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1 **AUSTIN LEGAL GROUP, APC**  
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2 TAMARA M. LEETHAM (SBN 234419)  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**02/18/2020** at 10:25:00 AM  
Clerk of the Superior Court  
By Carolina Miranda, Deputy Clerk

5 Attorneys for proposed intervenor  
6 KIM Investments, LLC

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

9 CITRUS ST PARTNERS, LLC,

10 Plaintiff

11 v.

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

15 Respondents,

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

**DECLARATION OF GINA AUSTIN IN  
SUPPORT OF PROPOSED  
INTERVENOR KIM INVESTMENTS,  
LLC’S EX PARTE APPLICATION TO  
INTERVENE OR IN THE  
ALTERNATIVE FOR AN ORDER  
SHORTENING TIME ON MOTION FOR  
LEAVE TO INTERVENE**

[Imaged File]

Judge: Hon. Richard S. Whitney  
Dept: C-68  
Date: February 19, 2020  
Time: 8:45 a.m.

Petition Filed: December 5, 2019

16 Does 11-20,

17 Real Parties In Interest.

18 KIM Investments, LLC,

19 Real Party In Interest-

20 Intervenor.

21 I, Gina Austin, declare:

22 1. I am an attorney duly licensed to practice before all California courts. I have

1 personal knowledge of the following facts and if called upon, I could and would competently  
2 testify hereto.

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

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

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

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

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

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

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

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

25 10. On October 22, 2019, the City Planning Commission approved a day care facility at  
26 3468 Citrus Street, Lemon Grove, California 91945. Upon the satisfaction of the conditions  
27 enumerated in the day care’s conditional use permit, the day care will be deemed a “protected  
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1 use” that will disqualify KIM’s CUP Application under LGMC section 17.32.090(B).

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

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

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

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

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

25 16. On January 14, 2020, I appeared at the ex parte hearing along with attorney Tamara  
26 Leetham, who also represents KIM in this action. During this hearing, Judge Medel allowed me  
27 and Ms. Leetham to argue against the temporary restraining order. We strenuously objected to  
28

1 the Court entering any order that impacted KIM as KIM had not been named in the action, its  
2 CUP Application was the target of the ex parte hearing, and that KIM must afforded due process  
3 as KIM would suffer significant harm in the event its January 21, 2020 hearing was negatively  
4 impacted.

5 17. As evidence of harm, I informed the Court that any interference with KIM's January  
6 21, 2020 hearing could cause its CUP Application to be denied because of the pending day care  
7 application within 1,000 feet. I explained to the Court that it was essentially a race between KIM  
8 and the day care and that if KIM's application was enjoined without KIM's ability to oppose, it  
9 would allow the daycare the unfair advantage of proceeding without KIM's ability to seek any  
10 relief. Judge Medel considered this and at KIM's request, included a provision in the temporary  
11 restraining order enjoining the City from further processing the daycare's conditional use permit  
12 application.

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

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

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

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

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

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

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

12           25. Because the hearing date three months away, and given the time sensitive issues,  
13 KIM scheduled an ex parte on its motion to intervene to either request the Court grant it on an ex  
14 parte basis or shorten time on the May 1, 2020 hearing date. The ex parte is scheduled for  
15 February 19, 2020.

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

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

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28. A true and correct copy of KIM's Proposed Verified Answer In Intervention is attached as Exhibit A and incorporated by reference.

I declare under penalty of perjury under California state law that the foregoing is true and correct. Executed this 18th day of February 2020 at San Diego, California.

