IMMEDIATE STAY REQUESTED

Fourth Civil Number D079215

In the Court of Appeal of the State of California

FOURTH APPELLATE DISTRICT
DIVISION ONE

UL CHULA TWO LLC,

Plaintiff and Appellant,

v.

CITY OF CHULA VISTA, a California public entity; CHULA VISTA CITY MANAGER, and DOES 1-20,

Defendants and Respondents,

MARCH AND ASH CHULA VISTA, INC.;

TD ENTERPRISES LLC; and DOES 23 through 50,

Real Parties In Interest.

From the Superior Court of the State of California
For the County of San Diego County
Case Number 37-2020-00041554-CU-WM-CTL
[Related to Case Nos. 2020-00041802-CU-MC-CTL; 37-2020-00033446-CU-MC-CTL]
The Honorable Richard E.L. Strauss;
Dept. C-75; Tel. #: (619) 450–7075

PETITION FOR WRIT OF SUPERSEDEAS, PROHIBITION, IMMEDIATE TEMPORARY STAY, AND/OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF [ACCOMPANIED BY APPENDIX OF EXHIBITS]

LEWIS BRISBOIS BISGAARD & SMITH LLP
*Lann G. McIntyre, SBN 106067
lann.mcintyre@lewisbrisbois.com
Gary K. Brucker, Jr., SBN 238644
Anastasiya Menshikova, SBN 312392
550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619.233.1006
Facsimile: 619.233.8627

Attorneys for Plaintiff and Appellant
UL CHULA TWO LLC

COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION ONE	COURT OF APPEAL CASE NUMBER: D079215
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: Lann G. McIntyre (SBN 106067); Gary K. Brucker, Jr. (SBN 238644) FIRM NAME: Lewis Brisbois Bisgaard & Smith LLP STREET ADDRESS: 550 West C Street, Suite 1700 CITY: San Diego STATE: CA ZIP CODE: 92101 TELEPHONE NO.: (619) 233-1006 FAX NO.: (619) 233-8627 E-MAIL ADDRESS: lann.mcintyre@lewisbrisbois.com; gary.brucker@lewisbrisbois.com ATTORNEY FOR (*name*): Petitioner and Plaintiff UL Chula Two LLC	SUPERIOR COURT CASE NUMBER: 37-2020-00041554-CU-MC-CTL
APPELLANT/ PETITIONER: UL CHULA TWO LLC RESPONDENT/ REAL PARTY IN INTEREST: CITY OF CHULA VISTA, ET AL.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Petitioner and Plaintiff UL Chula Two LLC

2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☒ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest *(Explain):*
(1) UL Holdings, Inc.	Ownership interest
(2) Will Senn	Ownership interest
(3) CVC Holding LLC	Ownership interest
(4) Chetan Abrol	Ownership interest
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 3, 2021

Lann G. McIntyre
(TYPE OR PRINT NAME)

/s/ Lann G. McIntyre
(SIGNATURE OF APPELLANT OR ATTORNEY)

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INTRODUCTION

UL Chula Two LLC ("UL Chula") applied for one of two storefront retailer cannabis licenses in the City of Chula Vista's (the "City") District One. In its application, UL Chula disclosed a matter involving the Holistic Café, in which eight years earlier one of UL Chula's principals had entered a stipulated judgment regarding civil zoning violations in the City of San Diego

involving a nonprofit medicinal cannabis storefront called the Holistic Café.

After completing the application, going through a background check and participating in an interview, UL Chula scored the highest of any retail storefront applicant in District One and fully expected to advance to the next stage. The City, however, improperly denied UL Chula's application on the basis that the City of San Diego had "adversely sanctioned or penalized" one of UL Chula's principals for a "material violation of state or local laws or regulations related to Commercial Cannabis Activity" under the City's Municipal Code ("CVMC"), Section 5.19.050(A)(5)(f), and for involvement in "unlawful Commercial Cannabis Activity" under Section 5.19.050(A)(5)(g). Although the Notice of Decision did not mention the Holistic Café, later proceedings revealed that the alleged civil zoning violations relating to the nonprofit medicinal cannabis storefront were the basis for the City's denial of UL Chula's application.

UL Chula filed a petition for writ of administrative mandamus to reverse the denial of the application to operate a retail storefront cannabis business by the City and Chula Vista City Manager and requested a preliminary injunction. Real parties in interest March and Ash Chula Vista, Inc., and TD Enterprises LLC were unsuccessful applicants in other districts, but after UL Chula was disqualified, they were given the opportunity to change districts and move to the next phase of the application process with the City in District One.

UL Chula successfully obtained a temporary restraining order, but the court denied the petition for writ of administrative mandamus and request for a preliminary injunction and dissolved the temporary restraining order it had previously granted. UL Chula appealed the judgment. In the meantime, however, the City is free to proceed with the licensing process and to issue licenses in District One. UL Chula requests that this Court issue a temporary stay or writ of supersedeas or other relief to temporarily stay further licensing decisions by the City in District One pending the outcome of this appeal. Otherwise, UL Chula will lose the benefit of this appeal and will be irreparably harmed.

UL Chula presents substantial issues in this appeal. The alleged civil zoning violations the City relied on do not constitute unlawful "commercial cannabis activity" as a matter of law, and the City's decision to treat it as such was plain error.

In addition, the only reading of the sections of the municipal code relied on by the City to deny UL Chula's application that gives effect to both the purpose of the code and other sections of the code is that the phrase "unlawful Commercial Cannabis Activity" must mean not just *any* unlawful activity, but commercial cannabis activities that were unlawful under the regulatory schemes enacted by the State of California and localities following the passage of Proposition 64 in 2016 and the City in 2018, which legalized commercial and adult recreational cannabis use and the term

"commercial cannabis activity" was first coined. The City applied an erroneous legal standard to deny UL Chula's application for a license.

Moreover, the administrative proceedings were permeated by procedural irregularities that denied UL Chula a fair hearing. Deputy City Attorney Megan McClurg played an integral role in drafting the ordinance that was eventually codified as CVMC § 5.19.01 *et seq*. In so doing, Ms. McClurg made presentations to City Manager Gary Halbert and worked closely with his staff. At the hearing on UL Chula's appeal from the City's denial of its application, Ms. McClurg, who was one of the drafters of the very code that governed UL Chula's application and appeal, represented the City of Chula Vista and her colleague, another Deputy City Attorney served as advisor to the hearing officer, City Manager Gary Halbert. Naturally, the City Manager was, or at the very least reasonably appeared to be substantially influenced by the arguments made by Ms. McClurg and particularly those about what the municipal code said and meant when deciding UL Chula's appeal. UL Chula was deprived of a fair and impartial tribunal for the appeal hearing.

WHY A WRIT SHOULD ISSUE

A writ of supersedeas or temporary stay or other relief to preserve the status quo may issue following the denial of a writ of administrative mandamus and preliminary injunction if petitioners would suffer irreparable harm in the interim.

