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**ELECTRONICALLY FILED**  
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Clerk of the Superior Court  
By Carolina Miranda, Deputy Clerk

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

10 CITRUS ST PARTNERS, LLC;  
11  
12       Petitioner,  
13  
14       vs.

15 CITY OF LEMON GROVE; CITY  
16 COUNCIL OF THE CITY OF LEMON  
17 GROVE; AND DOES 1-10,  
18  
19       Respondents.

20 \_\_\_\_\_  
21 DOES 11-20  
22       Real Parties in Interest and  
23 Defendants.

24 \_\_\_\_\_  
25 KIM INVESTMENTS, LLC,  
26  
27       Real Party In Interest and  
28 Intervenor.

**CASE NO. 37-2019-00064690-CU-MC-CTL**

**PROPOSED INTERVENOR KIM  
INVESTMENTS, LLC'S MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT OF EX PARTE APPLICATION  
TO INTERVENE OR IN THE  
ALTERNATIVE, FOR AN ORDER  
SHORTENING TIME ON MOTION IFOR  
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

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1 **I. INTRODUCTION**

2 Citrus Street refuses to acknowledge KIM’s right to participate in this litigation and  
3 defend its interests. Citrus Street’s conduct in this litigation, not KIM’s, exemplifies  
4 gamesmanship and misuse of the Court process in violation of KIM’s due process rights and to its  
5 severe detriment. KIM has already been severely harmed in this lawsuit by Citrus Street’s  
6 unsupportable refusal to name KIM as a party while requesting injunctive relief from the Court  
7 that directly and immediately impacted, and continues to impact, KIM. Citrus Street’s continued  
8 refusal to acknowledge KIM’s necessary participation will only exacerbate this harm

9 KIM has a right to intervene in the above-captioned action to protect its interests in its  
10 land use application to operate a Medical Marijuana Dispensary (“MMD”) within the City of  
11 Lemon Grove (“Defendant” or “City”). Citrus St Partners, LLC’s (“Petitioner” or “Citrus”) attempt  
12 to enjoin further processing of KIM’s entitlement through its motion for a preliminary  
13 injunction against the City directly interferes with KIM’s interests. If Citrus is successful in its  
14 claims, KIM will be precluded from a final determination on its land use application and could  
15 lose its approval due to the proposed establishment of “protective uses” that may disqualify  
16 KIM’s ability to operate its MMD entirely. Consequently, the Court must allow KIM to intervene  
17 in order to adequately protect its direct and immediate interest in this matter.

18 **II. FACTUAL AND PROCEDURAL BACKGROUND**

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

22 On January 28, 2019, KIM began the City’s zoning clearance process as part of its  
23 conditional use permit application to legally operate a medical marijuana dispensary (“MMD”) pursuant  
24 to Measure V at 3515 Harris Street, Lemon Grove, CA 91945 (“Harris Street”) (“CUP Application”).  
25 (Austin Decl. ¶¶ 1-4; Yousif Decl. ¶¶ 2-3.)

26 On April 3, 2019, Citrus Street submitted its own application to operate a medical  
27 marijuana dispensary in the City. (Austin Decl. ¶ 5; Yousif Decl. ¶ 4.) LGMC section  
28

1 17.32.090(B) prohibits the establishment of a MMD within 1,000 feet of a “regulated use” which  
2 includes other MMD’s and licensed daycare facilities. (Austin Decl. ¶ 6.) Citrus Street’s  
3 application for 7309 Broadway and KIM’s CUP Application for Harris Street are within 1,000  
4 feet of one another and thus approval of one CUP application necessarily precludes approval of  
5 the competing application. (Austin Decl. ¶ 7.)

6 On May 8, 2019 the City deemed KIM’s application complete which made KIM eligible  
7 to proceed to City’s CUP phase and on May 9, 2019, KIM submitted its Harris St. CUP  
8 Application to the City. (Austin Decl. ¶¶ 8-9; Yousif Decl. ¶¶ 5-6.)

9 On October 22, 2019, the City Planning Commission approved a day care facility at 3468  
10 Citrus Street, Lemon Grove, California 91945. (Austin Decl. ¶ 10; Yousif Decl. ¶ 7.) Upon the  
11 satisfaction of the conditions enumerated in the day care’s conditional use permit, the day care  
12 will be deemed a “protected use” that will disqualify KIM’s CUP Application under LGMC  
13 section 17.32.090(B). (Id.)

