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TORREY HOLISTICS, INC.

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County of San Diego

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Clerk of the Superior Court
By A. Gidron ,Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 TORREY HOLISTICS, INC., a California
13 corporation; and

14 Petitioner and Plaintiff,

15 v.

16 CITY OF SAN DIEGO, a municipal
17 corporation; CITY OF SAN DIEGO
18 PLANNING COMMISSION; and DOES 1
through 10, inclusive;

19 Respondents and Defendants.

20
21 SORRENTO VALLEY INVESTMENT
GROUP, a California partnership, and DAVID
22 SEYRANIAN, an individual;

23 Real Parties-in-Interest

Case No. 24CU029405C

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

[Code of Civil Procedure §§ 1085, 1060, 815.6
(Mandatory Duty)]

Filed: December 18, 2024

Trial Date: Not Assigned

1 In support of this Verified Petition for Peremptory Writ of Mandate and Complaint for
2 Declaratory Relief (the “Petition”), Petitioner and Plaintiff TORREY HOLISTICS, INC. (“Torrey
3 Holistics”) alleges as follows:

4 **I. INTRODUCTION**

5 1. Torrey Holistics is an established and licensed cannabis operator of cannabis outlet
6 located at 10671 Roselle Street, Suite 100 in the Torrey Pones Community Plan area of the City of
7 San Diego, State of California. As a trusted and reputable member of the burgeoning cannabis
8 industry, Torrey Holistics obtained a conditional use permit (CUP No. 1371299) (as amended,
9 “Torrey Holistics CUP”) from Respondent and Defendant CITY OF SAN DIEGO (“City”) in
10 accordance with the rules and regulations put forward by the San Diego Municipal Code (“SDMC”) and all applicable land use plans, including, but not limited to, the City of San Diego Local Coastal
11 Program (“LCP”). Torrey Holistics continues to operate its cannabis outlet at the aforementioned
12 site in good standing.

14 2. In this action, Torrey Holistics respectfully petitions this Court for a peremptory writ
15 of mandate and declaratory judgment to set aside and vacate the decision of Respondent and
16 Defendant CITY OF SAN DIEGO PLANNING COMMISSION (“Planning Commission”) (collectively with the City, “Respondents”) to deny the appeal challenging the City of San Diego
17 Development Services Department’s (“DSD”) decision to approve a conditional use permit (CUP
18 No. 18655099) (“MedMen CUP”) amendment to extend the operations of the cannabis outlet
19 located at 10715 Sorrento Valley Road in the Torrey Pones Community Plan area of the City of San
20 Diego, State of California.

22 3. The Planning Commission’s September 19, 2024, unlawful decision to deny the
23 appeal and affirm DSD’s approval leave Torrey Holistics with no options and no adequate remedy
24 short of filing this Petition. Torrey Holistics therefore requests that the Court issue a writ of mandate
25 directing the Respondents to comply with its mandatory duties under the SDMC and all applicable
26 land use plans, including, but not limited to LCP. Additionally, because of the highly arbitrary and
27 capricious nature of the Respondents’ actions serving no legitimate government interest in flagrant
28

1 violation of the law, Torrey Holistics seeks injunctive relief expressly authorized by law as alleged
2 herein.

3 **II. PARTIES**

4 4. Petitioner and Plaintiff Torrey Holistics, Inc. is a California corporation with a legal
5 property interest in real property located at 10671 Roselle Street, Suite 100, in the Torrey Pones
6 Community Plan area of the City of San Diego, State of California. It is the permittee of certain
7 entitlements, including the Torrey Holistics CUP identified in Paragraph 1, and licenses for the
8 development of and operation of a cannabis outlet at the aforementioned site.

9 5. Respondent and Defendant City of San Diego is a municipal corporation
10 incorporated under the laws of the State of California, located in the County of San Diego, and is a
11 political subdivision of the State of California. Respondent and Defendant City of San Diego,
12 pursuant to its police powers granted under the California Constitution, is the entity responsible for
13 the authorizations and approvals necessary for the operation of cannabis outlets within its
14 jurisdictional boundaries as identified herein.

