

1 ALENA SHAMOS, State Bar No. 216548  
AShamos@chwlaw.us  
2 MATTHEW C. SLENTZ, State Bar No. 285143  
MSlantz@chwlaw.us  
3 COLANTUONO, HIGHSMITH & WHATLEY, PC  
440 Stevens Avenue, Suite 200  
4 Solana Beach, CA 92075  
Telephone: (213) 542-5700  
5 Facsimile: (213) 542-5710

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

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO, CENTRAL COURTHOUSE**

10 UL CHULA TWO LLC,

11 Plaintiffs,

12 v.

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

16 Defendants.

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

19 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]**  
*Unlimited Jurisdiction*

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

**RESPONDENTS CITY OF CHULA  
VISTA AND CHULA VISTA CITY  
MANAGER'S ANSWER TO UL CHULA  
TWO, LLC'S VERIFIED PETITION  
FOR WRIT OF MANDAMUS AND  
COMPLAINT FOR DECLARATORY &  
INJUNCTIVE RELIEF**

Complaint Filed: November 13, 2020

Hearing Date: May 21, 2021

Time: 9:00 AM

Dept.: C-75

22  
23 Defendants and Respondents, City of Chula Vista and the Chula Vista City Manager (jointly,  
24 "the City") answer the Verified Petition for Writ of Mandamus and Complaint for Declaratory and  
25 Injunctive Relief ("Petition") filed by Petitioner Ul Chula Two, LLC ("Petitioner"), by admitting,  
26 denying, and alleging as follows:  
27  
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## **INTRODUCTION**

1. In response to Paragraph 1, the City admits that Petitioner applied to the City for a retail storefront cannabis business license on or about January 18, 2019 and that on August 27, 2019 Petitioner scored 900.3. The City avers that Chapter 5.19 of the Chula Vista Municipal Code (“CVMC”) regulates the application process and the advancement of the highest scoring applicants and speaks for itself. The remaining allegations in Paragraph 1 consist of legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response; however, to the extent the remaining allegations the City does not specifically admit contain any factual allegations, the City denies each and every such factual allegation.

2. In response to Paragraph 2, the City avers that the allegations of the first and second sentences relate to the notice of decision issued by the City, which document speaks for itself and is the best evidence of its contents. The remaining allegations in Paragraph 2 consist of legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response; however, to the extent the allegations in Paragraph 2 contain any factual allegations, the City denies them.

3. In response to Paragraph 3, the City admits that Petitioner included with its application a letter attaching a copy of the Stipulated Judgment in the *Holistic Café* case, as that term is defined in the Petition. The remaining allegations in Paragraph 3 consist of legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response; however, to the extent the allegations in Paragraph 3 not specifically admitted by the City contain any factual allegations, the City denies them.

4. In response to Paragraph 4, the City avers the allegations in that Paragraph consist of legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response; however, to the extent the allegations in Paragraph 4 contain any factual allegations, the City denies them.

5. In response to Paragraph 5, the City avers the allegations in that Paragraph consist of legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response; however, to the extent the allegations in Paragraph 5 contain any factual allegations, the City denies

1 them.

2 **JURISDICTION, VENUE, AND PARTIES**

3 6. In response to Paragraph 6, the City is without sufficient knowledge or information to  
4 form a belief as to the truth of the allegations contained therein and, on that basis, denies each and  
5 every allegation.

6 7. In response to Paragraph 7, the City admits the allegations contained therein.

7 8. In response to Paragraph 8, the City admits the allegations contained therein.

8 9. In response to Paragraph 9, the City admits this Court has jurisdiction. The City avers  
9 the remaining allegations in Paragraph 9 consist of legal theory, conclusions, argument, and  
10 characterizations of Petitioner's case requiring no response; however, to the extent the allegations in  
11 Paragraph 9 not specifically admitted by the City contain any factual allegations, the City denies  
12 them.

13 10. In response to Paragraph 10, the City admits venue is proper in this Court.

14 11. In response to Paragraph 11, the City is without sufficient knowledge or information  
15 to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and  
16 every allegation.

17 12. In response to Paragraph 12, the City is without sufficient knowledge or information  
18 to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and  
19 every allegation.

20 **GENERAL ALLEGATIONS**

21 ***Prop 215, Prop 64, And The City's Regulatory Scheme***

22 13. In response to Paragraph 13, the City avers the allegations in that Paragraph consist of  
23 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
24 however, to the extent the allegations in Paragraph 13 contain any factual allegations, the City denies  
25 them.

26 14. In response to Paragraph 14, the City avers the allegations in that Paragraph consist of  
27 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
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1 however, to the extent the allegations in Paragraph 14 contain any factual allegations, the City denies  
2 them.

