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CIVIL BUSINESS OFFICE  
CENTRAL DIVISION

No Fee GC §6103

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

**F I L E D**  
Clerk of the Superior Court

FEB 18 2016

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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 CITY OF SAN DIEGO, a municipal  
corporation,  
11  
12 Plaintiff,  
13 v.  
14 DARRYL COTTON, an individual; and  
DOES 1 through 50, inclusive,  
15 Defendants.

Case No. 37-2016-00005526-CU-MC-CTL  
UNLIMITED JURISDICTION  
COMPLAINT FOR INJUNCTION,  
CIVIL PENALTIES, AND OTHER  
EQUITABLE RELIEF

17 Plaintiff City of San Diego, appearing through its attorneys, Jan I. Goldsmith, City  
18 Attorney, and Onu Omordia, Deputy City Attorney, alleges the following, based on information  
19 and belief:

20 JURISDICTION AND VENUE

21 1. Plaintiff City of San Diego, by this action and pursuant to San Diego Municipal Code  
22 (SDMC) sections 12.0202 and 121.0311, and California Code of Civil Procedure section 526,  
23 seeks to enjoin Defendants from using or maintaining a property in violation of the SDMC as  
24 alleged in this Complaint, and seeks a temporary restraining order, a preliminary injunction, and a  
25 permanent injunction prohibiting Defendants from operating or maintaining a marijuana  
26 dispensary, cooperative, collective, or other distribution or sales business; and also seeks to obtain  
27 civil penalties, costs and other equitable relief for the Defendants' violations of law.

1           2. The omission or commission of acts and violations of law by Defendants as alleged in  
 2 this Complaint occurred within the City of San Diego, State of California. Each Defendant at all  
 3 times mentioned in this Complaint has transacted business within the City of San Diego, State of  
 4 California, or is a resident of San Diego County, within the State of California, or both.

5           3. The property, where the business acts and practices described in this Complaint are or  
 6 were performed, is located in the City of San Diego.

7 **THE PARTIES**

8           4. At all times mentioned in these pleadings, Plaintiff, City of San Diego, was and is a  
 9 municipal corporation and a chartered city, organized and existing under the laws of the State of  
 10 California.

11           5. Defendant Darryl Cotton (COTTON) is an individual and resident of the County of  
 12 San Diego, State of California. COTTON, at all times relevant to this action, was and is the  
 13 owner of record of the property located at 6176 Federal Boulevard, San Diego, California, 92114  
 14 (PROPERTY), where a marijuana dispensary is conducting business.

15           6. COTTON is a "Responsible Person"<sup>1</sup> within the meaning of SDMC section 11.0210  
 16 for allowing and maintaining violations of the SDMC at the PROPERTY.

17           7. As the property owner, Defendant COTTON is also strictly liable for all code  
 18 violations occurring at the PROPERTY pursuant to SDMC section 121.0311 and applicable  
 19 California law.

20           8. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the  
 21 provisions of California Code of Civil Procedure section 474, their true names and capacities  
 22 being unknown to Plaintiff. The City is informed and believes that each of Defendants DOES 1  
 23 through 50 is in some manner responsible for conducting, maintaining or directly or indirectly  
 24 permitting the unlawful activity alleged in this Complaint. Plaintiff will ask leave of the court to  
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27 <sup>1</sup> SDMC section 11.0210 defines "Responsible Person" as "[a] person who a Director determines  
 28 is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or  
 applicable state codes. The term "Responsible Person" includes but is not limited to a property owner,  
 tenant, person with a Legal Interest in real property or person in possession of real property."  
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1 amend this Complaint and to insert in lieu of such fictitious names the true names and capacities  
2 of DOES 1 through 50 when ascertained.

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

7 **PROPERTY**

8 10. The legal address of the PROPERTY where a marijuana dispensary is operating is  
9 6176 Federal Boulevard, San Diego, California, 92114, also identified as Assessor's Parcel  
10 Number 543-020-02, according to the San Diego County Recorder's Grant Deed, document  
11 number 1998-0102763, recorded February 27, 1998.

12 11. The legal description of the PROPERTY is:

13 THAT PORTION OF BLOCK 25, TRACK NO. 2 OF ENCANTO  
14 HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN  
15 DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP  
16 THEREOF NO. 1100, FILED IN THE OFFICE OF THE  
17 COUNTY RECORDER OF SAN DIEGO, DECEMBER 5, 1907,  
18 AS SHOWN ON MAP NO. 2121 OF JOFAINA VISTA, FILED IN  
19 THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO  
20 COUNTY, JULY 20, 1928, NOW ABANDONED AND  
21 DESCRIBED AS LOT 20.

19 12. The Grant Deed recorded with the San Diego County Recorder's Office on  
20 February 27, 1998 lists the owner of the PROPERTY as "DARRYL COTTON, A Single Man."