15 6. Respondent and Defendant San Diego Planning Commission is a seven-member
16 body, with each member appointed by the Mayor of the City of San Diego, that authorized to
17 exercise certain powers on behalf of the City, and was the final decision-maker for the appeal of
18 DSD's approval of the amendment to the MedMen CUP.

19 7. Real Party-in-Interest Sorrento Valley Investment Group self-identifies as a
20 California-based partnership with legal property interest in real property located at 10715 Sorrento
21 Valley Road in the Torrey Pones Community Plan area of the City of San Diego, State of California.
22 Sorrento Valley Investment Group is the new applicant on the application to amend and extend the
23 MedMen CUP at issue in this case, as identified in the application's Ownership Disclosure
24 Statement.

25 8. Defendant and Respondent David Seyranian is an individual and is a "Financially
26 Interested Person" on the application to amend and extend the MedMen CUP at issue in this case,
27 as identified in the application's Ownership Disclosure Statement. Together, with Sorrento Valley
28 Investment Group, Mr. Seyranian shall be referred to herein as ("SVIG").

1 9. Torrey Holistics does not know the true names and capacities of the Respondents and
2 Defendants named as Does 1 through 10 and, therefore, sues Respondents and Defendants by
3 fictitious names. Torrey Holistics is informed and believes, and thereon alleges that each Doe is in
4 some way responsible for the events described herein. Torrey Holistics will seek leave to amend
5 this Petition when the true names and capacities of these parties have been ascertained.

6 **III. JURISDICTION AND VENUE**

7 10. The Court has general subject matter jurisdiction over state law claims, including the
8 administrative and traditional mandamus claims pursuant to Code of Civil Procedure sections 1085,
9 1094.5 and 1060.

10 11. The Court has personal jurisdiction over all Respondents and Defendants pursuant to
11 Code of Civil Procedure section 410.10.

12 12. Venue for this action properly lies with this Court pursuant to Code of Civil
13 Procedure sections 392, 393(b), 394 and 395. Venue is appropriate in the County of San Diego
14 Superior Court because the property that is the subject of the City's administrative action, the City
15 and the actions that resulted in this legal dispute are located or occurred within the County of San
16 Diego.

17 13. Torrey Holistics has performed any and all conditions precedent to filing this action
18 and have exhausted any and all available administrative remedies to the extent required by law.

19 14. This Petition is timely under all relevant statutes of limitations, including, but not
20 limited to, Code of Civil Procedure sections 1085, 1094.5, 1060 and 815.6.

21 15. Torrey Holistics seeks to enforce important rights affecting the public interest.

22 16. If this Petition is granted, a significant benefit will be conferred on the general public,
23 and a large class of citizens.

24 17. Torrey Holistics has no plain, speedy, or adequate remedy in the ordinary course of
25 law.

1 **IV. STATEMENT OF FACTS**

2 **A. *History of California Cannabis Legalization***

3 18. In 1996 the voters of the State of California, including voters in the City of San
4 Diego, passed Proposition 215, the Compassionate Use Act (“CUA”), which allows the use of
5 cannabis for medical purposes when recommended by a physician and excludes from criminal
6 prosecution the patient and the primary caregiver, as defined in the CUA.

7 19. Effective January 1, 2004, the State of California enacted Senate Bill 420, the
8 Medical Marijuana Program Act (“MMPA”), which, among other things: (i) established
9 requirements for the issuance of voluntary identification cards; (ii) provided a defense to criminal
10 charges related to the cultivation, possession, sale, or storage of medical cannabis; (iii) prohibited
11 the distribution of cannabis for profit; (iv) exempted from prosecution qualified patients and
12 designated primary caregivers who associate to collectively or cooperatively cultivate cannabis
13 for medical purposes; (v) required the Attorney General to issue guidelines for the security and
14 non-diversion of medical cannabis; and (vi) allowed cities to adopt and enforce laws consistent
15 with the MMPA.

