court authority dating back to the 1800s presents a simple test to determine if a party is aggrieved: “*Would the party have had the thing, if the erroneous judgment had not been given?*” If the answer be yea, then the person is the ‘party aggrieved.’ But his right to the thing must be immediate, and not the remote consequence of the judgment, had it been differently given.” (*Adams v. Woods* (1857) 8 Cal. 306, 315, cited with approval by *Crook v. Contreras* (2002) 95 Cal.App.4th 1194, 1201, original italics.) Put another way, “One is considered ‘aggrieved’ whose rights or interests are injuriously affected by the judgment. Appellant’s interest must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment.” (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) The injured interest must also be “‘recognized by law.’” (*Atlas Construction Supply, Inc. v. Swinerton Builders* (2021) 60 Cal.App.5th 175, 274 Cal.Rptr.3d 414, 423, citing *Six4Three, LLC v. Facebook, Inc.* (2020) 49 Cal.App.5th 109, 115.)

FZC is not aggrieved by the City’s issuance of RCDD’s Business License because FZC’s position would not be affected in any way had RCDD not been granted the License. FZC was not issued a NCR, a necessary prerequisite to the issuance of a business license under VMC section 5.04.145. If RCDD were denied a business license, FZC’s position would remain exactly the same. It would still need to apply for and receive an NCR to be eligible for its own business license. In other words, FZC’s appeal does not demonstrate that its alleged interest in challenging RCDD’s Business License has been recognized by law. In sum, FCZ has failed to demonstrate that it has a legal right to automatically be issued a NCR if RCDD’s NCR was not granted and/or renewed.

## **B. Request for Appeal of RCDD’s NCR and NCR Renewal under Chapter 5.94**

Nor can FZC appeal the February 13, 2021 renewal of RCDD’s NCR under VMC Chapter 5.94. The same reasoning and conclusion applies to FZC’s much belated notice of appeal of the City’s February 13, 2019 issuance of RCDD’s original NCR and denial of FZC’s application.

The only section in Chapter 5.94 that references an appeal is VMC section 5.94.120, which applies to the “approval, conditional approval, denial, suspension or revocation” of a NCR. That section makes no reference to the renewal of a NCR under VMC section 5.94.070(D). In addition, Section 5.94.120 authorizes an applicant to exercise appeal rights afforded under the Vista Municipal Code. It does not establish any mechanics for an appeal. And no provisions of the Vista Municipal Code provide appeal rights to the City Council or vest the City Council with an inherent right to review the determinations of the City Manager. Moreover,



City Attorney  
City Prosecutor

Jeff Augustini, Esq.  
March 11, 2021  
Page 3

the City's issuance of a NCR to RCDD, and the related issue of FZC's ability to appeal that decision, is already the subject of a pending lawsuit between FZC and the City.

For the foregoing reasons, FZC's appeal is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter C. Chung".

Walter C. Chung  
Assistant City Attorney

cc: Darold Pieper, City Attorney  
Patrick Johnson, City Manager  
Kathy Valdez, City Clerk  
Alena Shamos, Esq.



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VERIFICATION

State of California, County of San Diego

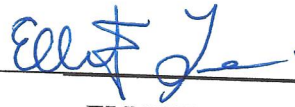
I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR: (1) PEREMPTORY WRIT OF MANDAMUS; and (2) INJUNCTIVE RELIEF**; and know its contents.

I have been authorized by Petitioner and Plaintiff Frank Zimmerman Collective, to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that basis allege that the claims, allegations and averments stated in the foregoing document are true based upon the information reasonably available to me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 21, 2021, at Long Beach, California.



\_\_\_\_\_  
ELLIOT LEWIS