14 On November 14, 2019, KIM received a notification letter from the City stating that its  
15 CUP Application was complete and would be set for City Council hearing on Tuesday, January  
16 21, 2020 at 6:00pm. (Austin Decl. ¶ 11; Yousif Decl. ¶ 8.)

17 On November 19, 2019, the City Council voted to deny Citrus Street’s CUP application to  
18 operate a MMD at 7309 Broadway. (Austin Decl. ¶ 12; Yousif Decl. ¶ 9.)

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

24 On December 5, 2019, Citrus filed this action against the City of Lemon Grove (“City”)   
25 alleging two causes of action: (1) Mandamus pursuant to Code of Civil Procedure section 1094.5  
26 (“Administrative Mandamus”); and (2) Declaratory and Injunctive Relief (although injunctive  
27 relief is an equitable remedy, not a cause of action). Citrus Street did not name KIM as a real  
28 party in interest or defendant.

1           On January 9, 2020, KIM’s counsel received an e-mail from Citrus Street attorney Grant  
2 Olsson. (Austin Decl. ¶ 14; Yousif Decl. ¶ 11.) Mr. Olsson asked KIM’s counsel if she was  
3 authorized to accept service of paperwork filed in this action to include the January 13, 2020  
4 restraining order hearing in Department 66 of this Court. (Id.) Prior to this e-mail, neither KIM  
5 nor its counsel had any knowledge of this proceeding. (Id.) On receiving Mr. Olsson’s e-mail,  
6 KIM’s counsel looked this case up on the San Diego Superior Court’s register of actions and saw  
7 that KIM was not a party. (Austin Decl. ¶ 15.) She then responded to Mr. Olsson’s e-mail by  
8 asking him why he had included KIM in the ex parte notice as KIM was not a party. (Id.) Mr.  
9 Olsson responded that Citrus Street was filing a temporary restraining order and preliminary  
10 injunction to request an order enjoining the City from holding the January 21, 2020 hearing on  
11 KIM’s conditional use permit application and acknowledged that KIM, may have an interest in  
12 opposing the January 14, 2020 ex parte application given the fact that the requested relief would  
13 impact KIM. (Id.)

14           On January 14, 2020, KIM’s counsel appeared at the ex parte hearing; KIM’s manager  
15 was also in attendance. (Austin Decl. ¶ 16; Yousif Decl. ¶ 12.) During this hearing, Judge Medel  
16 allowed KIM’s attorneys to argue against the temporary restraining order to include due process  
17 objections, and harm to KIM. (Austin Decl. ¶ 16.) As evidence of harm, the Court was informed  
18 the Court that any interference with KIM’s January 21, 2020 hearing could cause its CUP  
19 Application to be denied because of the pending day care application within 1,000 feet. (Austin  
20 Decl. ¶ 17.) Judge Medel considered this harm and at KIM’s request, included a provision in the  
21 temporary restraining order enjoining the City from further processing the daycare’s conditional  
22 use permit application. (Austin Decl. ¶ 17; Yousif Decl. 13; RJN Ex. 1, pg. 2, ¶ 2.) During the  
23 January 14, 2020 TRO hearing, Judge Medel asked Citrus Street if it would agree to allow KIM to  
24 intervene during the hearing to which Citrus Street said no. (Austin Decl. ¶ 18; Yousif Decl. ¶  
25 14.) Thus, when the January 14, 2020 hearing concluded, KIM’s counsel had been permitted to  
26 appear and argue and the Court had allowed language proposed by KIM’s counsel to become part  
27 of the temporary restraining order. (Austin Decl. ¶ 19.) The City did not object to KIM’s  
28 appearance and has filed papers indicating its position that KIM is a necessary and indispensable

1 party. (Id.)

2 After the hearing, KIM’s counsel and Citrus Street’s counsel conferred in the hallway  
3 outside of Department 66. (Austin Decl. ¶ 20.) KIM’s attorney asked Citrus Street’s attorney if  
4 she would agree to KIM’s intervention since Citrus Street refused to name KIM as party. (Id.)  
5 Citrus Street’s attorney said she would ask her client but doubted the client would agree and  
6 thereafter KIM was informed me that Citrus Street would not agree to allow KIM to intervene  
7 and KIM was forced to file its motion to intervene. (Id.)

