

RJN NO.	DOCUMENT TITLE/DESCRIPTION
1	City of San Diego v. The Tree Club Cooperative, San Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL. Stipulation for Entry of Final Judgement and Permanent Injunction; Judgment Thereon.
2	City of San Diego v. CCSquared Wellness Cooperative, San Diego Superior Court Case No. 37-2015-0004430-CU-MC-CTL. Preliminary Injunction Order
3	Ownership Disclosure Statement by Rebecca Berry Form DS-318 of October 31, 2016
4	Supplemental Declaration of Gina M. Austin for September 7, 2018 Hearing in Salam Razuki v. Ninus Malan, San Diego Superior Court Case No. 37-2018-0034229-CU-BC-CTL
5	People v. McElfresh, San Diego Superior Court No. CD272111
6	Jessica McElfresh Deferred Prosecution Agreement
7	Jonah Valdez, San Diego DA's Prosecution of Pot Attorney Has Sent Chills Through the Legal Community (August 9, 2017.)
8	Form DS-3032, General Application
9	Plaintiff/Cross-Defendant Larry Geraci's Answers to Special Interrogatories, Set Two, Propounded by Defendant/Cross-Complainant Darryl Cotton
10	Cotton Cross-Complaint of May 12, 2017
11	Cotton First Amended Cross-Complaint of June 30, 2017
12	Second Amended Cross-Complaint of August 25, 2017
13	Motion for Directed Verdict filed on July 11, 2019
14	Order Denying Motion for Directed Verdict
15	Judgment on Jury Verdict entered on August 9, 2019

RJN NO.	DOCUMENT TITLE/DESCRIPTION
16	Motion for New Trial on September 13, 2019.
17	Opposition to Motion for New Trial

Dated: August 27, 2021

Law Office of Jacob P. Austin

By S/ Jacob P. Austin, Esq.
Jacob P. Austin, Esq. for
Darryl Cotton, Plaintiff

EXHIBIT 1

FILED
 Clerk of the No Fee GC \$6103
 OCT 27 2014
 By: DJ JELLISON, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal
 corporation,

Plaintiff,

v.

THE TREE CLUB COOPERATIVE, INC., a
 California corporation;
 JONAH McCLANAHAN, an individual;
 JOHN C. RAMISTELLA, an individual;
 JL 6th AVENUE PROPERTY, LLC, a
 California limited liability company;
 LAWRENCE E. GERACI, also known as
 LARRY GERACI, an individual;
 JEFFREY KACHA, an individual; and
 DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2014-00020897-CU-MC-CTL

JUDGE: RONALD S. PRAGER

STIPULATION FOR ENTRY OF FINAL
 JUDGMENT AND PERMANENT
 INJUNCTION; JUDGMENT THEREON
 [CCP § 664.6]

IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its
 attorneys, Jan I. Goldsmith, City Attorney, and by Marsha B. Kerr, Deputy City Attorney, and
 Defendants JL 6th AVENUE PROPERTY, LLC, a California limited liability company;
 LAWRENCE E. GERACI, aka LARRY GERACI, an individual; and JEFFREY KACHA, an
 individual, appearing by and through their attorney, Joseph S. Carmellino, enter into the
 following Stipulation for Entry of Final Judgment in full and final settlement of the above-
 captioned case without trial or adjudication of any issue of fact or law, and agree that a final
 judgment may be so entered:

L:\CEU\CASE.ZN\1762.mk\pleadings\Stip JL 6th, Kacha,
 Geraci.docx

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STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION

1 1. This Stipulation for Entry of Final Judgment (Stipulation) is executed between and
 2 among Plaintiff City of San Diego, a municipal corporation, and Defendants JL 6th AVENUE
 3 PROPERTY, LLC; LAWRENCE E. GERACI, aka LARRY GERACI; and JEFFREY KACHA
 4 only, who are named parties in the above-entitled action (collectively, "Defendants").

5 2. The parties to this Stipulation are parties to a civil suit pending in the Superior Court
 6 of the State of California for the County of San Diego, entitled *City of San Diego, a municipal*
 7 *corporation v., The Tree Club Cooperative, Inc., a California corporation; Jonah McClanahan,*
 8 *an individual; John C. Ramistella, an individual; JL 6th Avenue Property, LLC, a California*
 9 *limited liability company; Lawrence E. Geraci, also known as Larry Geraci, an individual;*
 10 *Jeffrey Kacha, an individual; and DOES 1 through 50, inclusive,* Case No. 37-2014-00020897-
 11 CU-MC-CTL. This Stipulation does not affect *City of San Diego v. Tycel Cooperative, Inc., et al.,*
 12 San Diego Superior Court case No. 37-2014-00025378-CU-MC-CTL, which is a separate case to
 13 be considered separately.

14 3. The parties wish to avoid the burden and expense of further litigation and accordingly
 15 have determined to compromise and settle their differences in accordance with the provisions of
 16 this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein
 17 shall be deemed to constitute an admission or an adjudication of any of the allegations of the
 18 Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and
 19 only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent
 20 Injunction by the Superior Court.

21 4. The address where the tenant Defendants were maintaining a marijuana dispensary
 22 business is 1033 Sixth Avenue, San Diego, California, 92101, also identified as Assessor's Parcel
 23 Number 534-186-04-00 (PROPERTY).

24 5. The PROPERTY is owned by JL 6th AVENUE PROPERTY, LLC (JL), according to
 25 San Diego County Recorder's Grant Deed, Document No. 2012-0184893, recorded March 29,
 26 2012. Defendants GERACI and KACHA are members of JL and hereby certify they have
 27 authority to sign for and bind JL herein.

28 ///

6. The legal description of the PROPERTY is:

THE NORTH HALF OF LOT D IN BLOCK 34 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MADE BY L.L. LOCKLING FILED JUNE 21, 1871 IN BOOK 13, PAGE 522 OF DEEDS, IN THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY.

7. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties to this Stipulation.

INJUNCTION

8. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,** Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent equity powers, from engaging in or performing, directly or indirectly, any of the following acts:

a. Keeping, maintaining, operating, or allowing the operation of an unpermitted marijuana dispensary, collective or cooperative at the PROPERTY, including but not limited to, a marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code.

b. Defendants shall not be barred in the future from any legal and permitted use of the PROPERTY.

COMPLIANCE MEASURES

DEFENDANTS agree to do the following at the PROPERTY:

9. **Within 24 hours from the date of signing this Stipulation,** cease maintaining, operating, or allowing at the PROPERTY any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the California Health and Safety Code.

1 10. The Parties acknowledge that where local zoning ordinances allow the operation of a
 2 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then
 3 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or
 4 cooperative in the City of San Diego as authorized under the law after Defendants provide the
 5 following to Plaintiff in writing:

- 6 a. Proof that the business location is in compliance with the ordinance; and
- 7 b. Proof that any required permits or licenses to operate a marijuana dispensary,
 8 collective or cooperative have been obtained from the City of San Diego as required by the
 9 SDMC.

10 11. If the marijuana dispensary that is operating at the PROPERTY, including but
 11 not limited to, The Tree Club Cooperative, Inc., Jonah McClanahan and John C.
 12 Ramistella, does not agree to immediately voluntarily vacate the premises, then within 24
 13 hours from the date of signing this Stipulation, DEFENDANTS shall in good faith use all legal
 14 remedies available to evict the marijuana dispensary business known as The Tree Club
 15 Cooperative, Inc., Jonah McClanahan and John C. Ramistella or the appropriate party responsible
 16 for the leasehold and operation of the marijuana dispensary, including but not limited to,
 17 prosecuting an unlawful detainer action.

18 12. Within 24 hours from the date of signing this Stipulation, remove all signage from
 19 the exterior of the premises advertising a marijuana dispensary, including but not limited to,
 20 signage advertising The Tree Club Cooperative.

21 13. Within 24 hours from the date of signing this Stipulation, post a sign for a
 22 minimum of 60 calendar days, conspicuously visible from the exterior of the PROPERTY stating
 23 in large bold font and capital letters that can be seen from the public right way, that "The Tree
 24 Club Cooperative" is permanently closed and that there is no dispensary operating at this address.

25 14. Allow personnel from the City of San Diego access to the PROPERTY to inspect for
 26 compliance upon 24-hour verbal or written notice. Inspections shall occur between the hours of
 27 8:00 a.m. and 5:00 p.m.

MONETARY RELIEF

17. Commencing within 30 days of signing this Stipulation, Defendants shall pay to Plaintiff City of San Diego civil penalties in the amount of \$25,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past violations alleged by Plaintiff in this action. **\$19,000 of these penalties is immediately suspended.** These suspended penalties shall only be imposed if Defendants fail to comply with the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if imposition of the penalties will be sought by Plaintiff and on what basis. Civil penalties in the amount of \$6,000 shall be paid in 15 monthly installments of \$400.00 each, at 30-day intervals following the date of the first payment as specified above, in the form of a certified check, payable to the "City of San Diego," and delivered to the Office of the City Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention: Marsha B. Kerr.

18. In the event of default by Defendants as to any amount due under this Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the

1 enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing
2 legal rate from the date of default until paid in full.

3 19. Nothing in this Stipulation shall prevent any party from pursuing any remedies as
4 provided by law to subsequently enforce this Stipulation or the provisions of the SDMC,
5 including criminal prosecution and civil penalties that may be authorized by the court according
6 to the SDMC at a cumulative rate of up to \$2,500 per day per violation.

7 20. Defendants agree that any act, intentional or negligent, or any omission or failure by
8 their contractors, successors, assigns, partners, members, agents, employees or representatives to
9 comply with the requirements set forth in Paragraphs 8-17 above will be deemed to be the act,
10 omission, or failure of Defendants and shall not constitute a defense to a failure to comply with
11 any part of this Stipulation. Further, should any dispute arise between any contractor, successor,
12 assign, partner, member, agent, employee or representative of Defendants for any reason,
13 Defendants agree that such dispute shall not constitute a defense to any failure to comply with
14 any part of this Stipulation, nor justify a delay in executing its requirements.

