

2014 NOV -4 A 11: 14

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

1 JAN I. GOLDSMITH, City Attorney  
MARLEA DELL'ANNO, Assistant City Attorney  
2 JON D. DWYER, Chief 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) 533-5500  
6 Fax: (619) 533-5696  
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 EL CAJON ESTATES, LLC, a California  
14 limited liability company;  
MARK PERECMAN, as an individual, and as  
15 officer and principal of EL CAJON ESTATES  
LLC;  
16 SEYMOUR L. WEKSLER, as an individual,  
and as officer and principal of EL CAJON  
17 ESTATES LLC;  
GREEN URBAN ASSOCIATION, a California  
18 corporation;  
CHI HUYNH, as an individual, and as chief  
19 executive officer, chief financial officer, and  
secretary of GREEN URBAN ASSOCIATION;  
20 DONNA B. DUONG, as an individual; and  
DOES 1 through 50, inclusive,

21 Defendants.  
22

Case No. 37-2014-00037675-CU-MC-CTL

UNLIMITED JURISDICTION

COMPLAINT FOR INJUNCTION,  
CIVIL PENALTIES, AND OTHER  
EQUITABLE RELIEF

23 Plaintiff City of San Diego, appearing through its attorneys, Jan I. Goldsmith, City  
24 Attorney, by Jon D. Dwyer, 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 8. Defendant SEYMOUR L. WEKSLER (WEKSLER) is an individual and resident of  
2 the City of San Diego, who at all times relevant to this action, was and is an officer or principal of  
3 EL CAJON ESTATES, according to the Articles of Organization filed on April 28, 2006, with  
4 the California Secretary of State, File number 200612210153. In addition, as a landlord of the  
5 PROPERTY Defendant WEKSLER also transacts business in the County of San Diego, State of  
6 California.

7 9. Defendants EL CAJON ESTATES, PERECMAN and WEKSLER maintained and  
8 continue to maintain a marijuana dispensary at the PROPERTY.

9 10. Defendants EL CAJON ESTATES, PERECMAN and WEKSLER will sometimes be  
10 referred to independently and sometimes collectively as "PROPERTY OWNERS."

11 11. The PROPERTY OWNERS are each a "Responsible Person"<sup>1</sup> within the meaning of  
12 SDMC section 11.0210 for maintaining violations of the SDMC at the PROPERTY. As property  
13 owners, Defendants EL CAJON ESTATES, PERECMAN and WEKSLER are also strictly liable  
14 for all code violations occurring at the PROPERTY per SDMC section 121.0311.

15 12. Defendant GREEN URBAN ASSOCIATION (GREEN URBAN), a California  
16 corporation is organized and existing under the laws of the State of California, which at all times  
17 relevant to this action, was and is operating a marijuana dispensary at the PROPERTY according  
18 to the Articles of Incorporation filed with the California Secretary of State on January 29, 2013,  
19 entity number C3541432.

20 13. Defendant CHI HUYNH (HUYNH) is an individual who, at all times relevant to this  
21 action, was the Chief Executive Officer, Chief Financial Officer, and Secretary of GREEN  
22 URBAN and was doing business at the PROPERTY.

23 14. Defendants GREEN URBAN and HUYNH will sometimes be referred to  
24 independently and sometimes collectively as the "MD OPERATORS." MD OPERATORS have  
25 been doing business as a marijuana dispensary at the PROPERTY since at least August 27, 2013.  
26

27 <sup>1</sup> 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 15. The MD OPERATORS are each a "Responsible Person" under SDMC section  
2 11.0210 for causing or maintaining violations of the SDMC at the PROPERTY.

3 16. Defendant, DONNA B. DUONG (DUONG), is the tenant of the PROPERTY where  
4 the marijuana dispensary is operating according to a lease entered into between EL CAJON  
5 ESTATES, WEKSLER, and DUONG, on January 15, 2013

6 17. As the tenant of the PROPERTY, Defendant DUONG is a "Responsible Person"  
7 within the meaning of SDMC section 11.0210 for maintaining violations of the SDMC at the  
8 PROPERTY. As a tenant, DUONG, is also strictly liable for all code violations occurring at the  
9 PROPERTY per SDMC section 121.0311.

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

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

21 **PROPERTY**

22 20. The PROPERTY where the marijuana dispensary is operating is located at 3140 El  
23 Cajon Boulevard, San Diego, State of California, which includes a portion marked 3140 ½ and is  
24 part of Assessor's Parcel Number 446-181-27-00; according to San Diego County Recorder's  
25 Grant Deed document No. 2010-0087931, recorded February 23, 2010. There are four structures  
26 on the parcel. The marijuana dispensary is operating at the unit addressed as 3140 El Cajon  
27 Boulevard, which includes a portion marked 3140 ½.

28 . . . . .

