

**Case No. D079215**

In the Court of Appeal, State of California

**FOURTH APPELLATE DISTRICT, DIVISION ONE**

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**UL CHULA TWO LLC,**  
*Plaintiff and Appellant*

vs.

**CITY OF CHULA VISTA AND THE CHULA VISTA CITY MANAGER**  
*Defendants and Respondents*

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Appeal From the Superior Court of the State of California  
County of San Diego. Case No. 37-2020-00041554-CU-WM-CTL  
Honorable Richard E. L. Strauss, Judge Presiding

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**MOTION FOR JUDICIAL NOTICE  
OF CANNABIS LICENSES**

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**To the Honorable Presiding Justice and Associate Justices of  
Division One of the Fourth District Court of Appeal:**

Defendants and Respondents City of Chula Vista and the Chula Vista City Manager (jointly “City”), and Real Parties in Interest March and Ash Chula Vista, Inc. and TD Enterprise, LLC (together “Real Parties”) move this Court to take judicial notice of the following documents under Evidence Code section 452, subdivisions (c) and (h); Evidence Code section 459; and rule 8.252 of the California Rules of Court:

1. A certified copy of the Cannabis Business License Certificate, Storefront Retailer, issued to March and Ash Chula Vista, Inc. on December 16, 2021, by the City’s Development Services Department in District 1 of the City. A true and correct copy of this document is attached hereto as **Exhibit A**.
2. A certified copy of the Cannabis Business License Certificate, Storefront Retailer, issued to TD Chula Vista 1, Inc. on April 27, 2022, by the City’s Development Services Department in District 1 of the City. A true and correct copy of this document is attached hereto as **Exhibit B**.

**Exhibits A and B** are relevant to show that Real Parties have vested property rights that have come into existence since the start of this appeal, which the Court may wish to consider.

This Motion is based on the attached Memorandum, the Declaration of Alena Shamos, the records and files of this court, the proposed order granting this motion, and any further argument the Court may request.

DATED: August 22, 2022

**COLANTUONO, HIGHSMITH  
& WHATLEY, PC**

/s/ Alena Shamos  
ALENA SHAMOS  
MATTHEW C. SLENTZ  
Attorneys for Respondents  
City of Chula Vista and the Chula  
Vista City Manager

DATED: August 22, 2022

**ALLEN MATKINS LECK  
GAMBLE MALLORY & NATSIS  
LLP**

/s/ Heather S. Riley  
HEATHER S. RILEY  
REBECCA WILLIAMS  
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March and Ash Chula Vista, Inc.

DATED: August 22, 2022

**TENCERSHERMAN LLP**

/s/ Philip C. Tencer  
PHILIP C. TENCER  
Attorneys for Real Party in Interest  
TD Enterprise, LLC

## **MEMORANDUM**

### **I. INTRODUCTION**

UL Chula Two, LLC (“UL Chula”), is an unsuccessful applicant dissatisfied with the review process conducted by the City of Chula Vista (“City”) for granting licenses to storefront cannabis retailers. Since this appeal began, licenses have been issued to Real Parties in Interest March and Ash Chula Vista, Inc. and TD Enterprise, LLC (together “Real Parties”), both of whom are now operating storefront cannabis retail locations in City Council District 1. In light of this Court’s modified Opinion in *CV Amalgamated LLC v. City of Chula Vista* (Cal. Ct. App., Aug. 12, 2022, No. D078720) 2022 WL 3354984 (“*CV Amalgamated*”), and in an abundance of caution, the City submits this motion and the attached documents to apprise the Court of these changes in Real Parties’ status. The current appeal presents a very different set of claims and issues than the ones raised in *CV Amalgamated*, nevertheless, it seemed prudent to provide this Court with an up to date status report in case these changes impact the Court’s analysis of this appeal.

### **II. FACTUAL AND PROCEDURAL BACKGROUND**

A complete statement of facts is included in the Joint Respondents’ Brief (“RB”), filed March 24, 2022, and incorporated herein by reference. (RB at pp. 15–23.)

UL Chula filed its Petition for Writ of Mandate (“Petition”) in San Diego Superior Court on November 13, 2020. (1-AA-10.) Among the relief requested was a preemptory writ of mandate “enjoining Respondent from issuing any other cannabis licenses in the City and, to the extent that Respondent has already issued such licenses, to declare such licenses null and void.” (1-AA-33, ¶¶ 1 and 4.) UL Chula subsequently amended its Complaint to name Real Parties March and Ash Chula Vista, Inc. and TD Enterprise, LLC as defendants. (1-AA-266–267.)