15 **RETENTION OF JURISDICTION**

16 21. The Court will retain jurisdiction for the purpose of enabling any of the parties to this
17 Stipulation to apply to this Court at any time for such order or directions that may be necessary or
18 appropriate for the construction, operation or modification of the Stipulation, or for the
19 enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

20 **RECORDATION OF JUDGMENT**

21 22. A certified copy of this Judgment shall be recorded in the Office of the San Diego
22 County Recorder pursuant to the legal description of the PROPERTY.

23 **KNOWLEDGE AND ENTRY OF JUDGMENT**

24 23. By signing this Stipulation, Defendants admit personal knowledge of the terms set
25 forth herein. Service by mail shall constitute sufficient notice for all purposes.

26 ///

24. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: OCT. 21, 2014

JAN I. GOLDSMITH, City Attorney

By Marsha B. Kerr
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 7/26 2014

JL 6TH AVENUE PROPERTY, LLC

By [Signature]
Member

Dated: 10-21-14 2014

[Signature]
Lawrence E. Geraci aka Larry Geraci, an individual

Dated: 9/26 2014

[Signature]
Jeffrey Kacha

Dated: 9/26 2014

[Signature]
Joseph S. Carmellino, Attorney for
Defendants JL 6th Avenue Property, LLC,
Lawrence E. Geraci aka Larry Geraci and
Jeffrey Kacha

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ORDER

Upon the stipulation of the parties hereto and upon their agreement to entry of this Stipulation without trial or adjudication of any issue of fact or law herein, and good cause appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 10/27/14


JUDGE OF THE SUPERIOR COURT

RONALD S. PRAGER

37-2014-00020897-CU-MC-CTL

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Geraci.docx

EXHIBIT 2

No Fee GC §6103

FILED
Clerk of the Superior Court

JUN 17 2015

FILED
Clerk of the Superior Court

JUN 17 2015

By: H. CHAVARIN, Deputy
15 JUN 11 PM 107SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGOCITY OF SAN DIEGO, a municipal
corporation,

Plaintiff,

v.

CCSQUARED WELLNESS COOPERATIVE,
a California corporation;
BRENT MESNICK, an individual;
JL INDIA STREET, LP, formerly known as JL
INDIA STREET, LLC;
JEFFREY KACHA, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2015-00004430-CU-MC-CTL

STIPULATION FOR ENTRY OF FINAL
JUDGMENT AND PERMANENT
INJUNCTION; JUDGMENT THEREON
[CCP § 664.6]

IMAGED FILE

1. Plaintiff, City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and Marsha Kerr, Deputy City Attorney; and Defendants, JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI (Doe 1) (collectively, "Defendants"), appearing by and through their attorney, Joseph Carmellino, Esq., enter into the following Stipulation for Entry of Final Judgment (Stipulation) in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered.

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2. The parties to this Stipulation are parties in two civil actions pending in the Superior Court of the State of California for the County of San Diego. It is the intention of the parties that the terms of this Stipulation constitute a global settlement of the following cases:

a. *City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-00004430-CU-MC-CTL.

b. *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-0000000972.

3. The parties wish to avoid the burden and expense of further litigation and accordingly have determined to compromise and settle their differences in accordance with the provisions of this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent Injunction by the Superior Court.

4. The address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Avenue, San Diego, also identified as Assessor's Parcel Number 452-407-17-00 (PROPERTY). The PROPERTY is currently owned by JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC.

5. The legal description of the PROPERTY is:

Lot 3 in block 45 of loma grande, in the city of San Diego, County of San Diego, State of California, according to Map thereof No. 692, filed in the Office of the County Recorder of San Diego County, November 23, 1891.

6. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties to this Stipulation.

INJUNCTION

7. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this

1 Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,**
 2 Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San
 3 Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil
 4 Procedure section 526, and under the Court's inherent equity powers, from engaging in or
 5 performing, directly or indirectly, any of the following acts:

6 Keeping, maintaining, operating or allowing any commercial, retail, collective,
 7 cooperative or group establishment for the growth, storage, sale or distribution of marijuana,
 8 including, but not limited to, any marijuana dispensary, collective or cooperative organized
 9 anywhere in the City of San Diego without first obtaining a Conditional Use Permit pursuant to
 10 the San Diego Municipal Code.

11 **COMPLIANCE MEASURES**

12 **DEFENDANTS agree to do the following at the PROPERTY:**

13 8. **Immediately** cease maintaining, operating, or allowing any commercial, retail,
 14 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of
 15 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative
 16 organized pursuant to the California Health and Safety Code.

17 9. The Parties acknowledge that where local zoning ordinances allow the operation of a
 18 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then
 19 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or
 20 cooperative in the City of San Diego as authorized under the law after Defendants provide the
 21 following to Plaintiff in writing:

22 a. Proof that the business location is in compliance with the ordinance; and

23 b. Proof that any required permits or licenses to operate a marijuana dispensary,
 24 collective or cooperative have been obtained from the City of San Diego as
 25 required by the SDMC.

26 10. **Within 24 hours from the date of signing this Stipulation,** remove all signage from
 27 the exterior of the premises advertising a marijuana dispensary, including but not limited to,
 28 signage advertising CCSquared Wellness Cooperative or CCSquared Storefront.

- 12. **No later than 48 hours from signing this Stipulation** remove all fixtures, items and property associated with a marijuana dispensary business from the PROPERTY.

13. **Within one week of signing this Stipulation**, Defendant will contact City zoning investigator Leslie Sennett at 619-236-6880 to schedule an inspection of the PROPERTY.

14. Defendants, jointly and severally, shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's investigative costs, the amount of **\$2,438.03**. All other attorney fees and costs expended by the parties in the above-captioned case are waived by the parties. The parties agree that payment in full of the monetary amount referenced as investigative costs is applicable to and satisfies payment of investigative costs for both cases referenced in paragraph 2 above.

15. Defendants shall jointly and severally pay to Plaintiff City of San Diego civil penalties in the amount of \$75,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past violations alleged by Plaintiff in this action. **\$37,500 of these penalties is immediately suspended.** Payment in the amount of \$37,500 in civil penalties plus \$2438.03 in investigative costs referenced in paragraph 14, totaling \$39,938.03, shall be made in 24 monthly installments of \$1,664.09 each beginning on or before June 5, 2015, and continuing on the fifth of each successive month until paid in full. Receipt of Defendants' initial monthly payment of \$1,664.09 on June 4, 2015 is acknowledged. The parties agree that payment in full of the monetary amounts referenced as civil penalties is applicable to and satisfies payment of civil penalties for both of the cases referenced in paragraph 2 above. All payments shall be made in the form of a certified check payable to the "City of San Diego," and shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

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RECORDATION OF JUDGMENT

21. This Stipulation shall not be recorded unless there is an uncured breach of the terms herein, in which instance a certified copy of this Stipulation and Judgment may be recorded in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

KNOWLEDGE AND ENTRY OF JUDGMENT

22. By signing this Stipulation, Defendants admit personal knowledge of the terms set forth herein. Service by regular mail shall constitute sufficient notice for all purposes.

23. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

By

Marsha B. Kerr
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 6-10, 2015

JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC

By

Jeffrey Kacha General Partner

Dated: 6-10, 2015

Jeffrey Kacha, an individual

Dated: 6-8, 2015

Lawrence E. Geraci, aka Larry Geraci, an individual

1 Dated: 6/17/15, 2015

2 By 

3 Joseph S. Carnellino
4 Attorney for Defendants Jeffrey Kacha and
5 JL India Street LP, formerly known as JL
6 India Street, LLC

7 **JUDGMENT**

8 Upon the stipulation of the parties hereto and upon their agreement to entry of this
9 Stipulation without trial or adjudication of any issue of fact or law herein, and good cause
10 appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

11 Dated: 6-17-16

 JOHN S. MEYER

12 JUDGE OF THE SUPERIOR COURT
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EXHIBIT 3



City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☒ Conditional Use Permit
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ Other _____

Project Title

Federal Blvd. MMCC

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Project No. For City Use Only

Court's Ex. **030**

Case # 37-2017-00010073-CU-BC-CTL

Rec'd _____

Dept. **C-73** Clk. _____

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print):

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

6176 Federal Blvd

City/State/Zip:

San Diego Ca 92114

Phone No:

(619) 954-4447

Fax No:

Signature:

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of Individual (type or print):

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

5982 Gullstrand St

City/State/Zip:

San Diego / Ca / 92122

Phone No:

8589996882

Fax No:

Signature:

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

EXHIBIT 4

Gina M. Austin (SBN 246833)
 E-mail: *gaustin@austinlegallgroup.com*
 Tamara M. Leetham (SBN 234419)
 E-mail: *tamara@austinlegallgroup.com*
 AUSTIN LEGAL GROUP, APC
 3990 Old Town Ave, Ste A-112
 San Diego, CA 92110
 Phone: (619) 924-9600
 Facsimile: (619) 881-0045

Attorneys for Defendants
 Ninus Malan

ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego

09/04/2018 at 05:46:00 PM
 Clerk of the Superior Court
 By E- Filing, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN DIEGO- CENTRAL DIVISION**

SALAM RAZUKI, an individual,

Plaintiff,

vs.

NINUS MALAN, an individual; CHRIS
 HAKIM, an individual; MONARCH
 MANAGEMENT CONSULTING, INC., a
 California corporation; SAN DIEGO
 UNITED HOLDINGS GROUP, LLC, a
 California limited liability company; FLIP
 MANAGEMENT, LLC, a California
 limited liability company; ROSELLE
 PROPERTIES, LLC, a California limited
 liability company; BALBOA AVE
 COOPERATIVE, a California nonprofit
 mutual benefit corporation; CALIFORNIA
 CANNABIS GROUP, a California
 nonprofit mutual benefit corporation;
 DEVILISH DELIGHTS, INC. a California
 nonprofit mutual benefit corporation; and
 DOES 1-100, inclusive;

Defendants.

CASE NO. 37-2018-00034229-CU-BC-CTL

**SUPPLEMENTAL DECLARATION OF
 GINA M. AUSTIN FOR SEPTEMBER 7,
 2018 HEARING**

[Imaged File]

AUSTIN LEGAL GROUP, APC
 3990 Old Town Ave, Ste A-112
 San Diego, CA 92110

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

1 I, Gina M. Austin, declare:

2 1. I am attorney admitted to practice before this Court and all California courts and,
3 along with Tamara M. Leetham, represent defendant Ninus Malan ("Malan") in this matter. I
4 make this supplemental declaration in support of Malan's application to vacate order appointing
5 receiver. Unless otherwise stated, all facts testified to are within my personal knowledge and, if
6 called as a witness, I would and could competently testify to them.