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

21. The legal description in the Grant Deed is:

PARCEL A:

THE SOUTH 100 FEET OF LOT 28 AND THE SOUTH 100 FEET OF THE WEST HALF OF LOT 29 IN BLOCK 113 OF UNIVERSITY HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF MADE BY G.A. D'HEMECOURT IN BOOK 8, PAGE 36 ET SEQ OF LIS PENDENS ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

PARCEL B:

THE SOUTH 100 FEET OF THE EAST HALF OF LOT 29 AND THE SOUTH 100 FEET OF LOT 30 IN BLOCK 113 OF UNIVERSITY HEIGHTS ACCORDING TO THE MAP THEREOF MADE BY G.A. D'HEMECOURT IN BOOK 8, PAGE 36 ET SQ OF LIS PENDENS ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

COMMON ADDRESS:  
3140-3150 EL CAJON BOULEVARD, SAN DIEGO,  
CALIFORNIA 92104  
APN: 446-181-27

22. The deed lists the owner of the PROPERTY as "El Cajon Estates, LLC, a California limited liability company."

23. The PROPERTY is located in the Mid City Communities Planned District: CN-1 zone in the City of San Diego.

**FACTUAL ALLEGATIONS**

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

25. On or about October 6, 2011, the City of San Diego filed a complaint in civil case 37-2011-00099058-CU-MC-CTL against the PROPERTY OWNERS and SIBANNAC ALTERNATIVE, INC. and its officers, alleging the same zoning violations as alleged in this complaint for a marijuana dispensary operating at the PROPERTY called Sibannac Alternative, Inc.

1           26. On or about November 17, 2011, Sibannac Alternative, Inc., and its representatives  
2 entered into a stipulated judgment with the City, in which the Honorable Ronald S. Prager  
3 ordered Sibannac Alternative, Inc. to cease operation of a marijuana dispensary at the  
4 PROPERTY.

5           27. On or about January 12, 2012, the PROPERTY OWNERS entered into a stipulated  
6 judgment with the City, in which the Honorable Ronald S. Prager permanently enjoined EL  
7 CAJON ESTATES, WEKSLER, and PERECMAN from maintaining a marijuana dispensary at  
8 the PROPERTY and anywhere else in the City.

9           28. On or about August 26, 2013, the City of San Diego's Development Services  
10 Department, Code Enforcement Division's (CED) Land Development Investigator Leslie Sennett  
11 (Sennett) and Combination Building Inspector Robert Cervantes (Cervantes) went to the  
12 PROPERTY and conducted an inspection to determine whether EL CAJON ESTATES,  
13 WEKSLER, and PERECMAN were abiding by the Honorable Ronald S. Prager's order.  
14 WEKSLER'S attorney Mark Robert Bluemel ("Bluemel") and WEKSLER were at the inspection.  
15 There was no signage outside for a marijuana dispensary. During the inspection, they went inside  
16 the units addressed 3140 El Cajon Boulevard, which includes a portion marked 3140½. 3140  
17 appeared to be an apartment. 3140½ El Cajon Boulevard was attached to 3140 and had exercise  
18 equipment inside. The tenant was an Asian male but did not give his name. Sennett did not see  
19 any evidence of a marijuana dispensary operating at the PROPERTY.

20           29. On or about September 19, 2013, as Sennett prepared to close the case, she conducted  
21 an internet research and checked the Weedmaps website and for GREEN URBAN. She found that  
22 it was *still* operating at the PROPERTY and advertising marijuana products for sale at the  
23 PROPERTY. The Weedmaps page listed a marijuana menu, directions, and a customer review.  
24 GREEN URBAN had a note on their Weedmaps page dated August 24, 2013, that in part stated,  
25 "We are sorry to inform you that we are temporarily closed until Tuesday morning for reasons we  
26 are not able to discuss...." Tuesday morning was the day after CED's inspection that was  
27 conducted on August 26, 2013.

28 . . . . .

1 30. On or about September 19, 2013, Sennett called GREEN URBAN to ask for the hours  
2 of operation and location. An man answered the telephone and stated the hours of operation and  
3 confirmed that GREEN URBAN was at the PROPERTY. Additionally, the man stated that  
4 GREEN URBAN was not located in the Smoke Shop and informed her that when she got to the  
5 Smoke Shop, someone would call him and let him know she was there and he would meet her and  
6 lead her to the dispensary in the rear.

7 31. On October 9, 2013, CED issued a Notice of Violation (NOV) to EL CAJON  
8 ESTATES and GREEN URBAN outlining the violations in the PROPERTY. As Sennett was  
9 aware that the marijuana dispensary operating at the PROPERTY was located within 600 feet of  
10 Children's Creative and Performing Arts School which is located at 3051 El Cajon Boulevard and  
11 is in violation of state law, she also listed a violation of the Health and Safety Code on the NOV.  
12 The NOV required Defendants to immediately cease operating or maintaining the marijuana  
13 dispensary at the PROPERTY in violation of zoning laws.