A stay pending appeal is necessary to maintain the status quo because the City is now free to proceed with issuing licenses in District One. The City only permits eight storefront licenses—two for each of the City's four districts. The City has allowed March and Ash and TD Enterprises, who did not qualify to advance to Phase Two of the application process in their original districts, to migrate into District One and advance to Phase Two. If these applicants are issued licenses, no licenses will remain for UL Chula. Even if more licenses are made available in the future, UL Chula will lose the competitive advantage afforded by being "first-to-market" and developing a loyal customer base.

Without the relief requested in this petition, the City will be free to issue whatever licenses it wishes until the appeal is heard and decided. The value of the appeal will be lost. No harm will result from maintaining the status quo pending the determination of the appeal, and to the extent there is any burden on the City, it is certainly outweighed by the harm to UL Chula if its business prospects are not protected.

Thus, to prevent unnecessary and irreparable further harm to UL Chula, a writ of supersedeas or temporary stay must issue to stay the City's licensing decisions pending the outcome of UL Chula's appeal of the order denying its petition for writ of administrative mandamus and request for preliminary injunction.

PETITION FOR WRIT OF SUPERSEDEAS

A. The Parties.

1. Appellant UL Chula is a plaintiff in an underlying action entitled *UL Chula Two LLC vs. City of Chula Vista*, et al., Superior Court of the State of California, County of San Diego, Case No. 37-2020-00041554-CU-WM-CTL [Related to Case Nos. 2020-00041802-CU-MC-CTL; 37-2020-00033446-CU-MC-CTL]. [Petitioner's Appendix of Exhibits ("PA") Exh. 1, pp. 7-9.][1]

2. Respondents City of Chula Vista, Chula Vista City Manager and DOES 1-20 are defendants in the underlying action. [PA Exh. 1, pp. 7-9.]

3. Real Parties in Interest March and Ash Chula Vista, Inc., TD Enterprise LLC and DOES 23 through 50 are Real Parties in Interest in the underlying action. [PA Exh. 1, pp. 7-9.]

B. Authenticity of Exhibits.

1. The exhibits accompanying this petition in the appendix to the petition are true and correct copies of documents filed in the superior court. Certain excerpted pages from the certified administrative record are also included. All exhibits are incorporated by reference as though fully set forth herein.

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[1] References to Petitioner's Appendix ("PA") shall be to the exhibit number and consecutively paginated page number of the three-volume appendix of exhibits filed concurrently with the petition.

C. Factual and Procedural Background

1. UL Chula applied for a retail storefront license in the City's District One. [PA Exh. 1, p. 8; Exh. 6, p. 699.] As required by the application and CVMC 5.19.050(A)(1)(j), one of UL Chula's principals, Willie Senn, was obligated to sign an Affirmation and Consent affirming that he "has not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction." [PA Exh. 1, pp. 12, 110.] Contemporaneously, and in order to be fully transparent, counsel for UL Chula disclosed to the City of a stipulated judgment involving Mr. Senn on December 14, 2012, in the *Holistic Café* matter. [PA Exh. 1, pp. 112-113; Exh. 6, pp. 700-701.] The *Holistic Café* complaint alleged various civil zoning violations in the City of San Diego. [PA Exh. 6, pp. 713-722.] In resolving the lawsuit, the parties stipulated and agreed in the *Holistic Café* matter that "[n]either this Stipulated Judgment nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint." [*Id.* at 723-725.]

2. Despite disclosing the Holistic Café matter, on June 10, 2019, the City notified UL Chula that it had successfully completed Phases 1A and 1B, and invited UL Chula to proceed to Phase 1C (the interview) on July 17, 2019. [PA Exh. 1, p. 115; Exh. 6, p. 702.] UL Chula's total score following the interview was 900.3 points—the highest for a retail storefront in the City's District One. [PA Exh. 6, p. 712.]

3. On May 6, 2020 the City issued a Notice of Decision rejecting UL Chula's Application. [PA Exh. 1, p. 117; Exh. 6, pp. 703-706.] The City cited two sections of CVMC § 5.19.050 as the basis for its decision:

4. First, the City cited CVMC § 5.19.050(A)(5)(f), stating, Mr. Senn "has been adversely sanctioned or penalized by the City . . . for a material violation of state or local laws or regulations related to **Commercial Cannabis Activity** . . . ." It went on to claim that "The City of San Diego sanctioned William [*sic*] Senn for violations of laws or regulations related to **unlawful Commercial Cannabis Activity**." [PA Exh. 1, p. 117; Exh. 6, pp. 703-706.]

5. Second, the City cited CMVC § 5.19.050(A)(5)(g), stating, Mr. Senn has "conducted, facilitated, caused, aided, abetted, suffered, or concealed **unlawful Commercial Cannabis Activity** in the City or any other Jurisdiction . . . ." It went on to claim that "William [*sic*] Senn was involved in **unlawful Commercial Cannabis Activity** in the City of San Diego from approximately 2010 to 2012." [PA Exh. 1, p. 117; Exh. 6, pp. 703-706.]

6. The Notice of Decision did not mention *Holistic Café* or any of the particular facts or evidence that the City relied upon in reaching its conclusions. [PA Exh. 1, p. 117; Exh. 6, pp. 703-706.]

7. The City's application procedure specifically allows for an appeals process, including a requirement for a hearing. (CVMC, § 5.19.050, subd. (A)(6); Regs, § 0501, subd. (P)(2)(b).)[2] The Notice of Decision gave UL Chula until May 21, 2020 to appeal the decision. [PA Exh. 1, p. 117; Exh. 6, pp. 703-706.] On May 21, 2020, UL Chula timely filed a Consolidated Request to Appeal with the City of Chula Vista. [PA Exh. 1, p. 119; Exh. 6, pp. 707-709.] On May 26, 2020, the City sent notice of a hearing on June 10, 2020. [PA Exh. 1, pp. 125-126.]

8. On Friday, June 5, 2020, the City emailed its evidence to UL Chula, which was the first time the City disclosed that it was relying upon the allegations in *Holistic Café* as the basis to deny UL Chula's Application. [PA Exh. 6, p.710; Exh. 8, p. 827.]

9. Also on June 5, 2020, UL Chula submitted a brief on appeal arguing: (1) the rejection of its applications was impermissibly vague and violated due process in that it did not disclose any of the facts or evidence that the City relied upon in rejecting the application; (2) there were no laws related to Commercial Cannabis Activity in 2010-2012 in the City of San Diego; (3) to the extent the City's decision was related to *Holistic Café*, there is no relevant, admissible evidence that

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[2] Even if the City's application procedure had not provided for an appeal, a "fair and impartial hearing" so that an applicant can "present the merits of her application to the licensing tribunal" is nonetheless required by law. (See *Fascination, Inc. v. Hoover* (1952) 39 Cal.2d 260, 268-270.)

Mr. Senn engaged in unlawful *commercial* cannabis activity; and (4) that the City should exercise its discretion and set aside the Notice of Decision on equitable grounds. [PA Exh. 1, pp. 128-137; Exh. 6, pp. 726-735.]