7 2. I am an expert in cannabis licensing and entitlement at the state and local levels
8 and regularly speak on the topic across the nation.

9 3. My firm also performs additional legal services for these defendants to include
10 corporate transactions and structuring, land use entitlements and regulations related to cannabis,
11 and state compliance related to cannabis.

12 4. The purpose of this declaration is to provide additional information related to the
13 events that have transpired since the last hearing on August 20, 2018. All of the facts previously
14 testified to in my declaration of June 30, 2018 and August 20, 2018 remain true and accurate.

15 5. I spoke with Mr. Essary immediately after the hearing in this matter on August 20,
16 2018 and suggested that an independent cannabis expert not affiliated with either the plaintiff or
17 defendant would be a better solution in order to avoid an actual or apparent conflict of interest by
18 Mr. Lachant. I informed Mr. Essary that while I could provide any cannabis licensing
19 information he required, both sides would probably appreciate an independent third party. I
20 recommended Pamela Epstein of Greenwise Consulting.

21 6. Both Ninus Malan and Pamela Epstein informed me on August 27, 2018 that Mr.
22 Essary was going to continue to use Mr. Lachant despite our objections. On August 27, 2018 I
23 followed up with an email to Mr. Essary that we oppose the use of Mr. Lachant given the fact that
24 Mr. Lachant is a partner with Nelson Hardiman and counsel for plaintiff-in-intervention. A true
25 and correct copy of the email is attached hereto as Exhibit A.

26 7. There is no need for Mr. Essary to manage or control any part of state application
27 process. The only fee associated with the Balboa Dispensary state license will not occur until the
28 annual license is issued. Based upon expected revenues of \$2.5 to \$7.5 the fee to the Bureau of

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San Diego, CA 92110

1 Cannabis Control will be \$64,000. So long as Ninus Malan and Balboa Ave Cooperative are the
2 identified "owners" and applicants for the state licensing for the Balboa Dispensary there is no
3 need to change any information at the state level. However, if a consultant is needed I am willing
4 to provide the necessary assistance.

5 8. If Mr. Essary remains the receiver he would be deemed an "owner" of the Balboa
6 Dispensary and an additional application would need to be filed pursuant to Section 5024 (c) of
7 Title 16 Division 42 of the California Code of Regulations. This additional application would
8 unnecessarily increase expenses for the Balboa Dispensary as the application would need to be
9 submitted anew with the receiver as an "owner" and then again once the litigation is complete. It
10 will also cause a delay that could potentially prevent the Balboa Dispensary from operating in
11 2019 if the annual application is not approved. If SB 1459 is signed by the governor (allowing
12 for provisional licenses for those who hold temporary licenses) the change of ownership may also
13 affect the ability of Balboa Ave Cooperative to obtain a provision license.

14 9. There is no need for Mr. Essary to manage or control any part of state application
15 process for the distribution or manufacturing license at the Mira Este property. The only fee
16 associated with the Mira Este state licenses will not occur until the annual licenses are issued.
17 The fees will be \$7,500 to California Department of Public Health for manufacturing so long as
18 revenue is not over \$500,000 and \$1,200 for distribution so long as annual revenue is not over
19 \$3,000,000 for manufacturing. As long as Ninus Malan, Chis Hakim and California Cannabis
20 Group are the identified "owners" and applicants for the state licensing for the Mira Este property
21 there is no need to change any information at the state level. However, if a consultant is needed I
22 am willing to provide the necessary assistance.

23 10. If Mr. Essary remains the receiver he would be deemed an "owner" and additional
24 filing requirements must be met for both the distribution and manufacturing applications.

25 11. During the time that SoCal was operating the Balboa Dispensary they were using a
26 point of sale system called Treez. The City of San Diego through its contractor MGO is in the
27 middle of a tax and compliance audit of the Balboa dispensary. I have been working with MGO
28 to determine what information is required to be provided and have agreed on what is to be

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1 produced. On August 24, 2018 I received the sales report from Treez for the sales occurring
2 during January through March 2018 while SoCal was operating the dispensary. A true and
3 correct copy of the email is attached hereto as Exhibit B. I did not attach the excel spread sheets
4 as they are over 1000 pages.

5 12. I immediately forwarded this information to MGO for their review. Mr. Grigor
6 Gevorgyan of MGO informed me that there is a discrepancy between the tax form that was filed
7 by Mr. Essary and the sales data reported on the spreadsheets of approximately \$100,000. A true
8 and correct copy of the email from Mr. Gevorgyan is attached hereto as Exhibit C.

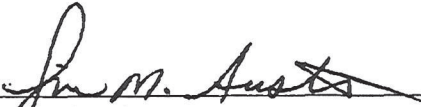
9 13. I informed Mr. Essary of the discrepancy. On August 27, 2018 Mr. Essary sent an
10 email stating that he would have to contact Mr. Yaeger to determine why there is a discrepancy.
11 As of the drafting of this declaration MGO has not received a response from Mr. Yaeger or Mr.
12 Essary as to the basis for the discrepancy. A true and correct copy of MGO's request for
13 clarification is attached hereto as Exhibit D.

14 14. On August 15, 2018, I was attending the hearing for the Conditional Use Permit
15 for a marijuana production facility located on 8859 Balboa Ave, Suites A-E. San Diego United
16 Holdings, LLC is the applicant. The application was approved and was not appealed. The permit
17 will be recorded by the City of San Diego within the next 10 business days. The temporary and
18 annual state application for this location must be prepared. The expense for the application
19 process is \$25,000. This expense will be covered by the operating group that San Diego United
20 Holdings contracts with to conduct operations at this facility. It is critical that the operating entity
21 be secured as quickly as possible to allow for the timely filing of a state application. All of the
22 potential operating entities that we have had conversations with will not enter into an agreement
23 so long as there is a receiver in control.

24 15. An application for a Conditional Use Permit by Mira Este Properties, LLC for a
25 marijuana production facility located at 9212 Mira Este Court is set to go before the Hearing
26 Officer on October 3, 2018. It is highly likely that the permit will be appealed to the Planning
27 Commission because the City will only be issuing 40 licenses and approximately half will have
28 been issued by this time. It is my opinion that successful approval of this application is

1 contingent on our office attending the hearing.

2 I declare under penalty of perjury under California state law that the foregoing is true and
3 correct. Executed in San Diego, California on September 4, 2018.

4
5 
6 Gina M. Austin

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EXHIBIT 5

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION**

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

V.

JAMES SEAN SLATIC,
dob 01/02/59;

KENSUKE HANAOKA,
dob 04/08/86;

PATRIC MCDONALD,
dob 10/14/73;

MATTHEW ALLAN CARMICHAEL,
dob 03/25/73;

DANIEL FORREST GREGG,
dob 11/20/67;

JESSICA CLAIRE MCELFRISH,
dob 02/20/82;

Defendants

CT No. CD272111

DA No. AEE604

COMPLAINT-FELONY

INFORMATION

Date: _____

PC296 DNA TEST STATUS SUMMARY

Defendant	DNA Testing Requirements
SLATIC, JAMES SEAN	DNA sample required upon conviction
HANAOKA, KENSUKE	DNA sample required upon conviction
MCDONALD, PATRIC	DNA sample has been previously provided
CARMICHAEL, MATTHEW ALLAN	DNA sample required upon conviction
GREGG, DANIEL FORREST	DNA sample has been previously provided
MCELFRESH, JESSICA CLAIRE	DNA sample required upon conviction

CHARGE SUMMARY

Count	Charge	Issue Type	Sentence Range	Special Allegations	Allegation Effect
1	PC182(a)(1) SLATIC, JAMES SEAN HANAOKA, KENSUKE MCDONALD, PATRIC CARMICHAEL, MATTHEW ALLAN GREGG, DANIEL FORREST MCELFRESH, JESSICA CLAIRE	Felony	3-5-7		
2	HS11379.6(a) SLATIC, JAMES SEAN HANAOKA, KENSUKE MCDONALD, PATRIC CARMICHAEL, MATTHEW ALLAN GREGG, DANIEL FORREST MCELFRESH, JESSICA CLAIRE	Felony	3-5-7		
3	PC182(a)(1) SLATIC, JAMES SEAN HANAOKA, KENSUKE MCDONALD, PATRIC MCELFRESH, JESSICA CLAIRE	Felony	16-2-3		
4	PC182(a)(5) SLATIC, JAMES SEAN HANAOKA, KENSUKE MCDONALD, PATRIC MCELFRESH, JESSICA CLAIRE	Felony	16-2-3		
5	PC182(a)(1) SLATIC, JAMES SEAN HANAOKA, KENSUKE MCDONALD, PATRIC MCELFRESH, JESSICA CLAIRE	Felony	16-2-3		

CHARGE SUMMARY (cont'd)

Count	Charge	Issue Type	Sentence Range	Special Allegations	Allegation Effect
6	PC182(a)(1) SLATIC, JAMES SEAN HANAOKA, KENSUKE MCDONALD, PATRIC MCELFRESH, JESSICA CLAIRE	Felony	16-2-3		
7	PC182(a)(1) SLATIC, JAMES SEAN HANAOKA, KENSUKE MCDONALD, PATRIC CARMICHAEL, MATTHEW ALLAN GREGG, DANIEL FORREST MCELFRESH, JESSICA CLAIRE	Felony	2-3-4		
8	HS11360(a)(3)(D) SLATIC, JAMES SEAN HANAOKA, KENSUKE MCDONALD, PATRIC	Felony	2-3-4		
9	HS11360(a)(3)(D) SLATIC, JAMES SEAN HANAOKA, KENSUKE MCDONALD, PATRIC	Felony	2-3-4		
10	HS11370.6(a) SLATIC, JAMES SEAN HANAOKA, KENSUKE MCDONALD, PATRIC	Felony	2-3-4		
11	PC186.10(a) SLATIC, JAMES SEAN	Felony	16-2-3/\$250,000	PC186.10(c)(1)(A)	+1 Yr Consec
12	HS11370.9(a) SLATIC, JAMES SEAN	Felony	2-3-4		

PC1054.3

INFORMAL REQUEST FOR DISCOVERY

The undersigned, certifying upon information and belief, complains that in the County of San Diego, State of California, the Defendant(s) did commit the following crime(s):

CHARGES

COUNT 1 - CONSPIRACY TO COMMIT A CRIME

On and between January 1, 2015, and June 29, 2016, JAMES SEAN SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, AND JESSICA MCELFRISH did willfully and unlawfully conspire together and with another person and persons whose identity is known and unknown, under the business name Med-West Distribution, LLC (hereafter “MedWest”), to commit the crime of MANUFACTURING A CONTROLLED SUBSTANCE, to wit: TETRAHYDROCANNABINOLS (THC)/CONCENTRATED CANNABIS (Health and Safety Code section 11379.6(a)), in violation of PENAL CODE SECTION 182(a)(1).