3 15. In response to Paragraph 15, the City admits it adopted Ordinance No. 3418 on March  
4 6, 2018 and avers that the remaining allegations of the first sentence, and the whole of the second  
5 sentence relate to City Ordinance No. 3418, which document speaks for itself and is the best  
6 evidence of its contents. The City further admits that on November 6, 2018 voters approved Measure  
7 Q, and avers that the remaining allegations of the third sentence relate to Measure Q, which  
8 document speaks for itself and is the best evidence of its contents. The City avers that the remaining  
9 allegations in Paragraph 15 consist of legal theory, conclusions, argument, and characterizations of  
10 Petitioner's case requiring no response; however, to the extent the allegations in Paragraph 15 not  
11 specifically admitted by the City contain any factual allegations, the City denies them.

12 16. In response to Paragraph 16, the City avers that the allegations in that Paragraph  
13 relate to the CVMC section 5.19.010, a true and correct copy of which is included in the certified  
14 administrative record in this action, and which document speaks for itself and is the best evidence of  
15 its contents. The City further avers that the remaining allegations in Paragraph 16 consist of legal  
16 theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
17 however, to the extent the allegations in Paragraph 16 contain any factual allegations, the City denies  
18 them.

19 17. In response to Paragraph 17, the City avers that the allegations in that Paragraph  
20 relate to the CVMC Chapter 5.19, and in particular CMVC section 5.19.020 and 5.19.030, true and  
21 correct copies of which are included in the certified administrative record in this action, and which  
22 documents speak for themselves and are the best evidence of their contents. The remaining  
23 allegations in Paragraph 17 consist of legal theory, conclusions, argument, and characterizations of  
24 Petitioner's case requiring no response.

25 18. In response to Paragraph 18, the City avers that the allegations in that Paragraph  
26 relate to the CVMC section 5.19.050, a true and correct copy of which is included in the certified  
27 administrative record in this action, and which document speaks for itself and is the best evidence of  
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1 its contents. The City further avers that the remaining allegations in Paragraph 18 consist of legal  
2 theory, conclusions, argument, and characterizations of Petitioner's case requiring no response.

3 19. In response to Paragraph 19, the City avers that the allegations in that Paragraph  
4 relate to the City Cannabis Regulations, and in particular Regulation § 0501, a true and correct copy  
5 of which is included in the certified administrative record in this action, and which document speaks  
6 for itself and is the best evidence of its contents. The City avers that the remaining allegations in  
7 Paragraph 19 consist of legal theory, conclusions, argument, and characterizations of Petitioner's  
8 case requiring no response.

9 20. In response to Paragraph 20, the City avers that the allegations in that Paragraph  
10 consist of legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no  
11 response. The City further avers that to the extent the second sentence of Paragraph 20 relates to  
12 CVMC section 5.19.010, a true and correct copy of which is included in the certified administrative  
13 record in this action, that document speaks for itself and is the best evidence of its contents.

14 21. In response to Paragraph 21, the City admits the allegations contained in the first  
15 sentence of that Paragraph. The City avers that to the extent the second sentence of Paragraph 21  
16 relates to CVMC section 5.19.010, a true and correct copy of which is included in the certified  
17 administrative record in this action, that document speaks for itself and is the best evidence of its  
18 contents.

19 ***Petitioner's Application***

20 22. In response to Paragraph 22, the City avers that the allegations the first three  
21 sentences of Paragraph 22 relate to the City Cannabis Regulation § 0501, a true and correct copy of  
22 which is included in the certified administrative record in this action, and which document speaks for  
23 itself and is the best evidence of its contents. The City admits the allegations contained in the  
24 remaining two sentences of Paragraph 22.

25 23. In response to Paragraph 23, the City admits the allegations in the first and third  
26 sentences of that Paragraph. The City avers it is without sufficient knowledge or information to form  
27 a belief as to the truth of the allegations contained in the second sentence of Paragraph 23 and, on  
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1 that basis, denies each and every allegation.

2         24. In response to Paragraph 24, the City admits that Petitioner included with its  
3 application an executed Affirmation and Consent, a true and correct copy of which is included in the  
4 certified administrative record in this action, and which document speaks for itself and is the best  
5 evidence of its contents. The City avers that the remaining allegations in Paragraph 24 consist of  
6 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
7 however, to the extent the allegations in Paragraph 24 not specifically admitted by the City contain  
8 any factual allegations, the City denies them.

9         25. In response to Paragraph 25, the City admits that Petitioner included with its  
10 application a letter attaching a copy of the Stipulated Judgment in the *Holistic Café* case, as that term  
11 is defined in the Petition, a true and correct copy of which is included in the certified administrative  
12 record in this action, and which document speaks for itself and is the best evidence of its contents.  
13 The City avers that the remaining allegations in Paragraph 25 consist of legal theory, conclusions,  
14 argument, and characterizations of Petitioner's case requiring no response; however, to the extent the  
15 allegations in Paragraph 25 not specifically admitted by the City contain any factual allegations, the  
16 City denies them.

