

2013 SEP 26 P 2: No Fee GC §6103

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 CITY OF SAN DIEGO, a municipal
corporation,
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12 Plaintiff,

13 v.

14 MALCOLM FAMILY PROPERTIES, LLC; a
limited liability company;
DARLENE RAE MALCOLM, an individual;
15 LINDA MALCOLM, an individual;
QUINTINN P. HOLI, an individual;
16 THAO LAM HOANG, an individual, and
DOES 1 through 50, inclusive,
17
18 Defendants.

Case No. 37-2013-00068658-CU-MC-CTL

COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES, AND OTHER
EQUITABLE RELIEF

19 Plaintiff City of San Diego, appearing through its attorneys, Jan I. Goldsmith, City
20 Attorney, by Diane Silva-Martinez, Chief Deputy City Attorney, alleges the following, based on
21 information and belief:

22 **JURISDICTION AND VENUE**

23 1. Plaintiff City of San Diego, by this action and pursuant to San Diego Municipal Code
24 (SDMC) sections 12.0202 and 121.0311, and California Code of Civil Procedure section 526,
25 seeks to enjoin Defendants from using or maintaining a property in violation of the San Diego
26 Municipal Code as alleged in this Complaint, and seeks a preliminary injunction, and a permanent
27 injunction, prohibiting Defendants from operating or maintaining a marijuana cooperative,
28 collective, dispensary or other distribution or sales business; and also seeks to obtain civil

1 penalties, costs and other equitable relief for the Defendants' violations of law.

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

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

8 THE PARTIES

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

11 5. Defendant MALCOLM FAMILY PROPERTIES, LLC, is a limited liability company
12 organized and existing under the laws of the State of California and at all times relevant to this
13 action, is and was the owner of record of the property at 2621 El Cajon Boulevard, City of San
14 Diego, California, 92104 (PROPERTY), where a marijuana dispensary is conducting business.

15 6. As the owner of the PROPERTY, Defendant MALCOLM FAMILY PROPERTIES,
16 LLC is a "Responsible Person"¹ within the meaning of SDMC section 11.0210 as it is
17 maintaining violations of the SDMC at the PROPERTY. As property owner, MALCOLM
18 FAMILY PROPERTIES, LLC is also strictly liable for all code violations occurring at the
19 PROPERTY per SDMC section 121.0311.

20 7. Defendants DARLENE RAE MALCOLM and LINDA MALCOLM are individuals
21 and each is listed as a member and manager of "MALCOLM FAMILY PROPERTIES, LLC" on
22 the Articles of Organization filed on January 7, 2011, with the California Secretary of State, File
23 # 201102410046. As members and managers of MALCOLM FAMILY PROPERTIES, LLC,
24 each of these Defendants has a property ownership interest and conducts business in the City and
25 County of San Diego. Each Defendant meets the definition of a Responsible Person under the
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27 ¹ SDMC section 11.0210 defines "Responsible Person" as "[a] person who a Director determines
28 is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or
applicable state codes. The term "Responsible Person" includes but is not limited to a property owner,
tenant, person with a Legal Interest in real property or person in possession of real property."

1 SDMC and is strictly liable for all code violations occurring at the PROPERTY per SDMC
2 section 121.0311.

3 8. Defendant QUINTINN P. HOLI (HOLI) is the husband of DARLENE RAE
4 MALCOLM, one of the LLC Managers. HOLI responded to a Notice and Order issued by the
5 City of San Diego to the LLC, and has spoken numerous time with City code inspectors regarding
6 the PROPERTY. HOLI has also communicated via email messages with City inspectors
7 regarding the code violations and has held himself out as the person responsible for correcting the
8 code violations.

9 9. Defendant THAO LAM HOANG (HOANG) is the operator of the marijuana
10 dispensary conducting business at the PROPERTY. HOANG has identified himself as the
11 dispensary operator through investigation conducted by the City Attorney's Office.

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

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

23 **PROPERTY**

24 12. The PROPERTY where the marijuana dispensary is operating is located at 2621 El
25 Cajon Boulevard, San Diego, California, 92104, also identified as Assessor's Parcel Number 445-
26 422-04, according to San Diego County Recorder's Grant Deed Document No. 159865, recorded
27 March 28, 2011.