The object of the conspiracy was to use flammable, volatile and toxic chemicals to extract THC from marijuana, to purify concentrated cannabis, to sell concentrated cannabis for a profit, and to hide such activity from city inspectors.

Thereafter, in the County of San Diego, State of California, pursuant to the above conspiracy and in furtherance thereof:

OVERT ACT NO.(01): Between January 1, 2015 and June 29, 2016, JAMES SLATIC used MedWest to chemically extract THC or concentrated cannabis, using flammable, volatile and/or toxic chemicals.

OVERT ACT NO.(02): Between January 1, 2015 and June 29, 2016, JAMES SLATIC, or another coconspirator on behalf of MedWest, made untrue or misleading advertisements that would lead a reasonable patient to believe that MedWest did not use flammable, volatile, and/or toxic chemicals in the manufacturing process of concentrated cannabis.

OVERT ACT NO.(03): Between January 1, 2015 and January 28, 2016, JAMES SLATIC, acting as CEO of the nonprofit corporation Pacific Heights Partners, Inc., documented a net profit of more than \$3.2 million dollars from the sale of concentrated cannabis.

OVERT ACT NO.(04): Between July 20, 2015 and August 18, 2015, PATRIC MCDONALD, acting as Vice President and/or General Manager of MedWest, exported over 10 kilograms of concentrated cannabis to Pueblo West Organics in the State of Colorado.

OVERT ACT NO.(05): On or about October 7, 2015, KENSUKE HANAOKA, acting as the Operations Director of MedWest, forwarded an email to Hannae Warren and asked her to create an invoice for the attached “purchase order” of marijuana for approximately \$82,350.

OVERT ACT NO.(06): On or about February 20, 2015, JAMES SLATIC recorded the business address of MedWest as 8210 Engineer Road, San Diego, CA 92111.

OVERT ACT NO.(07): On or about April 27, 2015, JESSICA MCELFRISH, acting as the attorney for MedWest, visited 8210 Engineer Road to ensure all evidence of the manufacturing and possession of concentrated cannabis was removed before the scheduled inspection of April 28, 2015.

CHARGES (cont'd)

OVERT ACT NO.(08): On April 28, 2015, during a city inspection of 8210 Engineer Road, JESSICA MCELFRESH, acting as the attorney for MedWest, and for the purpose of concealing the chemical extraction of concentrated cannabis conducted on site, told a city investigator that MedWest did not operate on site and led inspectors to believe the business was only a packaging and paper company.

OVERT ACT NO.(09): On April 28, 2015, MedWest attorney JESSICA MCELFRESH kept a close eye on one of the inspectors, to wit: retired SDPD investigator Gary Jaus. McElfresh tried to keep Jaus focused on her and the papers, with the goal of having inspectors leave under the theory that no actual marijuana was on site.

OVERT ACT NO.(10): On December 24, 2015, MedWest attorney JESSICA MCELFRESH emailed JAMES SLATIC about the inspection that occurred on April 28, 2015. McElfresh told Slatic that the inspectors “were clearly suspicious.” McElfresh continued to say “I had to keep a very, very close eye on the retired SDPD investigator...Gary Jaus.... He’s a very smart man, and I had to walk a very fine line between being very nice and trying too hard to keep him focused on me.” McElfresh continued to say “I didn’t flirt (wouldn’t have worked), but I just kept focusing on the papers.... I’m convinced they walked away knowing it wasn’t a dispensary in the typical sense... but it probably seemed like something other than just paper. That just wasn’t what they were under mandate to look for, and hey, we did a very good job.” McElfresh continued to say “they’ve been there once and went away, operating under the theory that no actual marijuana is there. We did a really, really good job giving them plausible deniability – and it was clear to them it wasn’t a dispensary. But, I think they suspected it was something else more than paper.”

OVERT ACT NO.(11): On January 19, 2016, MATTHEW CARMICHAEL, acting as Director of Research and Development for MedWest, requested a quote from Capitol Scientific for the purchase of technical grade hexanes.

OVERT ACT NO.(12): On January 27, 2016, MATTHEW CARMICHAEL, acting as Director of Research and Development for MedWest, emailed Capital Scientific a purchase order for a 55 gallon drum of 190 proof ethanol and 4 liters of technical grade Hexanes.

OVERT ACT NO.(13): On January 28, 2016, DANIEL GREGG, acting as an employee of MedWest, operated or controlled the laboratory at 8210 Engineer Road.

OVERT ACT NO.(14): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed hexane, a flammable and volatile solvent.

OVERT ACT NO.(15): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed diethyl ether, a toxic solvent.

OVERT ACT NO.(16): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed chloroform, a toxic solvent.

CHARGES (cont'd)

OVERT ACT NO.(17): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed ethanol, a flammable and volatile solvent, for the purpose of manufacturing concentrated cannabis.

OVERT ACT NO.(18): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest put a container with a substance emitting flammable vapors into a purge oven. The substance was still emitting flammable vapors when HAZMAT arrived.

OVERT ACT NO.(19): On June 29, 2016, JAMES SLATIC, acting as CEO of MedWest, possessed over 1,000 vials of concentrated cannabis for sale, in the City of Escondido.

COUNT 2 - MANUFACTURING A CONTROLLED SUBSTANCE

On or about and between January 1, 2015 and January 28, 2016, JAMES SEAN SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, AND JESSICA MCELFRESH did unlawfully manufacture, compound, convert, produce, derive, process and prepare, directly and indirectly by chemical extraction and independently by means of chemical synthesis, a controlled substance, to wit: TETRAHYDROCANNABINOLS (THC)/CONCENTRATED CANNABIS, in violation of HEALTH AND SAFETY CODE SECTION 11379.6(a).

COUNT 3 - CONSPIRACY TO COMMIT A CRIME

On or about and between January 1, 2015 and January 28, 2016, JAMES SEAN SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, AND JESSICA MCELFRESH did unlawfully conspire together and with another person and persons whose identity is unknown to commit the crime of USING A PREMISES WITHOUT A PERMIT (San Diego Municipal Code section 121.0302(a)), in violation of PENAL CODE SECTION 182(a)(1).

The object of the conspiracy was to use flammable, volatile and/or toxic chemicals to extract THC from marijuana, to purify concentrated cannabis, to sell concentrated cannabis for a profit, and to hide such activity from city inspectors.

Thereafter, in the County of San Diego, State of California, pursuant to the above conspiracy and in furtherance thereof:

OVERT ACT NO.(01): Between January 1, 2015 and June 29, 2016, JAMES SLATIC used MedWest to chemically extract THC or concentrated cannabis, using flammable, volatile and/or toxic chemicals.

CHARGES (cont'd)

OVERT ACT NO.(02): Between January 1, 2015 and June 29, 2016, JAMES SLATIC, or another coconspirator on behalf of MedWest, made untrue or misleading advertisements that would lead a reasonable patient to believe that MedWest did not use flammable, volatile, and/or toxic chemicals in the manufacturing process of concentrated cannabis.

OVERT ACT NO.(03): Between January 1, 2015 and January 28, 2016, JAMES SLATIC, acting as CEO of the nonprofit corporation Pacific Heights Partners, Inc., documented a net profit of more than \$3.2 million dollars from the sale of concentrated cannabis.

OVERT ACT NO.(04): Between July 20, 2015 and August 18, 2015, PATRIC MCDONALD, acting as Vice President and/or General Manager of MedWest, exported over 10 kilograms of concentrated cannabis to Pueblo West Organics in the State of Colorado.

OVERT ACT NO.(05): On or about October 7, 2015, KENSUKE HANAOKA, acting as the Operations Director of MedWest, forwarded an email to Hannae Warren and asked her to create an invoice for the attached “purchase order” of marijuana for approximately \$82,350.

OVERT ACT NO.(06): On or about February 20, 2015, JAMES SLATIC recorded the business address of MedWest as 8210 Engineer Road, San Diego, CA 92111.

OVERT ACT NO.(07): On or about April 27, 2015, JESSICA MCELFRISH, acting as the attorney for MedWest, visited 8210 Engineer Road to ensure all evidence of the manufacturing and possession of concentrated cannabis was removed before the scheduled inspection of April 28, 2015.

OVERT ACT NO.(08): On April 28, 2015, during a city inspection of 8210 Engineer Road, JESSICA MCELFRISH, acting as the attorney for MedWest, and for the purpose of concealing the chemical extraction of concentrated cannabis conducted on site, told a city investigator that MedWest did not operate on site and led inspectors to believe the business was only a packaging and paper company.

OVERT ACT NO.(09): On April 28, 2015, MedWest attorney JESSICA MCELFRISH kept a close eye on one of the inspectors, to wit: retired SDPD investigator Gary Jaus. McElfresh tried to keep Jaus focused on her and the papers, with the goal of having inspectors leave under the theory that no actual marijuana was on site.

OVERT ACT NO.(10): On December 24, 2015, MedWest attorney JESSICA MCELFRISH emailed JAMES SLATIC about the inspection that occurred on April 28, 2015. McElfresh told Slatic that the inspectors “were clearly suspicious.” McElfresh continued to say “I had to keep a very, very close eye on the retired SDPD investigator... Gary Jaus.... He’s a very smart man, and I had to walk a very fine line between being very nice and trying too hard to keep him focused on me.” McElfresh continued to say “I didn’t flirt (wouldn’t have worked), but I just kept focusing on the papers.... I’m convinced they walked away knowing it wasn’t a dispensary in the typical sense... but it probably seemed like something other than just paper. That just wasn’t what they were under mandate to look for, and hey, we did a very good job.” McElfresh continued to say “they’ve been there once and went away, operating under the theory that no actual marijuana is there. We did a really, really good job giving them plausible deniability – and it was clear to them it wasn’t a dispensary. But, I think they suspected it was something else more than paper.”