17         26. In response to Paragraph 26, the City admits that on June 10, 2019, the City sent a  
18 letter to petitioner, a true and correct copy of which is included in the certified administrative record  
19 in this action, and which document speaks for itself and is the best evidence of its contents. The City  
20 further admits that Petitioner completed the interview pursuant to the CMVC on July 17, 2019. The  
21 City avers that the remaining allegations in Paragraph 26 consist of legal theory, conclusions,  
22 argument, and characterizations of Petitioner's case requiring no response; however, to the extent the  
23 allegations in Paragraph 26 not specifically admitted by the City contain any factual allegations, the  
24 City denies them.

25 ***The Denial and Appeal***

26         27. In response to Paragraph 27, the City admits that on May 6, 2020, the City sent  
27 Petitioner Notices of Decision pertaining to Petitioner's above referenced applications, true and  
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1 correct copies of which are included in the certified administrative record in this action, and which  
2 documents speak for themselves and are the best evidence of the contents. The City avers that the  
3 remaining allegations in Paragraph 27 consist of legal theory, conclusions, argument, and  
4 characterizations of Petitioner's case requiring no response; however, to the extent the allegations in  
5 Paragraph 27 not specifically admitted by the City contain any factual allegations, the City denies  
6 them.

7         28. In response to Paragraph 28, the City avers that the allegations in the first sentence of  
8 that Paragraph relate to the Notices of Decision sent by the City, true and correct copies of which are  
9 included in the certified administrative record in this action, and which documents speak for  
10 themselves and are the best evidence of their contents. As to the remaining allegations in Paragraph  
11 28, the City avers that those allegations relate to the CVMC section 5.19.050 and Regulation § 0501,  
12 true and correct copies of which are included in the certified administrative record in this action, and  
13 which documents speak for themselves and are the best evidence of their contents. The City further  
14 avers that the remaining allegations in Paragraph 28 consist of legal theory, conclusions, argument,  
15 and characterizations of Petitioner's case requiring no response.

16         29. In response to Paragraph 29, the City admits the allegations contained therein.

17         30. In response to Paragraph 30, the City admits the allegations contained in the first and  
18 last sentence of that Paragraph. As to the remaining allegations in Paragraph 30, the City avers that  
19 those allegations relate to the June 10, 2020 Notice of Hearing and Regulation § 0501, true and  
20 correct copies of which are included in the certified administrative record in this action, and which  
21 documents speak for themselves and are the best evidence of their contents. The City further avers  
22 that the remaining allegations in Paragraph 30 consist of legal theory, conclusions, argument, and  
23 characterizations of Petitioner's case requiring no response; however, to the extent the allegations in  
24 Paragraph 30 are not specifically admitted by the City contain any factual allegations, the City  
25 denies them.

26         31. In response to Paragraph 31, the City admits the allegations contained in the first  
27 sentence of that Paragraph. As to the remaining allegations in Paragraph 31, the City avers that they  
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1 consist of legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no  
2 response; however, to the extent the allegations in Paragraph 31 are not specifically admitted by the  
3 City contain any factual allegations, the City denies them.

4 32. In response to Paragraph 32, the City admits that Petitioner submitted a brief on  
5 appeal on June 5, 2020, a true and correct copy of which is included in the certified administrative  
6 record in this action. As to the remaining allegations in Paragraph 32, the City avers that those  
7 allegations relate to Petitioner's brief on appeal, which document speaks for itself and is the best  
8 evidence of its contents. As to the remaining allegations in Paragraph 32, the City avers that they  
9 consist of legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no  
10 response; however, to the extent the allegations in Paragraph 32 are not specifically admitted by the  
11 City contain any factual allegations, the City denies them.

12 33. In response to Paragraph 33, the City admits the allegations in the first sentence of  
13 that Paragraph that an appeal hearing was held on June 10, 2020. As to the remainder of the first  
14 sentence, as well as the second and third sentences of Paragraph 33, the City avers that a true and  
15 correct copy of the Transcript of proceedings is included in the certified administrative record in this  
16 action, which document speaks for itself and is the best evidence of its contents. Further as to the  
17 remainder of the third sentence of Paragraph 33, and the fourth sentence of that Paragraph, the City  
18 avers that they consist of legal theory, conclusions, argument, and characterizations of Petitioner's  
19 case requiring no response; however, to the extent the allegations in those sentences not specifically  
20 admitted by the City contain any factual allegations, the City denies them. The City avers it is  
21 without sufficient knowledge or information to form a belief as to the truth of the allegations  
22 contained in the final two sentences of Paragraph 33 and, on that basis, denies each and every  
23 allegation. However, the City acknowledges that Exhibit J appears to be an Order Amending  
24 Judgment Entered December 14, 2012, as to Defendant Willie Frank Senn, filed stamped May 3,  
25 2019, by the San Diego Superior Court, in Case No. 37-2012-00087648-CU-MC-CTL, which  
26 document speaks for itself and is the best evidence of its contents.

