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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF GREENLEE**

HOLISTIC PATIENT WELLNESS GROUP,
LLC, an Arizona limited liability company,
EAST VALLEY PATIENT WELLNESS
GROUP, LLC, an Arizona limited liability
company, NATURAL REMEDY PATIENT
CENTER, LLC, an Arizona limited liability
company,

Plaintiffs,

vs.

DUKE RODRIGUEZ, an individual; CUMBRE
INVESTMENT LLC, an Arizona limited
liability company; ULTRA HEALTH, LLC, an
Arizona limited liability company; ZONED
PROPERTIES, INC., a Nevada Corporation;
JOHN DOES and JANE DOES I-X; RED
LIMITED LIABILITY COMPANIES I-X;
BLACK CORPORATIONS I-X; and WHITE
PARTNERSHIPS I-X

Defendants.

Case No.:

**PLAINTIFF'S APPLICATION FOR
TEMPORARY RESTRAINING ORDER WITH
NOTICE AND FOR ORDER TO SHOW
CAUSE WHY PRELIMINARY INJUNCTION
SHOULD BE ISSUED**

Plaintiffs, Holistic Health Patient Wellness Group, LLC ("HPWG"), by and through undersigned counsel and pursuant to A.R.S. § 12-1801 and Ariz.R.Civ.P 65(d), hereby requests that this Court issue a preliminary injunction order against Duke Rodriguez ("Rodriguez") and Cumbre Investment, L.L.C. ("Cumbre") requiring them to cease and desist all fraudulent, unlawful, illegal, and improper conduct, *pendent lite*. The exact scope and language of the requested preliminary injunction is set forth herein.

A preliminary injunction is immediately necessary to preserve the viability of Holistic

1 Patient Wellness Group's business, which Duke Rodriguez ("Rodriguez" or "Defendant
2 Rodriguez") and Cumbre Investment LLC ("Cumbre") have unlawfully attempted to injure by
3 among other things, fraudulently converting and misappropriating HPWG's leasehold interest in
4 real property located at 234 Chase Creek Road, in Clifton, Arizona ("234 Chase Creek
5 Property"). In order to convert HPWG's leasehold interest in the 234 Chase Creek Property;
6 Rodriguez's conduct was outrageous, criminal and a breach of his fiduciary duty to HPWG.
7 Rodriguez's conduct reflects an evil mind, coupled with an evil hand.

8 It appears Rodriguez pioneered an elaborate, fraudulent, civil conspiracy; easily
9 detected by following the substantial paper trail and overwhelming evidence Rodriguez left
10 behind, which is attached as exhibits herein or as part of the verified complaint. It must come to
11 an end before irreparable harm occurs to innocent parties. Most recently, and in need of
12 immediate attention and correction, Rodriguez and Cumbre locked out HPWG from 234 Chase
13 Creek Road, HPWG's medical marijuana dispensary in Clifton, Arizona and turned off the 24
14 hour security camera system required by Arizona State Law for the marijuana dispensing facility,
15 all owned and operated by HPWG. Under A.A.C. § R9-17-310, a dispensary must ensure that
16 the dispensary is operating and available to dispense medical marijuana to qualifying patients
17 and designated caregivers at least 30 hours weekly between the hours of 7:00 a.m. and 10:00
18 p.m. Irreparable harm has already been inflicted on HPWG. Rodriguez and Cumbre completed
19 the fraudulent lockdown to take HPWG out of compliance with applicable medical marijuana laws
20 and rules, and also to illegally gain control of the medical marijuana stored as inventory at 234
21 Chase Creek Road. Rodriguez and Cumbre **do not** have a license to possess or control the
22 marijuana that they converted. Only HPWG has such a license. This jeopardizes the operation
23 of the HPWG's dispensary in addition to HPWG's license to dispense marijuana.