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1 13. The legal description of the PROPERTY is:

2 LOTS 7 IN BLOCK 123 OF UNIVERSITY HEIGHTS
3 ACCORDING TO AMENDED MAP MADE BY G.A.
4 D'HEMECOURT RECORDED IN THE OFFICE OF THE
5 RECORDER OF SAN DIEGO COUNTY IN BOOK 8 OF LIS
6 PENDENS AT PAGE 36 ET SEQ.

7 14. The deed lists the owner of the PROPERTY as "Malcolm Family Properties, LLC, a
8 limited liability company."

9 15. The PROPERTY is located in the Mid-City Communities Planned District (CL-1)
10 zone in the City of San Diego.

11 **FACTUAL ALLEGATIONS**

12 16. SDMC section 1512.0305(a), and corresponding Table 1512-03I, lists what are the
13 permitted uses in a CL-1 zone where the PROPERTY is located. The operation or maintenance of
14 a marijuana dispensary, collective, or cooperation is not one of the enumerated permitted uses.

15 17. The operation or maintenance of a marijuana dispensary is not a permitted use in any
16 zone designation under the SDMC.

17 18. On or about June 11, 2013, an inspection of the PROPERTY was conducted by Land
18 Development Investigator Leslie M. Sennett (SENNETT) and Building Inspector Robert
19 Cervantes (CERVANTES) due to complaints that a marijuana dispensary was operating at the
20 PROPERTY. SENNETT and CERVANTES confirmed on the inspection that a marijuana
21 dispensary named "Central Wellness Collective" was operating at the PROPERTY. At the
22 inspection SENNETT observed marijuana displayed in glass jars and in glass cabinets in the
23 dispensary. SENNETT also observed a "menu board" in the dispensary listing the types of
24 marijuana available.

25 19. SENNETT and CERVANTES also observed building code violations, such as walls
26 which had been constructed without the proper permits and without the required inspections and
27 approvals. They also observed an exit which was unlawfully obstructed by an inward swinging
28 security bar assembly.

29 20. SENNETT conducted research on the internet regarding the dispensary Central
30 Wellness Collective. SENNETT looked at a number of websites which posted reviews of the

1 marijuana dispensary Central Wellness operating at the PROPERTY. One website showed the
2 types of marijuana which could be purchased at Central Wellness and the corresponding prices.

3 21. On or about July 19, 2013, Code Enforcement Services Unit of the Development
4 Services Department of the City of San Diego issued a Notice and Order to the Defendants listing
5 the zoning and building violations that were found at the inspection. The Notice and Order
6 required Defendants to immediately cease operating or maintaining the marijuana dispensary in
7 violation of zoning laws at the PROPERTY. The Notice and Order listed specific deadlines in the
8 future by which the Defendants must provide permit applications and obtain inspections to correct
9 the building violations.

10 22. Due to the failure by the Defendants to comply with the Notice and Order and the
11 continuing operation of the dispensary, the case was referred to the City Attorney's Office.

12 23. City Attorney Investigator Gary Jaus (JAUS) visited the PROPERTY on
13 September 23, 2013, and confirmed the dispensary was still operating. JAUS also spoke with
14 Defendant HOANG who had been identified through investigation by the City Attorney's Office
15 as the dispensary operator. During their conversation, HOANG confirmed to JAUS that he was
16 the operator of the dispensary, Central Wellness Collective which was conducting business at the
17 PROPERTY.

18 24. Plaintiff is informed and believes that Defendants are blatantly and willfully in
19 violation of the SDMC and will continue to maintain the unlawful code violations in the future
20 unless the Court enjoins and prohibits such conduct. Absent the relief requested by Plaintiff, the
21 City is unable to enforce its zoning laws and therefore unable to ensure the compatibility between
22 land uses for its residents. The land use scheme and regulations under the Municipal Code
23 become meaningless and the public is left unprotected from the direct and indirect negative
24 effects associated with unpermitted and incompatible uses in their neighborhoods. Absent
25 injunctive relief, the City will be irreparably harmed and the ongoing violations will continue to
26 harm the public health safety and welfare.