UL Chula sought and obtained a temporary restraining order restricting the City from “issuing any City cannabis storefront retailer license, pursuant to Chula Vista Municipal Code (“CVMC”) § 5.19.040, in City Council District 1.” (1-AA-251.) However, the trial court deferred ruling on UL Chula’s request for a preliminary injunction to the same date as the merit hearing on the Petition. (1-AA-532.) Following the May 21, 2021 hearing, the trial court rejected the Petition, denied the motion for a preliminary injunction and declined UL Chula’s oral request to extend the stay. (2-AA-1138.) Judgment entered in Respondents’ favor on June 17, 2021 (2-AA-1139), and UL Chula appealed on July 6, 2021 (2-AA-1161.) As there was no stay in effect, UL Chula filed a Petition for Writ of Supersedeas in the instant action on August 3, 2021. On August 6, 2021, this Court summarily denied that request. With no stay in place after May 21, 2021, the City proceeded to process Phase II



applications in District 1, culminating in licenses being issued to March and Ash Chula Vista on December 16, 2021 (**Exh. A**) and TD Enterprise on April 27, 2022 (**Exh. B**). Both locations are now operating as storefront cannabis retailers.

While this case was fully briefed and pending oral argument, this Court decided *CV Amalgamated, supra*, 2022 WL 3354984. The Court admonished the City in that case for waiting until after oral argument to update the Court with information regarding the status of other licensees. The issues are markedly different between these two appeals; however, Respondents bring this motion in an abundance of caution to update the Court on the status of the City's storefront cannabis retail license process.

### **III. ARGUMENT**

#### **A. THE COURT MAY GRANT THIS MOTION FOR JUDICIAL NOTICE**

##### **i. GENERAL PRINCIPLES OF JUDICIAL NOTICE**

A reviewing court may take judicial notice of any matter specified in Evidence Code section 452. (Evid. Code, § 459.) Under subdivision (c) of Evidence Code section 452, the Court may notice “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” Under subdivision (h) of that section, the Court may also notice “[f]acts and

propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” A reviewing court may notice facts just as a trial court does. (Evid. Code, § 459, subd. (a).) In the trial court, judicial notice of facts covered by section 452 is mandatory upon request, where the opposing party is permitted to object and the court has enough information about the facts to determine that they come within a category subject to notice. (Evid. Code, § 453, subd. (b).)

“Judicial notice is the recognition and acceptance by the court, for use ... by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882, citations and quotations omitted.) “The underlying theory of judicial notice is that the matter judicially noticed is a law or fact that is **not reasonably subject to dispute.**” (*Ibid.*; see Evid. Code, § 452, subd. (h).)

## **ii. THE COURT MAY NOTICE THE CANNABIS LICENSES ISSUED TO REAL PARTIES**

**Exhibits A and B** are licenses issued to Real Parties to operate storefront cannabis retail locations in the City’s District 1. Such licenses are a vested property right and cannot be summarily revoked by the City without violating Real Parties’ due process rights. (See, e.g., *Korean American Legal Advocacy Foundation v. City of*

*Los Angeles* (1994) 23 Cal.App.4th 376, 393 [conditional use permits].) Indeed, the CVMC provides for revocation of a license only in certain circumstances, and following written notice and an opportunity to appeal. (CVMC § 5.19.260.) A City licensee may renew its license annually except in certain circumstances outlined in CVMC section 5.19.240(E). (*Id.*, § 5.19.240(E).)

The City could not present these licenses to the trial court, as they were issued on December 16, 2021 and April 27, 2022, after the trial court's ruling denying the Petition on May 21, 2021. (Cal. Rules of Court, rule 8.252(a)(2)(B).) Moreover, both licenses were issued after the record on appeal was complete, and while the case was being briefed.

**Exhibits A and B** are subject to judicial notice as official acts of the City. (Evid. Code, § 452, subd. (c); *Arroyo v. Plosay* (2014) 225 Cal.App.4th 279, 297 [judicial notice hospital licenses issued by State Department of Public Health].) Furthermore, licenses or permits are official government materials “not reasonably subject to dispute” and are “capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).) **Exhibits A and B** are thus subject to judicial notice, if relevant to the issues before the Court.

The City and Real Parties submit these licenses for the Court's consideration, mindful of the Court's admonishment to the City in *CV Amalgamated, supra*, 2022 WL 3354984, at \*6, fn. 11, despite the

fact the issues in *CV Amalgamated* are distinct from those presented here. In this instance, Real Parties were named in the trial court action, whereas other license applicants were not joined as parties in *CV Amalgamated*. (*Id.* at p. 14.) And, in *CV Amalgamated*, the appellant did not seek to revoke already issued licenses (*Ibid.*), a primary ground for relief requested by UL Chula here.

