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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 LEMOIN CORP, a California corporation;
MATTHEW BELL, an individual;
14 JOHN I. NOBEL, an individual and as co-
trustee of THE NOBEL FAMILY TRUST
15 dated February 18, 1998;
MAHIN NOBEL, an individual and as co-
16 trustee of THE NOBEL FAMILY TRUST
dated February 18, 1998;
17 DAVID N. ABELES, an individual and as co-
trustee of ABELES FAMILY TRUST dated
18 December 6, 2005;
MELODY N. ABELES, an individual and as
19 co-trustee of ABELES FAMILY TRUST dated
December 6, 2005; and
20 DOES 1 through 50, inclusive,

21 Defendants.

Case No. **37-2014-00031058-CU-MC-CTL**

UNLIMITED JURISDICTION

COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF

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

26 **JURISDICTION AND VENUE**

27 1. Plaintiff, City of San Diego, by this action and pursuant to San Diego Municipal Code
28 (SDMC) sections 12.0202 and 121.0311 and California Code of Civil Procedure section 526,

1 seeks to enjoin Defendants from using or maintaining a property in violation of the San Diego
2 Municipal Code as alleged in this Complaint, and seeks a preliminary injunction and a permanent
3 injunction prohibiting Defendants from operating or maintaining a marijuana dispensary,
4 cooperative, collective or other distribution or sales business; and also seeks to obtain civil
5 penalties, costs and other equitable relief for the Defendants' violations of law.

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

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

12 THE PARTIES

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

15 5. Defendant LEMOIN CORP (LEMOIN) is a California corporation, organized and
16 existing under the laws of the State of California, according to the California Secretary of State,
17 corporate filing number C3552323. At all times relevant to this action, LEMOIN is and was
18 operating a marijuana dispensary at 936 Garnet Avenue, San Diego, California 92109
19 (PROPERTY) within the City of San Diego.

20 6. Defendant MATTHEW BELL (BELL) is an individual and at all times relevant to this
21 action was the Chief Executive Officer, Secretary and Chief Financial Officer of LEMOIN.

22 7. Defendants JOHN NOBEL and MAHIN NOBEL are individuals and residents of the
23 County of San Diego and co-trustees of the NOBEL FAMILY TRUST, dated February 18, 1998
24 (collectively, NOBEL), which at all times relevant to this action was and is an owner of the
25 PROPERTY.

26 8. Defendants DAVID N. ABELES and MELODY N. ABELES are individuals and
27 residents of the County of San Diego and co-trustees of the ABELES FAMILY TRUST dated
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1 December 6, 2005, (collectively, ABELES), which at all times relevant to this action was an
2 owner of the PROPERTY.

3 9. As the owners of the PROPERTY, Defendants NOBEL and ABELES are strictly
4 liable for all code violations occurring at the PROPERTY, pursuant to SDMC section 121.0311
5 and applicable California law.

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

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

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

19 **PROPERTY**

20 13. The PROPERTY is identified as Assessor’s Parcel Number 415-603-11-00, according
21 to records in the office of the San Diego County Recorder.

22 14. The legal description of the PROPERTY is:

23 Lots 31 and 32 in Block 195 of Pacific Beach, in the City of San Diego,
24 County of San Diego, State of California, according to Map thereof Nos.
25 697 and 854, filed in the Office of the County Recorder of San Diego
26 County, January 8, 1892 and September 28, 1898, respectively.

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

3 **FACTUAL ALLEGATIONS**

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

7 17. John NOBEL admitted under penalty of perjury in a declaration recently filed with
8 this Court in Case No. 37-2011-00099050 that he has leased the PROPERTY to *three* different
9 marijuana dispensaries since 2011, despite two federal drug raids on the PROPERTY and notice
10 that the use violated the San Diego Municipal Code. An unlawful detainer action filed by
11 NOBEL, San Diego Superior Court Case No. 37-2014-0008640, admits BELL and LEMOIN
12 have occupied the PROPERTY since January 12, 2014 at a rent of \$16,000 per month. After a
13 motion to quash, BELL filed a demurrer to the amended unlawful detainer complaint, which will
14 not be heard until October 8, 2014. Meanwhile, BELL and LEMOIN continue to operate the
15 illegal dispensary.

16 18. On May 20, 2014, a San Diego Police Department narcotics detective conducted an
17 undercover buy of marijuana at the PROPERTY. An armed guard was stationed outside the door.
18 The detective observed display cabinets containing marijuana, hashish, hash oil and edible
19 products. Approximately a dozen marijuana plants were growing on a rack behind the counter.

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

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FIRST CAUSE OF ACTION

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

20. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1 through 19 of this Complaint as though fully set forth here in their entirety.

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

22. SDMC section 131.0520(b) states:

Within the commercial zones, no structure or improvement, or portion thereof, shall be constructed, established, or altered, nor shall any premises be used or maintained 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.

23. Beginning on an exact date unknown to Plaintiff, but since at least January 12, 2014, Defendants have maintained and used the PROPERTY for a purpose or activity not listed in Table 131-05B, in violation of SDMC sections 121.0302, 131.0520 and 131.0522.

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

PRAYER

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

1. That the PROPERTY be declared in violation of:

San Diego Municipal Code sections

121.0302(a) 131.0520 131.0522 Table 131-05B

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

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

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

12 c. Maintaining, operating, or allowing the operation of any unpermitted use
13 anywhere within the City of San Diego, including but not limited to any commercial, retail,
14 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of
15 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative
16 organized pursuant to the Health & Safety Code;

17 d. Maintaining signage on the PROPERTY advertising a medical marijuana
18 dispensary;

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

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

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

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

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

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 15, 2014

JAN I. GOLDSMITH, City Attorney

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

Attorneys for Plaintiff