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1 I

2 FIRST CAUSE OF ACTION

3 VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE ALLEGED
4 BY PLAINTIFF CITY OF SAN DIEGO AGAINST ALL DEFENDANTS

5 25. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1
6 through 24 of this Complaint as though fully set forth here in their entirety.

7 26. The PROPERTY is located in the Mid-City Community Planned District (CL-1) zone.
8 SDMC section 1512.0305(a) and corresponding Table 1512-03I, govern the uses allowed in this
9 zone. SDMC section 1512.0305(a) states: “[n]o building or improvement, or portion thereof, shall
10 be erected, constructed, converted, established, altered, or enlarged, nor be used except for one or
11 more of the purposes indicated ... in Table 1512-03I...” Table 1512-03I does not list a
12 marijuana dispensary as a permitted use.

13 27. Beginning on an exact date unknown to Plaintiff but since at least June 11, 2013 and
14 continuing to the present, the Defendants have maintained and used the PROPERTY for a
15 purpose or activity not listed in SDMC section 1512.0305(a) and corresponding table 1512-03I, in
16 direct violation of SDMC section 1512.0305(a).

17 28. SDMC section 129.0202(a) makes it unlawful to erect, construct, enlarge, alter, repair,
18 or improve a structure unless a Building Permit has been obtained for each structure. Beginning
19 on an exact date unknown to Plaintiff, but since at least June 11, 2013, and continuing to the
20 present, Defendants are in violation of SDMC section 129.0202(a) for failing to obtain the
21 required building permit for alterations, improvements and the remodeling of structures at the
22 PROPERTY, specifically unpermitted walls and an obstructed exit.

23 29. SDMC section 121.0302(a) states, “It is unlawful for any person to maintain or use
24 any premises in violation of any of the provisions of the Land Development Code², without a
25 required permit, contrary to permit conditions, or without a required variance.” Beginning on an
26 exact date unknown to Plaintiff, but at least since June 11, 2013, Defendants are in violation of
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28 ² SDMC §111.0101 (a) Chapters 11, 12, 13, and 14 of the City of San Diego Municipal Code shall be known collectively, and may be referred to, as the Land Development Code.

1 SDMC section 121.0302(a) for maintaining or using a premises where there exists violations of
2 the Land Development Code as listed above.

3 30. SDMC section 121.0302(b) states, "It is unlawful for any person to engage in any of
4 the following activities, or cause any of the following activities to occur in a manner contrary to
5 the provisions of the Land Development Code: (1) To erect, place, construct, convert, establish,
6 alter, use, enlarge, repair, move, remove, equip, maintain, improve, occupy, or demolish any
7 structures...." Beginning on an exact date unknown to Plaintiff, but at least since June 11, 2013,
8 Defendants are in violation of SDMC section 121.0302(b) for altering and maintaining a premises
9 in a manner contrary to the provisions of the Land Development Code as listed above.

10 31. Plaintiff has no adequate remedy at law other than this action. Defendants' use of the
11 PROPERTY in this manner cannot be remedied merely by the payment of monetary damages. As
12 owner of the PROPERTY, Defendant MALCOLM FAMILY PROPERTIES LLC and its LLC
13 Managers DARLENE RAE MALCOLM, and LINDA MALCOLM, and Defendant HOLI have
14 the ability, power, and duty to compel their tenant to cease operating the business, yet refuse to do
15 so. Instead, each of these Defendants continue to allow a marijuana dispensary to operate on the
16 PROPERTY despite knowing the use is unlawful.

17 32. Defendant HOANG similarly continues to operate an unlawful unpermitted business
18 in violation of zoning laws despite a Notice and Order by the City to cease operating.

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

24 **PRAYER**

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

- 27 1. That the PROPERTY be declared in violation of:
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San Diego Municipal Code sections

121.0302(a) 121.0302(b)
129.0202(a) 1512.0305(a)

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

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

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

c. Maintaining, operating, or allowing the operation of any unpermitted use anywhere within the City of San Diego;

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

e. Maintaining building violations at the PROPERTY; and

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

3. That immediately from the date of entry of judgment, Defendants cease the operation of the medical marijuana dispensary and remove all signs advertising the business.

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

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