**B. THE RECENTLY ISSUED CANNABIS  
LICENSES ARE AN EXCEPTION TO THE  
LITIGATION-ON-THE-RECORD RULE**

The City has taken a firm position against the improper admission of extra-record evidence in this appeal. (See, e.g., Respondents’ Opposition to Appellant’s Motion for Judicial Notice, filed June 22, 2022.) Should the Court wish to consider the licenses issued to Real Parties, they fall squarely within an exception to the litigation-on-the-record rule. “The general rule is that a hearing on a writ of administrative mandamus is conducted solely on the record of the proceeding before the administrative agency.” (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 101.) Extra-record evidence is allowed only “[w]here the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent ... .” (Code Civ. Proc., § 1094.5, subd. (e); see also *Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1595 (“*Fort Mojave*”).) The

licenses that the City and Real Parties seek to admit here were issued after the City Manager and trial court decisions, and represent “truly new evidence, of emergent facts.” (*Ibid.*)

These licenses are not presented to either contradict or support the rulings below, but merely to inform the Court of developments that may affect this Court’s ruling. A court reviewing the record for substantial evidence is generally limited to “remanding the case to be reconsidered in the light of that [new] evidence ...” (*Fort Mojave, supra*, 38 Cal.App.4th at p. 1595); nevertheless, judicial notice may be appropriate to complete the appellate record to include material post-appeal events. (*E.g., Flatley v. Mauro* (2006) 39 Cal.4th 299, 306 [judicial notice of dismissals taken to “help complete the context of this case”]; *Panoche Energy Center, LLC v. Pacific Gas & Electric Co.* (2016) 1 Cal.App.5th 68, 90 [judicial notice of post-appeal regulatory developments].) This motion falls within those parameters.

#### **IV. CONCLUSION**

The City and Real Parties respectfully request this Court grant the motion to notice **Exhibits A** and **B** attached hereto.

DATED: August 22, 2022

**COLANTUONO, HIGHSMITH  
& WHATLEY, PC**

/s/ Alena Shamos  
ALENA SHAMOS  
MATTHEW C. SLENTZ  
Attorneys for Respondents  
City of Chula Vista and the Chula  
Vista City Manager

DATED: August 22, 2022

**ALLEN MATKINS LECK  
GAMBLE MALLORY & NATSIS  
LLP**

/s/ Heather S. Riley  
HEATHER S. RILEY  
REBECCA WILLIAMS  
Attorneys for Real Party In Interest  
March and Ash Chula Vista, Inc.

DATED: August 22, 2022

**TENCERSHERMAN LLP**

/s/ Philip C. Tencer  
PHILIP C. TENCER  
Attorneys for Real Party in Interest  
TD Enterprise, LLC

## DECLARATION OF ALENA SHAMOS

### Cal. Rules of Court, rule 8.54(a)(2)

I, ALENA SHAMOS, declare:

1) I am an attorney licensed to practice law in the State of California and before this Court. I am Senior Counsel with the law firm Colantuono, Highsmith & Whatley, PC, attorneys of record for Respondents and Defendants, City of Chula Vista ("City") and the Chula Vista City Manager. I personally know of the matters set forth herein and, if called as a witness, I could competently testify thereto.

2) Attached hereto as **Exhibit A** is a certified copy of the Cannabis Business License Certificate, Storefront Retailer, issued to March and Ash Chula Vista, Inc., on December 16, 2021, by the City's Development Services Department in District 1 of the City. I obtained this document from the City Clerk.

3) Attached hereto as **Exhibit B** is a certified copy of the Cannabis Business License Certificate, Storefront Retailer, issued to TD Chula Vista 1, Inc. on April 27, 2022, by the City's Development Services Department in District 1 of the City. I obtained this document from the City Clerk.

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

Executed on August 22, 2022 at San Diego, California.

  
ALENA SHAMOS

## INDEX OF EXHIBITS

Exhibit	Document	Pages
<b>A</b>	Certified copy of the Cannabis Business License Certificate, Storefront Retailer, issued to March and Ash Chula Vista, Inc., on December 16, 2021, by the City's Development Services Department in District 1 of the City	18
<b>B</b>	Certified copy of the Cannabis Business License Certificate, Storefront Retailer, issued to TD Chula Vista 1, Inc. on April 27, 2022, by the City's Development Services Department in District 1 of the City	20



# EXHIBIT A



THIS INSTRUMENT IS A TRUE AND CORRECT COPY  
OF THE ORIGINAL THEREOF ON FILE IN THE  
OFFICE OF THE CHULA VISTA CITY CLERK.