24 In the highly regulated medical marijuana industry; Rodriguez and Cumbre's actions
25 constitute a crime in the State of Arizona. Rodriguez's reckless conduct places HPWG at severe
26 risk and out of compliance with applicable medical marijuana laws and rules that HPWG
27 diligently follows. Further incidents of Rodriguez's fraudulent conduct are discussed below and
28 also in the verified complaint filed in this matter. If HPWG's license to dispense and/or grow
medical marijuana is revoked, the State may use that fact as the basis for denying any future
application or license to grow medical marijuana under A.C.C. § R9-17-322.

As alleged more fully in the Verified Complaint filed contemporaneously

herewith, Rodriguez and Cumbre have acted with motive, in violation of the law, and are continuing to violate the law with the intent to severely harm HPWG which jeopardizes the marijuana license. HPWG has no remedy available to it, besides the relief requested herein, to prevent Rodriguez and Cumbre from continuing to act improperly, unlawfully and harm HPWG. In light of the foregoing risk to HPWG's business, which directly ensues from Rodriguez's and Cumbre's conduct, HPWG cannot wait until a final determination of this controversy to obtain the relief requested herein. By that time, without the Court's intervention, Rodriguez and Cumbre will continue to misappropriate and convert HPWG's property, and carry on the fraudulent scheme Rodriguez has put in place.

Accordingly, HPWG requests that this Court grant the relief requested herein and restrain HPWG by enjoining it in the manner set forth in the accompanying proposed preliminary injunction.

This application is supported by the following Memorandum of Points and Authorities, along with the Verified Complaint, all supporting documents and the testimony and evidence to be presented at the various hearings that result from this request.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

HPWG, EVPWG and NRPC are limited liability companies formed for the purpose of dispensing and cultivating marijuana in accordance with Arizona state law, regulations and rules. HPWG, EVPWG and NRPC filed applications for medical Marijuana Dispensary Registration Certificates with the Arizona Department of Health Services ("ADHS") to dispense marijuana in Clifton, Arizona, Gilbert, Arizona and Safford, Arizona respectively. On August 9, 2012, ADHS allocated HPWG, EVPWG and NRPC Medical Marijuana Dispensary Registration Certificates for Community Health Analysis Areas #83, #77 and #84 respectively.

ADHS granted HPWG approval to operate a dispensary in Clifton, AZ and NRPC approval to operate a dispensary in Safford, AZ, after completing additional requirements beyond what was needed to receive a Dispensary Registration Certificate. Among other things, the dispensaries were required to pass inspection.

1 In or around the month of February of 2013, Patti Haugland ("Haugland") and Scott
2 Armstrong ("Armstrong"), in their capacity as manager and agent of Stone Path Real Estate LLC
3 ("Stone Path"), respectively, contacted Kathy Sanchez ("Sanchez") and inquired into acting as a
4 realtor for EVPWG. Haugland and Armstrong requested Sanchez allow them (on behalf of
5 Stone Path) to locate a suitable property for EVPWG to operate a medical marijuana dispensary
6 in Gilbert, Arizona. Sanchez authorized Haugland and Armstrong to begin the search for a
7 medical marijuana dispensary location in Gilbert, Arizona for EVPWG.

8 Again, in or around the month of March of 2013, Scott Armstrong, on behalf of Stone
9 Path, contacted Kathy Sanchez and requested to meet with Sanchez and EVPWG in regards to
10 locating a suitable property for EVPWG to operate a medical marijuana dispensary in Gilbert,
11 Arizona. This time, Armstrong indicated he would also bring another realtor employed by Stone
12 Path, by the name of Duke Rodriguez (Defendant Rodriguez). Rodriguez was a licensed Arizona
13 Real Estate Salesperson, who was to assist in locating a suitable property for EVPWG to operate
14 a medical marijuana dispensary in Gilbert, Arizona. In fact, in or around March of 2013,
15 Armstrong and Rodriguez (on behalf of Stone Path) met with Sanchez. Rodriguez orally agreed
16 with Sanchez (in her role as member-manager of EVPWG) to act as a realtor for EVPWG for
17 purposes of acquiring a location to operate a medical marijuana dispensary in Gilbert, Arizona.

