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1 JAN I. GOLDSMITH, City Attorney
MARLEA DELL'ANNO, Assistant City Attorney
2 JON D. DWYER, Deputy City Attorney
California State Bar No. 233123
3 Office of the City Attorney
Community Justice Division/Code Enforcement Unit
4 1200 Third Avenue, Suite 700
San Diego, California 92101-4103
5 Telephone: (619) 533-5655
Fax: (619) 533-5696
6 JDwyer@sandiego.gov

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 CITY OF SAN DIEGO, a municipal
corporation,

11 Plaintiff,

12 v.

13 KINDEST MEDS, INC., a California
nonprofit mutual benefit corporation;
14 CHRISTOPHER BOUDREAU, as an
individual;
15 LEROY DAN BAIN, as an individual, and as
trustee of BAIN FAMILY TRUST dated
16 August 25, 2005;
17 THELMA JEAN HARMON BAIN, as an
individual, and as trustee of BAIN FAMILY
18 TRUST dated August 25, 2005; and,
19 DOES 1 through 50, inclusive,

20 Defendants.

Case No. 37-2014-00020893-CU-MC-CTL

UNLIMITED JURISDICTION

COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF

21 Plaintiff City of San Diego, appearing through its attorneys, Jan I. Goldsmith, City
22 Attorney, by Jon D. Dwyer, Deputy City Attorney, alleges the following based on information
23 and belief:

24 **JURISDICTION AND VENUE**

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

1 prohibiting Defendants from illegally operating or maintaining a marijuana dispensary,
2 cooperative, or collective, or other marijuana distribution or sales business; and also seeks to
3 obtain civil penalties, costs, and other equitable relief for the Defendants' violations of law.

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

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

10 THE PARTIES

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

13 5. Defendant KINDEST MEDS, INC. (KINDEST MEDS), is a California nonprofit
14 mutual benefit corporation, organized and existing under the laws of the State of California,
15 according to the California Secretary of State corporate filing number C3637080. At all times
16 relevant to this action KINDEST MEDS was and is conducting business as a marijuana
17 dispensary, which is also commonly known as a collective or cooperative, at 3455 Camino Del
18 Rio South (PROPERTY) within the City of San Diego.

19 6. Defendant CHRISTOPHER BOUDREAU (BOUDREAU) is an individual and
20 resident of and/or transacts business in the County of San Diego, State of California. At all times
21 relevant to this action, BOUDREAU was and is the Chief Executive Officer, Chief Financial
22 Officer, President, and Secretary of KINDEST MEDS according to the California Secretary of
23 State corporate filing number C3637080, which has been doing business as a marijuana
24 dispensary at the PROPERTY.

25 7. Defendants KINDEST MEDS and BOUDREAU will sometimes be referred to
26 independently and sometimes collectively as "MD OPERATORS."
27
28

1 8. The MD OPERATORS are each a “Responsible Person” within the meaning of
2 SDMC section 11.0210¹ for causing or maintaining violations of the SDMC at the PROPERTY.

3 9. As a “Responsible Person,” KINDEST MEDS is strictly liable for all code violations
4 occurring at the PROPERTY pursuant to SDMC section 121.0311 and applicable California law.

5 10. As a “Responsible Person,” BOUDREAU is strictly liable for all code violations
6 occurring at the PROPERTY pursuant to SDMC section 121.0311 and applicable California law.

7 11. BAIN FAMILY TRUST dated August 25, 2005 (BAIN TRUST), at all times herein-
8 mentioned, is a legally organized trust with an undivided 100% interest in ownership of the
9 PROPERTY, and, at all times relevant to this action, was and is the owner of the PROPERTY
10 where a marijuana dispensary is conducting business.

11 12. Defendant LEROY DAN BAIN (LEROY BAIN) is an individual and resident of
12 and/or transacts business in the County of San Diego, State of California. At all times relevant to
13 this action, LEROY BAIN was and is a trustee of BAIN TRUST, owner of the PROPERTY.