By:   
Gina M. Austin

**EXHIBIT A**

1 GINA M. AUSTIN (SBN 246833)  
E-mail: gaustin@austinlegalgroup.com  
2 TAMARA M. LEETHAM (SBN 234419)  
E-mail: tamara@austinlegalgroup.com  
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5

6 Attorneys for proposed intervenor  
KIM Investments, LLC  
7

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  
GROVE; AND DOES 1-10,

15 Respondents,

16 Does 11-20,

17 Real Parties In Interest.

18 KIM Investments, LLC,

19 Real Party In Interest-  
Intervenor.  
20

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

**[PROPOSED] VERIFIED ANSWER IN  
INTERVENTION**

[Imaged File]

Petition Filed: December 5, 2019

21 By leave of Court, and in accordance with Code of Civil Procedure section 387(e)(1),  
22 Real Party in Interest-Intervenor KIM Investments, LLC (“KIM” or “Intervenor”), files this  
23 [Proposed] Verified Answer in Intervention and thereby intervenes in the above captioned  
24 action. KIM alleges the following grounds for intervention:

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**GROUND FOR INTERVENTION**

1  
2           1.       KIM seeks to intervene in this action on the basis of Code of Civil Procedure  
3 section 387(d)(1)(B). KIM has a direct and immediate interest in the land use entitlement that  
4 Plaintiff is attempting to enjoin through its temporary restraining order and motion for a  
5 preliminary injunction against the City, and KIM has already been directly affected and will  
6 continue to be directly affected by the outcome of this litigation. Currently, KIM has no  
7 adequate representation of its interest in this action.

8           2.       On November 22, 2019, Petitioner Citrus St. Partners, LLC (“Petitioner” or  
9 “Citrus”) sued defendants City of Lemon Grove and City Council of Lemon Grove (collectively  
10 “City”).

11           3.       On January 9, 2020, KIM was notified of Petitioner’s intention to file an Ex Parte  
12 Application for a Temporary Restraining Order preventing the City of Lemon Grove from  
13 approving conditional use permit CUP-190-0002.

14           4.       On January 14, 2020, the court granted Petitioner’s Ex Parte Application for a  
15 Temporary Restraining Order preventing the City of Lemon Grove from finally approving  
16 KIM’s conditional use permit CUP-190-0002 and set the OSC Re: Preliminary Injunction for  
17 February 14, 2020.

18           5.       As shown by the facts alleged below, KIM has a direct interest in the subject  
19 matter of this litigation. KIM’s interest has already been directly affected and is likely to  
20 continue to be directly affected by the outcome of the litigation. KIM’s interest has already been  
21 affected by the temporary restraining order granted by this Court in January 14, 2020, and KIM  
22 will most certainly be affected by the outcome of Plaintiff’s request for a preliminary injunction.  
23 Adjudication of KIM’s interests will not unduly delay nor expand the trial of this action.

24           6.       KIM is, and at all relevant times was, a limited liability company existing under  
25 California state law with its principal place of business in San Diego County, California.

26           7.       KIM is the applicant of conditional use permit CUP-190-0002 in the City.

27           8.       Upon information and belief, P Petitioner is a limited liability company existing  
28 under California state law with its principal place of business in Lemon Grove California.

1           9.       In 2016, the voters in the City of Lemon Grove passed Measure V, an initiative  
2 removing the City’s prohibition of medical marijuana dispensaries. The measure was codified in  
3 Chapter 17.32 of the Lemon Grove Municipal Code (“LGMC”).

4           10.      On January 28, 2019, KIM began the City’s zoning clearance process to obtain a  
5 conditional use permit (“CUP”) for a medical marijuana dispensary (“MMD”) at 3515 Harris  
6 Street, Lemon Grove, CA 91945, and on May 8, 2019 the City deemed the application complete.  
7 At that time, KIM was eligible to proceed to the CUP phase. On May 9, 2019 KIM submitted its  
8 CUP application to the City.

9           11.      Petitioner submitted an application for a CUP to establish a MMD at 7309  
10 Broadway in Lemon Grove on April 3, 2019.

11           12.      LGMC section 17.32.090(B) prohibits the establishment of an MMD within  
12 1,000 feet of a “regulated use” (other MMDs) or a “protected use” (public parks, playgrounds,  
13 licensed day care facilities, schools, and alcohol and substance abuse treatment centers).

14           13.      7309 Broadway and 3515 Harris Street are within 1,000 feet of one another and  
15 thus approval of one of the CUP applications would necessarily preclude the other.