CHARGES (cont'd)

OVERT ACT NO.(11): On January 19, 2016, MATTHEW CARMICHAEL, acting as Director of Research and Development for MedWest, requested a quote from Capitol Scientific for the purchase of technical grade hexanes.

OVERT ACT NO.(12): On January 27, 2016, MATTHEW CARMICHAEL, acting as Director of Research and Development for MedWest, emailed Capital Scientific a purchase order for a 55 gallon drum of 190 proof ethanol and 4 liters of technical grade Hexanes.

OVERT ACT NO.(13): On January 28, 2016, DANIEL GREGG, acting as an employee of MedWest, operated or controlled the laboratory at 8210 Engineer Road.

OVERT ACT NO.(14): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed hexane, a flammable and volatile solvent.

OVERT ACT NO.(15): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed diethyl ether, a toxic solvent.

OVERT ACT NO.(16): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed chloroform, a toxic solvent.

OVERT ACT NO.(17): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed ethanol, a flammable and volatile solvent, for the purpose of manufacturing concentrated cannabis.

OVERT ACT NO.(18): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest put a container with a substance emitting flammable vapors into a purge oven. The substance was still emitting flammable vapors when HAZMAT arrived.

COUNT 4 - CONSPIRACY TO OBSTRUCT JUSTICE

On or about and between April 1, 2015 and April 28, 2015, JAMES SEAN SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, AND JESSICA MCELFRESH did unlawfully conspire together and with another person and persons whose identity is unknown to commit an act to pervert and obstruct justice, and the due administration of the laws, in violation of PENAL CODE SECTION 182(a)(5).

The object of the conspiracy was to use flammable, volatile and/or toxic chemicals to extract THC from marijuana, to purify concentrated cannabis, to sell concentrated cannabis for a profit, and to hide such activity from city inspectors.

CHARGES (cont'd)

Thereafter, in the County of San Diego, State of California, pursuant to the above conspiracy and in furtherance thereof:

OVERT ACT NO.(01): On or about February 20, 2015, JAMES SLATIC recorded the business address of MedWest as 8210 Engineer Road, San Diego, CA 92111.

OVERT ACT NO.(02): Between April 1, 2015 and April 28, 2016, JAMES SLATIC used MedWest to chemically extract THC or concentrated cannabis, using flammable, volatile and/or toxic chemicals.

OVERT ACT NO.(03): On or about April 27, 2015, JESSICA MCELFRISH, acting as the attorney for MedWest, visited 8210 Engineer Road to ensure all evidence of the manufacturing and possession of concentrated cannabis was removed before the scheduled inspection of April 28, 2015.

OVERT ACT NO.(04): On April 28, 2015, during a city inspection of 8210 Engineer Road, JESSICA MCELFRISH, acting as the attorney for MedWest, and for the purpose of concealing the chemical extraction of concentrated cannabis conducted on site, told a city investigator that MedWest did not operate on site and led inspectors to believe the business was only a packaging and paper company.

OVERT ACT NO.(05): On April 28, 2015, MedWest attorney JESSICA MCELFRISH kept a close eye on one of the inspectors, to wit: retired SDPD investigator Gary Jaus. McElfresh tried to keep Jaus focused on her and the papers, with the goal of having inspectors leave under the theory that no actual marijuana was on site.

OVERT ACT NO.(06): On December 24, 2015, MedWest attorney JESSICA MCELFRISH emailed JAMES SLATIC about the inspection that occurred on April 28, 2015. McElfresh told Slatic that the inspectors “were clearly suspicious.” McElfresh continued to say “I had to keep a very, very close eye on the retired SDPD investigator...Gary Jaus.... He’s a very smart man, and I had to walk a very fine line between being very nice and trying too hard to keep him focused on me.” McElfresh continued to say “I didn’t flirt (wouldn’t have worked), but I just kept focusing on the papers.... I’m convinced they walked away knowing it wasn’t a dispensary in the typical sense... but it probably seemed like something other than just paper. That just wasn’t what they were under mandate to look for, and hey, we did a very good job.” McElfresh continued to say “they’ve been there once and went away, operating under the theory that no actual marijuana is there. We did a really, really good job giving them plausible deniability – and it was clear to them it wasn’t a dispensary. But, I think they suspected it was something else more than paper.”

COUNT 5 - CONSPIRACY TO COMMIT A CRIME

On or about and between April 1, 2015 and April 28, 2015, JAMES SEAN SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, AND JESSICA MCELFRISH did unlawfully conspire together and with another person and persons whose identity is unknown to commit the crime of DELAYING AND OBSTRUCTING A PUBLIC OFFICER (Penal Code section 148(a)(1)), in violation of PENAL CODE SECTION 182(a)(1).

Thereafter, in the County of San Diego, State of California, pursuant to the above conspiracy and in furtherance of the objects thereof:

CHARGES (cont'd)

OVERT ACT NO.(01): On or about February 20, 2015, JAMES SLATIC recorded the business address of MedWest as 8210 Engineer Road, San Diego, CA 92111.

OVERT ACT NO.(02): Between April 1, 2015 and April 28, 2016, JAMES SLATIC used MedWest to chemically extract THC or concentrated cannabis, using flammable, volatile and/or toxic chemicals.

OVERT ACT NO.(03): On or about April 27, 2015, JESSICA MCELFFRESH, acting as the attorney for MedWest, visited 8210 Engineer Road to ensure all evidence of the manufacturing and possession of concentrated cannabis was removed before the scheduled inspection of April 28, 2015.

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COUNT 6 - CONSPIRACY TO COMMIT A CRIME

On or about and between April 1, 2015 and April 28, 2015, JAMES SEAN SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, AND JESSICA MCELFFRESH did unlawfully conspire together and with another person and persons whose identity is unknown to commit the crime of CONCEALING EVIDENCE (Penal Code section 135), in violation of PENAL CODE SECTION 182(a)(1).

Thereafter, in the County of San Diego, State of California, pursuant to the above conspiracy and in furtherance of the objects thereof:

OVERT ACT NO.(01): On or about February 20, 2015, JAMES SLATIC recorded the business address of MedWest as 8210 Engineer Road, San Diego, CA 92111.

CHARGES (cont'd)

OVERT ACT NO.(02): Between April 1, 2015 and April 28, 2016, JAMES SLATIC used MedWest to chemically extract THC or concentrated cannabis, using flammable, volatile and/or toxic chemicals.

OVERT ACT NO.(03): On or about April 27, 2015, JESSICA MCELFRISH, acting as the attorney for MedWest, visited 8210 Engineer Road to ensure all evidence of the manufacturing and possession of concentrated cannabis was removed before the scheduled inspection of April 28, 2015.

OVERT ACT NO.(04): On April 28, 2015, during a city inspection of 8210 Engineer Road, JESSICA MCELFRISH, acting as the attorney for MedWest, and for the purpose of concealing the chemical extraction of concentrated cannabis conducted on site, told a city investigator that MedWest did not operate on site and led inspectors to believe the business was only a packaging and paper company.

OVERT ACT NO.(05): On April 28, 2015, MedWest attorney JESSICA MCELFRISH kept a close eye on one of the inspectors, to wit: retired SDPD investigator Gary Jaus. McElfresh tried to keep Jaus focused on her and the papers, with the goal of having inspectors leave under the theory that no actual marijuana was on site.

OVERT ACT NO.(06): On December 24, 2015, MedWest attorney JESSICA MCELFRISH emailed JAMES SLATIC about the inspection that occurred on April 28, 2015. McElfresh told Slatic that the inspectors “were clearly suspicious.” McElfresh continued to say “I had to keep a very, very close eye on the retired SDPD investigator...Gary Jaus.... He’s a very smart man, and I had to walk a very fine line between being very nice and trying too hard to keep him focused on me.” McElfresh continued to say “I didn’t flirt (wouldn’t have worked), but I just kept focusing on the papers.... I’m convinced they walked away knowing it wasn’t a dispensary in the typical sense... but it probably seemed like something other than just paper. That just wasn’t what they were under mandate to look for, and hey, we did a very good job.” McElfresh continued to say “they’ve been there once and went away, operating under the theory that no actual marijuana is there. We did a really, really good job giving them plausible deniability – and it was clear to them it wasn’t a dispensary. But, I think they suspected it was something else more than paper.”

COUNT 7 - CONSPIRACY TO COMMIT A CRIME

On or about and between January 1, 2015 and June 29, 2016, JAMES SEAN SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, AND JESSICA MCELFRISH did unlawfully conspire together and with another person and persons whose identity is unknown to commit the crime of SALE OF CONCENTRATED CANNABIS (Health and Safety Code section 11360(a)(2)), in violation of PENAL CODE SECTION 182(a)(1).

The object of the conspiracy was to use flammable, volatile and/or toxic chemicals to extract THC from marijuana, to purify concentrated cannabis, to sell concentrated cannabis for a profit, and to hide such activity from city inspectors. Thereafter, in the County of San Diego, State of California, pursuant to the above conspiracy and in furtherance of the objects thereof:

OVERT ACT NO.(01): Between January 1, 2015 and June 29, 2016, JAMES SLATIC used MedWest to chemically extract THC or concentrated cannabis, using flammable, volatile and/or toxic chemicals.

CHARGES (cont'd)

OVERT ACT NO.(02): Between January 1, 2015 and June 29, 2016, JAMES SLATIC, or another coconspirator on behalf of MedWest, made untrue or misleading advertisements that would lead a reasonable patient to believe that MedWest did not use flammable, volatile, and/or toxic chemicals in the manufacturing process of concentrated cannabis.

OVERT ACT NO.(03): Between January 1, 2015 and January 28, 2016, JAMES SLATIC, acting as CEO of the nonprofit corporation Pacific Heights Partners, Inc., documented a net profit of more than \$3.2 million dollars from the sale of concentrated cannabis.

OVERT ACT NO.(04): Between July 20, 2015 and August 18, 2015, PATRIC MCDONALD, acting as Vice President and/or General Manager of MedWest, exported over 10 kilograms of concentrated cannabis to Pueblo West Organics in the State of Colorado.