16 20. In 2015, the State of California enacted Senate Bill 643, Assembly Bill 266, and
17 Assembly Bill 243, comprising the Medical Cannabis Regulation & Safety Act (“MCRSA”)
18 (formerly known as the Medical Marijuana Regulation and Safety Act), which, among other things,
19 established a comprehensive regulatory framework for the production, transportation, and sale of
20 medical cannabis.

21 21. In November 2016, the Adult Use of Marijuana Act (“AUMA”) was adopted by
22 the voters of the State of California, which decriminalized non-medicinal cannabis and established
23 a regulatory system for non-medicinal cannabis businesses in California.

24 22. Thereafter, in June 2017, the California State Legislature enacted the Medicinal and
25 Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) to establish a comprehensive set of
26 laws regulating both individual and commercial medicinal and non-medicinal cannabis activity
27 throughout the State of California.
28

1 23. California Business and Professions Code section 26200(a)(1) authorizes local
2 jurisdictions to either permit and regulate or prohibit the operation of cannabis businesses within
3 their boundaries.

4 ***B. City Cannabis Regulations***

5 24. The City has a substantial interest in promoting compliance with state and local laws
6 intended to regulate cannabis sales and use and in discouraging the illegal purchase of cannabis
7 products.

8 25. As such, the City Council has adopted a comprehensive set of requirements,
9 restrictions, and enforcement procedures with regard to cannabis activity within the City in order to
10 protect public safety, health, and other law enforcement interests.

11 26. Specifically, with the passage of AUMA in 2016, the City SDMC regulations to
12 allow specific types of commercial cannabis businesses, including cannabis outlets, cannabis
13 production facilities and cannabis testing facilities to operate in specific land use zones of the City.
14 As separately regulated uses, all new “Cannabis Outlets” and “Cannabis Production Facilities”
15 require approval of a Process Three conditional use permit (“CUP”). These CUPs are granted for
16 five (5) years at a time, and renewals/amendments must be processed to continue cannabis
17 operations for additional 5-year increments. As originally adopted, the SDMC allowed for thirty-
18 six (36) Cannabis Outlet storefront retailers (four [4] per Council District) for medicinal and adult-
19 use sales, and a total of forty (40) Cannabis Production Facilities Citywide for cannabis cultivation,
20 manufacturing, and distribution activities. (See SDMC §§ 141.0504, 141.1004.) There are no limits
21 on the number of cannabis testing facilities, and they are allowed by right in certain zones.

22 27. Section 5.1 of the San Diego City Charter requires the creation of a Redistricting
23 Commission at the beginning of each decade, after the U.S. Census, to adopt plans that specify the
24 boundaries of districts for the City Council. The redrawing of district boundaries is designed to
25 ensure local legislatures are representative of the City’s diverse population. On Wednesday,
26 December 15, 2021, the City of San Diego Redistricting Commission voted 7-0-2 to approve the
27 certain redistricting actions as identified in “Map 92973.” These new boundaries took effect after
28 the City’s general election in November 2022.

1 28. Redistricting, as approved and implemented, forced (1) additional Cannabis Outlet
2 CUP over the existing cap in District 1, the district in which both the Torrey Holistics CUP and
3 MedMen CUP were awarded.

4 29. On or about February 3, 2021, the San Diego City Attorney's Office issued a
5 memorandum on the outcome of redistricting on cannabis CUPs in relation to redistricting. As such,
6 City proposed amendments to SDMC to address the Cannabis Outlet cap to comply with the City
7 Attorney's Office memorandum.

8 30. As part of this amendment process, the City recognized: "There have been several
9 instances where cannabis...facilities have not paid their taxes, but the operator(s) have continued to
10 operate cannabis businesses... As a result, the Treasurer's Office and the [Cannabis Business
11 Division] evaluated the current Municipal Code language and has determined that amendments to
12 the code should be adopted in order to prohibit an operator from opening...new cannabis operations
13 within the City if there is an outstanding tax liability owed to the City." As such, staff proposed
14 amendments to SDMC sections 42.1502, 42.1504 and 42.1507.

