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6 Attorneys for Respondents/Defendants,
CITY OF CHULA VISTA AND CHULA VISTA CITY MANAGER
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**
10

11 UL CHULA TWO LLC,

12 Petitioner/Plaintiff,

13 v.

14 CITY OF CHULA VISTA, a California
public entity; CHULA VISTA CITY
15 MANAGER, and DOES 1 through 20,

16 Respondents/Defendants.

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

18 Real Parties In Interest.
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Exempt from Filing Fees
Government Code § 6103

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/03/2021 at 02:33:00 PM
Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

CASE NO. 37-2020-00041554-CU-WM-CTL
Unlimited Jurisdiction

(Case assigned to Hon. Richard E. L. Strauss,
Dept. C-75)

[IMAGED FILE]

**DECLARATION OF ALENA SHAMOS
IN SUPPORT OF RESPONDENTS'
OPPOSITION TO EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

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

Complaint Filed: November 13, 2020

Colantuono, Highsmith & Whatley, PC
440 Stevens Avenue, Suite 200
SOLANA BEACH, CA 92075

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DECLARATION OF ALENA SHAMOS

I, ALENA SHAMOS, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court.

I am Senior Counsel to the law firm of Colantuono, Highsmith & Whatley, PC, attorneys of record for Respondents and Defendants City of Chula Vista and the Chula Vista City Manager. I have personal knowledge of the matters set forth herein and if called upon as a witness, I could competently testify thereto.

2. As referenced in the Declaration of Gary Brucker, Counsel for Petitioner and Plaintiff UL Chula Two, LLC, in December 2020, he and I discussed the possibility of a temporary stay—subject to the approval of Real Parties in Interest, March and Ash Chula Vista, Inc. and TD Enterprise LLC (“Real Parties in Interest”)—temporarily enjoining the City from issuing any City cannabis storefront retailer license in City Council District 1 for the pendency of the action.

3. I incorporated the proposed stay into a draft stipulation setting the briefing and hearing schedule in this action and sent it to Mr. Brucker. It was the City’s intent to expeditiously proceed on the merits and avoid wasting resources by engaging in interim *ex parte* and motion procedures.

4. As referenced in Paragraph 3 of Mr. Brucker’s Declaration in Support of the Temporary Restraining Order Application, I circulated a proposed stipulation to all Counsel and the parties participated in conference calls regarding its terms. However, the parties could not reach agreement. On January 19, 2021, Petitioner filed and served its motion for preliminary injunction.

5. In light of objections to a full stay of license issuance in District 1, that were raised during the parties’ discussions, on January 20, 2021, I modified the stay language and sent Petitioner a revised stipulation proposing an agreement for a temporary stay that enjoined the City from issuing more than one (1) City cannabis storefront retailer license in City Council District 1.

6. I made this proposal in exchange for Petitioner’s withdrawal of the Preliminary

1 Injunction Motion. Attached hereto as **Exhibit A** is a true and correct copy of my email to Petitioner's
2 Counsel, dated January 20, 2021, with the attached draft Stipulation. Petitioner did not agree to the
3 proposed terms.

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

6 Executed on February 3, 2021 at San Diego, California.

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10 _____
11 ALENA SHAMOS
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EXHIBIT A

Alena Shamos

From: Alena Shamos
Sent: Wednesday, January 20, 2021 9:38 AM
To: 'Brucker, Gary'
Subject: RE: Re: UL Chula Two LLC v. City of Chula Vista, et al.
Attachments: Stipulation Prop Order AS 2021-1-20 Rev.DOCX

Gary - In anticipation of a potential conversation, attached is a proposed stipulation that I am prepared to circulate to the group as a whole (except for phil@tencersherman.com, whom I believe is Counsel on another matter?) pending our discussion.

The proposal is that if the parties can agree to this, you take the Preliminary Injunction motion off calendar. I tentatively have March & Ash's Counsel on board. Although I have reached out to TD Enterprises' Counsel, David, he appears to be out of town. Let me know your thoughts. Again, my number is 858-699-8911. I will be around all day as I am working on a large filing deadline in another matter.

Thanks in advance,

Alena

Alena Shamos

Senior Counsel

Colantuono, Highsmith & Whatley, PC

440 Stevens Avenue, Suite 200 | Solana Beach, CA 92075

Direct 858-682-3665 | **Main** 213-542-5700 | **Fax** 213-542-5710

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From: Alena Shamos
Sent: Wednesday, January 20, 2021 9:04 AM
To: Brucker, Gary <Gary.Brucker@lewisbrisbois.com>
Subject: RE: Re: UL Chula Two LLC v. City of Chula Vista, et al.