OVERT ACT NO.(05): On or about October 7, 2015, KENSUKE HANAOKA, acting as the Operations Director of MedWest, forwarded an email to Hannae Warren and asked her to create an invoice for the attached “purchase order” of marijuana for approximately \$82,350.

OVERT ACT NO.(06): On or about February 20, 2015, JAMES SLATIC recorded the business address of MedWest as 8210 Engineer Road, San Diego, CA 92111.

OVERT ACT NO.(07): On or about April 27, 2015, JESSICA MCELFRISH, acting as the attorney for MedWest, visited 8210 Engineer Road to ensure all evidence of the manufacturing and possession of concentrated cannabis was removed before the scheduled inspection of April 28, 2015.

OVERT ACT NO.(08): On April 28, 2015, during a city inspection of 8210 Engineer Road, JESSICA MCELFRISH, acting as the attorney for MedWest, and for the purpose of concealing the chemical extraction of concentrated cannabis conducted on site, told a city investigator that MedWest did not operate on site and led inspectors to believe the business was only a packaging and paper company.

OVERT ACT NO.(09): On April 28, 2015, MedWest attorney JESSICA MCELFRISH kept a close eye on one of the inspectors, to wit: retired SDPD investigator Gary Jaus. McElfresh tried to keep Jaus focused on her and the papers, with the goal of having inspectors leave under the theory that no actual marijuana was on site.

OVERT ACT NO.(10): On December 24, 2015, MedWest attorney JESSICA MCELFRISH emailed JAMES SLATIC about the inspection that occurred on April 28, 2015. McElfresh told Slatic that the inspectors “were clearly suspicious.” McElfresh continued to say “I had to keep a very, very close eye on the retired SDPD investigator... Gary Jaus.... He’s a very smart man, and I had to walk a very fine line between being very nice and trying too hard to keep him focused on me.” McElfresh continued to say “I didn’t flirt (wouldn’t have worked), but I just kept focusing on the papers.... I’m convinced they walked away knowing it wasn’t a dispensary in the typical sense... but it probably seemed like something other than just paper. That just wasn’t what they were under mandate to look for, and hey, we did a very good job.” McElfresh continued to say “they’ve been there once and went away, operating under the theory that no actual marijuana is there. We did a really, really good job giving them plausible deniability – and it was clear to them it wasn’t a dispensary. But, I think they suspected it was something else more than paper.”

CHARGES (cont'd)

OVERT ACT NO.(11): On January 19, 2016, MATTHEW CARMICHAEL, acting as Director of Research and Development for MedWest, requested a quote from Capitol Scientific for the purchase of technical grade hexanes.

OVERT ACT NO.(12): On January 27, 2016, MATTHEW CARMICHAEL, acting as Director of Research and Development for MedWest, emailed Capital Scientific a purchase order for a 55 gallon drum of 190 proof ethanol and 4 liters of technical grade Hexanes.

OVERT ACT NO.(13): On January 28, 2016, DANIEL GREGG, acting as an employee of MedWest, operated or controlled the laboratory at 8210 Engineer Road.

OVERT ACT NO.(14): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed hexane, a flammable and volatile solvent.

OVERT ACT NO.(15): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed diethyl ether, a toxic solvent.

OVERT ACT NO.(16): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed chloroform, a toxic solvent.

OVERT ACT NO.(17): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest possessed ethanol, a flammable and volatile solvent, for the purpose of manufacturing concentrated cannabis.

OVERT ACT NO.(18): On January 28, 2016, JAMES SLATIC, KENSUKE HANAOKA, PATRIC MCDONALD, MATTHEW CARMICHAEL, DANIEL GREGG, or another coconspirator on behalf of MedWest put a container with a substance emitting flammable vapors into a purge oven. The substance was still emitting flammable vapors when HAZMAT arrived.

OVERT ACT NO.(19): On June 29, 2016, JAMES SLATIC, acting as CEO of MedWest, possessed over 1,000 vials of concentrated cannabis for sale, in the City of Escondido.

COUNT 8 -EXPORT MORE THAN 4 GMS CONCENTRATED CANNABIS

On or about July 21, 2015, JAMES SEAN SLATIC, KENSUKE HANAOKA, and PATRIC MCDONALD did unlawfully import, offer to import, and attempted import into this state, and transport for sale, offer to transport for sale, and attempted transport for sale out of this state, of more than 4 grams of concentrated cannabis, within the meaning of HEALTH AND SAFETY CODE SECTION 11360(a)(3)(D).

CHARGES (cont'd)

COUNT 9 - EXPORT MORE THAN 4 GMS CONCENTRATED CANNABIS

On or about August 17, 2015, JAMES SEAN SLATIC, KENSUKE HANAOKA, and PATRIC MCDONALD did unlawfully import, offer to import, and attempted import into this state, and transport for sale, offer to transport for sale, and attempted transport for sale out of this state, of more than 4 grams of concentrated cannabis, within the meaning of HEALTH AND SAFETY CODE SECTION 11360(a)(3)(D).

COUNT 10 - POSSESSION OF MONEY OR INSTRUMENTS OVER \$100,000.00

On or about January 28, 2016, JAMES SEAN SLATIC, KENSUKE HANAOKA, and PATRIC MCDONALD did unlawfully possess money and negotiable instruments in excess of one hundred thousand dollars (\$100,00) which had been obtained as the result of the unlawful sale, possession for sale, transportation and manufacture of a controlled substance with knowledge that the money and negotiable instruments had been so obtained, in violation of HEALTH AND SAFETY CODE SECTION 11370.6(a).

COUNT 11 - MONEY LAUNDERING

On or about and between January 2, 2015 and November 30, 2015, JAMES SEAN SLATIC did unlawfully conduct and attempt to conduct more than one transaction involving monetary instruments of a total value exceeding twenty-five thousand dollars (\$25,000) within a 30-day period through one or more financial institutions, with the specific intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of criminal activity and knowing that the monetary instrument represents the proceeds of and is derived directly or indirectly from the proceeds of criminal activity, in violation of PENAL CODE SECTION 186.10(a).

And it is further alleged with regard to the above offense that the value of the transaction and transactions involved exceeded fifty thousand dollars (\$50,000) but were less than one hundred fifty thousand dollars (\$150,000), within the meaning of PENAL CODE SECTION 186.10(c)(1)(A).

COUNT 12 - RECEIVE/ACQUIRE OVER \$25,000 FROM CONTROLLED SUBSTANCE OFFENSE

On or about and between November 6, 2015 and November 30, 2015, JAMES SEAN SLATIC did knowingly and unlawfully receive and acquire proceeds and engage in a transaction involving proceeds in excess of twenty-five thousand dollars (\$25,000), known to be derived from a violation of the Uniform Controlled Substances Act, with the intent to conceal and disguise and aid in concealing and disguising the nature, location, ownership, control and source of the proceeds, in violation of HEALTH AND SAFETY CODE SECTION 11370.9(a).

NOTICE: Any defendant named on this complaint who is on criminal probation in San Diego County is, by receiving this complaint, on notice that the evidence presented to the court at the preliminary hearing on this complaint is presented for a dual purpose: the People are seeking a holding order on the charges pursuant to Penal Code Section 872 and simultaneously, the People are seeking a revocation of the defendant's probation, on any and all such probation grants, utilizing the same evidence, at the preliminary hearing. Defenses to either or both procedures should be considered and presented as appropriate at the preliminary hearing.

NOTICE: Any defendant named on this complaint who is on Mandatory Supervision in San Diego County is, by receiving this complaint, on notice that the evidence presented to the court at the preliminary hearing on this complaint is presented for a dual purpose: the People are seeking a holding order on the charges pursuant to Penal Code Section 872 and simultaneously, the People are seeking a revocation of the defendant's Mandatory Supervision pursuant to Penal Code Sections 1170(h)(5)(B) and 1203.2, on any and all such grants, utilizing the same evidence, at the preliminary hearing. Defense to either or both procedures should be considered and presented as appropriate at the preliminary hearing.

Pursuant to PENAL CODE SECTION 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by PENAL CODE SECTION 1054.3.

Sheriff's records indicate that as of the booking date one or more defendants have not yet provided a DNA sample to the DOJ database. Pursuant to Penal Code Section 296(e), the court shall order collection of DNA from the defendant(s) if advised by the prosecuting attorney that a sample is required but has not been provided by the defendant. Pursuant to Penal Code sections 296/296.1, if not already required from a past conviction, any defendants who have not done so will be required to provide a sample upon conviction of this felony offense.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT, CASE NUMBER CD272111, CONSISTS OF 12 COUNTS.

Executed at City of San Diego, County of San Diego, State of California, on May 23, 2017.

COMPLAINANT

INFORMATION

BONNIE M. DUMANIS
District Attorney
County of San Diego
State of California
by:

Date

Deputy District Attorney

EXHIBIT 6

SUMMER STEPHAN
District Attorney
JORGE DEL PORTILLO
Deputy District Attorney, SBN 241474
330 W. Broadway, Ste. 960
San Diego, California
Tel: (619) 531-4419
Fax: (619) 531-3340
Email: Jorge.DelPortillo@sdca.org

Clerk of the Superior Court

JUL 23 2018

By: A. LUGO, Deputy

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

JESSICA CLAIRE MCELFRISH,

Defendant.

Case No.: CD272111

DA No.: AEE604

**DEFERRED PROSECUTION
AGREEMENT**

Date: 7/23/2018

Time: 9:00 a.m.

Dept: 2004

DEFERRED PROSECUTION AGREEMENT

Defendant Jessica C. McElfresh, by and through her counsel, Eugene G. Iredale, and the People of the State of California, by and through their attorneys Summer Stephan, District Attorney, and Jorge Del Portillo, Deputy District Attorney, enter into this Deferred Prosecution Agreement (DPA).

A. AGREEMENT

Upon completion of the terms and conditions as set forth in this agreement, Defendant Jessica Claire McElfresh will be permitted to plead guilty to a violation of San Diego Municipal Code section 121.0302(a), as an infraction, in 12 months. This section will be charged as an infraction and added as Count 14. The People will amend the complaint to add this charge and dismiss the balance of the complaint on the same day the Defendant will enter her plea, so long

1 as the terms and conditions are met. The Defendant will be required to pay a fine of \$250 per San
2 Diego Municipal Code section 12.0201.