8 On January 21, 2020, in response to the TRO, the City continued KIM’s CUP Application  
9 hearing to February 18, 2020. (Austin Decl. ¶ 21; Yousif Decl. ¶ 15.)

10 On January 28, 2020, KIM filed its motion to intervene and that same day, KIM filed a  
11 Code of Civil Procedure section 170.6 challenge. (Austin Decl. ¶ 22; Yousif Decl. ¶ 16.)

12 On January 29, 2020, Judge Medel signed an order granting the 170.6 challenge (“170.6  
13 Order”) finding that the challenge was timely filed and the party’s/attorney’s statement meets the  
14 requirements of Code of Civil Procedure section 170.6(a)(4) (“170.6 Order”). (Austin Decl. ¶ 23;  
15 RJN Ex. 2.) The 170.6 Order further states that the case would be reassigned and a notice mailed  
16 to the parties and/or counsel. (Id.) Thereafter, the case was immediately reassigned pursuant to the  
17 170.6 Order to Department 68 for all purposes, the honorable Richard S. Whitney, presiding, and  
18 the dates in Department 66 were vacated. (Id.)

19 On reassignment, KIM’s counsel contacted the department 68 calendar clerk about KIM’s  
20 motion to intervene and the calendar clerk asked KIM to refile it with a new hearing date of May  
21 1, 2020, which KIM thereafter filed. (Austin Decl. ¶ 24; Yousif Decl. ¶ 17.) Because the hearing  
22 date is three months away, and given the time sensitive issues, KIM scheduled an ex parte on its  
23 motion to intervene to either request the Court grant it on an ex parte basis or shorten time on the  
24 May 1, 2020 hearing date. (Austin Decl. ¶ 25; Yousif Decl. ¶ 18.) KIM has been severely harmed  
25 in this lawsuit by Citrus Street’s temporary restraining order which has already enjoined the City  
26 from hearing KIM’s CUP Application. KIM was allowed no voice in the process and has no voice  
27 to oppose the preliminary injunction which Citrus Street’s seeks to continue to enjoin KIM’s CUP  
28 Application. (Yousif Decl. ¶¶ 19-20.)

1                   **III.    THE COURT HAS DISCRETION TO ALLOW A THIRD PARTY TO**  
2                   **INTERVENE IN AN ACTION IN WHICH THE THIRD PARTY'S RIGHTS**  
3                   **WILL BE AFFECTED**

4                   **A.    Kim Is Entitled To Intervene Pursuant To Code Of Civil Procedure Section**  
5                   **387(D)(1)(B)**

6                   Code of Civil Procedure section 387(d) reads as follows:

7                   “(1) The court shall, upon timely application, permit a nonparty to intervene in the  
8                   action or proceeding if either of the following conditions is satisfied:

- 9                   (a) A provision of law confers an unconditional right to intervene.  
10                  (b) The person seeking intervention claims an interest relating to the property or  
11                  transaction that is the subject of the action and that person is so situated that the  
12                  disposition of the action may impair or impede that person’s ability to protect  
13                  that interest, unless that person’s interest is adequately represented by one or  
14                  more of the existing parties.

- 15                  (2) The court may, upon timely application, permit a nonparty to intervene in the  
16                  action or proceeding if the person has an interest in the matter in litigation, or  
17                  in the success of either of the parties, or an interest against both [emphasis  
18                  added].”

19                  Thus, the Court is required to allow intervention if the person seeking intervention:

- 20                  (1)    Claims an interest relating to the property or transaction which is the subject of the  
21                  action; and  
22                  (2)    That person is so situated that the disposition of the action may as a practical  
23                  matter impair or impede that person’s ability to protect that interest; unless  
24                  (3)    That person’s interest is adequately represented by existing parties...” (Code Civ.  
25                  Proc. § 387(d); *Cal. Physicians’ Service v. Superior Court of L.A. County* (1980)  
26                  102 Cal.App.3d 91, 96.)

27                  Intervention pursuant to Code of Civil Procedure section 387(d) is mandatory if the  
28                  petition to intervene is timely made and the intervenor’s interest is not adequately represented by  
29                  existing parties. (Code Civ. Proc. § 387(d); *Lohnes v. Astron Computer Products* (2001) 94  
30                  Cal.App.4th 1150, 1153 [emphasis added].) KIM has a direct property interest in this litigation,  
31                  as the Petitioner has asked the court to enjoin the City from processing KIM’s land use  
32                  entitlement for KIM’s proposed MMD. The Petitioner’s temporary restraining order, and the  
33                  Court’s granting of the temporary restraining order, has already impaired KIM’s likelihood to  
34                  operate its MMD without KIM having any ability to protect its strong interest in the continuance



1 of City processing.