10. A hearing was held on June 10, 2020, with the City Manager serving as the hearing officer. A deputy city attorney was present as an advisor to the City Manager, and another deputy city attorney was present as counsel for the City. [PA Exh. 6, pp. 736-739, 814.] Testimony was given by witnesses for the City and the City's evidence was admitted, over UL Chula's objections. [*Id.* at pp. 142, 739-820.][3] UL Chula presented no evidence or testimony at the hearing because the City's impermissibly vague Notice of Decision prejudiced UL Chula's ability to prepare for the hearing, which itself was scheduled on less than legally sufficient notice under the Regs. [PA Exh. 8, p. 827.]

11. The City served its "Findings and Statement of Decision with Regard to Appeal of Notice of Decision Rejecting Application for Cannabis License" ("Final Decision") on August 26, 2020. [PA Exh. 1, pp. 142-147 ; Exh. 6, pp. 814-819.] The Final Decision denied UL Chula's appeal and concluded "the

[3] Petitioner stipulated to the admissibility of Exhibits 1-7, 14, 15 and 16. Petitioner raised objections with specific grounds to the remaining exhibits as they were presented during the hearing. [PA Exh. 6, pp. 757-758, 763-765, 767, 769, 773, 778.]

evidence shows the City reasonably and properly denied Appellant's application." [PA Exh. 1, p. 147; Exh. 6, p. 819.]

12. On November 13, 2020, UL Chula filed its verified petition for a writ of mandate. [PA Exh. 1, pp. 7-32.] On January 19, 2021, UL Chula filed a motion for preliminary injunction. [PA Exh. 2, pp. 264-294.] On February 1, 2021, UL Chula filed its ex parte application for a temporary restraining order preventing the City from issuing storefront licenses in District 1. [PA Exh. 3, pp. 465-691.] On February 4, 2021, the trial court granted UL Chula's request for a temporary restraining order. [PA Exh. 4, p. 693; Exh. 5, pp. 695-696.] The trial court decided to maintain the status quo by extending the temporary restraining order until the May 21, 2021 hearing on the Petition for Writ of Administrative Mandamus. [PA Exh. 7, p. 823.]

13. On May 21, 2021, the trial court denied UL Chula's writ of mandamus petition and its petition for preliminary injunction [PA Exh. 10, pp. 1090-1093.] The trial court further denied UL Chula's request for a temporary stay. [PA Exh. 11, pp. 1104-1108.] The court entered judgment on June 17, 2021. [PA Exh. 12, pp. 1111-1113.] The trial court's denial of the preliminary injunction is, in part, the basis for UL Chula's application for a writ of supersedeas.

14. On July 6, 2021, UL Chula filed a Notice of Appeal from the judgment. [PA Exh. 13, pp. 1122-1124.]

D. Basis for Relief.

1. If the City is allowed to continue issuing storefront licenses it will result in UL Chula missing its opportunity to apply for such a license, further damaging its business. There are only two retail storefront cannabis licenses for each of the City's four districts. Being first-to-market is critical to the success, profitability and viability of these types of businesses. UL Chula will suffer irreparable harm and the appeal will not provide an adequate remedy if a temporary stay of issuance of licenses is not ordered.

E. Inadequacy of Remedy by Appeal.

1. Relief in the ordinary course of appeal is an inadequate remedy because the City can continue to issue storefront retail licenses, preventing UL Chula from having its chance at securing a license. The City must be enjoined from such action. With each license that the City issues, UL Chula's ability to secure a license for its storefront retail cannabis business is threatened. Thus, if UL Chula is forced to wait for its appeal to be heard it will continue to suffer irreversible damage to its business prospects.

PRAYER

WHEREFORE, petitioner UL Chula prays that this court:

1. Pending this Court's ruling on this petition, UL Chula requests that the Court issue a temporary immediate stay of enforcement of the City of Chula Vista's decision to deny

UL Chula's application for a retail storefront commercial cannabis license and the City's issuance of any further licenses in District One and/or the decision and judgment of the Superior Court in Case Number 37-2020-00041554-CU-MC-CTL; and/or

2. Issue a writ of supersedeas, a stay, or other appropriate relief staying enforcement of the City of Chula Vista's decision to deny UL Chula's application for a retail storefront commercial cannabis license and the City's issuance of any further licenses in District One and/or the decision and judgment of the Superior Court in Case Number 37-2020-00041554-CU-MC-CTL, such stay to remain in effect until the remittitur is issued in the instant appeal;

3. Grant such other and further relief as may be deemed just and proper.

DATED: August 3, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: */s/ Lann G. McIntyre*
Lann G. McIntyre
Gary K. Brucker, Jr.
Anastasiya Menshikova
Attorneys for Plaintiff and Appellant
UL CHULA TWO LLC

VERIFICATION

I, Lann G. McIntyre, declare as follows:

I am an attorney duly licensed to practice in all of the courts of the State of California and am a partner at Lewis Brisbois Bisgaard & Smith LLP, attorneys of record for petitioner herein. I have read the foregoing petition and know its contents. The facts alleged in the petition are true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I executed this verification on August 3, 2021, in San Diego, California.

/s/ Lann G. McIntyre
Lann G. McIntyre

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

I.
DISCUSSION

A. This Court Has the Authority to Stay the Underlying Proceedings Pending the Outcome of UL Chula's Appeal.

On appeal from a judgment denying a petition for a writ of administrative mandamus, the court to which the appeal is taken may stay the administrative order or decision. (Code Civ. Proc., § 1094.5(g)-(h).) The court also has the inherent power pursuant to Code of Civil Procedure section 923 to stay proceedings during the pendency of an appeal, to issue a writ of supersedeas, or to make any order appropriate to preserve the status quo, the effectiveness of the judgment subsequently to be entered, or otherwise in aid of its jurisdiction. (Code Civ. Proc., § 923; see also *Sacramento Newspaper Guild v. Sacramento County Bd. Of Sup'rs*. (1967) 255 Cal.App.2d 51; *Dry Cleaners & Dryers Institute v. Reiss* (1937) 5 Cal.2d 306, 310 [purpose of the writ is to maintain the subject of the action in status quo until final determination of the appeal].)

UL Chula has met the two fundamental prerequisites to filing a petition for writ of supersedeas: (1) perfection of appeal, and (2) exhaustion of trial court remedies. (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2019 ¶¶ 7:276-7:278, p. 734.); *In re Christy L.* (1986)

187 Cal.App.3d 753, 758-759; *Veyna v. Orange County Nursery, Inc.* (2009) 170 Cal.App.4th 146, 157-158.

UL Chula perfected its appeal of the order denying the petition for a writ of administrative mandamus and a preliminary injunction by filing a notice of appeal on July 6, 2021. [PA Exh. 13, pp. 1122-1124.]

UL Chula has exhausted its trial court remedies: the trial court in a final judgment denied the preliminary injunction which requested an injunction against issuing storefront retail cannabis licenses, and the trial court denied UL Chula's petition for writ of mandamus, which requested that UL Chula be allowed to proceed to Phase Two of the application process.[PA Exh. 12, pp. 1111-1119.] Hence, UL Chula has met the procedural prerequisites to supersedeas relief.