3
4 **B. TERMS AND CONDITIONS**

5 To obtain the benefits of this plea bargain, the Defendant must complete the following
6 terms and conditions:

- 7 1. Complete the California State Bar Ethics School.
8 2. Take the Multistate Professional Responsibility Exam and obtain a passing score of 86
9 or higher.
10 3. Complete 80 hours of volunteer work with a registered nonprofit organization that is
11 not affiliated with marijuana.
12 4. Not violate any laws, minor traffic violations excluded.

13
14 **C. STATEMENT OF FACTS**

15 On the date of the plea, the Defendant will make the following admission under penalty of
16 perjury:

17 On the date of the plea, the Defendant will agree to the following statement of facts: On
18 April 28, 2015, the defendant knowingly facilitated the use of a premises without a required
19 permit, in violation of San Diego Municipal Code section 121.0302(a), to wit: an unpermitted
20 marijuana manufacturing and distribution operation by MedWest Distribution, LLC.

21
22 **D. WAIVERS**

23 The Defendant agrees to continue to waive her right to a speedy preliminary hearing. The
24 parties agree to vacate the preliminary hearing set for July 23, 2018. The parties agree to schedule
25 a readiness conference in 12 months to enter the plea.

26 The Defendant also agrees to waive any objection to the delay of prosecution and its
27 consequences, including but not limited to: the fading of a witness's memory, the expiration of
28 evidence, and the inability to secure a witness's attendance.

29 ///

E. CONSEQUENCES

If the Defendant fails to meet any of the terms and conditions, prosecution of all charges will resume.

F. DECLARATIONS

By signing this DPA, the Defendant makes the following declarations under penalty of perjury:

1. I have not been induced to enter this DPA by any promise or representation of any kind except as outlined above.
2. I am entering this DPA freely and voluntarily, without fear or threat to me or anyone closely related to me.
3. I am sober and my judgement is not impaired. I have not consumed any drug, alcohol or narcotic within the past 24 hours.

DATED: 7-23-18


JESSICA C. McELFRESH
Defendant

DATED: 23 July 2018


EUGENE G. IREDALE
Attorney for Defendant
Jessica Claire McElfresh

DATED: 7/23/18


JORGE DEL PORTILLO
Deputy District Attorney

EXHIBIT 7



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NEWS

San Diego DA's Prosecution of Pot Attorney Has Sent Chills Through the Legal Community

Lawyers in San Diego and beyond worry the prosecution of a lawyer who represents a marijuana business could force a central tenet of practicing law – attorney-client privilege – to go up in smoke.

[Jonah Valdez](#)

August 9, 2017



On July 7, dozens of attorneys filled the seats of a small San Diego courtroom. The attorneys were attending a hearing for one of their own, Jessica McElfresh, a San Diego lawyer experienced in cannabis law.

McElfresh is facing multiple felony charges.

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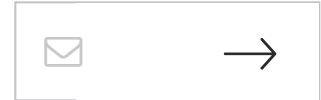
What drew most attorneys to court that day was something they consider sacred: the attorney-client privilege of McElfresh and her past clients was at risk. Prosecutors wanted to look through all of her records, not just the ones pertaining to the charges she was fighting. Prosecutors and the defense have agreed on a method that would protect the confidentiality of McElfresh and her clients, though Judge Laura Hलगren has only dubbed the agreement a “starting point.” A lot of lawyers remain concerned about the direction of the case.

The prosecution comes at a time of increased uncertainty over how law enforcement will treat the marijuana industry in San Diego – and it’s being taken by some as a sign that it will not be permissive.

In late May, then-District Attorney Bonnie Dumanis filed a slew of criminal charges, alleging that James Slatic, a medical-marijuana entrepreneur, and his business partners sought to illegally manufacture and sell hash oil across the country. The defendants were also charged with money laundering and obstruction of justice.

The DA alleged that Slatic’s lawyer, McElfresh, was in on the scheme, saying that she hid evidence of the hash oil from city inspectors during an April 2015 inspection of Slatic’s Med-West facilities in Kearny Mesa.

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The basis of the charges was an email McElfresh wrote to Slatic following the 2015 inspection. The email, a privileged attorney-client communication, was part of the trove of information and property seized during the DA-led raid of the Med-West facilities in January 2016, which drew widespread publicity and criticism.

“They’ve been there once and went away, operating under the theory that no actual marijuana is there,” McElfresh wrote in the email to Slatic. “We did a really, really good job giving them plausible deniability – and it was clear to them it wasn’t a dispensary. But, I think they suspected it was something else more than paper.”

“In that email, [McElfresh] essentially admitted she orchestrated a charade for city inspectors,” Deputy District Attorney Jorge Del Portillo wrote in court papers.

Slatic said the damning email was taken out of context. They were having a bigger, harmless conversation about a zoning inspection and making sure his facility was not mistaken for a dispensary.

Citing a rule that says a lawyer’s communications with a client are fair game if they were made with the intent of committing or covering up a crime, Judge Charles Rogers ruled that the email was not protected by attorney-client privilege and could be

used by the DA as evidence to file criminal charges. The ruling was the first of many red flags for other attorneys.

On the same day the charges were filed, investigators carried out a warrant and searched McElfresh's home and office. Investigators took files, her desktop computer, laptop and cell phone.

During her years of practice, McElfresh has counseled hundreds of people about medical cannabis law. She did much of that work through email. After the search in May, the mostly email conversations with her clients, which are traditionally protected by attorney-client privilege, lay outside of her reach and up for debate in court.

Del Portillo argued for the "crime-fraud exception," asserting that since McElfresh allegedly conspired to commit a crime with her Med-West clients, she loses her attorney-client privilege. "Notions of fundamental fairness demand that the privilege give way to justice," Del Portillo wrote in court papers.

At the July 7 hearing, lawyers representing McElfresh's former clients — medical marijuana businesses, nonprofits and political action committees — appeared in court to assert their attorney client-privilege.

Mara Felsen was one of those lawyers.

"When it became apparent that they were trying to evade the attorney-client privilege, there was a concerted effort to get all hands on deck and assert the attorney-client privilege, with respect to the clients," Felsen said.

"We have several clients who may also be in the files that were seized by the DA," said Gina Austin, an attorney representing one of McElfresh's former clients. "We are protecting our rights."

Austin said that endangering attorney-client privilege could spell a soured relationship and broken trust between attorneys and clients.

"If the courts start to breach those confidential provisions, then the clients are not going to disclose info to us, and we're not going to be able to adequately represent them," Austin said.

Austin said that most of the lawyers she's talked with feel it's a terrible thing to see an attorney indicted for simply doing her job. Felsen has talked to other criminal defense lawyers and all see the case as "a shocking outrage," she said. Though many attorneys feel the DA's interpretation of the law is extreme, the fluidity of cannabis law and its evolving nature make it difficult when it comes to its application.

"The only thing [McElfresh] did wrong was to advise a client in a field of law where the rules are rapidly

changing, and what is legal and is not legal is not entirely clear on any particular point,” Eugene Iredale, McElfresh’s defense attorney, said.

Michael Crowley, a criminal defense lawyer and member of the San Diego County Bar’s Ethics Committee, has been watching the McElfresh trial from afar. What troubles him about the case is the lack of clarity around cannabis law.

Though the city of San Diego legalized recreational pot dispensaries in late January, it remains the only city in the county to do so. Statewide, the design of regulations is still unknown, as state officials are preparing for the 2018 rollout.

“It’s one thing to pass legislation, it’s another to implement it. That’s where attorneys come in. They need to give opinions on what the law says without fear of being prospected by a DA who thinks they know the law. An attorney needs to feel that they can freely give advice on areas that are murky in the law. Because everybody’s just trying to figure it out,” Crowley said.

The case has also laid bare a disconnect between the popular vote – the majority of county voters supported Proposition 64, the statewide measure legalizing recreational marijuana – and county officials’ stance on marijuana.

The County Board of Supervisors voted in March to ban any new marijuana businesses and phase out old ones in unincorporated areas of the county.

"Unfortunately, for whatever reason, the district attorney in San Diego County has historically fought a rearguard action against the changing norms and laws as represented by the democratic enactment of propositions regarding medicinal, and now recreational use of marijuana," Iredale said.

"[The DA's office], whether it be subtle, or expressed, are being pressured by political forces within the Board Supervisors who have shown disdain for the law that the people voted for overwhelmingly," Crowley said, "They are using their own political views to thwart what the people voted for."

Felsen, who has years of experience as a cannabis attorney, is used to seeing the DA come down hard on the cannabis industry, recalling aggressive prosecution toward minor cases. Raids on medical marijuana dispensaries were common throughout Dumanis' term as district attorney.

The DA's office is simply upholding the law, said spokeswoman Tanya Sierra.

"The DA's Office will enforce the letter and the spirit of the new law, which includes protecting safe access to marijuana and protecting consumers from illegal

business practices that could jeopardize public health," Sierra wrote in an email.

Sierra said the Med-West case isn't really about marijuana.

"It's about safe access and a company that used toxic chemicals and pesticides in their products, potentially putting consumers' health at risk," Sierra said. One of the charges against Med-West is the chemical extraction of THC using "flammable, volatile and/or toxic chemicals," a process outlawed by a state health code.

Part of the DA's strategy to waive McElfresh's attorney-client privilege has been to turn to federal law. Marijuana remains illegal at the federal level under the Controlled Substances Act.

Yet Halgren, the judge who presided over the July 7 hearing, said that federal law would not be considered in the case, since the search warrant was written under state and local provisions.

In a July 21 hearing, Del Portillo, the deputy DA, tried to argue that the search of the computer should be treated like a file cabinet, using broad terms like "ethanol" and "THC" or "marijuana" as search terms, to draw out any evidence.

Iredale argued such a search would be too broad and would put all of McElfresh's past clients at risk of forfeiting their privilege.

Halgren sided with Iredale, saying that the "starting point" was to limit the search of the computer to the names and entities specified in the warrant with the exception of McElfresh's name. Halgren added that the prosecution would be able to argue for other search methods in future hearings. All data collected in the search has been under review by a neutral, third-party expert assigned by Halgren to decide whether items are privileged.