15 31. SDMC section 141.0504 places a five (5) year time limit on Cannabis Outlet CUPs,
16 but states these CUPs can be amended for another five-year term. SDMC section 126.0114(d), which
17 outlines the process for amending CUPs to extend expiration dates, states an amendment to an
18 existing development permit will not affect the original expiration date of the permit unless a change
19 is specifically requested. In such cases, the application must be deemed complete prior to the
20 development permit expiration date and the development permit will automatically be extended until
21 a decision on the amendment request is final, and all available administrative appeals of the project
22 decision have been exhausted.

23 32. As part of the aforementioned amendment process, the City found allowing CUPs to
24 remain in effect while their amendments are being processed is reasonable. However, SDMC
25 section 126.0114 did not provide for a time limit on this extension and allowed applicants to take as
26 long as they like to process. In the context of a five-year time limit, this can lead to applicants taking
27 an extended amount of time to process their amendments, effectively extending their CUPs for up
28 to a year or more in some cases. City research indicated that amendments cost sixty-three percent

(63%) as much as the original permit, but they take 108 days (3.6 months) longer to process. The average cost paid by a successful applicant for a new Cannabis CUP in the City is approximately \$22,371, with an average processing time of 447 days (14.7 months). As of the date the City was considering amending its cannabis regulations, approximately eleven (11) CUP amendments have been processed to a decision, with an average cost of \$14,165 and an average processing time of 555 days (18.2 months). In short, amendments cost less, but take more time.

33. Staff admitted it had significant equity and due process concerns with these extended amendment periods and how they can function as “holding” a spot. Specifically, staff has found that applicants have used this code process to continue extending their CUP application while not actually seeing the amendment application through to decision. Because there is a cap on the number of cannabis CUPs, this prevents other applicants from applying for a CUP because there are no permits available.

34. Therefore, staff proposed changes to address the issue. Specifically, SDMC section 141.0504(n)(4)¹ outlines the cannabis CUP amendment process, and states that an application to extend the expiration date of a CUP must be submitted and deemed complete prior to the CUP expiration date, and the existing CUP is automatically extended until a decision on the amendment request is final, and all available administrative appeals of the project decision have been exhausted. SDMC section 141.0504(n)(4) was to be amended to prohibit the indefinite extensions of cannabis CUPs as to allow other eligible applicants to be able to process their permits.

35. On or about December 14, 2022, the City Council adopted Ordinance O-21591, which amended SDMC section 141.0504 related to “Cannabis Outlets.” Under the amendment, existing Cannabis Outlets that changed districts as a result of City Council redistricting are allowed to remain in certain circumstances, which may result in more than four (4) existing in a district.²

¹ As amended, SDMC § 141.0504(n)(4)(B) states: “An amendment application to extend the expiration date of a Conditional Use Permit must be submitted and deemed complete prior to the Conditional Use Permit expiration date. The Conditional Use Permit shall automatically be extended until a decision on the amendment request is final, and all available administrative appeals of the project decision have been exhausted. This automatic extension does not apply to development permit applications that are closed in accordance with Section 126.0115.” (Emphasis added.)

² As amended, SDMC § 141.0504 states: “No more than four cannabis outlets are permitted in each City Council District except that any permitted cannabis outlet that changes City Council District as a result of redistricting may remain at

1 The SDMC contains the following note after Section 141.0504: “Amendments as adopted by O-
2 21591 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission
3 certifies it as a Local Coastal Program Amendment.”

4 36. On or about February 9, 2023, the California Coastal Commission (“CCC”) approved
5 an amendment to the City’s LCP, which would incorporate the aforementioned cannabis-related
6 SDMC amendments.

7 37. In its action, the CC certified the request to amend the City’s certified LCP
8 implementation plan. Specifically, the amendment included code amendments related to redistricting
9 and conditional use permit extensions for Cannabis Outlets. It was the CCC’s understanding and intent
10 to certify the proposed ordinance that “would allow permitted cannabis outlets to continue operating if
11 their location is redistricted into a new City Council district that is at or over the cannabis outlet limit.”

12 38. Since the amendment request was intended to take effect automatically upon CCC
13 certification, and the Commission certified the amendment as submitted (without any suggested
14 modifications or other terms).

