

AUSTIN LEGAL GROUP, APC  
3990 Old Town Ave, Ste A-101  
San Diego, CA 92110

1 **AUSTIN LEGAL GROUP, APC**  
2 GINA M. AUSTIN (SBN 246833)  
3 E-mail: gaustin@austinlegalgroup.com  
4 TAMARA M. LEETHAM (SBN 234419)  
5 E-mail: tamara@austinlegalgroup.com  
6 3990 Old Town Ave, Ste A-101  
7 San Diego, CA 92110  
8 (619) 924-9600/ FAX (619) 881-0045

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**02/13/2020** at 12:00:00 AM  
Clerk of the Superior Court  
By E- Filing, Deputy Clerk

6 Attorneys for proposed intervenor  
7 KIM Investments, LLC

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF SAN DIEGO –CENTRAL DIVISION**

10 CITRUS ST PARTNERS, LLC,

11 Plaintiff

12 v.

13 CITY OF LEMON GROVE; CITY  
14 COUNCIL OF THE CITY OF LEMON  
15 GROVE; AND DOES 1-10,

16 Respondents,

Case No: 37-2019-0064690-CU-MC-CTL

**DECLARATION OF GINA AUSTIN IN  
SUPPORT OF PROPOSED  
INTERVENOR KIM INVESTMENTS,  
LLC'S OPPOSITION TO CITRUS  
STREET'S FEBRUARY 13, 2020 EX  
PARTE APPLICATION TO REASSIGN  
CASE**

[Imaged File]

Judge: Hon. Richard S. Whitney  
Dept: C-68  
Date: February 13, 2020  
Time: 8:45 a.m.

Petition Filed: December 5, 2019

20 Does 11-20,

21 Real Parties In Interest.

22 KIM Investments, LLC,

23 Real Party In Interest-  
24 Intervenor.

1 I, Gina Austin, declare:

2 1. I am an attorney duly licensed to practice before all California courts. I have personal  
3 knowledge of the following facts and if called upon, I could and would competently testify  
4 hereto.

5 2. I represent KIM Investments, LLC (“KIM”) with respect to a conditional use permit  
6 application for a medical marijuana dispensary in the City of Lemon Grove (“City”), CUP 190-  
7 0002 (“CUP Application”) and I have been KIM’s attorney through the entirety of its CUP  
8 Application process. Through this representation, I am familiar with KIM’s CUP Application,  
9 petitioner Citrus Street, LLC’s (“Citrus Street”) competing application, and the City’s marijuana  
10 ordinance.

11 3. In 2016, City voters passed Measure V, an initiative removing the City’s prohibition  
12 on medical marijuana dispensaries. Measure V was codified in Chapter 17.32 of the Lemon  
13 Grove Municipal Code (“LGMC”).

14 4. On January 28, 2019, KIM began the City’s zoning clearance process as part of its  
15 CUP Application to legally operate a medical marijuana dispensary (“MMD”) pursuant to  
16 Measure V at 3515 Harris Street, Lemon Grove, CA 91945 (“Harris Street”).

17 5. On April 3, 2019, Citrus Street submitted its own application to operate a medical  
18 marijuana dispensary in the City.

19 6. LGMC section 17.32.090(B) prohibits the establishment of a MMD within 1,000 feet  
20 of a “regulated use” which includes other MMD’s and licensed daycare facilities.

21 7. Citrus Street’s application for 7309 Broadway and KIM’s CUP Application for  
22 Harris Street are within 1,000 feet of one another and thus approval of one CUP application  
23 necessarily precludes approval of the competing application.

24 8. On May 8, 2019 the City deemed KIM’s application complete which made KIM  
25 eligible to proceed to City’s CUP phase.

26 9. On May 9, 2019 KIM submitted its Harris St. CUP Application to the City.

27 10. On October 22, 2019, the City Planning Commission approved a day care facility at  
28

1 3468 Citrus Street, Lemon Grove, California 91945. Upon the satisfaction of the conditions  
2 enumerated in the day care’s conditional use permit, the day care will be deemed a “protected  
3 use” that will disqualify KIM’s CUP Application under LGMC section 17.32.090(B).

4 11. On November 14, 2019, KIM received a notification letter from the City stating that  
5 its CUP Application was complete and would be set for City Council hearing on Tuesday,  
6 January 21, 2020 at 6:00pm.

7 12. On November 19, 2019, the City Council voted to deny Citrus Street’s CUP  
8 application to operate a MMD at 7309 Broadway.

9 13. On November 21, 2019 and November 26, 2019, I formally objected to KIM’s  
10 January 21, 2020 hearing date because it was more than 80 days after the City deemed KIM’s  
11 project complete in violation of LGMC section 17.28.02(G) which requires public hearings to be  
12 held no later than 60 days following a deemed complete application, or in KIM’s case November  
13 7, 2019.

14 14. On January 9, 2020, I received an e-mail from an attorney named Grant Olsson, who  
15 represents petitioner Citrus Street partners. Mr. Olsson asked me by e-mail if I was authorized to  
16 accept service of paperwork filed in this action, more specifically for a January 13, 2020  
17 restraining order hearing in Department 66 of this Court. Prior to this e-mail, neither I nor KIM  
18 had any knowledge of this proceeding.