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34. In response to Paragraph 34, the City admits the allegations in the first sentence of that Paragraph. As to the remaining allegations in Paragraph 34, the City avers that a true and correct copy of the Findings and Statement of Decision dated August 26, 2020 is included in the certified administrative record in this action, which document speaks for itself and is the best evidence of its contents.

35. In response to Paragraph 35, the City admits the allegations contained therein and affirms that the certified administrative record was timely provided to Petitioner in accordance with applicable law.

### **A WRIT OF MANDATE SHOULD ISSUE**

#### ***Ground 1 – Civil Zoning Violations Are Not Disqualifying As A Matter Of Law***

36. In response to Paragraph 36, the City avers the allegations in that Paragraph consist of legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response; however, to the extent the allegations in Paragraph 36 contain any factual allegations, the City denies them. The City further avers that to the extent Paragraph 36 relates to CVMC section 5.19.050, a true and correct copy of which is included in the certified administrative record in this action, that document speaks for itself and is the best evidence of its contents.

37. In response to Paragraph 37, the City avers the allegations in that Paragraph consist of legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response; however, to the extent the allegations in Paragraph 37 contain any factual allegations, the City denies them.

38. In response to Paragraph 38, the City avers the allegations in that Paragraph consist of legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response; however, to the extent the allegations in Paragraph 38 contain any factual allegations, the City denies them.

39. In response to Paragraph 39, the City avers the allegations in that Paragraph consist of legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response; however, to the extent the allegations in Paragraph 39 contain any factual allegations, the City denies

1 them. The City further avers that to the extent Paragraph 39 relates to CVMC section 5.19.050, a true  
2 and correct copy of which is included in the certified administrative record in this action, that  
3 document speaks for itself and is the best evidence of its contents.

4 40. In response to Paragraph 40, the City avers the allegations in that Paragraph consist of  
5 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
6 however, to the extent the allegations in Paragraph 40 contain any factual allegations, the City denies  
7 them. The City further avers that to the extent Paragraph 40 relates to CVMC section 5.19.050, a true  
8 and correct copy of which is included in the certified administrative record in this action, that  
9 document speaks for itself and is the best evidence of its contents.

10 41. In response to Paragraph 41, the City avers the allegations in that Paragraph consist of  
11 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
12 however, to the extent the allegations in Paragraph 41 contain any factual allegations, the City denies  
13 them. The City avers it is without sufficient knowledge or information to form a belief as to the truth  
14 of the allegations contained in the final sentence of Paragraph 41; however, the City acknowledges  
15 that Exhibit M to the Petition appears to be a Complaint for Preliminary and Permanent Injunction,  
16 Civil Penalties and Other Equitable Relief, filed stamped December 14, 2012, by the San Diego  
17 Superior Court, in Case No. 37-2012-00087648-CU-MC-CTL, which document speaks for itself and  
18 is the best evidence of its contents.

19 42. In response to Paragraph 42, the City avers the allegations in that Paragraph consist of  
20 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
21 however, to the extent the allegations in Paragraph 42 contain any factual allegations, the City denies  
22 them. The City further avers that to the extent Paragraph 42 relates to Exhibit M to the Petition,  
23 which the City acknowledges appears to be, a Complaint for Preliminary and Permanent Injunction,  
24 Civil Penalties and Other Equitable Relief, filed stamped December 14, 2012, by the San Diego  
25 Superior Court, in Case No. 37-2012-00087648-CU-MC-CTL, that document speaks for itself and is  
26 the best evidence of its contents. In addition, to the extent the allegations in Paragraph 42 relate to  
27 the City of San Diego's Municipal Code, the City avers the Code constitutes documents that speak  
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1 for themselves and are the best evidence of their contents.

2       43. In response to Paragraph 43, the City avers the allegations in that Paragraph consist of  
3 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
4 however, to the extent the allegations in Paragraph 43 contain any factual allegations, the City denies  
5 them. The City further avers that to the extent Paragraph 43 relates to the City of San Diego's  
6 Municipal Code, the Code constitutes documents that speak for themselves and are the best evidence  
7 of their contents.

8       44. In response to Paragraph 44, the City avers the allegations in that Paragraph consist of  
9 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
10 however, to the extent the allegations in Paragraph 44 contain any factual allegations, the City denies  
11 them.

12       45. In response to Paragraph 45, the City avers the allegations in that Paragraph consist of  
13 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
14 however, to the extent the allegations in Paragraph 45 contain any factual allegations, the City denies  
15 them.

16 ***CVMC § 5.19.050(A)(5)(f) Does Not Apply To Civil Zoning Violations***

17       46. In response to Paragraph 46, the City avers the allegations in that Paragraph consist of  
18 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
19 however, to the extent the allegations in Paragraph 46 contain any factual allegations, the City denies  
20 them. The City further avers that to the extent Paragraph 46 relates to CVMC section 5.19.050, a true  
21 and correct copy of which is included in the certified administrative record in this action, that  
22 document speaks for itself and is the best evidence of its contents.