15 **C. MedMen CUP Amendment**

16 39. On or about June 18, 2018, the City of San Diego City Council (“City Council”)
17 considered and approved the MedMen CUP with SVIG listed as the property owner and Sun Felt,
18 LLC listed as the permittee.

19 40. On or about June 6, 2023, Sure Felt, LLC filed an amendment application prior to
20 the expiration of the MedMen CUP (June 18, 2023). The City deemed the Sure Felt, LLC application
21 deemed complete the same day, automatically extending the lifespan of the MedMen CUP for the
22 processing period of that application.

23 41. Upon information and belief, Torrey Holistics alleges that in or around September 2023,
24 the City alerted Sure Felt, LLC that a City audit found discrepancies in monies due the City under the
25 MedMen CUP-related operating licenses. The City stated that because amounts were owed, the City
26 could deny the MedMen CUP amendment application. The City stopped processing the MedMen CUP

27 _____
28 its originally permitted location for the duration of its permit, regardless of the number of permitted cannabis outlets
within the new City Council District boundary, and subject to continued compliance with this section.”

1 amendment application until a promissory note was negotiated. It then took the City (4) four months to
2 draft, negotiate, and finalize said promissory notes with Sure Felt, LLC.

3 42. Upon information and belief, Torrey Holistics alleges that on or about April 10, 2024
4 Cannabis Business Division (“CBD”) Director Lara Gates alerted Sure Felt, LLC that it was behind on
5 promissory note payments, and the City would again stop processing the MedMen CUP amendment
6 application. In addition, Ms. Gates threatened that the City was referring the matter to the District
7 Attorney’s office and seeking criminal prosecution.

8 43. On or about April 16, 2024, the City sent Sure Felt, LLC and *Notice of Possible*
9 *Revocation of the Cannabis Operating Permit and Non-Renewal of CUP #1865509 for Conditional*
10 *Use Permit Violations* (“Revocation Notice”) due to non-payment of taxes, among other things.

11 44. On or about April 17, 2024, SVIG notified the City of changes to the previously
12 deemed-complete Sure Felt, LLC amendment application. These changes removed Sure Felt, LLC
13 as the applicant of the MedMen CUP amendment and rescinded its authorized agent status.

14 45. Upon information and belief, Torrey Holistics alleges that on or about April 25, 2024,
15 Sure Felt, LLC was granted a Receivership Order and Preliminary Injunction that included the property
16 located at 10715 Sorrento Valley Road. The City was promptly made aware of the stay on all actions
17 concerning said property.

18 46. The City then reviewed the amended application and, on or about May 2, 2024, DSD
19 approved the amended MedMen CUP amendment application in favor of SVIG. This approval
20 occurred using the same City project number as Sure Felt, LLC’s application despite the material
21 changes to the application.

22 47. On or about May 15, 2024, Sure Felt, LLC filed an appeal of DSD’s approval.

23 48. Upon information and belief, Torrey Holistics alleges that on or about May 20, 2024, the
24 City informed Sure Felt, LLC that it had not transferred the MedMen CUP to SVIG, but that it had
25 accepted and approved a new application and site plan for the MedMen CUP storefront (using the Sure
26 Felt, LLC project application number despite the rescission of its authorized agent status).

27 49. On or about May 21, 2024, the Torrey Pines Community Planning Board rescinded
28 its March 12, 2024 approval of the MedMen CUP amendment application.

1 50. On or about September 19, 2024, the Planning Commission held a publicly noticed
2 hearing to consider the appeal and public testimony in opposition of the MedMen CUP amendment
3 application. The Planning Commission denied Sure Felt, LLC's appeal and affirmed DSD's
4 approval of the MedMen CUP amendment application despite the identification of numerous
5 violations of application regulations.

6 51. In advance of this hearing, Torrey Holistics submitted correspondence to the
7 Planning Commission consider the failure of SVIG to remit the required taxes under the original
8 MedMen CUP, as well as the fact approval of the extension would violate SDMC section 141.0504
9 and the LCP.

10 52. Torrey Holistics also provided oral testimony regarding the MedMen CUP
11 amendment application at the Planning Commission hearing.