19 15. On receiving Mr. Olsson’s e-mail, I looked this case up on the San Diego Superior  
20 Court’s register of actions and saw that KIM was not a party. I then responded to Mr. Olsson’s  
21 e-mail by asking him why he had included me/KIM in the ex parte notice as KIM was not a  
22 party. Mr. Olsson responded that Citrus Street was filing a temporary restraining order and  
23 preliminary injunction to request an order enjoining the City from holding the January 21, 2020  
24 hearing on KIM’s conditional use permit application and acknowledged that my client, KIM,  
25 may have an interest in opposing the January 14, 2020 ex parte application given the fact that the  
26 requested relief would impact KIM.

27 16. On January 14, 2020, I appeared at the ex parte hearing along with attorney Tamara  
28

1 Leetham, who also represents KIM in this action. During this hearing, Judge Medel allowed me  
2 and Ms. Leetham to argue against the temporary restraining order. We strenuously objected to  
3 the Court entering any order that impacted KIM as KIM had not been named in the action, its  
4 CUP Application was the target of the ex parte hearing, and that KIM must afforded due process  
5 as KIM would suffer significant harm in the event its January 21, 2020 hearing was negatively  
6 impacted.

7 17. As evidence of harm, I informed the Court that any interference with KIM's January  
8 21, 2020 hearing could cause its CUP Application to be denied because of the pending day care  
9 application within 1,000 feet. I explained to the Court that it was essentially a race between KIM  
10 and the day care and that if KIM's application was enjoined without KIM's ability to oppose, it  
11 would allow the daycare the unfair advantage of proceeding without KIM's ability to seek any  
12 relief. Judge Medel considered this and at KIM's request, included a provision in the temporary  
13 restraining order enjoining the City from further processing the daycare's conditional use permit  
14 application.

15 18. During the January 14, 2020 TRO hearing, Judge Medel asked Citrus Street if it  
16 would agree to allow KIM to intervene during the hearing. Citrus Street said no, it would have to  
17 consult with its client.

18 19. Thus, when the January 14, 2020 hearing concluded, I had been permitted to appear  
19 and argue, Ms. Leetham had been permitted to appear and argue, the Court had allowed  
20 language we proposed to become part of the temporary restraining order. The City did not object  
21 to KIM's appearance and has filed papers indicating its position that KIM is a necessary and  
22 indispensable party.

23 20. After the hearing, I walked out with Ms. Leetham and we both stopped in the  
24 hallway outside of Department 66 to confer with Mr. Olsson and Suzanne Varco, KIM's lead  
25 attorney. I asked Ms. Varco if she would agree to KIM's intervention since Citrus Street refused  
26 to name KIM as party. Ms. Varco said she would ask her client but doubted the client would  
27 agree. The Citrus Street attorneys thereafter informed me that their client would not agree to  
28

1 allow KIM to intervene and KIM was forced to file its motion to intervene.

2 21. On January 21, 2020, the City continued KIM's CUP Application hearing to  
3 February 18, 2020.

4 22. On January 28, 2020, KIM filed its motion to intervene. That same day, KIM filed a  
5 Code of Civil Procedure section 170.6 challenge.

6 23. On January 31, 2020, Judge Medel signed an order granting the 170.6 challenge  
7 ("170.6 Order"). On signing the 170.6 Order, the dates in Judge Medel's department were  
8 vacated and the case was reassigned to Department 68, the honorable Richard S. Whitney  
9 presiding.

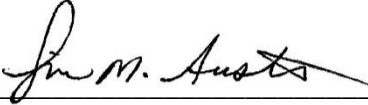
10 24. On reassignment, my office contacted the department 68 calendar clerk about KIM's  
11 motion to intervene and the calendar clerk asked us to refile it with a new hearing date of May 1,  
12 2020. We refiled the motion to intervene to reflect the May 1, 2020 hearing date.

13 25. Because the hearing date three months away, and given the time sensitive issues,  
14 KIM scheduled an ex parte on its motion to intervene to either request the Court grant it on an ex  
15 parte basis or shorten time on the May 1, 2020 hearing date. The ex parte is scheduled for  
16 February 18, 2020.

17 26. KIM has already been severely harmed in this lawsuit by Citrus Street's  
18 unsupportable refusal to name KIM as a party while requesting relief from the Court that directly  
19 and immediately impacted, and continues to impact, KIM. Citrus Street's continued refusal to  
20 acknowledge KIM's necessary participation will only exacerbate this harm. KIM must be  
21 allowed to defend its permit or it will lose it, which is exactly the outcome Citrus Street seeks.

22 27. Since the passage of Measure V, KIM has expended nearly \$1,500,000 toward the  
23 approval process and purchase of 3515 Harris Street.

24 I declare under penalty of perjury under California state law that the foregoing is true and  
25 correct. Executed this 12th day of February 2020 at San Diego, California.

26  
27 By:   
28 Gina M. Austin