Once these prerequisites have been met, a writ of supersedeas may issue upon a showing that (1) appellant would suffer irreparable harm absent the stay, and (2) the appeal has merit. (The Rutter Group 2019 ¶¶ 7:279-7:286, pp. 735-737.); *Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625.; *Mills v. County of Trinity* (1979) 98 Cal.App.3d 859, 861. As demonstrated below, this case meets both requirements.

B. This Court Should Issue a Temporary Stay or Writ of Supersedeas to Preserve the Status Quo and to Avoid Irreparable Harm to UL Chula.

A court should issue a discretionary stay pending appeal when "necessary to protect the appellants from the irreparable injury they will necessarily sustain in the event their appeal is deemed meritorious. (*Mill v. Cty. of Trinity* (1979) 98 Cal.App.3d 859, 861.) Courts considering discretionary stays consider two issues: (1) whether the appellant needs a stay to protect "the benefit of a reversal of the judgment against him," and (2) whether it is "like[ly] that substantial questions will be raised on appeal." (*Veyna v. Orange Cty. Nursery, Inc.* (2009) 170 Cal.App.4th 146, 156-157; see also *People ex rel. San Francisco Bay Conservation & Dev. Comm'n Town of Emeryville* (1968) 69 Cal.2d 533, 537 [stay pending appeal was necessary because "difficult questions of law are involved and the fruits of a reversal would be irrevocably lost unless the status quo is maintained"].)

The controlling test for whether to issue a writ of supersedeas is not the balancing of convenience or hardships, but the respective rights of the parties in view of either an affirmance or a reversal on appeal. (*Suburban Gas Service, Inc. v. Higgins* (1950) 98 Cal.App.2d 767, 769; *Food & Grocery Bureau v. Garfield* (1941) 18 Cal.2d 174, 177; see also *Mills v. County of Trinity, supra,* 98 Cal.App.3d at p. 861; *Sacramento Newspaper Guild v. Sacramento County Bd. Of Supervisors* (1967) 255 Cal.App.2d 51,53.) Here, UL Chula's right to protect its ability

to secure a storefront retail cannabis license greatly outweighs the right of the City to issue such licenses. In measuring the rights of the respective litigants, the scale clearly tips in favor of UL Chula's right to protect its business prospects.

Where the core purpose of the underlying lawsuit is to protect property interests from being lost pending appeal, and that purpose would be made moot if a stay was not in place, the court appropriately issues a writ of supersedeas to temporarily preserve the parties' rights. (*Ciani v. San Diego Trust & Sav. Bank* (1991) 233 Cal.App.3d 1604, 1621. ["we are obliged to issue the writ of supersedeas" to overrule the trial court's denial of the preliminary injunction].) In *Ciani*, the validity of a coastal development permit was at issue. The trial court denied an order preliminary enjoining the respondent from demolishing structures. Although the appellate court noted the facts upon which it was basing its decision to issue a writ of supersedeas were "tentatively found, upon the basis of probably incomplete evidence" it was "obliged" to issue the writ of supersedeas pending determination of the appeal because the core purpose of the underlying case would become moot if a writ of supersedeas were not issued and buildings were to be razed during the pendency of the appeal. (*Ibid.*)

Courts issue writs of supersedeas to prevent cities from issuing permits and licenses. For example, in *Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, the court extended a writ of supersedeas previously issued and

directed the trial court to issue an injunction prohibiting the city from issuing demolition permits unless the permits met specific criteria outlined by the court. (*Lincoln Place Tenants Assn. v. City of Los Angeles*, *supra,* at p. 1511.)

Here, similarly, issuance of a writ of supersedeas would maintain the status quo, remove the potential that an appeal will become moot, and remove the risk of permanent business injury and irreparable loss of business opportunity.

In reviewing the respective rights of the litigants in this proceeding, there is only one conclusion: a stay is necessary to protect UL Chula from the irreparable injury it will necessarily sustain in the event that its appeal is deemed meritorious. (*Mills v. County of Trinity*, *supra,* 98 Cal.App.3d at p. 861.) The City, on the other hand, will not suffer significant harm from a stay pending this appeal. The City has moved at a snail's pace in the licensing process since its inception. UL Chula is not requesting relief with respect to licensing applications and issuance of licenses in Districts Two, Three and Four. The relief sought by UL Chula is narrowly tailored and limited to the two retail storefront cannabis licenses the City might issue in District One. A brief stay during the pendency of this appeal will not have a significant effect on the City or Real Parties in Interest, but without a stay, UL Chula will be forever deprived of the "first-to-market" advantage that characterizes the cannabis retail industry and of the opportunity to secure one of only two retail storefront cannabis licenses available in District One.

As the president of UL Holdings, Willie Senn, attested based on his many years in the retail cannabis industry, the shopping habits of cannabis customers are particularly driven by loyalty to a chosen location and may not readily change shopping locations. [PA, Exh. 2, pp. 287-288.] The stark "first-to-market" advantage is invaluable to a new business developing goodwill. Establishing a comparable market share to the first and second retailers in the area is very difficult, even with superior products and customer service, and lower prices. [*Ibid.*]

Thus, even if the City were to grant additional licenses in District One, UL Chula will have a difficult time competing against already established "first-to-market" competitors with a loyal customer base. (Cf. *Donahue Schriber Realty Grp., Inc. v. Nu Creation Outreach* (2014) 232 Cal.App.4th 1171, 1184 ["customers choose to shop at a particular location based on custom and habit. . . a shopping center's success depends on customer goodwill and a desire to return to the same location out of habit and loyalty."], quoting *Wind v. Herbert* (1960) 186 Cal.App.2d 276, 285.)

C. UL Chula's Appeal Raises Substantial Issues.

The correctness of a decision of the trial court is not involved in the supersedeas proceeding; "it is not the function of such a writ to reverse, supersede, impair force of, or pass on the merits of judgment or order from which appeal has been taken." (*Shakin v. Board of Medical Examiners* (1967) 254 Cal.App.2d 102.) Because a writ of supersedeas does not decide the merits of

the appeal, the appellant's burden of showing "merit" is not so strong as to require the submission of an opening brief. *Sanchez v. Sanchez* (1960)178 Cal.App.2d 810, 818. Rather, to support issuance of the writ of supersedeas, appellant must show that "substantial questions" will be raised on the appeal. *Veyna v. Orange County Nursery, Inc.* (2009)170 Cal.App.4th 146, 157 and must explain the underlying case in a manner that "facially" demonstrates the merit of these issues. (Eisenberg et al., Cal Practice Guide: Civil Appeals and Writs (The Rutter Group 2019) ¶ 7.286, p. 737.)

1. The Trial Court Applied The Wrong Legal Standard In Interpreting The Phrase "Unlawful Commercial Cannabis Activity"

The abuse of discretion standard applies to reviewing the trial court's denial of the administrative writ. (*Hoag Memorial Hospital Presbyterian v. Kent* (2019) 36 Cal.App.5th 413, 421 ["The appellate scope of review from a judgment on a petition for writ of mandate is the same as that of the trial court . . . an appellate court asks whether the public agency committed a prejudicial abuse of discretion."].) A court's discretion is not unfettered, however, but must be measured against the general rules of law applicable to the case. (*Horsford v. Board of Trustees of Calif. State Univ.* (2005) 132 Cal.App.4th 359, 393-394; *Thayer v. Wells Fargo Bank, N.A.* (2001) 92 Cal.App.4th 819, 833 ["scope of discretion always resides in the particular law being applied."].) Furthermore, even construing all of the

evidence in favor of the City, there was no reasonable basis for the trial court's ruling.