Please let me know if you have a moment for a call. Thanks. 858-699-8911

Alena Shamos

Senior Counsel

Colantuono, Highsmith & Whatley, PC

440 Stevens Avenue, Suite 200 | Solana Beach, CA 92075

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From: Brucker, Gary <Gary.Brucker@lewisbrisbois.com>
Sent: Tuesday, January 19, 2021 11:41 AM
To: de Gruchy, Jeff <Jeff.deGruchy@lewisbrisbois.com>; Alena Shamos <AShamos@chwlaw.us>; David Kramer <d.kramer@vicentesederberg.com>; Joshua Kappel <josh@vicentesederberg.com>; Riley, Heather <hriley@allenmatkins.com>; Williams, Becca <BWilliams@allenmatkins.com>; phil@tencersherman.com
Cc: Baucher, Carson <Carson.Baucher@lewisbrisbois.com>; McIntyre, Lann <Lann.McIntyre@lewisbrisbois.com>
Subject: RE: Re: UL Chula Two LLC v. City of Chula Vista, et al.

Hi Everyone,

The hearing date for our PI motion is April 30, 2021. We are planning to go in *ex parte* to either advance the hearing date or seek a TRO until the hearing date. Before we do that, I wanted to check one last time to see if the Real Parties and Respondent would be willing to stipulate to a stay of licensing until April 30, 2021 so we can avoid further motion practice on this issue. Please let us know your thoughts.

Thank you,

Gary



Gary K. Brucker Jr.
Partner
Gary.Brucker@lewisbrisbois.com
T: 619.699.4917 F: 619.233.8627

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From: de Gruchy, Jeff <Jeff.deGruchy@lewisbrisbois.com>
Sent: Tuesday, January 19, 2021 11:23 AM
To: ashamos@chwlaw.us; David Kramer <d.kramer@vicentesederberg.com>; Joshua Kappel <josh@vicentesederberg.com>; Riley, Heather <hriley@allenmatkins.com>; Williams, Becca <BWilliams@allenmatkins.com>; phil@tencersherman.com
Cc: Brucker, Gary <Gary.Brucker@lewisbrisbois.com>; Baucher, Carson <Carson.Baucher@lewisbrisbois.com>; McIntyre, Lann <Lann.McIntyre@lewisbrisbois.com>
Subject: Re: UL Chula Two LLC v. City of Chula Vista, et al.

Dear Counsel:

Please find attached the following regarding the above-referenced matter, which has gone out for filing today:

- (1) Petitioner/Plaintiff's Notice of Motion and Motion for Preliminary Injunction and Stay of Decision
- (2) Petitioner/Plaintiff's Memorandum of Points and Authorities in Support of Its Motion for Preliminary Injunction and Stay of Decision

- (3) Declaration of Willie Senn in Support of Petitioner/Plaintiff's Motion for Preliminary Injunction and Stay of Decision
- (4) Declaration of Gary K. Brucker, Jr. in Support of Petitioner/Plaintiff's Motion for Preliminary Injunction and Stay of Decision
- (5) Appendix of Exhibits in Support of Petitioner/Plaintiff's Motion for Preliminary Injunction and Stay of Decision
- (6) [Proposed] Order Granting Petitioner/Plaintiff's Motion for Preliminary Injunction and Stay of Decision
- (7) Proof of Service

Best regards,



Jeff de Gruchy, Litigation Secretary

To Gary Brucker, Esq., Carson Baucher, Esq. and Paloma Moreno-Acosta, Esq.

Jeff.deGruchy@lewisbrisbois.com

T: 619.685.5510 F: 619.233.8627

550 West C Street, Suite 1700, San Diego, CA 92101 | LewisBrisbois.com

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**Exempt from Filing Fees
Government Code § 6103**

5 Attorneys for Respondents/Defendants,
CITY OF CHULA VISTA AND CHULA VISTA CITY MANAGER
6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**
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10 UL CHULA TWO LLC,
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public entity; CHULA VISTA CITY
14 MANAGER, and DOES 1 through 20,
15 Respondents/Defendants.
16 DOES 21-50,
17 Real Parties In Interest.
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CASE NO. 37-2020-00041554-CU-WM-CTL
Unlimited Jurisdiction

(Case assigned to Hon. Richard E. L. Strauss,
Dept. C-75)

[IMAGED FILE]

**STIPULATION AND [PROPOSED]
ORDER:**

**1) TEMPORARILY STAYING THE CITY
OF CHULA VISTA’S ISSUANCE OF
PHASE 2 STOREFRONT RETAIL
CANNABIS LICENSES IN COUNCIL
DISTRICT 1, AND**

**2) SETTING A SCHEDULE FOR
BRIEFING AND HEARING ON THE
MERITS**

Complaint Filed: November 13, 2020

22 **RECITALS**
23

24 WHEREAS, Petitioner UL Chula Two LLC (“UL Chula Two” or “Petitioner”) filed a Verified
25 Petition For Writ Of Mandamus (Code Civ. Proc, §§ 1085, 1094.5, 1094.6); And Complaint For
26 Declaratory & Injunctive Relief (“Petition”) on November 13, 2020 in San Diego Superior Court, and
27 the matter was assigned to Judge Timothy Taylor in Dept. C-72 of the above captioned Court.