18 Upon information and belief, Rodriguez never intended to locate a suitable property for
19 EVPWG to independently operate a medical marijuana dispensary in Gilbert, Arizona. Rather,
20 he intended to defraud EVPWG and Sanchez, by surreptitiously inserting himself into EVPWG's
21 business affairs.

22 Acting as agents for EVPWG, Rodriguez and Armstrong proposed a location for
23 EVPWG to operate a medical marijuana dispensary. The proposed location was 988 S. 182nd
24 Place, in Gilbert, Arizona. EVPWG was to enter into a lease for the premises located at 988 S.
25 182nd Place, in Gilbert, Arizona. However, Rodriguez, told the owner of 988 S. 182nd Place to
26 name Cumbre Investment LLC as the lessee to the lease agreement. Rodriguez told his
27 principal, EVPWG, that the naming of Cumbre as lessee was temporary, and that Cumbre
28 needed to be the lessee in order for the deal to go through. This was false. Rodriguez's
fraudulent conduct was undertaken with the objective of taking control of the medical marijuana
industry in Arizona.

While Rodriguez was locating a suitable property for EVPWG to operate a medical

1 marijuana dispensary in Gilbert, Arizona, he discovered that Kathy Sanchez was also a manager
2 and member of another entity, HPWG. Rodriguez, in his role as an Arizona Real Estate
3 Salesperson employed by Stone Path, also became an agent for HPWG. As an agent, acting on
4 behalf of HPWG; Rodriguez owed a fiduciary duty to HPWG.
5 In this role, Rodriguez assisted HPWG in negotiating a leasehold interest for a medical
6 marijuana dispensary in Clifton, Arizona at 400 Chase Creek Road ("400 Chase Creek
7 Property") and later at 234 Chase Creek Road ("234 Chase Creek Property"). The 234 Chase
8 Creek property is owned by the Town of Clifton.

9 Beginning in March of 2013, Rodriguez surreptitiously inserted himself into HPWG's
10 business affairs. Among other things, Rodriguez set out to defraud HPWG by controlling
11 HPWG's leasehold interest in the facility in which it was going to operate a medical marijuana
12 dispensary. Rodriguez's conduct is not limited to this group of litigants. For example, Rodriguez
13 previously held himself out as the Chief Executive Officer of a publicly traded company, Zoned
14 Properties, Inc. (See Exhibit A), when in fact Rodriguez has no such affiliation. Rodriguez has
15 leveraged his association with Zoned Properties, Inc. ("Zoned") and another affiliate of Zoned,
16 Ultra Health LLC, to acquire real property, or the debt instruments associated therewith, in an
17 attempt to foreclose and evict entities allocated medical marijuana registration certificates.
18 Rodriguez's conduct was and is predatory.

19 In March of 2013, Rodriguez began communicating with John Schempf, the Town
20 Manager for the City of Clifton regarding HPWG entering into a lease with the City of Clifton
21 for 400 Chase Creek Road and later at 234 Chase Creek Road. He was supposed to be
22 negotiating on behalf HPWG, however, Rodriguez repeatedly misrepresented his affiliation to
23 HPWG. On March 14, 2013, at a Regular Town Council Meeting, the Town Council of Clifton,
24 through a motion and a second to the motion authorized the Mayor of Clifton to execute a lease
25 agreement of the 234 Chase Creek Property with HPWG. This is clearly reflected in the
26 applicable Town Council Minutes. (See Exhibit B) No mention of any entity named Cumbre
27 Investment LLC is made at the March 14, 2013 Town Council meeting.

28 Schempf actively participated in the Town Council meeting and referred members of the
council to the lease as drafted by the town's legal counsel. The lease Schempf referred to named
HPWG as the tenant and lessee to the lease. (See Exhibit A of Complaint) On March 20, 2013,
HPWG and the Town of Clifton ("Clifton") began exchanging drafts of the lease agreement for

1 the 234 Chase Creek Property, in furtherance of the objectives laid out in the March 14, 2013
2 Regular Town Council Meeting.