12 **V. FIRST CAUSE OF ACTION**
13 **Petition for Writ of Mandate – Code of Civil Procedure § 1085**
14 **Against All Respondents and Defendants**

15 53. Torrey Holistics re-alleges and incorporates herein by this reference Paragraphs 1
16 through 52 of this Petition as set forth herein in full.

17 54. The City's authority to approve an extension or amendment to a Cannabis Outlet
18 CUP is subject to the requirements set forth in the City's regulations and published policies,
19 including the SDMC and the City's LCP. The City is responsible for administering regulations and
20 published policies and California law, and is obligated to perform the duties of: (1) awarding
21 entitlements for applications in compliance with the City's regulations and published policies; and
22 (2) not awarding entitlements for applications that do not meet the requirements prescribed in the
23 City's regulations and published policies.

24 55. The City's approval of the MedMen CUP amendment application is in violation of
25 the City's regulations and published policies, and California law is illegal, arbitrary, capricious,
26 lacking in evidentiary support, and inconsistent with the rules of interpretation for at least five (5)
27 reasons.

28 56. First, the application to amend the MedMen CUP expired as of April 17, 2024, when
SVIG made material changes to the application that was deemed complete as of June 6, 2023.

1 Because these material changes that required a new determination of completeness were made *after*
2 the original MedMen CUP was set, the application was no longer subject to the automatic extension
3 provided by SDMC. Therefore, without an application deemed complete prior to June 18, 2023,
4 there was no longer a valid MedMen CUP to extend.

5 57. Second, as identified in the Staff Report dated September 12, 2024, and prepared in
6 relation to Sure Felt, LLC's appeal, Sure Felt, LLC and SVIG failed to pay approximately
7 \$96,588.54 related to a promissory note, taxes and penalties, exclusive of any interest that is
8 accruing.

9 58. Pursuant to MedMen CUP, which was issued to both Sure Felt, LLC and SVIG, the
10 entitlement is a covenant running with the land and binding on *both* Sure Felt, LLC and SVIG. (See
11 Condition of Appeal ["COA"] No. 6.) Under the CUP, Sure Felt LLC and SVIG are subject to the
12 regulations of the City and prohibited from violating federal, state or City "laws, ordinances,
13 regulations, or policies." (See COA Nos. 7, 8.)

14 59. SDMC Chapter 3, Article 4, Division 1 ("Cannabis Business Tax Ordinance")
15 outlines the requirements for taxation on the retail and wholesale sales of cannabis and cannabis
16 products in the City of San Diego. These taxes must be paid in addition to the general sales tax.
17 Failure to remit these taxes in a timely manner can lead to penalties issued by the City Treasurer's
18 office and can also lead to administrative action on an annual "Operating Permit" or CUP, up to and
19 including revocation, per SDMC section 121.0313 (if taxes are not paid, the necessary permits for
20 operation may be revoked).

21 60. As discussed above, because neither Sure Felt, LLC nor SVIG complied with the
22 Cannabis Business Tax Ordinance, the City issued the Revocation Notice, which stated the
23 outstanding amounts were to be paid no later than May 5, 2024. There is no evidence these amounts
24 have or will be paid to the City.

25 61. Despite this, the City took the position that, because the applicant of the renewal
26 application switched from Sure Felt, LLC to SVIG, the switch in the named applicant somehow
27 relieved the holders of the MedMen CUP from the obligations set forth in the Revocation Notice.
28 However, this is fallacy as both Sure Felt, LLC *and* SVIG were required to comply with the

1 Cannabis Business Tax Ordinance under the conditions of the CUP. Removing Sure Felt, LLC from
2 the application does not somehow remediate that fact that a CUP holder presently seeking an
3 amendment is not in default of paying close to \$100,000 in monies owed to the City.