14 32. On December 4, 2013, Sennett and Cervantes conducted another inspection at the  
15 PROPERTY. WEKSLER's attorney, Bluemel, was also present. Bluemel was initially unable to  
16 access 3140 El Cajon Boulevard. Bluemel spoke with a man who appeared to be working in the  
17 smoke shop located in front of the building with the reported dispensary. After speaking with  
18 him, a young Asian couple opened the locked gate and let them in to 3140 El Cajon Boulevard.  
19 They were given access to the front of the structure and it still appeared to be a residential unit.  
20 The area where the dispensary was reported to operate was locked. The couple did not provide  
21 access. Sennett asked the couple if the PROPERTY was being used as a dispensary. The couple  
22 stated the dispensary had stopped a month ago. They then walked to the door that lead to 3140 ½.  
23 It was locked. There was a small plastic tube coming out from the bottom of the door similar to  
24 the type Sennett has seen used for irrigation and water runoff at marijuana grows.

25 33. On or about September 19, 2014, an undercover detective with the San Diego Police  
26 Department, Detective James, went to the PROPERTY to purchase concentrated cannabis  
27 (hashish), a controlled substance. There was no signage to identify the business. The building  
28 appeared to be a residence with a reception room and sales room attached.

1 34. As Detective James entered a security screen door into a lobby area, he smelled the  
2 strong odor of marijuana. The lobby contained a reception desk and two chairs for customers. The  
3 detective observed a man acting as the receptionist. Based on the detectives training and  
4 experience, the receptionist appeared to be under the influence of marijuana.

5 35. The receptionist handed Detective James a form to fill out. Once the detective finished  
6 filling out the form he was directed to a room where they sold marijuana.

7 36. Inside the room a "bud tender" named "Joe," who also appeared to be under the  
8 influence of marijuana met Detective James. Detective James observed two display cabinets in an  
9 "L" shape. The cabinets contained marijuana commonly referred to as "bud" or "flower," edibles  
10 (food infused with THC) and a small selection of "wax" (concentrated cannabis).

11 37. "Joe" sold Detective James \$40 worth of "wax" and gave him a free edible (Reeses  
12 Puffs cereal infused with THC) because he was a "first time patient."

13 38. Detective James left the PROPERTY and transported the items to San Diego Police  
14 Headquarters. He photographed the items before impounding them in the SDPD Headquarters  
15 Property Room.

16 39. California Health & Safety Code section 11362.768(b) prohibits marijuana  
17 dispensaries from operating within a 600 foot radius of a school.

18 40. Children's Creative and Performing Arts School is located at 3051 El Cajon  
19 Boulevard in San Diego, California. Christine Shaw (Shaw), an Associate Management Analyst  
20 of the San Diego Police Department's Crime Analysis Unit, verified that Children's Creative and  
21 Performing Arts School is the type of school listed in Health & Safety Code section  
22 11362.768(h).

23 41. On October 29, 2014, Shaw measured the distance of the PROPERTY to Children's  
24 Creative and Performing Arts Academy. The method of measurement she used was conducted in  
25 accordance with Health & Safety Code section 11362.768(c). Shaw confirmed that the  
26 PROPERTY was located within a 600 foot radius of Children's Creative and Performing Arts  
27 School.

28 . . . . .

1 42. Prior to the filing of this lawsuit, Defendants PERECMAN and WEKSLER have had  
2 ample notice and opportunity to voluntarily comply with the law. Defendants PERECMAN and  
3 WEKSLER have known since at least October 2011, that a marijuana dispensary is not a  
4 permitted use in the City of San Diego and yet they continue to violate the law. Moreover, they  
5 have been under a court order since January 2012, not to lease to dispensaries. Despite a formal  
6 Notice, and a court injunction, these Defendants continue to operate and maintain a marijuana  
7 dispensary at the PROPERTY in flagrant violation of local zoning laws.

8 43. Plaintiff is informed and believes that Defendants have engaged in and maintained a  
9 blatant and willful violation of the SDMC and will continue to maintain the unlawful code  
10 violations at the PROPERTY or at another location in the City of San Diego unless the Court  
11 enjoins and prohibits such conduct. Absent the relief requested by Plaintiff, the City is unable to  
12 enforce its zoning laws and therefore unable to ensure the compatibility between land uses for its  
13 residents. The land use scheme and regulations under the Municipal Code become meaningless  
14 and the public is left unprotected from the direct and indirect negative effects associated with  
15 unpermitted and incompatible uses in their neighborhoods. Absent injunctive relief, the City will  
16 be irreparably harmed and the ongoing violations will continue to harm the public health safety  
17 and welfare.