3 HPWG's lease of the 234 Chase Creek Property from TOC was to begin April 1, 2013.
4 Schempf and all others involved in the lease negotiations for the Chase Creek Property
5 understood HPWG's intended use of the premises was to cultivate, sell and dispense medical
6 marijuana. Schempf's negotiations with HPWG were documented through email. (See Exhibit B
7 of Complaint) Other communications between representatives of the Town of Clifton and
8 HPWG were documented through email. (See Exhibit C of Complaint) HPWG obtained a
9 conditional-use permit, from the town of Clifton, to operate a medical marijuana dispensary in
10 Clifton, AZ. This was documented through email. (See Exhibit C of Complaint) HPWG was
11 the only legal entity that was allocated a Medical Marijuana Dispensary Certificate to dispense
12 medical marijuana in CHAA #83, comprising Clifton, AZ. After the Town Council approved the
13 lease to HPWG, HPWG made a payment to the Town of Clifton on April 2, 2013 as a security
14 deposit and first month's rent for the Chase Creek Property. (See Exhibit D of Complaint) After
15 the Town Council approved the lease to HPWG, on April 25, 2013, HPWG paid the Town of
16 Clifton for a Building Permit regarding the construction and build out of HPWG's medical
17 marijuana dispensary. (See Exhibit E of Complaint)

18 After the Town of Clifton Town Council approved the leasing of property owned by
19 Town of Clifton to HPWG (234 Chase Creek Road), on May 10, 2013, Schempf executed a
20 document in his official capacity, evidencing HPWG's compliance with Local Jurisdiction
21 Zoning. (See Exhibit C) On the day the lease agreement for the 234 Chase Creek Property was
22 supposed to be executed (by HPWG and TOC) Rodriguez informed Sanchez and HPWG that he
23 would take the lease agreement (See Exhibit A of Complaint) (naming HPWG as lessee) over to
24 representatives of the Town of Clifton (the lessor) for execution. Upon information and belief,
25 Rodriguez proceeded to forge and alter the lease agreement as it was tendered to him by HPWG.
26 Under Arizona Law, a person commits criminal forgery if with intent to defraud, the person
27 falsely makes, completes or alters a written instrument. A.R.S. § 13-2002. Rodriguez changed
28 the name of the lessee designated on the lease agreement (a written instrument) to his own legal
entity (and his alter ego) Cumbre Investment LLC. (See Exhibit F of Complaint) Or in the
alternative, Rodriguez falsely made a new identical lease but changed the name of the lessee to
Cumbre Investment LLC, his alter ego. Rodriguez's actions and conduct constitute criminal

1 A.C.C. § R9-17-322.

2 **II. ARGUMENT**

3 Legal Standard

4 “A party seeking a preliminary injunction is obligated to establish four equitable criteria:

- 5 1. A strong likelihood that [the moving party] will succeed at trial on the merits;
6 2. The possibility of irreparable injury to [the moving party] not remediable by damages if the requested relief is not granted;
7 3. A balance of hardships favors [the moving party]; and
8 4. Public Policy favors injunction.”

9 *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (Ct. App. 1990). “The critical
10 element in this analysis is the relative hardship to the parties. To meet this burden, the moving
11 party may establish either 1) probable success on the merits and the possibility of irreparable
12 injury; or 2) the presence of serious questions and ‘the balance of hardships tip sharply’ in [the
13 moving party’s] favor.” *Id.* (citations omitted). As demonstrated below, HPWG can establish
14 each of the four equitable criteria required before injunctive relief may issue. *See Id.*