Here, UL Chula's appeal raises the issue of whether the trial court abused its discretion in applying an overly broad reading of the law. An abuse of discretion occurs when the applicable principles of law are not followed. "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc. § 1094.5, subd. (b); *Horsford v. Board of Trustees of Calif. State Univ., supra*, 132 Cal.App.4th at p. 393 ["action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an 'abuse' of discretion"].) The trial court's decision does not comport with the applicable law.

The trial court in this case denied the administrative writ because it applied an overly broad reading of Chapter 5.19 of the Chula Vista Municipal Code's (CVMC) reference to "Commercial Cannabis Activity." CVMC § 5.19.050(A)(5)(f) states:

> The Applicant, an Owner, a Manager, and/or an Officer has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure.

CVMC § 5.19.050(A)(5)(g) provides:

> The Applicant, an Owner, a Manager, and/or an Officer has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

In applying a broad reading of CVMC §§ 5.19.050(A)(5)(f) and (g), the trial court agreed that the civil zoning violations found in the *Holistic Café* matter constitute unlawful "*Commercial* Cannabis Activity."

The City's sole basis for rejecting Petitioner's application was an alleged civil zoning violation in the *Holistic Café* matter from 2012 that the City incorrectly determined was disqualifying pursuant to CVMC §§ 5.19.050(A)(5)(f) and (g).

None of the zoning ordinances that the City of San Diego accused the Holistic Café of violating in 2012 barred a medicinal cannabis storefront (or used the words marijuana or cannabis for that matter).[4] Indeed, the City's Statement of Decision concedes that "[s]pecific state licensing and local licensing of cannabis dispensaries" did not go into effect until 2016, four years *after* the City of San Diego entered into a stipulated judgment in *Holistic Cafe*. [PA Exh. 6, p. 816.] There simply were no "state or local laws or regulations related to *Commercial* Cannabis

[4] The City of San Diego did not amend its zoning rules to address medicinal cannabis until March 25, 2014, with the passage of Ordinance No. O-20356. [PA Exh. 6, pp. 919-954.]

Activity" in effect in 2012 that could have been the basis for the City's rejection of Petitioner's application.

Nonetheless, the Hearing Officer's Statement of Decision, which applied the wrong legal standard because it omitted the key term "commercial," found that:

> The City of Chula Vista Municipal Code has two sections that address the denial of a license for *Unlawful Cannabis Activity*, CVMC section 5.19.050(A)(5)(f) and (g). . . .
> The record shows Appellant engaged in *Unlawful Cannabis Activity* and, as a result, his cannabis license applications were properly denied . . . .
>
> [PA Exh. 6, pp. 816-817.]

The complaint in *Holistic Café* alleged violations of San Diego Municipal Code ("SDMC") §§ 1512.0305, 129.0202, 129.0302, 129.0802, 121.0302, 129.0111, 129.0314, 146.0104. [PA Exh. 2, pp. 428-437.] Other than Sections 121.0302 and 1512.0305, these code sections related to structural, electrical, and signage requirements, each of which could have been easily corrected by calling a contractor.

Together, SDMC §§ 121.0302 and 1512.0305 enact zoning rules for zone CN-1A in the City of San Diego's Mid-City Communities Planned District.[5] Table 1512-03I therein lists

[5] A copy of the Municipal Code in effect at the time is found at PA Exh. 3, p. 658-668.

all permitted uses for buildings located in zone CN-1A and excludes all other uses (as opposed to identifying excluded uses). [PA Exh. 3, pp. 661-665.] Notably, Table 1512-03I specifically allows for the operation of drug stores, pharmacies, liquor stores, bakeries, confectioneries, florists, variety stores, food stores, and dry goods stores without any reference to the types of products sold therein. [*Ibid.*] Yet, the City of San Diego contended in *Holistic Café* that a medicinal cannabis storefront was not specifically listed as a permitted use. [PA Exh. 6, pp. 713-722.] By this flawed logic, the City of San Diego could have also cited any café because the words "coffee," "tea," and "scones" were also not specifically listed.

During this 2010-2012 time period, localities and medical cannabis advocates hotly debated and litigated whether local governments could even use zoning regulations to ban legal medicinal cannabis storefronts with varying results. (See *City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413 [local governments cannot ban]; *County of Los Angeles v. Alternative Medicinal Cannabis Collective* (2012) 207 Cal.App.4th 601 [local governments cannot ban]; and *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 [local governments can ban].) It was not until 2013 that the California Supreme Court decided *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 761-762, which ruled that local governments could ban medical cannabis storefronts.

Despite having several legal and factual defenses available to them in 2012, the defendants in *Holistic Café*, including Mr. Senn, decided to settle the matter and entered into a stipulated judgment that did ***not*** include any admission of liability. [PA Exh. 6, pp. 723-725.] What the stipulated judgment did include was a reference to the uncertainty in the law (i.e., the then-pending *City of Riverside* case), and a provision that allowed the stipulated judgment to be amended in the future if the law were to change. [PA Exh. 6, p. 725.] Consistent with that provision, the Superior Court in *Holistic Café* amended the judgment on May 3, 2019 so as to specifically permit the defendants therein to engage in cannabis activities. [PA Exh. 1, pp. 139-140; Exh. 2, pp. 414-415.]

The term "Commercial Cannabis Activity" is defined by the City as follows: ". . . the *commercial* cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis or Cannabis Products." (CVMC, § 5.19.020 (emphasis added).) Critically, the City's definition relates only to "commercial" and not "Medicinal Cannabis" or "Medicinal Cannabis Product," which terms are separately defined in CVMC § 5.19.020. Indeed, the City's licensing scheme for *commercial* cannabis activities expressly excludes medicinal cannabis activities, thereby confirming an important distinction between what is *commercial* and what is medicinal under the City's own laws. (See, e.g., CVMC, § 5.19.090 ["A Storefront Retailer shall not Sell Medicinal Cannabis or Medicinal Cannabis Products."].)

The Holistic Café was a nonprofit mutual benefit corporation organized in compliance with Attorney General guidelines for the lawful distribution of medicinal cannabis by collectives and cooperatives. [PA Exh. 6, pp. 713-714.] Neither CMVC §§ 5.19.050(A)(5)(f) nor (g) therefore apply as a matter of law, and the City erred by applying a standard that omitted the term "commercial." (*See* Code Civ. Proc., § 1858 ["In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . ."].) Further, even if the defined term "Commercial Cannabis Activity" could be read as encompassing the nonprofit distribution of medicinal cannabis (it cannot), the alleged civil zoning violations in Holistic Café are not disqualifying under CMVC §§ 5.19.050(A)(5)(f) or (g) as a matter of law and the City committed clear legal error in finding the contrary.