2 No current party to the record is adequately representing KIM's interest. Petitioner is  
3 specifically attempting to impair KIM's interest, while the City is focused on defending its own  
4 decision-making process as it relates to Petitioner's CUP application. As demonstrated further  
5 below, KIM meets the standard enumerated by Code of Civil Procedure section 387(d) and is  
6 therefore entitled to intervene as of right.

7 1. KIM Has An Interest In The Property And Transaction That Is The  
8 Subject Of This Action

9 The Code of Civil procedure requires that the court allow intervention if the person  
10 seeking intervention "claims an interest relating to the property or transaction which is the subject  
11 of the action." (Code Civ. Proc. § 387(d)(1)(b); *California Physicians' Service v. Superior Court*  
12 (1980) 102 Cal.App.3d 91, 96.) The court must determine what "transaction" is the subject of  
13 this action. A transaction is an "[a]ct of transacting or conducting any business; negotiation,  
14 management, proceeding; that which is done; an affair...Something which has taken place,  
15 whereby the cause of action has arisen." (*Id.*)

16 KIM has a direct property interest in this litigation. Petitioner has requested this Court to  
17 enjoin the City from further processing KIM's land use entitlement to operate a MMD at 3515  
18 Harris Street. KIM has expended approximately \$1.5 million dollars processing its application  
19 and has strictly complied with all City permitting processes and requirements for this project. The  
20 Court's determinations within this litigation will have an immediate impact on KIM's ability to  
21 obtain approval of its MMD. This case's direct interference with KIM's land use entitlement  
22 clearly demonstrates KIM's direct, real, and immediate interest in this action.

23 Moreover, it is well established in California that a party seeking the issuance of a permit  
24 or a license has a clear and beneficial right to proper and lawful agency action. (*Endangered*  
25 *Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777; *Vaill v. Edmonds* (1991)  
26 4 Cal.App.4th 247, 257-58; *Great Western Sav. & Loan Assn. v. City of Los Angeles* (1973) 31  
27 Cal.App.3d 403, 409-10.) KIM seeks issuance of a conditional use permit to operate a MMD in  
28 the City. Thus, KIM has a clear, present and beneficial interest in the City's ministerial duty to

1 fairly and timely process KIM's CUP application, which will be directly affected by this  
2 litigation.

3 2. The Disposition Of This Action Will Impair Or Impede KIM's  
4 Ability To Protect Its Interest In The Transaction

5 Code of Civil Procedure section 387(d) also requires that the person seeking to intervene  
6 is so situated that the disposition of the action may impair or impede that person's ability to  
7 protect that interest. (Code Civ. Proc. § 387(d).) The disposition of this matter will impact KIM's  
8 ability to protect its interest in the property at issue.

9 KIM's ability to obtain approval and operate its proposed MMD now rests on the outcome  
10 of this action. If the Court prohibits the City from actively approving and processing the permits  
11 required for KIM's proposed MMD operation, it is highly likely the proposed protected day care  
12 use at 3468 Harris Street will obtain final approval and disqualify KIM's ability to operate a  
13 MMD at its proposed location. Without KIM's ability to intervene within this matter, it cannot  
14 protect its strong interest in the continued processing and approval of its proposed MMD  
15 operations.

16 3. KIM's Interests Are Not Adequately Represented

17 The Court has "broad discretion" in determining whether to permit intervention,"  
18 especially when there is evidence showing that the interests in defending claims would not  
19 necessarily be adequately represented by the named defendants. (*US Ecology, Inc. v. State of*  
20 *Calif.* (2001) 92 Cal.App.4th 113, 139-140; *People v. Superior Court (Good)* (1976)17 Cal.3d  
21 732, 737; *Jade K. v. Viguri*(1989) 210 Cal.App.3d 1459, 1468; *Simpson Redwood Co. v. State of*  
22 *Calif.* (1987) 196 Cal.App.3d 1192.)

23 KIM's interests will not be adequately represented by either party to the record. Petitioner  
24 has no intention of protecting KIM's interests and is specifically attempting to hinder KIM's  
25 interest in its land use entitlement by asking the Court to forbid the City from moving forward  
26 with KIM's project approval. This is inarguably the exact opposite of adequate representation of  
27 KIM's interest.