16           14.      On October 22, 2019, the Lemon Grove Planning Commission approved a day  
17 care facility at 3468 Citrus Street, Lemon Gove, California 91945.

18           15.      Upon the satisfaction of the conditions enumerated in its CUP, the day care will  
19 be deemed a projected use that will disqualify KIM’s MMD CUP application.

20           16.      On November 14, 2019, Joe Yousif, owner of KIM, received a notification letter  
21 from the City stating that his application for CUP-190-0002 was complete and would be set for  
22 City Council hearing on Tuesday, January 21, 2020 at 6:00pm.

23           17.      On November 19, 2019, the City Council voted to deny the Petitioner’s CUP  
24 application.

25           18.      On November 21, 2019 and November 26, 2019, KIM’s counsel formally  
26 objected to KIM’s hearing date of January 21, 2020 because it was more than 80 days after the  
27 project was complete in violation of LGMC section 17.28.02(G) which requires public hearings  
28 to be held no later than 60 days following a deemed complete application (November 7, 2019).

1 19. At all times City staff stated the project was complete and consistent with the  
2 municipal code and that staff would be recommending approval of the project.

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

5 21. Petitioner has asserted in the above-captioned action that City abused its  
6 discretion in denying its application for CUP -190-0001 and is seeking to enjoin the City from  
7 processing KIM's application for CUP-190-0002.

8 22. On January 14, 2020, Petitioner was granted a Temporary Restraining Order on  
9 January 14, 2020 against the City enjoining the City from making a final determination on  
10 KIM's CUP application. KIM was not a party to this case when the TRO was granted despite the  
11 fact it was KIM's MMD CUP application being enjoined. A hearing on Petitioner's request for  
12 a Preliminary Injunction was initially scheduled for February 14, 2020 in this Court.

13 23. If Petitioner is successful in its claims, KIM will be precluded from a final  
14 determination on its MMD CUP and could lose its ability to be approved due to the potential day  
15 care facility at 3468 Citrus Street or any other day care facility that locates within 1,000 feet.

16 24. KIM has no recourse to address issues which directly impact it unless the Court  
17 grants intervention. KIM should be allowed to intervene because it has been affected by this  
18 matter and it will continue to be affected by the outcome of this matter, and judicial economy  
19 and efficiency are served by allowing intervention.

20 25. Moreover, KIM's interests are not being represented in this matter

21 26. KIM has a direct interest in the subject matter of this litigation and will be  
22 directly impacted by its outcome. KIM should be granted its requested intervention.

23 **ANSWER TO PETITION**

24 KIM now answers the Verified Petition for Writ of Mandate and Complaint for  
25 Declaratory and Injunctive Relief ("Petition") of Petitioner Citrus St Partners, LLC  
26 ("Petitioner") on file herein as follows:

27 **INTRODUCTION**

28 1. As to Paragraph 1 of the Petition, KIM admits this allegation;

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2. As to Paragraph 2 of the Petition, KIM has no information or belief sufficient to enable it to answer the allegations contained therein and, placing its denial on that ground, denies each and every allegation thereof;

3. As to Paragraph 3 of the Petition, KIM has no information or belief sufficient to enable it to answer the allegations contained therein and, placing its denial on that ground, denies each and every allegation thereof;

4. As to Paragraph 4 of the Petition, KIM admits in part and denies in part. KIM admits that Petitioner files this action seeking a writ of mandate under Code of Civil Procedure section 1094.5 and declaratory relief under Code of Civil Procedure section 1060 directing the City to vacate its November 19, 2019 decision to deny Petitioner’s Application, and to revise its decision to conform with the law. KIM denies that Petitioner files this action seeking a writ of mandate under Code of Civil Procedure section 1085;

**PARTIES**

5. As to Paragraph 5 of this Petition, KIM has no information or belief sufficient to enable it to answer the allegations contained therein and, placing its denial on that ground denies each and every allegation thereof;