The scope of CVMC §§ 5.19.050(A)(5)(f) and (g) is limited to misconduct surrounding "*Commercial* Cannabis Activity." The phrase "unlawful Commercial Cannabis Activity" must be read to mean commercial cannabis activities that are unlawful under the regulatory schemes enacted by the State and localities following the passage of Proposition 64 in 2016, and not just any activity that is unlawful in the abstract. For example, under CVMC § 5.19.050(A)(1)(e)(i), the manager of a commercial cannabis license applicant must have "[a] minimum of 12 consecutive months, within the previous five years, as a

Manager with managerial oversight or direct engagement in the day-to-day operation of a lawful Commercial Cannabis Business *in a jurisdiction permitting such Commercial Cannabis Activity*." (CVMC, § 5.19.050(A)(1)(e)(i), italics added.) Yet, there are no jurisdictions permitting lawful commercial cannabis activity anywhere in the United States because *all* cannabis activity is unlawful under Federal law. (See, e.g., 21 U.S.C., § 811.) In fact, even if the City were to ignore Federal law entirely, there were no lawful *commercial* cannabis businesses anywhere in the state of California until its voters passed Proposition 64 in 2016.

Thus, it cannot be that *any* unlawful cannabis activities are disqualifying because that would necessarily lead to the automatic disqualification of every single experienced applicant whose experience in cannabis comes from managing a cannabis business (which is unlawful under Federal Law) or from engaging in any commercial cannabis activities in California before 2016. (See *City of Sanger v. Super. Ct.* (1992) 8 Cal.App.4th 444, 448 [courts should decline to interpret statutes in a manner that would frustrate the purposes of legislation or lead to absurd results].) Rather, for subdivision (g) to make any sense (and to avoid an otherwise direct conflict with CVMC § 5.19.050(A)(1)(e)(i)), subdivision (g) must be interpreted so that the phrase "unlawful Commercial Cannabis Activity" means activities that are unlawful under the regulatory schemes enacted by the State and City after 2016 and 2018, respectively, which is when each jurisdiction first coined the term "Commercial Cannabis Activity" in their respective codes.

Under this common sense reading of subdivision (g), an alleged violation of the City of San Diego's general zoning ordinances from back in 2012—ordinances that did not expressly ban otherwise lawful, nonprofit, medicinal cannabis storefronts under Senate Bill 420—cannot possibly be deemed an *unlawful* Commercial Cannabis Activity, because that phrase should only apply to activities deemed unlawful under the regulatory schemes enacted by the State and City following the passage of Proposition 64. Had the City intended otherwise, it could have changed the definition of Commercial Cannabis Activity to include nonprofit medicinal cannabis. It did not. The City could have also dropped the term "commercial" so that the disqualification was expanded to any "unlawful Cannabis Activity." It did not. Under the only logical reading of subdivision (g), the trial court clearly erred in applying an overly broad reading of the phrase.

Similarly, with regard to CVMC 5.19.050 § (A)(5)(f), the key language is the phrase "laws or regulations *related to* Commercial Cannabis Activity." (Italics added.) There are two ways to read subdivision (f). The first is the broadest and vaguest way which, unfortunately, is the reading that the trial court improperly applied. Under the trial court's misapplication of subdivision (f), the words "laws or regulations" are not limited to the laws or regulations "related to" the regulatory schemes that defined the term "Commercial Cannabis Activity" and made commercial cannabis activity lawful in the State of California and in the City for the very first time. Rather, the trial court's

reading extends to any "laws or regulations" of general application, including laws and regulations that have absolutely nothing to do with the regulation of commercial cannabis activity (or medicinal cannabis activity or even cannabis generally, for that matter).

Under this overbroad and untethered reading of subdivision (f), the City could, theoretically, reject an applicant whose otherwise lawful and licensed medicinal cannabis business was sanctioned for violating wage and hour laws. The City could likewise reject an applicant who received a speeding ticket while transporting medicinal cannabis. Or the City could reject an applicant for violating a noise ordinance. It was using this overly broad and unduly vague reading of subdivision (f) that the City erroneously concluded that any civil zoning violation at an otherwise lawful, nonprofit medical cannabis storefront constituted a violation of law "related to Commercial Cannabis Activity."

Alternatively, subdivision (f) can be read consistently with the clear intent of subdivision (g), discussed above, which avoids these kinds of absurd results by interpreting the phrase "state or local laws or regulations related to Commercial Cannabis Activity" to mean those laws and regulations that were enacted along with the regulatory scheme that first defined the term "Commercial Cannabis Activity" (at both the state and local level). This reading provides applicants with fair notice of what is and what is not a disqualifying violation of law because

applicants can review the Business and Professions Code and the CVMC and determine whether they have, in fact, violated any of the myriad commercial cannabis laws and regulations enacted following Proposition 64, MAUCRSA, or Ordinance No. 3418.

Under this proper reading of subdivision (f), a violation of the City of San Diego's general zoning regulations that did not expressly exclude otherwise lawful, nonprofit, medicinal cannabis storefronts under Proposition 215, but merely provided for a list of approved zoning uses on which medicinal cannabis was not explicitly listed (but was impliedly so, as discussed above), is not a violation of law *related to* Commercial Cannabis Activity as that phrase should be interpreted.

Had the trial court applied a proper reading of Chapter 5.19 of CVMC's reference to "Commercial Cannabis Activity," it would have had no basis to deny Petitioner's administrative writ petition.

2. The Trial Court Incorrectly Applied The Law Related To A Fair Tribunal

The city attorney's office was conflicted, and the trial court failed to apply the law requiring that adequate screening measures be in place. The City's appeal process violated Petitioner's due process right to a fair tribunal "in which the judge or other decision maker is free of bias for or against a party." (*Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 737 [citation and quotation marks omitted].) This is because Deputy City Attorney

Simon Silva served as the adviser to the hearing officer (i.e., City Manager Gary Halbert), and Deputy City Attorney Megan McClurg served as counsel for Respondent. [PA Exh. 6, 736-741.]

Although a "city attorney's office may 'act[] as an advocate for one party in a contested hearing while at the same time serving as the legal adviser for the decision maker'" without violating the other party's right to a fair tribunal, "performance of both roles" offends due process when: (1) adequate measures to screen the deputy city attorney serving as prosecutor and the deputy city attorney serving as adviser are absent; or (2) the deputy serving as prosecutor becomes a "primary legal adviser" to the decision maker. (*Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, 813, overruled in unrelated part by *Morongo*, supra, p. 740, fn. 2, [citations and quotation marks omitted].) Here, there is no evidence to suggest that the City Attorney's Office employed adequate screening measures to guarantee the necessary separation between its dual roles of adviser and advocate. (See, *Quintero*, *supra*, p. 813 [clarifying that the respondent City of Santa Ana had the "burden of showing the required separation"].)