14 13. As a trustee of BAIN TRUST, owner of the PROPERTY, LEROY BAIN is a
15 “Responsible Person” within the meaning of SDMC section 11.0210 as he is maintaining
16 violations of the SDMC at the PROPERTY. As a “Responsible Person,” LEROY BAIN is strictly
17 liable for all code violations occurring at the PROPERTY pursuant to SDMC section 121.0311
18 and applicable California law.

19 14. Defendant THELMA JEAN HARMON BAIN (JEAN BAIN) is an individual and
20 resident of and/or transacts business in the County of San Diego, State of California. At all times
21 relevant to this action, JEAN BAIN was and is a trustee of BAIN TRUST, owner of the
22 PROPERTY.

23 15. As a trustee of BAIN TRUST, owner of the PROPERTY, JEAN BAIN is a
24 “Responsible Person” within the meaning of SDMC section 11.0210 as she is maintaining
25

26 _____
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 violations of the SDMC at the PROPERTY. As a “Responsible Person,” JEAN BAIN is strictly
2 liable for all code violations occurring at the PROPERTY pursuant to SDMC section 121.0311
3 and applicable California law.

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

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

15 **PROPERTY**

16 18. The PROPERTY where the marijuana dispensary is operating is 3455 Camino Del
17 Rio South, San Diego, California, 92108. The PROPERTY is also identified as Assessor’s Parcel
18 Number 439-480-23-00, according to San Diego County Recorder’s Grant Deed document No.
19 2012-0476709, filed August 10, 2012. The legal description of the PROPERTY is:

20 ALL THAT PORTION OF LOT 2 OF THE NAGEL TRACT, IN THE
21 CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF
22 CALIFORNIA, ACCORDING TO MAP THEREOF NO. 3826, FILED
23 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO
24 COUNTY, FEBRUARY 27, 1958, DESCRIBED AS FOLLOWS:

25 COMMENCING AT THE NORTHEASTERLY CORNER OF SAID
26 LOT 2; THENCE ALONG THE EASTERLY LINE OF SAID LOT
27 SOUTH 18 °54’53” EAST (RECORD SOUTH 20°24’20” EAST) 28.66
28 FEET TO THE SOUTHEASTERLY CORNER OF LAND CONVEYED
TO THE STATE OF CALIFORNIA BY FINAL ORDER OF
CONDEMNATION RECORDED MAY 6, 1975 AS FILE NO. 107913
OF OFFICIAL RECORDS; AND THE TRUE POINT OF BEGINNING;
THENCE CONTINUING ALONG THE EASTERLY LINE OF SAID
LOT, SOUTH 20°24’20” EAST 198.35 FEET TO THE

1 SOUTHEASTERLY CORNER OF LAND CONVEYED TO MARY G.
2 LANCEFIELD BY DEED RECORDED AUGUST 14, 1968, AS FILE
3 NO. 138585 OF OFFICIAL RECORDS; THENCE ALONG THE
4 BOUNDARY OF SAID LAND SOUTH 69°35'40" WEST 66.00 FEET;
5 NORTH 20°24' 20" WEST 102.00 AND NORTHERLY 83.02 FEET
6 MORE OR LESS TO THE SOUTHWESTERLY CORNER OF SAID
7 FINAL ORDER OF CONDEMNATION BEING A POINT ON THE
8 ARC OF A CURVE CONCAVE SOUTHERLY AND HAVING A
9 RADIUS OF 2828.00 FEET TO A TANGENT FROM WHICH BEARS
10 NORTH 62°09' 09" EAST; THENCE ALONG THE SOUTHERLY
11 LINE OF SAID FINAL ORDER OF CONDEMNATION TO AND
12 ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL
13 ANGLE OF 1°40' 18" A DISTANCE OF 82.51 FEET TO THE TRUE
14 POINT OF BEGINNING.

15 19. The Grant Deed lists the owner of the PROPERTY as LEROY DAN BAIN and
16 THELMA JEAN HARMON BAIN, Co-Trustees of the BAIN FAMILY TRUST dated August
17 25, 2005.