23       47. In response to Paragraph 47, the City avers the allegations in that Paragraph consist of  
24 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
25 however, to the extent the allegations in Paragraph 47 contain any factual allegations, the City denies  
26 them. The City further avers that to the extent Paragraph 47 relates to CVMC section 5.19.020, a true  
27 and correct copy of which is included in the certified administrative record in this action, that  
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document speaks for itself and is the best evidence of its contents.

48. In response to Paragraph 48, the City avers the allegations in that Paragraph consist of legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response; however, to the extent the allegations in Paragraph 48 contain any factual allegations, the City denies them. The City further avers that to the extent Paragraph 48 relates to CVMC section 5.19.050, a true and correct copy of which is included in the certified administrative record in this action, that document speaks for itself and is the best evidence of its contents.

49. In response to Paragraph 49, the City avers the allegations in that Paragraph consist of legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response; however, to the extent the allegations in Paragraph 49 contain any factual allegations, the City denies them. The City further avers that to the extent Paragraph 49 relates to CVMC section 5.19.050, a true and correct copy of which is included in the certified administrative record in this action, that document speaks for itself and is the best evidence of its contents.

50. In response to Paragraph 50, the City avers the allegations in that Paragraph consist of legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response; however, to the extent the allegations in Paragraph 50 contain any factual allegations, the City denies them. The City further avers that to the extent Paragraph 50 relates to CVMC section 5.19.050, a true and correct copy of which is included in the certified administrative record in this action, that document speaks for itself and is the best evidence of its contents.

51. In response to Paragraph 51, the City avers the allegations in that Paragraph consist of legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response; however, to the extent the allegations in Paragraph 51 contain any factual allegations, the City denies them. The City further avers that to the extent Paragraph 51 relates to CVMC section 5.19.050, a true and correct copy of which is included in the certified administrative record in this action, that document speaks for itself and is the best evidence of its contents.

***CVMC § 5.19.050(A)(5)(g) Does Not Apply To Civil Zoning Violations***

52. In response to Paragraph 52, the City avers the allegations in that Paragraph consist of

1 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
2 however, to the extent the allegations in Paragraph 52 contain any factual allegations, the City denies  
3 them. The City further avers that to the extent Paragraph 52 relates to CVMC section 5.19.050, a true  
4 and correct copy of which is included in the certified administrative record in this action, that  
5 document speaks for itself and is the best evidence of its contents.

6 53. In response to Paragraph 53, the City avers the allegations in that Paragraph consist of  
7 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
8 however, to the extent the allegations in Paragraph 53 contain any factual allegations, the City denies  
9 them. The City further avers that to the extent Paragraph 53 relates to CVMC section 5.19.050, a true  
10 and correct copy of which is included in the certified administrative record in this action, that  
11 document speaks for itself and is the best evidence of its contents.

12 54. In response to Paragraph 54, the City avers the allegations in that Paragraph consist of  
13 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
14 however, to the extent the allegations in Paragraph 54 contain any factual allegations, the City denies  
15 them. The City further avers that to the extent Paragraph 54 relates to CVMC section 5.19.050, a true  
16 and correct copy of which is included in the certified administrative record in this action, that  
17 document speaks for itself and is the best evidence of its contents.

18 55. In response to Paragraph 55, the City avers the allegations in that Paragraph consist of  
19 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
20 however, to the extent the allegations in Paragraph 55 contain any factual allegations, the City denies  
21 them. The City further avers that to the extent Paragraph 55 relates to CVMC section 5.19.050, a true  
22 and correct copy of which is included in the certified administrative record in this action, that  
23 document speaks for itself and is the best evidence of its contents.

24 ***Ground 2 – The City Abused Its Discretion By Refusing To Exercise Its Discretion***

25 56. In response to Paragraph 56, the City avers the allegations in that Paragraph consist of  
26 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
27 however, to the extent the allegations in Paragraph 56 contain any factual allegations, the City denies  
28

1 them. The City further avers that to the extent Paragraph 56 relates to CVMC section 5.19.050, a true  
2 and correct copy of which is included in the certified administrative record in this action, that  
3 document speaks for itself and is the best evidence of its contents.

4 57. In response to Paragraph 57, the City avers the allegations in that Paragraph consist of  
5 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
6 however, to the extent Paragraph 57 contains any factual allegations, the City denies them. The City  
7 further avers that to the extent Paragraph 57 relates to CVMC section 5.19.050, a true and correct  
8 copy of which is included in the certified administrative record in this action, that document speaks  
9 for itself and is the best evidence of its contents.

10 58. In response to Paragraph 58, the City avers the allegations in that Paragraph consist of  
11 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
12 however, to the extent Paragraph 56 contains any factual allegations, the City denies them.

