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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
11 corporation,

12 Plaintiff,

13 v.

14 2202-2204 BRISTOL STREET
CORPORATION, a California corporation;
15 FABIO PASQUESI, an individual;
STEPHANIE K. LEITER, an individual;
16 LONG TRUONG, aka CALVIN TRUONG;
and DOES 1 through 50, inclusive,

17 Defendants.
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Case No. 37-2014-00030899-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 LONG TRUONG, also known as CALVIN TRUONG (TRUONG), is an
13 individual who at all times relevant to this action is and was operating a marijuana dispensary
14 doing business as The Bakery or The Bakery Collective at 6557-59 El Cajon Boulevard, San
15 Diego, California 92104 (PROPERTY) within the City of San Diego.

16 6. Defendant 2202-2204 BRISTOL STREET CORPORATION (BRISTOL) is a
17 California corporation which at all times relevant to this action was and is an owner of the
18 PROPERTY, according to Grant Deed No. 2013-0502007 filed in the records of the San Diego
19 County Recorder on August 9, 2013.

20 7. Defendant STEPHANIE K. LEITER (LEITER) is an individual who resides in
21 California, who at times relevant to this action was and is an owner of the PROPERTY, according
22 to Grant Deed No. 2013-0502007 filed in the records of the San Diego County Recorder on
23 August 9, 2013.

24 8. As the owners of the PROPERTY, Defendants BRISTOL and LEITER are strictly
25 liable for all code violations occurring at the PROPERTY, pursuant to SDMC section 121.0311
26 and applicable California law.

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1 9. 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 10. 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 11. 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 12. The PROPERTY is identified as Assessor’s Parcel Number 468-220-04-00, according
16 to records in the office of the San Diego County Recorder.

17 13. The legal description of the PROPERTY is:

18 Lots 7, 8 and 9 in Block 4 of Rolando Unit No. 1, in the City of San
19 Diego, County of San Diego, State of California, according to Map thereof
20 No. 1932, filed in the Office of the County Recorder of San Diego
County, August 3, 1926.

21 14. The PROPERTY is zoned CU-2-3 in the Central Urbanized Planned District in the
22 City of San Diego.

23 **FACTUAL ALLEGATIONS**

24 15. SDMC section 155.0238 and corresponding Table 155-02C list the permitted uses in a
25 CU-2-3 zone where the PROPERTY is located. Medical marijuana consumer cooperatives
26 (MMCCs) are *not* a permitted use in any Central Urbanized Planned District commercial zone.

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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 16. In July 2013, the City received a citizen complaint about a marijuana dispensary
2 operating at the PROPERTY. City zoning inspectors went to the location on August 4, 2013. The
3 inspectors observed two adult males enter the dispensary and leave a short time later with small
4 white paper bags. There was a security camera mounted on the building and an armed guard in
5 the reception area. There was a strong smell of marijuana in the lobby. The security guard and a
6 “volunteer” confirmed that a marijuana dispensary called The Bakery was in operation at the
7 location.

8 17. On August 13, 2014, the City sent a Notice of Violation to the Defendants notifying
9 them that the operation of a marijuana dispensary is not a permitted use at the PROPERTY and
10 that they were in violation of the San Diego Municipal Code.

11 18. On August 22, 2014, City investigators again observed the dispensary doing business
12 at the PROPERTY. They saw a female exit the location carrying a small white paper bag. The
13 armed, uniformed security guard was on duty and would not let the inspectors go beyond the
14 lobby area.

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

20 **I**

21 **FIRST CAUSE OF ACTION**

22 **VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE**
23 **ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST**
24 **ALL DEFENDANTS**

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

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1 21. 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 22. Beginning on an exact date unknown to Plaintiff, but since at least August 4, 2014,
5 Defendants have maintained and used the PROPERTY for a purpose or activity not listed in
6 Table 155-02C, in violation of SDMC sections 121.0302 and 155.0238.

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

12 **PRAYER**

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

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

16 **San Diego Municipal Code sections**

17 121.0302 (a) 155.0238

18 Table 155-02C

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

24 a. Maintaining, operating, or allowing at the PROPERTY any commercial, retail,
25 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of

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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 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative
2 organized pursuant to the Health & Safety Code;

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

5 c. Maintaining, operating, or allowing the operation of any unpermitted use
6 anywhere within the City of San Diego, including but not limited to 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 d. Maintaining signage on the PROPERTY advertising a medical marijuana
11 dispensary;

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

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

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

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

22 5. That pursuant to SDMC section 12.0202(b), Defendants be assessed a civil penalty of
23 \$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 12, 2014

JAN I. GOLDSMITH, City Attorney

By 
Marsha B. Kerr
Deputy City Attorney

Attorneys for Plaintiff