28 Moreover, the City will not be adequately representing KIM's interest in this action. The

1 City is primarily concerned with protecting its own decision-making and actions as it relates to  
2 Petitioner’s CUP application. KIM is the only party that can adequately advocate and protects its  
3 interests in this litigation and thus should be permitted to intervene.

4 4. KIM’s Request To Intervene Is Timely

5 KIM’s intervention in this matter is timely. (See *Sanders v. Pacific Gas & Electric Co.*  
6 (1975) 53 Cal.App.3d 661, 668-669 (applying the principle that the right to intervene should be  
7 asserted within a “reasonable time”).) KIM’s counsel received notice of Plaintiff’s intention to  
8 file the Ex Parte Application for Temporary Restraining Order and Order to Show Cause re  
9 Preliminary Injunction on January 9, 2020. On January 14, 2020, Plaintiff’s Ex Parte Application  
10 was heard. Based on the Court’s decision at that hearing, KIM files this Motion to Intervene and  
11 all its supporting papers just over one week from the temporary restraining order hearing. No  
12 other proceedings have occurred in this matter. Accordingly, KIM’s motion for intervention  
13 should be granted under Code Civil Procedure section 387(d)(1)(b) as it meets all statutory  
14 criteria necessary.

15 **B. IN THE ALTERNATIVE THE COURT SHOULD PERMIT KIM TO**  
16 **INTERVENE PURSUANT TO CODE OF CIVIL PROCEDURE SECTION**  
17 **387(d)(2)**

18 Code of Civil Procedure section 387(d)(2) reads as follows:

19 “The court may, upon timely application, permit a nonparty to intervene in the  
20 action or proceeding if the person has an interest in the matter in litigation, or in the  
21 success of either of the parties, or an interest against both.”

22 If the Court determines that KIM is not entitled to intervene as a matter of right, then KIM  
23 should be permitted to intervene at the Court’s discretion pursuant to Code of Civil Procedure  
24 section 387(d)(2). (Code Civ. Proc. § 387(d)(2); *Simpson Redwood Co, supra*, 196 Cal.App.3d at  
25 1201.) This provision is liberally construed in favor of intervention. (*Lindelli v. Town of San*  
26 *Anselmo* (2006) 139 Cal.App.4th 1499, 1505; *Lincoln Nat. Life Insurance Co. v. State Bd. Of*  
27 *Equalization* (1994) 30 Cal.App.4th 1411, 1423; *Simpson Redwood Co., supra*, 196 Cal.App.3d  
28 at 1200.) When granting a motion for intervention, it need not be certain that such interest will be  
affected by the outcome of the case; a substantial probability is sufficient. (*Timberidge*

1 *Enterprises, Inc. v. Santa Rosa* (1978) 86 Cal.App.3d 873, 881.)

2 “The purposes of intervention are to protect the interests of others who may be affected by  
3 the judgment and to obviate delay and multiplicity of actions.” (*People ex rel. Rominger v.*  
4 *County of Trinity* (1983) 147 Cal.App.3d 665, 660 (citing *People v. Superior Court (Good)*  
5 (1976) 17 Cal.3d 732, 736.) Trial courts have discretion to allow a party to intervene under Code  
6 of Civil Procedure section 387(d)(2) where (1) the nonparty has a direct and immediate interest in  
7 the action; (2) the intervention will not enlarge the issues in the litigation; (3) the reasons for the  
8 intervention outweigh any opposition by the parties presently in the action; and (4) proper  
9 procedures have been followed. (*Royal Indemnity Co. v. United Enterprises, Inc.* (2008) 162  
10 Cal.App.4th 194, 203.) KIM meets each element required for permissive intervention and, thus,  
11 should be granted leave to intervene.

12 1. KIM Has A Direct And Immediate Interest In This Case

13 For purposes of permissive intervention, a “direct and immediate interest” exists when  
14 “the moving party will either gain or lose by the direct legal operation and effect of the  
15 judgment.” (*Lindelli, supra*, 139 Cal.App.4th at 1505 (internal quotation marks omitted).)