6. As to Paragraph 6 of this Petition, KIM admits this allegation;

7. As to Paragraph 7 of this Petition, KIM admits this allegation;

8. As to Paragraph 8 of this Petition, KIM has no information or belief sufficient to enable it to answer the allegations contained therein and, placing its denial on that ground denies each and every allegation thereof;

9. As to Paragraph 9 of this Petition, KIM has no information or belief sufficient to enable it to answer the allegations contained therein and, placing its denial on that ground denies each and every allegation thereof;

10. As to Paragraph 10 of this Petition, KIM has no information or belief sufficient to enable it to answer the allegations contained therein and, placing its denial on that ground denies each and every allegation thereof;

11. As to Paragraph 11 of this Petition, KIM has no information or belief sufficient

1 to enable it to answer the allegations contained therein and, placing its denial on that ground  
2 denies each and every allegation thereof;

3 12. As to Paragraph 12 of this Petition, KIM has no information or belief sufficient to  
4 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
5 each and every allegation thereof;

6 13. As to Paragraph 13 of this Petition, KIM has no information or belief sufficient to  
7 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
8 each and every allegation thereof;

9 14. As to Paragraph 14 of this Petition, KIM has no information or belief sufficient to  
10 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
11 each and every allegation thereof;

12 15. As to Paragraph 15 of this Petition, KIM has no information or belief sufficient to  
13 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
14 each and every allegation thereof;

15 16. As to Paragraph 16 of this Petition, KIM has no information or belief sufficient to  
16 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
17 each and every allegation thereof;

18 17. As to Paragraph 17 of this Petition, KIM has no information or belief sufficient to  
19 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
20 each and every allegation thereof;

21 18. As to Paragraph 18 of this Petition, KIM objects in that these allegations consist  
22 of mere legal argument and are not based upon admissible facts. As such, KIM denies each and  
23 every allegation thereof;

24 **JURISDICTION AND VENUE**

25 19. Petitioner re-alleges and incorporates by reference preceding Paragraphs 1-18 in  
26 their entirety. No response required.

27 20. As to Paragraph 20 of this Petition, KIM has no information or belief sufficient to  
28 enable it to answer the allegations contained therein and, placing its denial on that ground

1 denies each and every allegation thereof;

2 21. As to Paragraph 21 of this Petition, KIM has no information or belief sufficient to  
3 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
4 each and every allegation thereof;

5 **STATEMENT OF FACTS**

6 22. Petitioner re-alleges and incorporates by reference preceding Paragraphs 1-22 in  
7 their entirety. No response required.

8 23. As to Paragraph 23 of this Petition, KIM admits this allegation;

9 24. As to Paragraph 24 of this Petition, KIM admits this allegation;

10 25. As to Paragraph 25 of this Petition, KIM admits this allegation;

11 26. As to Paragraph 26 of this Petition, KIM admits this allegation;

12 27. As to Paragraph 27 of this Petition, KIM admits this allegation;

13 28. As to Paragraph 28 of this Petition, KIM admits this allegation;

14 29. As to Paragraph 29 of this Petition, KIM has no information or belief sufficient to  
15 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
16 each and every allegation thereof;

17 30. As to Paragraph 30 of this Petition, KIM admits this allegation;

18 31. As to Paragraph 31 of this Petition, KIM has no information or belief sufficient to  
19 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
20 each and every allegation thereof;

21 32. As to Paragraph 32 of this Petition, KIM has no information or belief sufficient to  
22 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
23 each and every allegation thereof;

24 33. As to Paragraph 33 of this Petition, KIM has no information or belief sufficient to  
25 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
26 each and every allegation thereof;

27 34. As to Paragraph 34 of this Petition, KIM has no information or belief sufficient to  
28 enable it to answer the allegations contained therein and, placing its denial on that ground

1 denies each and every allegation thereof;

2 35. As to Paragraph 35 of this Petition, KIM has no information or belief sufficient to  
3 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
4 each and every allegation thereof;

5 36. As to Paragraph 36 of this Petition, KIM has no information or belief sufficient to  
6 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
7 each and every allegation thereof;

8 37. As to Paragraph 37 of this Petition, KIM admits this allegation.

