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County of San Diego

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Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

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11 Attorneys for Real Party in Interest TD Enterprise
12 LLC

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

15 UL CHULA TWO LLC,

16 Petitioner/Plaintiff,

17 vs.

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

21 Respondents/Defendants,

22 MARCH AND ASH CHULA VISTA, INC.;
23 TD ENTERPRISE LLC; and DOES 23
24 through 50,

25 Real Parties In Interest

CASE NO. 37-2020-00041554-CU-MC-CTL
[Related To Case Nos. 2020-00041802-CUMC-
CTL; 37-2020-00033446-CU-MC-CTL]

**DECLARATION OF DAVID KRAMER IN
SUPPORT OF TD ENTERPRISE LLC'S
OPPOSITION TO PETITIONER UL
CHULA TWO LLC'S *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER OR, IN THE
ALTERNATIVE, FOR AN ORDER
ADVANCING THE HEARING ON
MOTION FOR PRELIMINARY
INJUNCTION**

[Assigned for All Purposes to:
Judge: Hon. Richard E. L. Strauss, Dept C-75]

Hearing Date: February 4, 2021
Time: 9:00 a.m.
Dept.: C-75

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Exhibit A



Sent By US Mail & Email:
June 12, 2020

Tony Hall
6549 Mission Gorge Rd. #265
San Diego, CA 92120
tonyh@torreyholistics.com
c.sava@vicentesederberg.com

**RE: Early Phase Two Progression
TD Enterprise LLC dba Torrey Holistics – Chula Vista (Submitter ID: 57123) –
Storefront Retailer**

Dear Tony Hall,

Although your application was rejected as to Council District 4, your application has ranked fifth overall for storefront retailers in the City. For your information, there is currently an unfilled storefront retail license slot in Council District 1. Pursuant to Cannabis Regulations section 0501(N), in the event there is an unfilled Council District, the highest ranked remaining qualified applicant is offered the opportunity to select a site within the unfilled Council District, obtain a signed, notarized statement from the owner of the site, and then progress to Phase Two in that unfilled Council District. Your application is currently the highest ranked remaining qualified storefront retail application.

At this time, all appeals, including those for storefront retailers, are not yet exhausted. If, upon appeal, an error is found, an initially rejected application may be sent back to City for reassessment and potential rescoring. Based on current timelines, our best estimate is that all appeal hearings will take place within the next 10 days, and decisions will be rendered approximately 30 days thereafter. However, such estimate is subject to change.

In the meantime, City would like to offer you the opportunity to select a site for your storefront retail business within unfilled Council District 1, obtain a signed, notarized statement from the owner(s) of the site within 30 days, and receive a deemed qualified Notice of Decision letter allowing you to progress to Phase Two in Council District 1. This offer is contingent on the execution of a Release and Indemnity Agreement (“Agreement”); a copy of such Agreement is attached for your reference.

If you choose to move forward with such early Phase Two progression and a future appeal results in a rescoring that moves your application score out of its current ranking, you will then have the opportunity to appeal your application score. You may also have an opportunity to apply for future additional storefront retail licenses, as the Chula Vista City Council on April 28, 2020 directed City staff to re-examine the number of licenses allowed for cannabis retail establishments and potentially propose for Council consideration an increase to the number of

licenses allowed. Although we do not yet know what proposals will be considered or ultimately adopted by the Council, the consideration will involve examining a potential increase in the number of retail businesses allowed in the City.

If you would like to move forward at this time, please notify Kelley Bacon by email at kbacon@chulavistaca.gov. In your email to Ms. Bacon, please provide the names and email addresses of all persons who will sign your Agreement: for applicants who are entities, any individual with signatory authority for the entity may execute the Agreement; for applicants who are individuals, all business owners must execute the Agreement. Please also provide Ms. Bacon with the name and address for service of any notices related to such Agreement (see page 4 of the Agreement). The Agreement will then be sent in DocuSign format to all persons who will execute the document.

If you decline to move forward to Phase Two at this time, City will provide you with additional information on your application status upon exhaustion of all storefront retailer appeals.

We appreciate your time, and wish you and your colleagues well in this difficult time.

Sincerely,

A handwritten signature in blue ink that reads "Kelley Bacon" with a long horizontal flourish extending to the right.

Kelley Bacon,
Deputy City Manager

encl: Agreement (sample)

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UL CHULA TWO LLC V. CITY OF CHULA VISTA, ET AL.
SAN DIEGO SUPERIOR COURT
CASE NO. 37-2020-00041554-CU-WM-CTL

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is 12520 High Bluff Drive, Suite 230, San Diego, CA 92130. On February 3, 2021, I served true copies of the following document(s):

(1) DECLARATION OF DAVID KRAMER IN SUPPORT OF TD ENTERPRISE LLC'S OPPOSITION TO PETITIONER UL CHULA TWO LLC'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER OR, IN THE ALTERNATIVE, FOR AN ORDER ADVANCING THE HEARING ON MOTION FOR PRELIMINARY INJUNCTION

- ☐ U.S. MAIL – CCP § 1013a(1)) I am personally and readily familiar with the business practice of TENCERSHERMAN LLP for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at San Diego, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.
- ☐ (BY ELECTRONIC SERVICE VIA ONE LEGAL-Based on court order or an agreement of the parties to accept service by electronic transmission or by e-filing a document with the court, I caused the above-entitled document(s) to be served through One Legal at <https://www.onelegal.com/> addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the One Legal Receipt Page/Confirmation will be maintained with the original document(s) in this office.
- ☒ (BY ELECTRONIC MAIL – CCP § 1010.6(a)(6); CRC Rule 2.251) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused such documents described herein to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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2 Matthew Slentz, Esq.
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11 *Attorneys for Defendants*
12 *City of Chula Vista and City Manager of Chula*
13 *Vista*

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Attorneys for UL CHULA TWO LLC

17 I declare under penalty of perjury under the laws of the State of California that the above is true
18 and correct. Executed on February 3, 2021, at San Diego, California.

19 

20 Allison L. Miller