16 KIM has a direct and immediate interest in this case. As part of Petitioner’s attempt to  
17 require the City to re-evaluate its CUP application denial, it has requested this Court to prohibit  
18 the City from further processing KIM’s land use entitlement to operate a MMD at 3515 Harris  
19 Street. KIM has expended approximately \$1.5 million dollars into this location and the proposed  
20 MMD use for this project site. (Yousif Decl. ¶ 20.) The Court’s determinations within this  
21 litigation will have an immediate impact on KIM’s ability to obtain approval of its MMD land use  
22 entitlement due to the proposed, disqualifying “protective uses.” This case’s direct interference  
23 with KIM’s land use entitlement clearly demonstrates KIM’s direct, real, and immediate interest  
24 in this action.

25 If the Court should prohibit the City from actively approving and processing the permits  
26 required for KIM’s proposed MMD operation, it is highly likely that the proposed protected day  
27 care use at 3468 Harris Street will obtain final approval and disqualify KIM’s ability to operate a  
28 MMD at its proposed location. Because the proposed day care is currently in the process of

1 satisfying its CUP requirements, along with the inevitable delays litigation brings, there is  
2 sufficient probability that KIM will lose its direct and immediate interest if the Plaintiff is  
3 successful in its claims.

4 2. KIM Will Not Enlarge The Legal Issues

5 The court must exercise its discretion in determining, in each case, whether the original  
6 action between the existing parties should be allowed to proceed undisturbed by an intervenor's  
7 claim; and the more indirect the connection of that claim with the issues raised in the original  
8 action, the less likelihood there is of the court permitting intervention. (*Royal Indemnity Co.*,  
9 *supra*, at 203.)

10 KIM raises no new legal issues by this intervention. The primary issues within this  
11 litigation is the injunction to prevent further processing of KIM's MMD project and the City's  
12 alleged abuse of discretion in its review of Petitioner's CUP application. In KIM's Answer in  
13 Intervention, KIM does not raise any new legal issues to be decided by the Court. KIM simply  
14 seeks to participate in the proceeding to ensure it has the ability to defend Petitioner's request to  
15 stop the processing of KIM's land use entitlement.

16 3. KIM's Interests Outweigh Any Opposition To Intervention

17 When deciding permissive intervention, courts weigh the parties' opposition in order to  
18 give litigants "freedom to control the scope of litigation they initiate." (*Id.* at 212.) Petitioner  
19 currently controls the scope of this litigation. Control over the issues does not, however, give  
20 Petitioner the power to prevent interested parties from contesting the claims that affect them,  
21 which is KIM's goal in joining this lawsuit.

22 Courts do not recognize one party's opposition as a freestanding basis for denying  
23 permissive intervention. For example, in *Reliance Insurance Co. v. Superior Court of Santa*  
24 *Clara County* (2000) 84 Cal.App.4th 383, 387-88, the Court of Appeal reversed a trial court's  
25 denial of permissive intervention because it was opposed by a party. In *Reliance*, the plaintiffs  
26 sued a moving company for losing approximately \$2 million worth of their possessions. The  
27 Court of Appeal held that it was reversible error to deny permissive intervention to the moving  
28 company's insurer in light of the plaintiffs' objections. The Court reasoned that the insurer had a

1 real stake in the controversy because the moving company had its corporate status suspended,  
2 lacked the legal capacity to defend the action itself, and was therefore vulnerable to a default  
3 judgment, which the insurer might have to pay. In *Gray v. Begley* (2010) 182 Cal.App.4th 1509,  
4 1521-25, permissive intervention in favor of an insurer was upheld over the opposition of both  
5 parties because the insured defendant attempted to settle with the plaintiff to the potential  
6 detriment of the insurer. Both *Gray* and *Reliance* reflect the principle that a direct and immediate  
7 interest outweighs the opposition of one party, as is the case here, or even both the parties, when  
8 fairness to the intervenor requires it.

9 Here, KIM should be allowed to intervene because its interests will be impacted by the  
10 rulings of this court as is exhibited by the recent decision to grant Plaintiff's request for a  
11 temporary restraining order to enjoin the City from further approving and processing KIM's CUP  
12 application. KIM's interest in the outcome of Plaintiff's claims substantially outweighs any  
13 opposition from Plaintiff because KIM will be irreparably harmed if Plaintiff is successful in its  
14 claims. This litigation, which directly involves KIM's ability to open its proposed MMD, will  
15 result in factual and legal determinations concerning the City's ability to complete the CUP  
16 process. KIM has no ability to protect its interest in this litigation unless intervention is allowed.