9 **FIRST CAUSE OF ACTION**

10 **Writ of Mandate – Code of Civil Procedure § 1094.5**

11 38. Petitioner re-alleges and incorporates by reference preceding Paragraphs 1-37 in  
12 their entirety. No response required.

13 39. As to Paragraph 39 of this Petition, KIM has no information or belief sufficient to  
14 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
15 each and every allegation thereof;

16 40. As to Paragraph 40 of this Petition, KIM objects in that these allegations consist  
17 of mere legal argument and are not based upon admissible facts. As such, KIM denies each and  
18 every allegation thereof;

19 41. As to Paragraph 41 of this Petition, KIM has no information or belief sufficient to  
20 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
21 each and every allegation thereof;

22 42. As to Paragraph 42 of this Petition, KIM has no information or belief sufficient to  
23 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
24 each and every allegation thereof;

25 43. As to Paragraph 43 of this Petition, KIM has no information or belief sufficient to  
26 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
27 each and every allegation thereof;

28 44. As to Paragraph 44 of this Petition, KIM has no information or belief sufficient

1 to enable it to answer the allegations contained therein and, placing its denial on that ground  
2 denies each and every allegation thereof;

3 45. As to Paragraph 45 of this Petition, KIM has no information or belief sufficient to  
4 enable it to answer the allegations contained therein and, placing its denial on that ground denies  
5 each and every allegation thereof;

6 46. As to Paragraph 46, KIM has no information or belief sufficient to enable it to  
7 answer the allegations contained therein and, placing its denial on that ground denies each and  
8 every allegation thereof;

9 47. As to Paragraph 47, KIM has no information or belief sufficient to enable it to  
10 answer the allegations contained therein and, placing its denial on that ground denies each and  
11 every allegation thereof;

12 48. As to Paragraph 48, KIM has no information or belief sufficient to enable it to  
13 answer the allegations contained therein and, placing its denial on that ground denies each and  
14 every allegation thereof;

15 49. As to Paragraph 49, KIM has no information or belief sufficient to enable it to  
16 answer the allegations contained therein and, placing its denial on that ground denies each and  
17 every allegation thereof;

18 50. As to Paragraph 50, KIM has no information or belief sufficient to enable it to  
19 answer the allegations contained therein and, placing its denial on that ground denies each and  
20 every allegation thereof;

21 51. As to Paragraph 51, KIM has no information or belief sufficient to enable it to  
22 answer the allegations contained therein and, placing its denial on that ground denies each and  
23 every allegation thereof;

24 52. As to Paragraph 52, KIM objects in that these allegations consist of mere legal  
25 argument and are not based upon admissible facts. As such, KIM denies each and every  
26 allegation thereof;

27 53. As to Paragraph 53, KIM has no information or belief sufficient to enable it to  
28 answer the allegations contained therein and, placing its denial on that ground denies each and



1 every allegation thereof;

2 54. As to Paragraph 54, KIM has no information or belief sufficient to enable it to  
3 answer the allegations contained therein and, placing its denial on that ground denies each and  
4 every allegation thereof;

5 55. As to Paragraph 55, KIM has no information or belief sufficient to enable it to  
6 answer the allegations contained therein and, placing its denial on that ground denies each and  
7 every allegation thereof;

8 **SECOND CAUSE OF ACTION**

9 **Declaratory Relief**

10 56. Petitioner re-alleges and incorporates by reference preceding Paragraphs 1-55 in  
11 their entirety. No response required.