13 59. In response to Paragraph 59, the City avers the allegations in that Paragraph consist of  
14 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
15 however, to the extent Paragraph 59 contains any factual allegations, the City denies them.

16 60. In response to Paragraph 60, the City avers the allegations in that Paragraph consist of  
17 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
18 however, to the extent Paragraph 60 contains any factual allegations, the City denies them.

19 61. In response to Paragraph 61, the City avers the allegations in that Paragraph consist of  
20 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
21 however, to the extent Paragraph 61 contains any factual allegations, the City denies them.

22 62. In response to Paragraph 62, the City denies the allegations in the first sentence of  
23 that Paragraph. The City avers it is without sufficient knowledge or information to form a belief as  
24 to the truth of the allegations contained in the remainder of Paragraph 62 and, on that basis, denies  
25 each and every allegation.

26 ***Ground 3 – The City Denied Applicants Fair Notice In Violation Of Due Process***

27 63. In response to Paragraph 63, the City avers the allegations in that Paragraph consist of  
28

1 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
2 however, to the extent Paragraph 63 contains any factual allegations, the City denies them. The City  
3 further avers that to the extent Paragraph 63 relates to CVMC section 5.19.050, a true and correct  
4 copy of which is included in the certified administrative record in this action, that document speaks  
5 for itself and is the best evidence of its contents.

6 64. In response to Paragraph 64, the City avers the allegations in that Paragraph consist of  
7 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
8 however, to the extent Paragraph 64 contains any factual allegations, the City denies them.

9 65. In response to Paragraph 65, the City avers the allegations in that Paragraph consist of  
10 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
11 however, to the extent Paragraph 65 contains any factual allegations, the City denies them.

12 66. In response to Paragraph 66, the City avers the allegations in that Paragraph consist of  
13 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
14 however, to the extent Paragraph 66 contains any factual allegations, the City denies them.

15 67. In response to Paragraph 67, the City avers the allegations in that Paragraph consist of  
16 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
17 however, to the extent Paragraph 67 contains any factual allegations, the City denies them.

18 ***Ground 4 – The City's Hearing Procedure Violated Petitioner's Due Process***

19 68. In response to Paragraph 68, the City avers the allegations in that Paragraph consist of  
20 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
21 however, to the extent Paragraph 68 contains any factual allegations, the City denies them. The City  
22 further avers that to the extent Paragraph 68 relates to Regulation § 0501, a true and correct copy of  
23 which is included in the certified administrative record in this action, that document speaks for itself  
24 and is the best evidence of its contents.

25 69. In response to Paragraph 69, the City avers the allegations in that Paragraph consist of  
26 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
27 however, to the extent Paragraph 69 contains any factual allegations, the City denies them.  
28

1           70.     In response to Paragraph 70, the City avers the allegations in that Paragraph consist of  
2 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
3 however, to the extent Paragraph 70 contains any factual allegations, the City denies them.

4           71.     In response to Paragraph 71, the City avers the allegations in that Paragraph consist of  
5 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
6 however, to the extent Paragraph 71 contains any factual allegations, the City denies them.

7           72.     In response to Paragraph 72, the City admits the allegations in the first two sentences  
8 of that Paragraph stating that Deputy City Attorney McClurg and Deputy City Manager Kelly Bacon  
9 gave presentations to the City Council regarding proposed Ordinance 3418, and that copies of those  
10 presentations are attached to the Petition as Exhibits P through S. The City avers that the remaining  
11 sentences in Paragraph 72 consist of legal theory, conclusions, argument, and characterizations of  
12 Petitioner's case requiring no response; however, to the extent those sentences contain any factual  
13 allegations, the City denies them.

14     ***Ground 5 – The City's Findings Were Not Supported By The Evidence***

15           73.     In response to Paragraph 73, the City avers the allegations in that Paragraph consist of  
16 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
17 however, to the extent Paragraph 73 contains any factual allegations, the City denies them. The City  
18 further avers that to the extent Paragraph 73 relates to CVMC section 5.19.050, a true and correct  
19 copy of which is included in the certified administrative record in this action, that document speaks  
20 for itself and is the best evidence of its contents.

21           74.     In response to Paragraph 74, the City avers the allegations in that Paragraph consist of  
22 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
23 however, to the extent Paragraph 74 contains any factual allegations, the City denies them. The City  
24 further avers that to the extent Paragraph 74 relates to CVMC sections 5.19.020 and 5.19.090, true  
25 and correct copies of which are included in the certified administrative record in this action, those  
26 documents speak for themselves and are the best evidence of their contents.

27  
28





1 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
2 however, to the extent Paragraph 83 contains any factual allegations, the City denies them.

3 **SECOND CLAIM FOR RELIEF**  
4 **(ADMINISTRATIVE MANDATE)**

5 84. In answer to Paragraph 84, the City realleges and incorporates by reference each and  
6 every denial, admission, and allegation set forth in Paragraphs 1 through 83 above as though set  
7 forth fully herein.