21 13. The PROPERTY is located in a Commercial-Office (CO-2-1) zone in the City of  
22 San Diego. The PROPERTY consists of a single story building.

23 **FACTUAL ALLEGATIONS**

24 14. SDMC sections 131.0520 and 131.0522 and Table 131-05B list the permitted uses  
25 in a Commercial-Office (CO-2-1) zone in the City of San Diego where the PROPERTY is  
26 located. The operation or maintenance of a marijuana dispensary, collective, or cooperative is not  
27 one of the enumerated permitted uses.

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1 15. On or about October 21, 2015, the City of San Diego’s Development Services  
2 Department, Code Enforcement Division (CED), commenced an investigation of a marijuana  
3 dispensary by the name of “Pure Meds” operating at the PROPERTY in violation of local zoning  
4 laws.

5 16. In February of 2016, an undercover detective with the San Diego Police  
6 Department (SDPD) went to “Pure Meds” located at the PROPERTY to purchase marijuana. The  
7 detective purchased \$25 worth of marijuana. Because the detective was a first time patient, the  
8 detective was given an additional 3.3 grams of marijuana and one marijuana cigarette for free.

9 17. Inside the dispensary, the undercover detective observed the odor of marijuana, a  
10 lobby, sitting area, and a male receptionist. The detective observed security cameras, a reception  
11 window, and an interior door with security locking device to restrict access. Once allowed to  
12 enter the product room, the undercover detective saw a large display case containing marijuana,  
13 THC infused edibles, and concentrated cannabis. The detective observed a menu with pricing  
14 and different types of marijuana or THC products, a cash register, an ATM, and a female  
15 employee. The detective completed the transaction with the female employee. The undercover  
16 detective noticed that the male receptionist was wearing a drop holster with a semi-automatic  
17 handgun in the holster although the male receptionist had nothing identifying him as a security  
18 guard.

19 18. Plaintiff is informed and believes that Defendants are blatantly and willfully in  
20 violation of the SDMC and will continue to maintain the unlawful code violations in the future  
21 unless the Court enjoins and prohibits such conduct. Absent the relief requested by Plaintiff, the  
22 City is unable to enforce its zoning laws and therefore unable to ensure the compatibility between  
23 land uses for its residents. The land use scheme and regulations under the Municipal Code  
24 become meaningless and the public is left unprotected from the direct and indirect negative  
25 effects associated with unpermitted and incompatible uses in their neighborhoods. Absent  
26 injunctive relief, the City will be irreparably harmed and the ongoing violations will continue to  
27 harm the public health, safety, and welfare of the citizens of San Diego.

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**FIRST AND ONLY CAUSE OF ACTION**

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

19. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1 through 18 of this Complaint as though fully set forth here in their entirety.

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

21. The PROPERTY is located in a Commercial-Office (CO-2-1) zone in the City of San Diego. SDMC sections 131.0520 and 131.0522, and corresponding Table 131-05B, list the permitted uses in a CO-2-1 zone where the PROPERTY is located. The operation or maintenance of a marijuana dispensary, collective, or cooperative is not one of the enumerated permitted uses.

22. Beginning on an exact date unknown to Plaintiff, but since at least February of 2016, and continuing to the present, Defendants have maintained and used the PROPERTY for a purpose or activity not listed in Table 131-05B, in direct violation of SDMC sections 131.0520, 131.0522, and 121.0302(a).

23. Plaintiff has no adequate remedy at law other than this action. Defendants' use of the PROPERTY in this manner cannot be remedied merely by the payment of monetary damages. As the property owner, Defendant COTTON also has the ability, power, and duty to permanently cease to maintain the illegal business.

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

. . . . .

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<sup>2</sup> SDMC § 111.0101 (a) Chapters 11 through 15 of the City of San Diego Municipal Code shall be known collectively, and may be referred to, as the Land Development Code.

1 **PRAYER**

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

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

5 **San Diego Municipal Code sections**

6 121.0302(a) 131.0520  
7 131.0522 Table 131-05B

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

13 a. Maintaining, operating, or allowing at the PROPERTY or anywhere within the  
14 City of San Diego, any commercial, retail, collective, cooperative, or group establishment for the  
15 growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana  
16 dispensary, collective, or cooperative organized pursuant to the California Health and Safety  
17 Code;

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

20 c. Violating any provisions of the SDMC at the PROPERTY.

21 3. That immediately from the date of entry of judgment, Defendants cease maintaining a  
22 marijuana dispensary business at the PROPERTY and remove all signs advertising the business.

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

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

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

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

Dated: February 17, 2016

JAN I. GOLDSMITH, City Attorney

By Onu Omordia  
Onu Omordia  
Deputy City Attorney

Attorneys for Plaintiff