28 WHEREAS, the Petition sets forth allegations challenging 1) the decision of the City to deny
Petitioner’s application for a storefront retail cannabis license in the City’s Council District 1, pursuant

1 to Chapter 5.19 of the Chula Vista Municipal Code (CVMC), based on Petitioner’s prior violation of
2 the City of San Diego’s Zoning Laws, 2) the City’s administrative appeal process, and 3) the City
3 Manager’s decision - following the administrative appeal hearing - upholding the City’s denial of
4 Petitioner’s application.

5 WHEREAS, Petitioner served its Verified Petition for Writ of Mandate on Respondents, City
6 of Chula Vista and its City Manager (collectively, “City” or “Respondents”) on November 20, 2020.

7 WHEREAS, on November 18, 2020, Petitioner filed an Amendment to Complaint to add Real
8 Party in Interest March and Ash Chula Vista, Inc. (“March and Ash”) as Respondent DOE 22 and Real
9 Party in Interest TD Enterprises as Respondent DOE ____.

10 WHEREAS, on December 15, 2020, Petitioner applied to the Court *ex parte* to relate this action
11 to other earlier, and later, filed matters challenging the City’s denials of other cannabis license
12 applications under CVMC Chapter 5.19, which were pending before the Hon. Richard E. L. Strauss.
13 Petitioner’s *ex parte* application was granted and the above captioned action was reassigned from
14 Judge Taylor to Judge Strauss, in Dept. C-75.

15 WHEREAS, Counsel for Petitioner, Counsel for Real Parties, and Counsel for the City (jointly,
16 “Parties”) conferred, and subject to the approval of the Court, hereby agree to a schedule for
17 certification of the Administrative Record, briefing, and the hearing on the merits in this matter.

18 WHEREAS, the Parties further agree to a temporary stay, enjoining the City from issuing more
19 than one (1) City cannabis storefront retailer license, pursuant to CVMC § 5.19.040, in City Council
20 District 1 in order to maintain the *status quo* pending the resolution of this action, or the determination
21 of this action on the merits, as further set forth herein.

22 NOW THEREFORE, the Parties, through their undersigned counsel below, hereby stipulate
23 and agree as follows:

24 **STIPULATION**

25 1. In order to maintain the *status quo* pending the resolution, or determination of this
26 action on the merits, the Parties hereby agree to a temporary stay, enjoining the City from issuing more
27 than one (1) City cannabis storefront retailer license, pursuant to CVMC § 5.19.040, in City Council
28 District 1. The stay shall be in effect from the date of the Court enters the Order on this Stipulation,

1 until the above captioned matter is resolved pursuant to an enforceable settlement agreement or this
2 Court issues a Ruling on the merits.

3 2. The City shall prepare and certify the complete record of the proceedings for the above-
4 captioned matter by February ____, 2021, subject to payment for the record by UL Chula Two,
5 pursuant to Code of Civil Procedure section 1094.5 *et seq.*

6 3. Respondents shall have until March ____, 2021 to file their Answer, or otherwise
7 respond, to the Petition.

8 4. Subject to the Court's approval, the Parties agree to the following briefing and hearing
9 schedule for a merits determination on the Petition:

10 a) Petitioner shall file and serve the Opening Brief on or before March 30, 2021;

11 b) The City and Real Parties shall file and serve the Opposition Brief(s) on or
12 before April 29, 2021;

13 c) Petitioner shall file and serve the Reply Brief(s) on or before May 28, 2021.

14 d) The Parties have agreed that the Opening and Opposition Briefs shall not
15 exceed 25 pages each, and the Reply Brief(s) shall not exceed 15 pages.

16 e) In accordance with Petitioner's reservation pursuant to the Court's Online
17 Reservation system, the Parties hereby request a hearing on the merits on June 18 of
18 2021. The hearing on the merits as to the Writ of Mandate Causes of Action shall
19 also fully determine and decide Petitioner's claims for Declaratory and Injunctive
20 relief alleged in the Petition.

21 5. Per California Rules of Court, rule 2.251(b), and Code of Civil Procedure section
22 1010.6, the Parties agree to electronic service of all briefing and discovery, if any.