BY:  DATE: 7/22/22

KERRY K. BIGELOW, MMC, CITY CLERK

**DEVELOPMENT SERVICES DEPARTMENT  
CANNABIS BUSINESS LICENSE CERTIFICATE**

**EXPIRES 12/16/2022**

**Cannabis Business License #:** CB20-0014

**License Type:** Storefront Retailer

**Business Name:** March and Ash Chula Vista, Inc.

**Doing Business As:** March and Ash

**Address:** 885 E H ST, SUITE A

**License Issued:** 12/16/2021

**CV Business License #:** 092896

**State License Activity #:** C10-0000908-LIC

  
\_\_\_\_\_  
Lou El-Khazen  
Building Official/Code Enforcement Manager

Date: 12/16/2021

**POSTING:** This Certificate shall be posted in a conspicuous place on the premises.

# EXHIBIT B



THIS INSTRUMENT IS A TRUE AND CORRECT COPY  
OF THE ORIGINAL THEREOF ON FILE IN THE  
OFFICE OF THE CHULA VISTA CITY CLERK.

BY:  DATE: 7/22/22

KERRY K. BIGELOW, MMC, CITY CLERK

**DEVELOPMENT SERVICES DEPARTMENT  
CANNABIS BUSINESS LICENSE CERTIFICATE**

**EXPIRES 04/27/2023**

**Cannabis Business License #:** CB20-0003

**License Type:** Storefront Retailer

**Business Name:** TD Chula Vista I, Inc.


**Doing Business As:** California Holistics

**Address:** 810 PASEO DEL REY

**License Issued:** 04/27/2022

**CV Business License #:** 093980

**State License Activity #:** C10-0001005-LIC

  
\_\_\_\_\_  
Lou El-Khazen  
Building Official/Code Enforcement Manager

Date: 04/27/2022

**POSTING:** This Certificate shall be posted in a conspicuous place on the premises.

## **[PROPOSED] ORDER TAKING JUDICIAL NOTICE**

Good cause appearing, IT IS HEREBY ORDERED that Defendants and Respondents City of Chula Vista and the Chula Vista City Manager (jointly “City”), and Real Parties in Interest March and Ash Chula Vista, Inc. and TD Enterprise, LLC (together “Real Parties”) joint Motion for Judicial Notice is GRANTED.

IT IS ORDERED that this Court shall take judicial notice of the following:

- 1) The City Clerk certified copy of the Cannabis Business License Certificate, Storefront Retailer, issued to March and Ash Chula Vista, Inc., on December 16, 2021, by the City’s Development Services Department in District 1 of the City.
- 2) The City Clerk certified copy of the Cannabis Business License Certificate, Storefront Retailer, issued to TD Chula Vista 1, Inc. on April 27, 2022, by the City’s Development Services Department in District 1 of the City.

DATED: \_\_\_\_\_ By: \_\_\_\_\_  
Justice of the Court of Appeal

**PROOF OF SERVICE**

*UL Chula Two LLC v. City of Chula Vista, et al.*

San Diego Superior Court, Case No. 37-2020-00041554-CU-WM-CTL

Court of Appeal for the State of California,

Fourth Appellate District, Division One - Case No.: D079215

Our File No.: 33020-0009

I, Lourdes Hernandez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: LHernandez@chwlaw.us. On August 22, 2022, I served the document(s) described as **MOTION FOR JUDICIAL NOTICE OF CANNABIS LICENSURES** on the interested parties in this action addressed as follows:

**SEE ATTACHED SERVICE LIST**

- ☒ **BY ELECTRONIC TRANSMISSION:** By causing a true copy of the document(s) to be sent to the persons at the e-mail addresses listed on the service list on August 22, 2022, from the court authorized e-filing service at TrueFiling. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.
- ☒ **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

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

Executed on August 22, 2022, at Pasadena, California.

/s/ Lourdes Hernandez

Lourdes Hernandez

**SERVICE LIST**

*UL Chula Two LLC v. City of Chula Vista, et al.*

San Diego Superior Court, Case No. 37-2020-00041554-CU-WM-CTL

Court of Appeal for the State of California,

Fourth Appellate District, Division One - Case No.: D079215

Our File No.: 33020-0009

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*Attorneys for TD Enterprise LLC*  
**VIA TRUEFILING**

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Civil Central Division – Hall of Justice  
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San Diego, California 92101

**VIA U.S. MAIL**



**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: **ashamos@chwlaw.us**

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

Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
MOTION - MOTION (FEE PREVIOUSLY PAID)	MJN re Cannabis Licenses

Service Recipients:

<b>Person Served</b>	<b>Email Address</b>	<b>Type</b>	<b>Date / Time</b>
Rebecca Williams Allen Matkins Leck Gamble Mallory & Natsis	bwilliams@allenmatkins.com	e-Serve	8/22/2022 10:57:53 AM
Lourdes Hernandez Colantuono, Highsmith & Whatley, PC	lhernandez@chwlaw.us	e-Serve	8/22/2022 10:57:53 AM
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Josh Kappel	Josh@vicentesederberg.com	e-Serve	8/22/2022 10:57:53 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

8/22/2022

Date

/s/Lourdes Hernandez

Signature

Shamos, Alena (216548)

Last Name, First Name (PNum)

Colantuono, Highsmith & Whatley, PC

Law Firm