18 20. The PROPERTY is located in the Mission Valley Planned District, Comercial Office
19 MVPD-MV-CO² zone in the City of San Diego.

20 **FACTUAL AND ZONING BACKGROUND**

21 21. SDMC section 1514.0305 lists the permitted uses for the MVPD-MV-CO zone
22 where the PROPERTY is located.

23 22. As of April 24, 2014, SDMC section 1514.0305 lists medical marijuana consumer
24 cooperatives as requiring a conditional use permit (CUP) to be a permitted use within the MVPD-
25 MV-CO zone.

26 23. SDMC section 141.0614 describes the requirements for a marijuana dispensary to
27 be considered for, and obtain a CUP in zones such as the MVPD-MV-CO zone.

28 24. SDMC section 126.0306 makes is unlawful for any person to maintain, use, or
develop any premises without obtaining a required CUP.

29 **FACTUAL ALLEGATIONS**

30 25. On April 8, 2014, responding to a citizen complaint, representatives of the Code
31 Enforcement Section (CES) of the Development Services Department (DSD) of the City of San

32 ² SDMC § 1514.0102 establishes the boundaries for the Mission Valley Planned District.

1 Diego, Land Development Investigator Cameron Clark (CLARK) and Land Development
2 Investigator II Leslie Sennett (SENNETT), inspected the PROPERTY. CLARK and SENNETT
3 found KINDEST MEDS illegally operating as a marijuana dispensary at the PROPERTY.

4 26. When CLARK and SENNETT arrived at the PROPERTY, they observed a camera
5 mounted on the north side of building, pointed at the entrance of the building. CLARK and
6 SENNETT also saw a sign on the west side door of the building depicting a large white cross with
7 a green background and a green arrow pointing toward the north side of the building with the
8 words “entrance this way.”

9 27. A male met CLARK and SENNETT at the front door who escorted them into the
10 lobby. CLARK and SENNETT identified themselves and their purpose as visiting the marijuana
11 dispensaries in the City of San Diego. The male retrieved another male who identified himself as
12 “Brian,” but withheld his last name. Brian admitted he was the manager.

13 28. When asked about KINDEST MEDS’ opening date, Brian admitted that the
14 dispensary re-opened shortly after an inspection at the PROPERTY conducted by Senior Land
15 Development Investigator Kim Wallace-Ross and Combination Building Inspector Robert
16 Cervantes in January 2014.

17 29. Inside the lobby area, CLARK saw a large KINDEST MEDS logo on a door
18 leading to a receptionist area that matched the KINDEST MEDS logo on the KINDEST MEDS
19 website www.KindestMeds.com. Clark also saw two 3’ x 3’ posters with pictures of various
20 strains of marijuana framed and mounted in the lobby. When asked, the manager admitted that the
21 posters were not displayed as the dispensary’s menu, but rather, to show the “medical value” of
22 marijuana.

23 30. While CLARK spoke to the manager, two individuals entered the lobby area, and
24 identified themselves to Sennett as vendors that sell smoking devices to the dispensaries in the
25 City of San Diego

26 31. As part of his investigation into KINDEST MEDS, Clark found that KINDEST
27 MEDS openly advertises their dispensary operation on the internet at www.KindestMeds.com,
28 www.weedmaps.com, and in print inside of “medical marijuana lifestyle magazine” Culture.

1 39. 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 Code³, without a
3 required permit, contrary to permit conditions, or without a required variance.”

4 40. SDMC section 1514.0305 lists the permitted uses for the Mission Valley Planned
5 District, MVPD-MV-CO zone where the PROPERTY is located. SDMC section 1514.0305 lists
6 medical marijuana consumer cooperatives as a use requiring a conditional use permit to operate
7 within the zone.

8 41. SDMC section 126.0306 makes it unlawful for any person to maintain, use, or
9 develop any premises without a conditional use permit if such permit is required under the
10 applicable zoning regulations.

