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

15 UL CHULA TWO LLC,
16
17 Petitioner/Plaintiff,
18
19 vs.
20 CITY OF CHULA VISTA, a California
21 public entity; CHULA VISTA CITY
22 MANAGER, and DOES 1-20,

23 Respondents/Defendants,

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

27 Real Parties In Interest

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

**DECLARATION OF PHILIP TENCER IN
SUPPORT OF TD ENTERPRISE LLC'S
OPPOSITION TO PETITIONER UL
CHULA TWO LLC'S PRELIMINARY
INJUNCTION MOTION**

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

Hearing Date: March 26, 2021
Time: 9:00 a.m.
Dept.: C-75

**DECLARATION OF PHILIP TENCER IN SUPPORT OF TD ENTERPRISE LLC'S
OPPOSITION TO PRELIMINARY INJUNCTION**

28 I, Philip Tencer, declare as follows:

1. I am currently an attorney at TencerSherman LLP, attorneys for Real Party in Interest TD Enterprise LLC ("TD"). I am a member in good standing of the Bar of this Court. I make this

1 declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and
2 would testify competently thereto.

3 2. Attached hereto as **Exhibit A** is a true and correct copy of a letter sent by the City of
4 Chula Vista to TD, dated June 12, 2020.

5 DATED: March 15, 2021

TENCERSHERMAN LLP


7 By: 
8 Philip C. Tencer
9 Attorney for TD Enterprise LLC

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,



Kelley Bacon,
Deputy City Manager

encl: Agreement (sample)