18 **I**

19 **FIRST CAUSE OF ACTION**

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

23 44. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1  
24 through 43 of this Complaint as though fully set forth here in their entirety.

25 45. SDMC section 121.0302(a) states: "It is unlawful for any person to maintain or use  
26 any premises in violation of any of the provisions of the Land Development Code,<sup>2</sup> without a  
27 required permit, contrary to permit conditions, or without a required variance."

28 <sup>2</sup> SDMC §111.0101 (a) states that "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 46. The PROPERTY is located in the Mid City Community Planned District (CN-1) zone.  
2 SDMC section 1512.0305(a) and corresponding Table 1512-03I list the permitted uses for the  
3 Mid City Community Planned District zone where the PROPERTY is located. The operation or  
4 maintenance of a marijuana dispensary, collective or cooperative is not listed as a permitted use.

5 47. Beginning on an exact date unknown to Plaintiff but since at least August 27, 2013,  
6 and continuing to the present, the Defendants have maintained and used the PROPERTY for a  
7 purpose or activity not listed in SDMC section 1512.0305(a) and corresponding table 1512-03I, in  
8 violation of SDMC sections 1512.0305(a) and 121.0302(a).

9 48. Despite a court order prohibiting them from maintaining a dispensary at any property  
10 in San Diego, Defendants PERECMAN and WEKSLER continue to lease to a dispensary at the  
11 PROPERTY. Absent immediate injunctive relief, the justifiable expectations by citizens that state  
12 law and local zoning laws be enforced and their safety and quality of life be protected remain  
13 frustrated. Defendants fail and refuse to comply with the law and there is no expectation they will  
14 change their behavior.

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

20 50. Plaintiff has no adequate remedy and seeks an immediate injunction to prohibit  
21 Defendants from violating the law.

22 **II**

23 **SECOND CAUSE OF ACTION**

24 **VIOLATION OF THE CALIFORNIA HEALTH AND**  
25 **SAFETY CODE AS ALLEGED BY PLAINTIFF CITY OF**  
**SAN DIEGO AGAINST ALL DEFENDANTS**

26 51. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1  
27 through 43 of this Complaint as though fully set forth here in their entirety.

28 . . . . .

1 52. Health & Safety Code section 11362.768(b) prohibits medical marijuana cooperatives,  
2 collectives, dispensaries, operators, establishments, or providers who possess, cultivate, or  
3 distribute medical marijuana pursuant to this article from operating within a 600-foot radius of a  
4 school. Health & Safety Code section 11362.768(h) defines a school as “[a]ny public or private  
5 school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any  
6 private school in which education is primarily conducted in private homes.”

7 53. Beginning on an exact date unknown to Plaintiff but since at least August 27, 2013,  
8 and continuing to the present, Defendants are allowing and operating a marijuana dispensary  
9 within a 600 foot radius of Children’s Creative and Performing Arts Academy, in blatant  
10 violation of Health & Safety Code section 11362.768(b).

11 54. Absent immediate injunctive relief the City is unable to enforce the Health & Safety  
12 Code which seeks to protect children attending school from the direct and indirect negative  
13 effects of marijuana dispensaries as legislated by the State. The City and public will be  
14 irreparably harmed by this inability to enforce the law and the ongoing violations will continue to  
15 harm the public health, safety, and welfare.

16 55. This irreparable and permanent damage justifies issuance of an injunction as  
17 authorized by the San Diego Municipal Code, State law, and general principles of equity.

18 **PRAYER**

19 **WHEREFORE**, Plaintiff prays for judgment against each and every Defendant as  
20 follows:

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

22 **San Diego Municipal Code sections**

23 121.0302(a) Table 1512-03I  
24 1512.0305(a)

25 **California Health and Safety Code section**

26 11362.768(b)

27 . . . . .

28 . . . . .

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 California Health and Safety Code;

10           b. Maintaining, operating, or allowing the operation of any unpermitted use at the  
11 PROPERTY or anywhere in the City of San Diego;

12           c. 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; and,

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

17           3. That immediately from the date of entry of judgment, Defendants cease the operation  
18 of the marijuana dispensary at the PROPERTY and all advertisements for any business operating  
19 at the PROPERTY as a marijuana dispensary.

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

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

25           6. That pursuant to SDMC section 12.0202(b), Defendants are assessed a civil penalty of  
26 \$2,500 per day for each and every SDMC violation maintained at the PROPERTY.

27 . . . . .

28 . . . . .

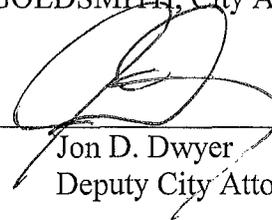
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Dated: November 3, 2014

JAN I. GOLDSMITH, City Attorney

By



Jon D. Dwyer  
Deputy City Attorney

Attorneys for Plaintiff