4 62. Assuming *en arguendo* that the change in the named applicant resolved the issue on
5 unpaid taxes and money owed, which it does not, approving the amendment to extend the life of the
6 original MedMen CUP would set a dangerous precedent that could destabilize and jeopardize the
7 cannabis industry within the City. Specifically, it would allow an end run around financial
8 obligations intentionally embedded in the entitlements granted to cannabis operators and identified
9 in the SDMC. Eventually, such loophole could be weaponized by operators in other industries and
10 bilk the City out of hundreds of thousands, if not millions of dollars in taxes. Such precedent would
11 be in violation of the intent of the 2022 amendments to tax requirements as discussed above that
12 were enacted to protect against this very scenario.

13 63. Third, given the fact SVIG remains out of compliance with the obligations
14 established within the CUP as of the date of this filing, the June 10, 2024 recall of the Revocation
15 Notice should not have been issued. As such, SVIG is in violation of the MedMen CUP and the
16 SDMC and should be ineligible for the amendment it obtained for the MedMen CUP. Put
17 alternatively, the MedMen CUP should be deemed expired/revoked as of May 5, 2024 (deadline to
18 repay the City under the Revocation).

19 64. Fourth, as discussed above, the redistricting that the occurred in 2022 resulted in
20 changes to the SDMC made to the cap on Cannabis Outlets permitted in certain Council Districts.
21 Specifically, SDMC was amended to allow the five (5) Cannabis Outlets located in the redistricted
22 Council District 1 to remain in previously conforming status. However, should any Cannabis Outlet
23 not subject to the redistricting be facing expiration or revocation of its CUP, the original cap of four
24 (4) Cannabis Outlets is reinstated. Amendments to both the SDMC and LCP related to the
25 exceedance of the cap threshold clearly and unambiguously applies to only those Cannabis Outlets
26 subject to redistricting. The MedMen CUP was never subject to redistricting.

27 65. Additionally, in order to maintain a previously conforming status, a permittee or
28 property owner cannot be in violation of the SDMC (unless the violation is related to the

1 nonconforming status). Here, SVIG is in violation of the Cannabis Business Tax Ordinance and the
2 prior MedMen CUP, at minimum, and should be deemed ineligible for an amendment to extend the
3 lifespan of the CUP by five (5) years – resulting in an expiration of the CUP. There is also an
4 argument that the CUP should be considered revoked as of May 5, 2024. Therefore, the
5 authorization to allow five (5) Cannabis Outlets in Council District 1 is no longer applicable, and
6 the cap is reduced to four (4). As there are already four (4) permitted Cannabis Outlets in good
7 standing within Council District 1,³ SVIG was barred from seeking an extension for the MedMen
8 CUP or from reapplying for a CUP under SDMC without also applying for an amendment to the
9 SDMC or a variance – neither of which was before the Planning Commission.

10 66. Lastly, as the property subject to the MedMen CUP is within the Coastal Overlay
11 Zone, under the Coastal Act (Pub. Res. Code §§ 30001 *et seq.*), the CCC is required to certify an
12 authorized exceedance of the Cannabis Outlet cap that is not otherwise permitted by the SDMC and
13 LCP. No such certification was sought or obtained. Therefore, the approval of the MedMen CUP
14 amendment application is in violation of the Coastal Act and the California Environmental Quality
15 Act (Pub. Res. Code §§ 21000 *et seq.*) (“CEQA”). (See *e.g.*, *Union of Medical Marijuana Patients,*
16 *Inc.* (2019) 7 Cal.5th 1171.)

17 67. Therefore, the City’s arbitrary and capricious approval of the application to amend
18 the MedMen CUP lacked evidentiary support.

19 68. The City also required to provide substantial evidence in the administrative record to
20 support its rules and regulations. (*W. States Petroleum Ass’n v. Super. Ct.* (1995) 9 Cal.4th 559,
21 571-574.) “Evidence is substantial if a reasonable trier of fact could conclude that the evidence is
22 reasonable, credible, and of solid value.” (*Plastic Pipe and Fittings Ass’n v. Cal. Bldg. Standards*
23 *Comm.* (2004) 124 Cal.App.4th 1390, 1407.) The City’s interpretation of the City’s regulations and
24 published policies is not supported by any evidence, much less substantial evidence.

25 69. As a past, current and future applicant under the City’s regulations and published
26 policies, Torrey Holistics has a clear, present, legal, and beneficial right in seeing that the City is
27

28 ³ See <https://www.sandiego.gov/sites/default/files/cannabis-outlet-locations.pdf?v=1>.