12 57. As to Paragraph 57, KIM has no information or belief sufficient to enable it to  
13 answer the allegations contained therein and, placing its denial on that ground denies each and  
14 every allegation thereof;

15 58. As to Paragraph 58, KIM has no information or belief sufficient to enable it to  
16 answer the allegations contained therein and, placing its denial on that ground denies each and  
17 every allegation thereof;

18 59. As to Paragraph 59, KIM has no information or belief sufficient to enable it to  
19 answer the allegations contained therein and, placing its denial on that ground denies each and  
20 every allegation thereof;

21 60. As to Paragraph 60, KIM has no information or belief sufficient to enable it to  
22 answer the allegations contained therein and, placing its denial on that ground denies each and  
23 every allegation thereof; and

24 61. As to Paragraph 61, KIM objects in that these allegations consist of mere legal  
25 argument and are not based upon admissible facts. As such, KIM denies each and every  
26 allegation thereof.

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**AFFIRMATIVE DEFENSES**

Subject to and without waiving the above denials, KIM asserts the following separate and affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

As a first and separate affirmative defense, KIM alleges that Petitioner has failed to state sufficient facts to constitute a cause of action upon which relief may be granted as to each alleged cause of action in the Petitioner.

**SECOND AFFIRMATIVE DEFENSE**

As a second and separate affirmative defense, KIM alleges that the Petition is uncertain, ambiguous, and unintelligible with respect to, inter alia, various factual allegations, the violations alleged, and the relief sought.

**THIRD AFFIRMATIVE DEFENSE**

As a third and separate affirmative defense, KIM alleges that the Petitioner and each and every purported cause of action therein, fails to plead violations of statutes with sufficient particularity.

**FOURTH AFFIRMATIVE DEFENSE**

As a fourth and separate affirmative defense, KIM is informed and believes and thereon alleges that Petitioner engaged in conduct and activity sufficient to constitute a release of any claim or cause of action that she may otherwise have against KIM.

**FIFTH AFFIRMATIVE DEFENSE**

As a fifth and separate affirmative defense, KIM alleges that as to each alleged cause of action, Petitioner, by its acts and conduct, has waived any and all claims it may have against KIM.

**SIXTH AFFIRMATIVE DEFENSE**

As a sixth and separate affirmative defense, KIM alleges that To the extent Petitioner suffered any damages as alleged in the Petition, which KIM specifically denies, such damage was not caused by the acts or omissions of KIM and therefore Petitioner is barred from recovery.

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**SEVENTH AFFIRMATIVE DEFENSE**

As a seventh and separate affirmative defense, KIM alleges that To the extent Petitioner suffered any damages as alleged in the Petition, which KIM specifically denies; those damages were the direct and proximate result of the acts and/or omissions of the other Defendants or third parties that have not been named in this action.

**EIGHTH AFFIRMATIVE DEFENSE**

As an eighth and separate affirmative defense, KIM alleges that Each and every cause of action alleged in the Petition is barred by the independent, intervening and superseding acts of other parties.

**NINTH AFFIRMATIVE DEFENSE**

As a ninth and separate affirmative defense, KIM alleges that Petitioner assumed the risk of the harms alleged in its Petition. Petitioner freely and voluntarily assumed the risk of damage alleged in the Petition, with full knowledge and appreciation of the magnitude thereof, which assumption of the risk was a proximate cause of the alleged damage, if any, sustained.

**TENTH AFFIRMATIVE DEFENSE**

As a tenth and separate affirmative defense, KIM alleges that Petitioner has failed to take reasonable steps to mitigate, alter, reduce or otherwise diminish its alleged damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

As an eleventh and separate affirmative defense, KIM alleges that Petitioner is barred from any recovery because KIM did not breach any duty owed to Petitioner.

**TWELFTH AFFIRMATIVE DEFENSE**

As a twelfth and separate affirmative defense, KIM alleges that Petitioner is precluded from recovery because it consented to the actions of KIM.

**THIRTEENTH AFFIRMATIVE DEFENSE**

As a thirteenth and separate affirmative defense, KIM alleges that Each and every cause of action alleged in the Petition is barred by the doctrine of unjust enrichment.

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**FOURTEENTH AFFIRMATIVE DEFENSE**

As a fourteenth and separate affirmative defense, KIM alleges that Each and every cause of action alleged in the Petition is barred by the equitable doctrine of unclean hands.

**FIFTEENTH AFFIRMATIVE DEFENSE**

As a fifteenth and separate affirmative defense, KIM alleges that KIM alleges that Petitioner has failed to satisfy one or more express or implied conditions precedent to any obligations allegedly owed to it.

**SIXTEENTH AFFIRMATIVE DEFENSE**

As a sixteenth and separate affirmative defense, KIM alleges that KIM alleges that the Petitioner’s Petition herein, and each and every cause of action contained in the Petition, is barred by reason of acts, omissions, representations and courses of conduct by Petitioner by which KIM was led to rely to its detriment, thereby barring, under the doctrine of equitable estoppel, any Causes of Action asserted by the Petitioner.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

As a seventeenth and separate affirmative defense, KIM alleges that Each and every cause of action alleged in the Petition is barred because no justiciable controversy exists between the parties as to those causes of action.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

As an eighteenth and separate affirmative defense, KIM alleges that KIM is informed and believes and thereon alleges that the Petition, and each and every purported cause of action contained therein, is barred by Petitioner’s fraud.

**NINETEENTH AFFIRMATIVE DEFENSE**

As a nineteenth and separate affirmative defense, KIM alleges that Petitioner’s claims are barred because its own conduct and activities amounted to a breach of the covenant of good faith and fair dealing.

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**TWENTIETH AFFIRMATIVE DEFENSE**

As a twentieth and separate affirmative defense, KIM alleges that Each and every cause of action alleged in the Petition is barred by the doctrine of laches, in that Petitioner failed to act timely, to the detriment of KIM.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

As a twenty-first and separate affirmative defense, KIM alleges that KIM contends that Petitioner has not suffered any damages as a result of any acts or omissions of KIM or its agents, representatives or employees and therefore Petitioner is barred from asserting any cause of action against KIM.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

As a twenty-second and separate affirmative defense, KIM alleges that KIM contends that it acted in good faith and with a reasonable belief that its actions were in compliance with any alleged contract or agreement between the parties and applicable laws of the State of California.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

As a twenty-third and separate affirmative defense, KIM alleges that Each and every cause of action alleged in the Petition is barred by Petitioner’s own misrepresentations regarding its actions.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

As a twenty-fourth and separate affirmative defense, KIM alleges that KIM is not legally responsible for the acts and/or omissions of additional Defendants or to be named as DOES.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

As a twenty-fifth and separate affirmative defense, KIM alleges that KIM presently has insufficient information upon which to determine whether additional affirmative defenses are available to it. KIM therefore reserves the right to assert additional affirmative defenses in the event further analysis reveals that other affirmative defenses would be available.

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**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

As a twenty-sixth and separate affirmative defense, KIM alleges that Petitioner lacks standing.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

As a twenty-seventh and separate affirmative defense, KIM alleges that Petitioner has failed to exhaust its administrative remedies.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

As a twenty-eighth and separate affirmative defense, KIM alleges that Petitioner has failed to exhaust its administrative remedies.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

As a twenty-ninth and separate affirmative defense, KIM reserves the right to seek amendment of this answer to raise additional affirmative defenses based on facts or the implications of facts not known or realized by Defendant-Intervenors at this time.

DATED: February 4, 2020

AUSTIN LEGAL GROUP, APC.

By: 

Gina M. Austin/Tamara M. Leetham  
Attorneys for Proposed Intervenor  
KIM Investments, LLC

AUSTIN LEGAL GROUP, APC  
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San Diego, CA 92110


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VERIFICATION

I, Jilette Yousif, am the Manager of KIM Investments, LLC, the proposed Intervenor in this action. I have read the foregoing Answer in Intervention and know its contents. The matters stated in the Answer in Intervention are true based on my knowledge, except those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under California state law that the foregoing is true and correct.

Executed on February 4, 2020, in San Diego County, California.

  
\_\_\_\_\_  
Jilette Yousif