23 6. The Parties acknowledge that the current briefing and hearing schedule is stipulated to
24 on the assumption that discovery will not be necessary. If any Party makes a good faith determination
25 that discovery is necessary, the Parties agree to meet and confer in good faith on an amended briefing
26 and hearing schedule.

7. To the extent any discovery is propounded, the Parties also agree to meet and confer regarding any discovery disputes in good faith and attempt to resolve any such disputes without the need for motion proceedings.

8. Nothing in this Stipulation prohibits 1) the Parties from later stipulating to an amended schedule, or in the event an agreement cannot be reached, 2) a Party from later seeking (via *ex parte* application or noticed motion) to modify this Stipulation and Order, or the schedule agreed to herein, based on subsequently occurring facts or events.

IT IS SO STIPULATED.

DATED: _____ LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
GARY K. BRUCKER, JR.
Attorneys for Plaintiff/Petitioner
UL CHULA TWO LLC

DATED: _____ COLANTUONO, HIGHSMITH & WHATLEY, PC

By: _____
ALENA SHAMOS
Attorneys for Respondents/Defendants
CITY OF CHULA VISTA and CHULA VISTA
CITY MANAGER

DATED: _____ ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: _____
HEATHER S. RILEY
Attorneys for Real Party in Interest
MARCH AND ASH CHULA VISTA, INC.

DATED: _____ VICENTE SEDERBERG LLP

By: _____
DAVID KRAMER
Attorneys for Real Party in Interest
TD ENTERPRISES

[PROPOSED] ORDER

IT IS HEREBY ORDERED THAT:

In order to maintain the *status quo* pending the resolution, or determination of this action on the merits, the City is enjoined from issuing more than one (1) City cannabis storefront retailer license, pursuant to CVMC § 5.19.040, in City Council District 1. The stay shall be in effect from the date of entry of this Order, until the above captioned matter is resolved pursuant to an enforceable settlement agreement, or this Court issues a Ruling the merits on, or following, the hearing date set forth below.

IT IS FURTHER ORDERED THAT:

1. The City shall prepare and certify the complete record of the proceedings for the above-captioned matter by February ____, 2021, subject to payment for the record by UL Chula Two, pursuant to Code of Civil Procedure section 1094.5 *et seq.*

2. Respondents shall have until March ____, 2021 to file their Answer, or otherwise respond, to the Petition.

3. The hearing on the merits of the Petition shall take place on June 18, 2021, at _____ a.m./p.m.;

4. Petitioner shall file and serve the Opening Brief on or before March 30, 2021;

5. The City and Real Parties shall file and serve the Opposition Brief(s) on or before April 29, 2021;

6. Petitioner shall file and serve the Reply Brief(s) on or before May 28, 2021.

7. The Opening and Opposition Briefs shall not exceed 25 pages each, and the Reply Brief(s) shall not exceed 15 pages.

IT IS SO ORDERED.

DATE: _____

Hon. Hon. Richard E. L. Strauss
Judge of the Superior Court

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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
Our File No. 33020.0009

I, Shoeba Hassan, 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: shassan@chwlaw.us. On February 3, 2021, I served the document(s) described as **DECLARATION OF ALENA SHAMOS IN SUPPORT OF RESPONDENTS' OPPOSITION TO EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER** on the interested parties in this action addressed as follows:

By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

- ☐ **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.
- ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on February 3, 2021 from the court authorized e-filing service at OneLegal.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on February 3, 2021, at Pasadena, California.



Shoeba Hassan

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
Our File No. 33020.0009

Gary K. Brucker, Jr., SBN 238644 Carson P. Baucher, SBN 298884 Lann G. McIntyre, SBN 106067 LEWIS BRISBOIS BISGAARD & SMITH LLP 550 West C Street, Suite 1700 San Diego, CA 92101 Tel.: (619) 233-1006 Fax: (619) 233-8627 E-mail: Gary.Brucker@lewisbrisbois.com Carson.Baucher@lewisbrisbois.com Lann.McIntyre@lewisbrisbois.com	<i>Attorneys for Plaintiff</i> UL CHULA TWO LLC
David Kramer, Esq. Josh Kappel, Esq. VICENTE SEDERBERG LLP 633 West 5th Street, 26th Floor Los Angeles, California 90071 Tel.: (310) 695-1836 Fax: (303) 860-4505 E-mail: d.kramer@vicentesederberg.com E-mail: josh@vicentesederberg.com	<i>Attorneys for Defendant</i> MARCH AND ASH CHULA VISTA, INC.
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	<i>Attorneys for Defendant</i> TD ENTERPRISE LLC
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	<i>Attorneys for Defendant</i> TD ENTERPRISE LLC