1 required to follow the City’s regulations and published policies and California law, and properly
2 issues cannabis-relate entitlements.

3 **VI. SECOND CAUSE OF ACTION**
4 **Government Code § 815.6 – Violation of Mandatory Duties**
5 **Against All Respondents and Defendants**

6 70. Torrey Holistics re-alleges and incorporates herein by this reference Paragraphs 1
7 through 69 f this Petition as set forth herein in full.

8 71. Government Code section 815.6 provides: “Where a public entity is under a
9 mandatory duty imposed by an enactment that is designed to protect against the risk of a particular
10 kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure
11 to discharge the duty unless the public entity establishes that it exercised reasonable diligence to
12 discharge the duty.”

13 72. As explained herein, SDMC and the LCP impose mandatory and obligatory duties
14 on the City that required it to approve permits necessary for amendment of the MedMen CUP based
15 on clear implementation guidelines that involved the application of purely objective standards that
16 required no substantial expertise or judgment by the City.

17 73. The mandatory duties on the City imposed by the SDMC and LCP, as well as the
18 State Legislature’s enactment and various amendments cannabis legislation, are “designed” to
19 protect against the particular injury that occurred – wrongful approval of the extension of a cannabis
20 outlet CUP.

21 74. Torrey Holistics and all similarly situated cannabis operators have incurred and will
22 continue to incur injury as a proximate result of the City’s violation of its mandatory duties to deny
23 the CUP amendment applications that are not in compliance with all applicable requirements,
24 including the SDMC and LCP, and all applicable objective planning and zoning requirements.

25 75. The City failed to exercise reasonable diligence in approving the amendment to the
26 MedMen CUP in violation of its mandatory duties under the SDMC and LCP.

27 76. Torrey Holistics therefore is entitled to judgment ordering the City to comply with
28 its mandatory duty to revoke the approval of the MedMen CUP amendment and any subsequently
granted cannabis operating approvals.

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78. An actual controversy has arisen and now exists between Torrey Holistics and respondents regarding whether the SDMC and LCP allows for the City to approve an amendment to an existing Cannabis Outlet CUP: (i) when the applicant is out of compliance with SDMC's tax requirements; (ii) when a material change in the application occurs *after* the expiration date of the original Cannabis Outlet CUP; (iii) when the application is out of compliance with the COAs in the original Cannabis Outlet CUP; (v) when the original Cannabis Outlet CUP was never subject to redistricting but the extension of the CUP would result in continued exceedance of the Cannabis Outlet cap established by the SDMC and LCP; and (vi) the City acted arbitrarily and capriciously in light of state and local laws related to cannabis operations.

80. Torrey Holistics further seeks a declaratory judgment that, upon satisfaction of all other requisites, the City must revoke the approval for the MedMen CUP amendment and any subsequently issued cannabis operating approvals.

I. PRAYER FOR RELIEF

1. As to the First Cause of Action: for judgment and a writ of mandate directing the City to comply with the SDMC and LCP by revoking the approval of the MedMen CUP amendment and any subsequently granted cannabis operating approvals.

2. As to the Second Cause of Action: for judgment and a writ of mandate directing the City to comply with the SDMC and LCP by revoking the approval of the MedMen CUP amendment and any subsequently granted cannabis operating approvals.

3. As to the Third Cause of Action: for judgment and a writ of mandate directing the City to comply with the SDMC and LCP by revoking the approval of the MedMen CUP amendment and any subsequently granted cannabis operating approvals.

4. As to all claims for damages, to the extent authorized or applicable, an award of any general, special, incidental or other damages the Court deems appropriate.

5. For costs of suit.

6. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and as authorized by any other applicable provisions of law.

7. For such other relief as the Court deems just and proper.

Dated: December 18, 2024

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By */s/Whitney A. Hodges*

Whitney A. Hodges
Allison C. Wong

Attorneys for Petitioners and Plaintiffs
TORREY HOLISTICS, INC.

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Tony Hall

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