17 4. KIM Has Followed Proper Procedure

18 Code of Civil Procedure section 387 establishes the procedures for intervention. An  
19 intervenor must (1) seek leave of court; (2) submit a proposed complaint [or answer] in  
20 intervention; which (3) states the grounds upon which the intervention rests; and (4) serve the  
21 intervention papers on all of the parties who have appeared. (Code Civ. Proc. § 387.) Because  
22 KIM followed each of these procedures and has met all requirements under the code, the Court  
23 can, and should, grant KIM's request for intervention.

24 **IV. THE CITY'S PLEADINGS ACKNOWLEDGE KIM IS A NECESSARY AND**  
25 **INDISPENSIBLE PARTY**

26 The City's opposition to Citrus Street's temporary restraining order states "Petitioner has  
27 also failed to join or name indispensable parties, such as the applicant for the Harris Street MMD  
28 CUP, KIM Investments, LLC. 'Where the Petitioner seeks some type of affirmative relief which,

1 if granted, would injure or affect the interest of a third person not joined, that third person is an  
2 indispensable party.’ (*Save Our Bay, Inc. v. San Diego Unified Port Dist.* (1996) 42 Cal.App.4th  
3 686, 692; see also *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 808-809 [a person is  
4 indispensable when the judgment to be rendered necessarily affects that person’s rights]; Code  
5 Civ. Proc. § 389(a).)” (City Opposition pg. 2, lines 21-27.) The City’s opposition goes on to state  
6 that “[t]he hearing Petitioner seeks to stop is the public hearing on Kim Investments’ CUP. Thus,  
7 Kim Investments is clearly impacted, and is beneficially interested as it has a ‘special  
8 interest...over and above the interest held in common with the public at large.’ (*Carsten v.*  
9 *Psychology Examining Com.* (1980) 27 Cal.3d 793, 796; Code Civ. Proc. § 1086; see also, *Vaill*  
10 *v. Edmonds* (1991) 4 Cal.App.4th 247, 257-58.)” (City Opposition, pg. 2, lines 27-28, pg. 3, lines  
11 1-3.)

12 The City understands that Kim’s participation is essential to these proceedings as  
13 explained in its opposition. The City’s position should also be considered by the Court in granting  
14 this request.

15 **V. IF THE COURT DECLINES TO ALLOW INTERVENTION ON AN EX PARTE**  
16 **BASIS, KIM REQUESTS AN ORDER SHOROTNING TIME FOR A HEARING ON ITS**  
17 **ALREADY FILED MAY 1, 2020 MOTION TO INTERVENE**

18 Code of Civil Procedure section 1005(b) provides in pertinent part “[u]nless otherwise  
19 ordered or specifically provided by law, all moving and supporting papers shall be served and  
20 filed at least 16 court days before the hearing...the court, or a judge thereof, may prescribe a  
21 shorter time.” Code of Civil Procedure section 128 gives the court the power to relieve a party  
22 from the statutory non-jurisdictional time requirement. This section states “(a) every court shall  
23 have the power to do all of the following (8) amend and control its process and orders so as to  
24 make them conform to law and justice.” (Code Civ. Proc. § 128(a).) Accordingly, this court has  
25 the authority to hear, in the alternative to KIM’s ex parte application for leave to intervene, this  
26 application for an order shortening time and expediting the date by which KIM’s motion to  
27 intervene may be heard. Based on the foregoing, the facts in this case warrant intervention on an  
28 ex parte basis. If, however, the Court is disinclined to grant KIM’s ex parte request to intervene,

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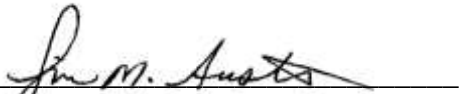
KIM asks this Court to grant an order shortening time for its May 1, 2020 hearing date, and to set a briefing schedule for this motion as soon as possible and in no event after Petitioner’s preliminary injunction hearing.

**VI. CONCLUSION**

Due to KIM’s direct and immediate interest in this litigation, the lack of adequate representation of this interest, and the timeliness of this ex parte application, the Court should grant KIM’s ex parte request to intervene. If the Court declines to hear this application on an ex parte basis, KIM requests the Court grant an order shortening time on KIM’s May 1, 2020 motion to intervene.

Dated: February 18, 2020

Respectfully Submitted,  
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