Though the preliminary method of how to search McElfresh's records was decided, Halgren said the court would revisit the prosecution's argument on the crime-fraud exception in light of Rogers' ruling on the April 2015 email between McElfresh and Slatic.

Iredale called the prosecution's attempts to reach into McElfresh's privileged conversations an "excessive overreach," "unprecedented," "truly extraordinary" and "frightening." Though Iredale said he feels like he successfully preserved McElfresh and her clients' confidentiality, some remain skeptical.

Omar Figueroa, a cannabis attorney and law ethics professor, took the trip from his offices in Sonoma County to attend the July 7 hearing to support McElfresh. He said that even with Halgren's ruling

limiting the scope of the computer search, he fears an appellate court could side with the DA, if it reaches that point.

For Austin, it's still a "wait-and-see" situation. "We would hope the judicial system will work the way it's supposed to work. We would hope that it goes the way you would want to see those protections and not have the chilling effect on the clients," she said.

Correction: An earlier version of this post referred to Gina Austin as a lawyer representing Citizens for Patient Rights. Austin represents one of Jessica McElfresh's former clients but does not represent Citizens for Patient Rights.

Tags:

Cannabis

Marijuana

pot

san diego district attorney

What do you think?

Written By

Jonah Valdez

Jonah Valdez is a freelance reporter based in San Diego, but is ready to travel wherever a story may lead. You can contact him via email at jonahmvaldez@gmail.com and follow him on Twitter [@jonahmv](https://twitter.com/jonahmv).

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EXHIBIT 8

Court's Ex. 034

Case # 37-2017-00010073-CU-BC-CTL

Rec'd _____

Dept. **C-73** Clk. _____

General Application

FORM
DS-3032
AUGUST 2013

1. Approval Type: *Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ Electrical/Plumbing/Mechanical ☐ Sign ☐ Structure ☐ Grading ☐ Public Right-of-Way; ☐ Subdivision ☐ Demolition/Removal ☐ Development Approval ☐ Vesting Tentative Map ☐ Tentative Map ☐ Map Waiver ☒ Other: CUP

2. Project Address/Location: *Include Building or Suite No.*
6176 Federal Blvd.

Project Title:
Federal Blvd. MMCC

Project No.: *For City Use Only*
520604

Legal Description: *(Lot, Block, Subdivision Name & Map Number)*

TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO

Assessor's Parcel Number:
543-020-02

Existing Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☒ Commercial/Non-Residential ☐ Vacant Land

Proposed Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☒ Commercial/Non-Residential ☐ Vacant Land

Project Description:

The project consists of the construction of a new MMCC facility

3. Property Owner/Lessee Tenant Name: *Check one* ☐ Owner ☒ Lessee or Tenant
Rebecca Berry

Telephone: _____ Fax: _____

Address: _____ City: San Diego State: CA Zip Code: 92122 E-mail Address: becky@tfcisd.net

4. Permit Holder Name - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.

Name: Rebecca Berry Telephone: _____ Fax: _____

Address: _____ City: San Diego State: CA Zip Code: 92122 E-mail Address: becky@tfcisd.net

5. Licensed Design Professional (if required): (check one) ☒ Architect ☐ Engineer License No.: C-19371

Name: Michael R Morton AIA Telephone: _____ Fax: _____

Address: _____ City: San Diego State: CA Zip Code: 92104 E-mail Address: _____

6. Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) -

a. Year constructed for all structures on project site: 1951

b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A

c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☒ Yes ☐ No

d. Does the project include any foundation repair, digging, trenching or other site work? ☒ Yes ☐ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Abhay Schweitzer

Signature: Date: 10/28/2016

7. Notice of Violation - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? ☐ No ☐ Yes, copy attached

8. Applicant Name: *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☒ Other Person per M.C. Section 112.0102
Rebecca Berry

Address: _____ City: San Diego State: CA Zip Code: 92122 E-mail Address: becky@tfcisd.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature: Date: Oct 31 2016

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DS-3032 (08-13)



City of San Diego
Development Services
1222 First Ave., MS-401
San Diego, CA 92101
(619) 446-5000

Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP)

FORM
DS-190
MARCH 2014

The purpose of this affidavit is for the property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative (MMCC) to affirm that all uses within 1,000 feet from the subject property line have been identified, including residential zones within 100 feet, as defined in San Diego Municipal Code (SDMC), Sections 113.0103 and 141.0614.

The proposed MMCC location must be 100 feet from any residential zone and not within 1,000 feet of the property line of the following:

- | | |
|----------------------|--|
| 1. Public park | 6. Minor-oriented facility |
| 2. Church | 7. Other medical marijuana consumer cooperatives |
| 3. Child care center | 8. Residential care facility |
| 4. Playground | 9. Schools |
| 5. City library | |

GENERAL INFORMATION

Project Name:

Federal Blvd. MMCC

Project No.: For City Use Only

5201004

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Date Information Verified by Owner or Authorized Agent:

10/28/2016

DECLARATION: *The property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative must complete the following section and sign their name where indicated.*

We are aware that the business described above is subject to the Medical Marijuana Consumer Cooperatives (MMCC) regulated by SDMC, Section 141.0614 and Chapter 4, Article 2, Division 15. We hereby affirm under penalty of perjury that the proposed business location is not within 1,000 feet, measured in accordance with SDMC, Section 113.0225, of the property line of any public park, church, child care center, playground, library owned and operated by the City of San Diego, minor-oriented facility, other medical marijuana consumer cooperative, residential care facility, or schools; and is 100 feet from any residential zone as identified on the 1000-foot radius map and spread-sheet submitted with the Conditional Use Permit application.

Property Owner or Authorized Agent Name: Check one ☒ Owner ☐ Agent

Telephone No.:

Mailing Address:

City:

State:

Zip Code:

Signature:

Date:

Business Owner Name:

Rebecca Berry

Telephone No.:

(858) 999-6882

Mailing Address:

5982 Gullstrand Street

City:

San Diego

State:

CA

Zip Code:

92122

Signature:

Rebecca Berry

Date:

Oct 31 2016

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DS-190 (03-14)

 <p>City of San Diego Development Services Attn: Deposit Accounts 1222 First Ave., MS-401 San Diego, CA 92101 (619) 446-5000</p>	<h2 style="text-align: center;">Deposit Account/Financially Responsible Party</h2>	FORM DS-3242
		AUGUST 2014

Project Address/Location: 6176 Federal Blvd. San Diego, CA. 92114		Project No.: <u>520606</u>	Internal Order No.: <u>For City Use Only</u>
Approval Type: Check appropriate box for type of approval requested: <input type="checkbox"/> Grading <input type="checkbox"/> Public Right-of-Way <input type="checkbox"/> Subdivision <input type="checkbox"/> Neighborhood Use <input type="checkbox"/> Coastal <input type="checkbox"/> Neighborhood Development <input type="checkbox"/> Site Development <input type="checkbox"/> Planned Development <input checked="" type="checkbox"/> Conditional Use <input type="checkbox"/> Variance <input type="checkbox"/> Vesting Tentative Map <input type="checkbox"/> Tentative Map <input type="checkbox"/> Map Waiver <input type="checkbox"/> Other: _____			
Is the project subject to a Reimbursement Agreement? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, provide Reimbursement Agreement Application Project Number or Resolution/Ordinance No.: _____			
Deposit Trust Fund Account Information: A deposit into a Trust Fund account with an initial deposit to pay for the review, inspection and/or project management services is required. The initial deposit is drawn against to pay for these services. The Financially Responsible Party will receive a monthly statement reflecting the charges made against the account, and an invoice when additional deposits are necessary to maintain a minimum balance. The payment of the invoice will be required in order to continue processing your project. At the end of the project, any remaining funds will be returned to the Financially Responsible Party.			
<u>FINANCIALLY RESPONSIBLE PARTY</u>			
Name/Firm Name: Rebecca Berry		Address: 5982 Gullstrand Street	E-mail:
City: San Diego	State: CA	Zip Code: 92122	Telephone: Fax No.:
Financially Responsible Party Declaration: I understand that City expenses may exceed the estimated advance deposit and, when requested by the City of San Diego, will provide additional funds to maintain a positive balance. Further, the sale or other disposition of the property does not relieve the individual or Company/Corporation of their obligation to maintain a positive balance in the trust account, unless the City of San Diego approves a Change of Responsible Party and transfer of funds. Should the account go into deficit, all City work may stop until the requested advance deposit is received.			
<input type="checkbox"/> This is a continuation of existing Project No.: _____ Internal Order No.: _____			
NOTE: Using an existing opened account may be allowed when: 1. Same location for both projects; 2. Same Financially Responsible Party; 3. Same decision process (Ministerial and discretionary projects may not be combined); 4. Same project manager is managing both projects; and 5. Preliminary Review results in a project application.			
Please be advised: Billing statements cannot distinguish charges between two different projects.			
Please Print Legibly.			
Print Name: <u>REBECCA BERRY</u>		Title: <u>PRESIDENT</u>	
Signature*: <u>Rebecca Berry</u>		Date: <u>10/31/16</u>	
*The name of the individual and the person who signs this declaration must be the same. If a corporation is listed, a corporate officer must sign the declaration (President, Vice-President, Chairman, Secretary or Treasurer).			
<u>FOR CITY USE ONLY</u>			
Project Title: <u>Federal Blvd mmcc</u>		Date Requested: <u>10/31/16</u>	
<input type="checkbox"/> Keep existing Project No.: _____ as lead or <input type="checkbox"/> Use new Project No.: _____ as lead			
ACCOUNT CLOSURE AUTHORIZATION			
Date Requested: _____		<input type="checkbox"/> Completed <input type="checkbox"/> Inactive <input type="checkbox"/> Withdrawn <input type="checkbox"/> Collections	
Print Name: _____		Signature: _____	

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DS-3242 (08-14)



THE CITY OF SAN DIEGO

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☒ Conditional Use Permit
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ Other _____

Project Title

Project No. For City Use Only

Federal Blvd. MMCC

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print):

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

6176 Federal Blvd

City/State/Zip:

San Diego Ca 92114

Phone No:

(619) 954-4447

Fax No:

Signature :

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of Individual (type or print):

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

5982 Gullstrand St

City/State/Zip:

San Diego / Ca / 92122

Phone No:

8589996882

Fax No:

Signature :

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date: