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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/05/2020 at 10:06:00 AM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

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6 Attorneys for proposed intervenor
KIM Investments, LLC

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

15 Respondents,

16
17
18 Does 11-20,

19 Real Parties In Interest.

20 KIM Investments, LLC,

21 Real Party In Interest-

22 Intervenor.

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

**DECLARATION OF GINA AUSTIN IN
SUPPORT OF PROPOSED
INTERVENOR KIM INVESTMENTS,
LLC’S MOTION TO INTERVENE**

[Imaged File]

Judge: Hon. Richard S. Whitney
Dept: C-68
Date: May 1, 2020
Time: 10:30 a.m.

Petition Filed: December 5, 2019

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24
25 I, Gina Austin, declare:

26 1. I am an attorney duly licensed to practice before all California courts and represent
27 Proposed Intervenor KIM Investments, LLC (“KIM”) in this matter. I have personal knowledge
28 of the following facts and if called upon, I could and would competently testify hereto.

1 2. KIM seeks to intervene in this action pursuant to the provisions of Code of Civil
2 Procedure section 387.

3 3. On November 22, 2019, petitioner Citrus St. Partners, LLC (“Petitioner” or “Citrus”)
4 sued defendants City of Lemon Grove and City Council of Lemon Grove (collectively “City”).

5 4. On January 9, 2020, I was notified of Petitioner’s intention to file an Ex Parte
6 Application for a Temporary Restraining Order preventing the City of Lemon Grove from
7 approving conditional use permit CUP-190-0002.

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

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

13 7. KIM is the applicant of conditional use permit CUP-190-0002 and I have been
14 KIM’s attorney through the entirety of its application process.

15 8. Petitioner is a limited liability company existing under California state law with its
16 principal place of business in Lemon Grove, California.

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

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

25 11. On April 3, 2019, Petitioner submitted an application for a CUP to establish a MMD
26 at 7309 Broadway in Lemon Grove.

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

4 13. 7309 Broadway and 3515 Harris Street are within 1,000 feet of one another and thus
5 approval of one of the CUP applications would necessarily preclude the other.

6 14. On October 22, 2019, the Lemon Grove Planning Commission approved a day care
7 facility at 3468 Citrus Street, Lemon Grove, CA 91945.

8 15. Upon the satisfaction of the conditions enumerated in its conditional use permit, the
9 day care will be deemed a “protected use” that will disqualify KIM’s CUP application.

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

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

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

19 19. At all times City staff stated the project was complete and consistent with the LGMC
20 and that staff would be recommending approval of the project.

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

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

26 22. Plaintiff was granted a Temporary Restraining Order on January 14, 2020 against the
27 City, which has temporarily enjoined the City from making a final determination on KIM’s CUP
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1 application. A hearing on Petitioner’s request for a Preliminary Injunction was initially
2 scheduled for February 14, 2020.

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

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

9 25. Moreover, KIM’s interests are not being represented in this matter

10 26. KIM has a direct interest in the subject matter of this litigation and will be directly
11 impacted by its outcome – it should be allowed to join.

12 27. A copy of KIM’s proposed Verified Answer in Intervention is attached as Exhibit
13 “A” and incorporated by reference.

14 I declare under penalty of perjury under California state law that the foregoing is true and
15 correct. Executed this 4th day of February 2020 at San Diego, California.


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17 By: 
18 _____
19 Gina M. Austin
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EXHIBIT A

1 GINA M. AUSTIN (SBN 246833)
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2 TAMARA M. LEETHAM (SBN 234419)
E-mail: tamara@austinlegalgroup.com
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6 Attorneys for proposed intervenor
KIM Investments, LLC
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

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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

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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;

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

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

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

13 **PARTIES**

14 5. As to Paragraph 5 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 6. As to Paragraph 6 of this Petition, KIM admits this allegation;

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

19 8. As to Paragraph 8 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 9. As to Paragraph 9 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 10. As to Paragraph 10 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 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

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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