8 85. In response to Paragraph 85, the City avers the allegations in that Paragraph consist of  
9 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
10 however, to the extent Paragraph 85 contains any factual allegations, the City denies them.

11 86. In response to Paragraph 86, the City avers the allegations in that Paragraph consist of  
12 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
13 however, to the extent Paragraph 86 contains any factual allegations, the City denies them.

14 87. In response to Paragraph 87, the City avers the allegations in that Paragraph consist of  
15 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
16 however, to the extent Paragraph 87 contains any factual allegations, the City denies them.

17 88. In response to Paragraph 88, the City avers the allegations in that Paragraph consist of  
18 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
19 however, to the extent Paragraph 88 contains any factual allegations, the City denies them.

20 **THIRD CLAIM FOR RELIEF**  
21 **(DECLARATORY & INJUNCTIVE RELIEF)**

22 89. In answer to Paragraph 89, the City realleges and incorporates by reference each and  
23 every denial, admission, and allegation set forth in Paragraphs 1 through 88 above as though set  
24 forth fully herein.

25 90. In response to Paragraph 90, the City avers the allegations in that Paragraph consist of  
26 legal theory, conclusions, argument, and characterizations of Petitioner's case requiring no response;  
27 however, to the extent Paragraph 90 contains any factual allegations, the City denies them.  
28

1           91.     In response to Paragraph 91, the City avers the allegations in that Paragraph consist of  
2 legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response;  
3 however, to the extent Paragraph 91 contains any factual allegations, the City denies them.

4           92.     In response to Paragraph 92, the City avers the allegations in that Paragraph consist of  
5 legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response;  
6 however, to the extent Paragraph 92 contains any factual allegations, the City denies them.

7           93.     In response to Paragraph 93, the City avers the allegations in that Paragraph consist of  
8 legal theory, conclusions, argument, and characterizations of Petitioner’s case requiring no response;  
9 however, to the extent Paragraph 93 contains any factual allegations, the City denies them.

10                               **PRAYER**

11           The remaining portion of the Petition contains Petitioner’s prayer for relief, to which no  
12 response is required. To the extent any response is required, City denies that Petitioner is entitled to  
13 any relief whatsoever.

14                               **AFFIRMATIVE DEFENSES**

15           Without admitting any allegations of the Petition or assuming the burden of proof of any of the  
16 following claims, defenses, or issues, the City is informed and believes, and upon such information  
17 and belief alleges as follows:

18  
19                               **FIRST AFFIRMATIVE DEFENSE**

20                               **(Failure to State a Claim)**

21           1.     The Petition, and each cause of action and/or claim alleged therein, fails to state facts  
22 sufficient to constitute a cause of action against the City.

23  
24                               **SECOND AFFIRMATIVE DEFENSE**

25                               **(Standing)**

26           2.     The Petition, and each cause of action and/or claim alleged therein, is barred because  
27 Petitioner lacks standing.

**THIRD AFFIRMATIVE DEFENSE**

**(Mootness)**

3. Each claim of the Petition is moot.

**FOURTH AFFIRMATIVE DEFENSE**

**(Failure to Exhaust Administrative Remedies)**

4. Petitioner failed to exhaust its administrative remedies; as a result, the action is barred.

**FIFTH AFFIRMATIVE DEFENSE**

**(Failure to Comply with Government Claims Act Requirements)**

5. The Petition, and each and every cause of action therein, is barred by Petitioner's failure to comply with the claim presentation requirements of the Government Claims Act.

**SIXTH AFFIRMATIVE DEFENSE**

**(No Prejudicial Error)**

6. The Petition, and each cause of action and/or claim alleged therein, is barred by the presumption set forth in Evidence Code section 664.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Exercise of Discretion)**

7. The City alleges that neither a public entity nor a public employee is liable for any injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Immunity)**

8. The City alleges that neither a public entity nor a public employee is liable for his act or omission, exercising due care, in the execution or enforcement of any law.

**NINTH AFFIRMATIVE DEFENSE**

**(Acts in Accordance with Law and Substantial Evidence)**

9. With respect to all actions alleged in the Petition, the City: (i) proceeded in the manner required by law; (ii) did not act arbitrarily, capriciously, or wholly without evidentiary support; (iii) did not abuse its discretion; and (iv) made all required findings, which supported the City's actions and were themselves supported by substantial evidence.

**TENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

10. The Petition, and each cause of action and/or claim alleged therein, is barred by the doctrine of estoppel.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Waiver)**

11. The Petition, and each cause of action and/or claim alleged therein, is barred by the doctrine of waiver.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Laches)**

12. The Petition, and each cause of action and/or claim alleged therein, is barred by the doctrine of laches.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

13. The Petition, and each cause of action and/or claim alleged therein, is barred by the doctrine of unclean hands.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(No Equitable Relief)**

14. Petitioner is not entitled to any relief in equity from the City because the balance of harms does not warrant such relief

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Compliance with Applicable Law)**

15. The Petition, and each cause of action and/or claim alleged therein, is barred because the City complied in each and every respect with all applicable procedural and substantive laws.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Conduct Justified)**

16. The City's conduct in regard to the matters alleged in the Petition was justified, and Petitioners are therefore barred from any recovery.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Acquiescence)**

17. Petitioner, by its conduct, has acquiesced to the conduct of the City, and therefore, Petitioner is barred from maintaining each cause of action and/or claim alleged in the Petition.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Legislative Discretion)**

18. The Petition, and each cause of action and/or claim alleged therein, is barred because Petitioner improperly seeks to control the City's exercise of discretion and compel the City to exercise that discretion in a particular manner.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Full Performance)**

19. The City has appropriately, completely, and fully performed and discharged any and all obligations and legal duties arising out of the matters alleged in the Petition.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Good Faith)**

20. The City acted reasonably and in good faith at all times material herein based on all relevant facts and circumstances known to City at the time it so acted. Accordingly, any recovery or relief sought by the Petition is barred.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Improper Purposes)**

21. The Petition, and each cause of action and/or claim alleged therein, is barred because Petitioner has commenced this proceeding to oppress, delay, and coerce the City and to improperly serve private financial purposes.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Separation of Powers)**

22. The relief sought in the Petition is barred because it would require the Court to substitute its judgment for that of the City in violation of the principles of separation of powers, and/or engage in continuous supervision over local government affairs.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Attorneys' Fees Not Recoverable)**

23. The Petition, and each purported cause of action contained therein, fails to set forth facts that would constitute a basis for an award of attorney fees against the City under Code of Civil Procedure section 1021.5 or any other statute or doctrine.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(Costs of Suit Not Recoverable)**

24. The Petition, and each purported cause of action contained therein, fails to set forth facts that would constitute a basis for an award of costs of suit against the City.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

**(Additional Defenses)**

25. The City has insufficient information and knowledge at present on which to form a belief as to whether it may have additional, as yet unstated, defenses to this suit. The City reserves the right to assert additional defenses if further investigation indicates such affirmative defenses would be appropriate.

**PRAYER**

WHEREFORE, the City prays for judgment as follows:

1. That the Court deny the Petition and that no writ issue;
2. That the Court deny Petitioner's request for declaratory relief;



3. That the Court deny Petitioner's request for an injunction;
4. That the Court deny Petitioner's request for attorneys' fees and costs of suit;
5. That Petitioner take nothing by this action;
6. That the Court award the City's its attorneys' fees and costs of suit; and
7. For such other relief as the Court deems proper.

DATED: April 9, 2021

**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**



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ALENA SHAMOS  
MATTHEW C. SLENTZ  
Attorneys for Respondents/Defendants,  
CITY OF CHULA VISTA AND CHULA VISTA  
CITY MANAGER

**[Deemed verified pursuant to Civil Code section 446]**

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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 April 9, 2021, I served the document(s) described as **RESPONDENTS CITY OF CHULA VISTA AND CHULA VISTA CITY MANAGER'S ANSWER TO UL CHULA TWO, LLC'S VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF** 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 April 9, 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 April 9, 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

<p>Gary K. Brucker, Jr., SBN 238644 Lann G. McIntyre, SBN 106067 Anastasiya Menshikova, SBN 312392 <b>LEWIS BRISBOIS BISGAARD &amp; SMITH LLP</b> 550 West C Street, Suite 1700 San Diego, CA 92101 Tel.: (619) 233-1006 Fax: (619) 233-8627 E-mail: Gary.Brucker@lewisbrisbois.com Anastasiya.Menshikova@lewisbrisbois.com Lann.McIntyre@lewisbrisbois.com</p>	<p><i>Attorneys for Plaintiff</i> UL CHULA TWO LLC</p>
<p>David Kramer, Esq. Josh Kappel, Esq. <b>VICENTE SEDERBERG LLP</b> 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</p>	<p><i>Attorneys for Defendant</i> MARCH AND ASH CHULA VISTA, INC.</p>
<p>Heather Riley, Esq. Rebecca Williams, Esq. <b>ALLEN MATKINS LECK GAMBLE MALLORY &amp; NATSIS LLP</b> 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</p>	<p><i>Attorneys for Defendant</i> TD ENTERPRISE LLC</p>
<p>Philip Tencer, Esq. <b>TENCERSHERMAN LLP</b> 12520 High Bluff Drive, Suite 240 San Diego, CA 92130 Tel.: (858) 408-6901 Fax: (858) 754-1260 E-mail: Phil@tencersherman.com</p>	<p><i>Attorneys for Defendant</i> TD ENTERPRISE LLC</p>