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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,

11 Plaintiff,

12 v.

13 D.O.T., INC., a California corporation;
MATTHEW MILLER, an individual;
14 JOHN I. NOBEL, an individual and as co-
trustee of THE NOBEL FAMILY TRUST
15 created February 18, 1998;
MAHIN NOBEL, an individual and as co-
16 trustee of THE NOBEL FAMILY TRUST
created February 18, 1998; and
17 DOES 1 through 50, inclusive,

18 Defendants.

Case No. 37-2014-00032879-CU-MC-CTL

UNLIMITED JURISDICTION

COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF

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

23 **JURISDICTION AND VENUE**

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

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

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

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

9 **THE PARTIES**

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

12 5. Defendant D.O.T., INC. (D.O.T.) is a California corporation, which, at all times
13 relevant to this action, is and was operating a marijuana dispensary known as DANK ON
14 TURQUOISE at 841 Turquoise Street, Suite F2, San Diego, California 92109 (PROPERTY)
15 within the City of San Diego.

16 6. Defendant MATTHEW MILLER (MILLER) is an individual who, at all times
17 relevant to this action, was the CEO, secretary, CFO and agent for service of D.O.T. and was
18 doing business at the PROPERTY.

19 7. Defendants JOHN NOBEL and MAHIN NOBEL are individuals and residents of the
20 County of San Diego and co-trustees of the NOBEL FAMILY TRUST, dated February 18, 1998
21 (collectively, NOBEL).

22 8. By Quitclaim Deed recorded March 19, 1998, as Document No. 1998-0148426 in the
23 office of the San Diego County Recorder, NOBEL was granted title to the PROPERTY, where
24 the acts described in this Complaint occurred.

25 9. NOBEL is strictly liable for all code violations occurring at the PROPERTY pursuant
26 to SDMC section 121.0311 and applicable California law.

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1 10. Defendants are "Responsible Persons"¹ within the meaning of SDMC section 11.0210,
2 as each is allowing or maintaining violations of the SDMC at the PROPERTY.

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

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

14 **PROPERTY**

15 13. The PROPERTY is identified as Assessor's Parcel Number 415-241-31-00, according
16 to records in the office of the San Diego County Assessor.

17 14. The legal description of the PROPERTY is:

18 Lots 22, 23, 24, 25 and 26 in Block 2 of OCEAN VILLA, in the
19 City of San Diego, County of San Diego, State of California,
20 according to Map thereof No. 977 filed in the Office of the County
Recorder of San Diego March 14, 1906.

21 15. The PROPERTY is located in a Commercial-Community CC-4-2 zone in the City of
22 San Diego.

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28 ¹ Section 11.0210 defines "Responsible Person" as "[a] person who a Director determines is responsible
SDMC 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 **FACTUAL ALLEGATIONS**

2 16. SDMC section 131.0522 and corresponding Table 131-05B list the permitted uses in a
3 CC-4-2 zone where the PROPERTY is located. Medical marijuana consumer cooperatives
4 (MMCCs) are *not* a permitted use in that zone.

5 17. A verified complaint filed by NOBEL on April 15, 2014, San Diego Superior Court
6 Case No. 37-2014-00011549, admits D.O.T. and MILLER have occupied the PROPERTY since
7 August 30, 2013.

8 18. On January 28, 2014, a City zoning inspector went to the PROPERTY and advised
9 MILLER that a marijuana dispensary is not a permitted use at the location. On July 16, 2014,
10 inspectors went to the PROPERTY and found D.O.T. still in operation. On August 18, 2014, the
11 City issued a Notice of Violation to NOBEL and D.O.T. regarding the zoning violation and
12 demanding that the marijuana dispensary cease operation.

13 19. On September 22, 2014, a San Diego Police Department narcotics detective conducted
14 an undercover buy of marijuana and a marijuana edible granola bar called "Buddha's Best" at the
15 PROPERTY. The detective observed glass display cases containing 40 or more glass mason jars
16 of marijuana and two large refrigerators containing cookies, brownies and candies with THC in
17 them.

18 20. Plaintiff is informed and believes that Defendants are willfully violating state and
19 local laws and will continue to maintain the unlawful code violations in the future unless the
20 Court enjoins and prohibits such conduct. Absent injunctive relief, the City will be irreparably
21 harmed and the ongoing violations will continue to harm the public health, safety, and welfare of
22 the citizens of San Diego.

23 **I**

24 **FIRST CAUSE OF ACTION**

25 **VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE**
26 **ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST**
ALL DEFENDANTS

27 21. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1
28 through 20 of this Complaint as though fully set forth here in their entirety.

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

4 23. SDMC section 131.0520(b) states:

5 Within the commercial zones, no structure or improvement, or portion thereof, shall
6 be constructed, established, or altered, nor shall any premises be used or maintained
7 except for one or more of the purposes or activities listed in Table 131-05B. It is
unlawful to establish, maintain, or use any premises for any purpose or activity not
listed in this section or Section 131.0522.

8 24. Since July 1, 2013, Defendants have maintained and used the PROPERTY for a
9 purpose or activity not listed in Table 131-05B, in violation of SDMC sections 121.0302,
10 131.0520 and 131.0522.

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

16 **PRAYER**

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

19 1. That the PROPERTY be declared in violation of:

20 **San Diego Municipal Code sections**

21 121.0302(a) 131.0520 131.0522 Table 131-05B

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

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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 a. Maintaining, operating, or allowing at the PROPERTY any commercial, retail,
2 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of
3 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative
4 organized pursuant to the Health & Safety Code;
- 5 b. Maintaining, operating, or allowing the operation of any unpermitted use at the
6 PROPERTY;
- 7 c. Maintaining, operating, or allowing the operation of any unpermitted use
8 anywhere within the City of San Diego, including but not limited to any commercial, retail,
9 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of
10 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative
11 organized pursuant to the Health & Safety Code;
- 12 d. Maintaining signage on the PROPERTY advertising a medical marijuana
13 dispensary;
- 14 e. Advertising in any manner, including on the Internet, the existence of any
15 commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or
16 distribution of marijuana, including but not limited to any marijuana dispensary, collective, or
17 cooperative organized pursuant to the Health and Safety Code at the PROPERTY;
- 18 f. Violating any provisions of the SDMC at the PROPERTY.

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

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

24 5. That pursuant to SDMC section 12.0202(b), Defendants be assessed a civil penalty of
25 \$2,500 per day for each and every SDMC violation maintained at the PROPERTY.

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

Dated: September 25, 2014

JAN I. GOLDSMITH, City Attorney

By Marsha B. Kerr
Marsha B. Kerr
Deputy City Attorney

Attorneys for Plaintiff