Even if there were screening measures in place, it would not matter because the City of Chula Vista Meeting Minutes reflected that Ms. McClurg worked closely with Deputy City Manager Kelly Bacon on the drafting of the City's cannabis laws in the presence of the City Manager/Hearing Officer Gary

Halbert. [PA Exh. 1, pp. 242-262.] Specifically, Ms. McClurg and a member of City Manager Halbert's staff, Deputy City Manager Kelley Bacon, played an integral role in the drafting of Ordinance 3418, eventually codified in CVMC § 5.19.010 *et seq.* Ms. McClurg and Ms. Bacon gave presentations to the Chula Vista City Council on the proposed ordinance, including their ongoing revisions thereto, no less than four times prior to the Ordinance's adoption. [PA Exh. 1, pp. 242-262.][6] City Manager Halbert was present each time for these presentations. [*Ibid*.] Given Ms. McClurg's and Ms. Bacon's joint role as drafters of the very code provisions which governed Petitioner's application and subsequent appeal, "[i]t would only be natural for [City Manager Halbert, Ms. Bacon's supervisor] . . . to give more credence to [Ms. McClurg's] arguments when deciding [Petitioner's] case." Under these facts, there is an "appearance of unfairness . . . sufficient to invalidate the hearing" on due process grounds. (*Quintero*, *supra*, p. 816.)

This set of circumstances creates an unacceptable risk of bias because the City Manager would naturally consider Ms. McClurg a "primary legal adviser," creating an incurable violation of due process. (*Quintero supra,* 114 Cal.App.4th at p. 813.)

Though the law does not require any evidence of bias or unfairness, the record shows there was ample bias and

[6] These exhibits are admissible pursuant to Code of Civil Procedure § 1094.5(e).

unfairness in the proceedings. For example, though Ms. McClurg knew what the CVMC said having participated in drafting the law, no less than 10 times she ignored the term "commercial" and articulated a lesser standard for the hearing officer. [PA Exh. 6, pp. 751-752, 755, 806, 808.]

For example:

- "MS. MCCLURG: . . . it's the City's position that there are valid grounds for rejection, um, that all applications were rejected based on the Appellant's um, involvement in *unlawful cannabis activity* in the City of San Diego. Um, to the extent that that's confusing as to which *unlawful cannabis activity* we were referring to, um, we can certainly provide more information, but um, we are aware of one incident in which um, Mr. Senn was sanctioned . . . ." [PA Exh. 6, p. 751 (emphasis added).]

- "MS. MCCLURG: . . . [Sergeant Varga] will discuss Notice of Violation, um, issued by the City and other information that led them to believe that *unlawful activity* had occurred." [PA Exh. 6, p. 752 (emphasis added).]

- "Ms. MCCLURG: Uh, if an applicant or an owner has been sanctioned um, for laws related to *cannabis activity*, is that a basis for rejection in the municipal code? SERGEANT VARGA: Yes it is." [PA Exh. 6, p. 755 (emphasis added).]

- "MS. MCCLURG: . . . in this case it was certainly related to illegal *marijuana activity*, or unlawful *marijuana activity*." [PA Exh. 6, p. 806 (emphasis added).]

- "MS. MCCLURG: . . . for these reasons, uh, the City feels that there is sufficient evidence to show . . . that the um, *unlawful cannabis activity* disqualifiers were also correct. If you look specifically at those provisions, it was a sanction or a penalty by any jurisdiction for laws related to *cannabis activity* . . . all of these documents together um, certain suggest that we have an issue here with unlawful *cannabis activity*. . . . the City does stand behind its um, rejection of any applicant that was involved previously in unlawful uh, *cannabis activity* in any jurisdiction." [PA Exh. 6, p. 808 (emphasis added).]

The City claims these repeated misstatements were harmless because Ms. McClurg used the word "commercial" during the hearing (four times) and Petitioner's counsel correctly used the words "commercial cannabis activity" during the hearing. But Ms. McClurg's statements *did* matter. Most notably, the Statement of Decision issued by the Hearing Officer misstated the correct legal standard over ten times in a six-page document. [PA Exh. 6, pp. 814-819.] And while it is true that the Statement of Decision did correctly quote the language from the CVMC, it also recited the wrong legal standard over twice as many times as the right legal standard. [*Ibid.*] This error shows that the City impermissibly conflated the terms "cannabis

activity" with "*commercial* cannabis activity" as if they had the same meaning under the CVMC when they do not:

- "Appellant . . . made the following claims of error: (1) that he was denied Due Process because the Notices of Decision did not provide sufficient notice as to when the *Unlawful Cannabis Activity* took place. . . . he asks the City to exercise its discretion and not consider the *Unlawful Cannabis Activity* allegations to deny the applications." [PA Exh. 6, p. 815 (emphasis added).]

- "The evidence supports the conclusion Appellant had notice as to the time frame in which he was alleged to have engaged in the *Unlawful Cannabis Activity*." [PA Exh. 6, p. 815 (emphasis added).]

- ". . . Appellant had ample notice that the alleged *Unlawful Cannabis Activities* took place between 2010 and 2012 in the City of San Diego, specifically at the Holistic Café.[7] Thus, he could have presented a defense that he did not engage in any *Unlawful Cannabis Activities* between 2010 and 2012. " [PA Exh. 6, p. 816 (emphasis added).]

- "The City of Chula Vista Municipal Code has two sections that address the denial of a license for *Unlawful Cannabis Activity*,

[7] The Notice of Decision did not reference the Holistic Café whatsoever. [PA Exh. 6, p. 705.]

CVMC section 5.19.050(A)(5)(f) and (g)." [PA Exh. 6, p. 816 (emphasis added).]

- "The record shows Appellant engaged in *Unlawful Cannabis Activity* and, as a result, his cannabis license applications were properly denied pursuant to CVMC 5.19.505(A)(5)(g)." [PA Exh. 6, p. 817 (emphasis added).]

- "Here, the issue was whether Appellant was involved in *Unlawful Cannabis Activity* or violated a law involving *Unlawful Cannabis*." [PA Exh. 6, p. 817 (emphasis added).]

- "As a result, the exhibits were relevant to prove Appellant's alleged *Unlawful Cannabis Activities*." [PA Exh. 6, p. 818 (emphasis added).]

Though the City may regret that CVMC sections 5.19.050(A)(5)(f) and (g) are written in terms of "commercial cannabis," the law is the law and the City's misconduct violated Petitioner's due process right to an impartial hearing. At the very least, the trial court failed to hold the City responsible for satisfying its burden of proof by providing evidence showing that there were adequate screening measures in place.

CONCLUSION

For the foregoing reasons, pending this Court's ruling on this petition, the Court should issue a temporary immediate stay of enforcement of the City of Chula Vista's decision to deny UL Chula's application for a retail storefront commercial cannabis license and the City's issuance of any further licenses in District One and/or the decision and judgment of the Superior Court in Case Number 37-2020-00041554-CU-MC-CTL; and/or issue a writ of supersedeas, a stay, or other appropriate relief staying enforcement of the City of Chula Vista's decision to deny UL Chula's application for a retail storefront commercial cannabis license and the City's issuance of any further licenses in District One and/or the decision and judgment of the Superior Court in Case Number 37-2020-00041554-CU-MC-CTL, such stay to remain in effect until the remittitur is issued in the instant appeal, and grant such other and further relief as may be deemed just and proper.