11 42. Beginning on an exact date unknown to Plaintiff but since at least April 8, 2014,
12 and continuing to the present, Defendants LEROY BAIN and JEAN BAIN as individuals and as
13 trustees for BAIN FAMILY TRUST dated August 25, 2005, have maintained and used the
14 PROPERTY for a use requiring a conditional use permit under SDMC section 1514.0305 without
15 a conditional use permit, in violation of SDMC sections 121.0302(a) and 126.0306.

16 43. Beginning on an exact date unknown to Plaintiff, but since at least April 8, 2014,
17 and continuing to the present, Defendants KINDEST MEDS and BOUDREAU have maintained
18 and used the PROPERTY for a use requiring a conditional use permit under SDMC section
19 1514.0305 without a conditional use permit, in violation of SDMC sections 121.0302(a) and
20 126.0306.

21 44. Absent the relief requested by Plaintiff, the City of San Diego is unable to enforce
22 its zoning laws and therefore unable to ensure compatibility between land uses. Irreparable harm
23 will be suffered by Plaintiff in that the City of San Diego’s land use scheme and regulations under
24 the Municipal Code become meaningless and the public is left unprotected from the direct and
25

26
27 ³ Chapters 11, 12, 13,14, and 15 of the City of San Diego Municipal Code shall be known, and
28 may be referred to collectively as the Land Development Code. SDMC §111.0101 (a).

1 indirect negative effects associated with unpermitted and incompatible uses in their
2 neighborhoods.

3 45. Absent injunctive relief, the justifiable expectation by citizens that state law and
4 local zoning laws be enforced and their safety and quality of life be protected, remains frustrated.
5 Defendants have failed and refused to comply with the law and there is no expectation they will
6 change their behavior.

7 46. Defendants are willfully violating the law and continue to maintain an unlawful
8 use. Plaintiff has no adequate remedy and seeks an immediate injunction to prohibit Defendants
9 from violating the law.

10 **PRAYER**

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

13 1. That Defendants and the PROPERTY be declared in violation of:

14 **San Diego Municipal Code sections**

15 121.0302(a) 126.0306

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

21 a. Maintaining, operating, or allowing at the PROPERTY any commercial, retail,
22 nonprofit, collective, cooperative, or group establishment for the growth, storage, sale, or
23 distribution of marijuana, including but not limited to any marijuana dispensary, collective, or
24 cooperative organized pursuant to the Health and Safety Code without required permits;

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

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

- 1 d. Maintaining signage on the PROPERTY advertising a marijuana dispensary;
2 e. Advertising in any manner, including on the Internet, the existence of any
3 commercial, retail, nonprofit, collective, cooperative, or group establishment for the growth,
4 storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary,
5 collective, or cooperative organized pursuant to the Health and Safety Code at the PROPERTY
6 without obtaining required permits;
7 f. Conducting any type of business within the City of San Diego without first
8 obtaining all required permits, certificates, and approvals;
9 g. Maintaining or performing any construction, electrical, or plumbing/mechanical
10 work at the PROPERTY without first obtaining all required permits, inspections, and approvals;
11 and,
12 h. Violating any provisions of the SDMC at the PROPERTY.

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

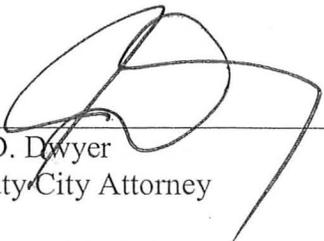
16 4. That Plaintiff City of San Diego, recover all costs incurred by Plaintiff, including the
17 costs of investigation, as appropriate.

18 5. That pursuant to SDMC section 12.0202(b), Defendants be assessed a civil penalty of
19 \$2,500 per day for each and every SDMC violation maintained at the PROPERTY.

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

22 Dated: June 25, 2014.

23 JAN I. GOLDSMITH, City Attorney

24
25 By 
26 Jon D. Dwyer
27 Deputy City Attorney

28 Attorneys for Plaintiff