DATED: August 3, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: */s/ Lann G. McIntyre*
Lann G. McIntyre
Gary K. Brucker, Jr.
Anastasiya Menshikova
Attorneys for Plaintiff and Appellant
UL CHULA TWO LLC

CERTIFICATE OF COMPLIANCE WITH RULE 8.204

I, the undersigned, Lann G. McIntyre, declare that:

1. I am a partner in the firm of Lewis Brisbois Bisgaard & Smith LLP, counsel of record for appellant UL Chula Two LLC.

2. This certificate of compliance is submitted in accordance with rule 8.204 of the California Rules of Court.

3. This Petition for Writ of Supersedeas was produced with a computer. It is proportionately spaced in 13 point Century Schoolbook typeface. The petition contains 8,439 words, including footnotes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California, on August 3, 2021.

/s/ Lann G. McIntyre
Lann G. McIntyre

PROOF OF SERVICE

UL Chula Two LLC vs. City of Chula Vista, a California public entity; Chula Vista City Manager; and DOES 1-20
March and Ash Chula Vista, Inc., TD Enterprise LLC, and DOES 23 through 50 (Real Parties in Interest)
Fourth Civil Number D079215

I, Janis Kent, state:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 550 West C Street, Suite 1700, San Diego, California 92101.

On August 3, 2021 I served the following document described as **PETITION FOR WRIT OF SUPERSEDEAS, PROHIBITION, IMMEDIATE TEMPORARY STAY, AND/OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; AND APPELLANT'S APPENDIX OF EXHIBITS [VOLUMES 1 TO 3]** on all interested parties in this action through TrueFiling, addressed to all parties appearing on the electronic service list for the above-titled case. The service transmission was reported as complete and a copy of the TrueFiling Receipt/Confirmation will be filed, deposited or maintained with the original document in this office.

On August 3, 2021, I served the following document described as **PETITION FOR WRIT OF SUPERSEDEAS, PROHIBITION, IMMEDIATE TEMPORARY STAY, AND/OR OTHER APPROPRIATE RELIEF;**

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; AND APPELLANT'S APPENDIX OF EXHIBITS [VOLUMES 1 TO 3] on all interested parties at the addresses listed in the service list by overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed in the attached service list for the above-titled case. I placed the envelope or package for collection and delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 3, 2021, at San Diego, California.

_____

Janis Kent

SERVICE LIST

UL Chula Two LLC vs. City of Chula Vista, a California public entity; Chula Vista City Manager; and DOES 1-20
March and Ash Chula Vista, Inc., TD Enterprise LLC, and DOES 23 through 50 (Real Parties in Interest)
Fourth Civil Number D079215

Alena Shamos, Esq.
Matthew Slentz, Esq.
Colantuono, Highsmith & Whatley, PC
440 Stevens Avenue, Suite 200
Solana Beach, CA 92075
Direct Tel: 858-682-3665
Tel: 213-542-5700
Fax: 213-542-5710
E-Mail: ashamos@chwlaw.us
E-Mail: mslentz@chwlaw.us

Attorneys for Defendants and Appellants
City of Chula Vista and City Manager of Chula Vista
(Via TrueFiling)

Heather Riley, Esq.
Rebecca Williams, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
One America Plaza
600 West Broadway, Suite 2700
San Diego, CA 92101-0903
Tel: (619) 233-1155
Fax: (619) 233-1158
E-Mail: hriley@allenmatkins.com
E-Mail: bwilliams@allenmatkins.com

Attorneys for March and Ash Chula Vista, Inc.
(Via TrueFiling)

David Kramer, Esq.
Josh Kappel, Esq.
Vicente Sederberg LLP
633 West 5th Street, 26th Floor
Los Angeles, California 90071

Tel: 310-695-1836
Mobile: 917-929-0248
Fax: (303) 860-4505
E-Mail: d.kramer@vicentesederberg.com
E-Mail: josh@vicentesederberg.com

Attorneys for TD Enterprise LLC
(Via TrueFiling)

Philip Tencer, Esq.
TencerSherman LLP
12520 High Bluff Drive, Suite 240
San Diego, CA 92130
Tel: (858) 408-6901
Fax: (858) 754-1260
E-Mail: Phil@tencersherman.com

Attorneys for TD Enterprise LLC
(Via TrueFiling)

The San Diego County Superior Court
The Honorable Richard E.L. Strauss
Department C-75
Hall of Justice
SIXTH FLOOR
330 W Broadway
San Diego, CA 92101
(Via Overnight Mail)

Clerk of Supreme Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(Via Electronic)

4841-8576-4338.7

STATE OF CALIFORNIA California Court of Appeal, Fourth Appellate District Division 1	***PROOF OF SERVICE*** **STATE OF CALIFORNIA** California Court of Appeal, Fourth Appellate District Division 1

Case Name: **UL Chula Two LLC v. City of Chula Vista et al.**
Case Number: **D079215**
Lower Court Case Number: **37-2020-00041554-CU-WM-CTL**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **lann.mcintyre@lewisbrisbois.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
PETITION - PETITION FOR WRIT OF SUPERSEDEAS (WITH ONE TIME RESPONSIVE FEE)	UL Chula Two - Petition for Writ of Supersedeas - FINAL 8.3.2021
APPENDIX - JOINT APPENDIX	UL Chula Two - Appendix of Exhibits (Vol. 1 of 3) - FINAL 8.3.2021
APPENDIX - JOINT APPENDIX	UL Chula Two - Appendix of Exhibits (Vol. 2 of 3) - FINAL 8.3.2021
APPENDIX - JOINT APPENDIX	UL Chula Two - Appendix of Exhibits (Vol. 3 of 3) - FINAL 8.3.2021

Service Recipients:

Person Served	Email Address	Type	Date / Time
Rebecca Williams Allen Matkins Leck Gamble Mallory & Natsis	bwilliams@allenmatkins.com	e-Serve	8/3/2021 5:46:35 PM
David Kramer Vicente Sederberg LLP	d.kramer@vicentesederberg.com	e-Serve	8/3/2021 5:46:35 PM
Philip Tencer TencerSherman LLP 173818	phil@tencersherman.com	e-Serve	8/3/2021 5:46:35 PM

Alena Shamos Colantuono, Highsmith & Whatley, PC 216548	ashamos@chwlaw.us	e-Serve	8/3/2021 5:46:35 PM
Lann Mcintyre Lewis Brisbois Bisgaard & Smith LLP 106067	lann.mcintyre@lewisbrisbois.com	e-Serve	8/3/2021 5:46:35 PM
Matthew Slentz Colantuono, Highsmith & Whatley 285143	mslentz@chwlaw.us	e-Serve	8/3/2021 5:46:35 PM
Heather Riley Allen Matkins Leck Gamble Mallory & Natsis LLP 214482	hriley@allenmatkins.com	e-Serve	8/3/2021 5:46:35 PM

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/3/2021

Date

/s/Janis Kent

Signature

McIntyre, Lann (106067)

Last Name, First Name (PNum)

Lewis Brisbois Bisgaard & Smith, LLP

Law Firm