15 HPWG’s Claims are Highly Likely to Succeed at Trial on the Merits.

16 As this Court will note from its review of the Verified Complaint, Rodriguez and Cumbre
17 are named defendants in over ten civil causes of action ranging from breach of fiduciary duty to
18 civil conspiracy. Rodriguez clearly breached a fiduciary duty to HPWG, defrauded HPWG and
19 converted HPWG’s marijuana and a leasehold interest. As noted in the verified complaint,
20 Rodriguez was an Arizona Real Estate Salesperson licensed by the Arizona Department of Real
21 Estate. He worked as an agent for EVPWG and HPWG. It is unequivocal that Rodriguez
22 locked out HPWG from the very same property he assisted HPWG in lease negotiations. This is
23 a breach of a fiduciary duty. Even though HPWG is confident that it will succeed on each and
24 every one of its claims, HPWG need only demonstrate that it is likely to succeed on one of its
25 claims for relief against Rodriguez and Cumbre to satisfy the first criterion for injunctive relief.
26 *See e.g. Phoenix Orthopedic Surgeons, Ltd. V. Peairs*, 164 Ariz. 54, 58-59, 790 P.2d 752, 756-57
27 (Ct. App. 1989) (disapproved of on other grounds) (court enjoined defendant on the probable
28 success of one claim by plaintiff eligible for injunctive relief); *see also Compass Bank v.*
Hartley, 430 F.Supp.2d 973, 983 (D. Ariz. 2006) (“The Court need not address the validity of
each and every claim. Rather, for purposes of determining Plaintiffs’ likelihood of success on
the merits, it is sufficient that the Court finds that Plaintiffs are likely to succeed” on one claim)

1 Even without engaging in discovery of any kind, it is blatant that Rodriguez and
2 Cumbre defrauded HPWG in route to converting HPWG's leasehold interest in 234 Chase Creek
3 Property. It should be noted that the Town Council Minutes, from the March 14, 2013 Regular
4 Town Council Meeting unequivocally authorized the Mayor of Clifton to execute a lease
5 agreement of the 234 Chase Creek Property with HPWG. No mention of Cumbre Investment
6 LLC is made. From that point on, a chain of email communication between Sanchez and HPWG
7 to the Town of Clifton and its representatives further cements the fact that HPWG was the
8 rightful lessee to the lease agreement for the 234 Chase Creek Property. In case there is any
9 remaining doubt as to who the correct lessee at the 234 Chase Creek Property is, there is
10 systematic and continuous documentation related to the property that indicates HPWG as the
tenant or lessee:

- 11 • (2) Documentation of Compliance with Local Jurisdiction Zoning dated May 10,
12 2013 and June 3, 2013,
- 13 • Email Correspondence between HPWG and Town of Clifton,
- 14 • Check from HPWG to Town of Clifton for Building Permit at the 234 Chase
15 Creek Property,
- 16 • Conditional Use Permit Granted to HPWG,
- 17 • Check from HPWG to Town of Clifton for Security Deposit and First Month's
Rent)

18 Duke Rodriguez and Cumbre Investment LLC clearly committed the tort of conversion:
19 HPWG had a right to possess the 234 Chase Creek Property and Medical Marijuana within the
20 234 Chase Creek Property. Defendant Rodriguez and Cumbre intentionally exercised dominion
21 and control over Plaintiff HPWG's property, as they converted the leasehold interest and
22 marijuana when they locked HPWG out of the dispensary. HPWG was deprived possession or
23 use of the property misappropriated by Defendant Rodriguez, as Defendant Rodriguez and
24 Cumbre locked HPWG out of the dispensary

25 This outrageous and unacceptable conduct constituted a plethora of violations of various
26 Arizona laws and regulations. Not to mention that the Defendants' reckless and illegal conduct
27 placed Plaintiff's state-issued licenses and certificates into serious jeopardy and further interfered
28 with Plaintiff's business interests. Accordingly, HPWG is entitled to a temporary restraining
order and a preliminary injunction that requires Rodriguez and Cumbre, among other things, to

1 surrender possession of 234 Chase Creek Road in Clifton, Arizona to the rightful lessee.
2 Rodriguez and Cumbre should refrain from entering or otherwise accessing 234 Chase Creek
3 Road because in doing so, they violate Arizona and Federal law.

4 HPWG Will Be Irreparably Harmed If This Court Does Not Enjoin Rodriguez and
5 Cumbre Controlling the Dispensary Located at 234 Chase Creek Road

6 HPWG has sustained and will continue to suffer irreparable harm due to Rodriguez and
7 Cumbre's unlawful actions. As explained above, HPWG has a valid leasehold interest in 234
8 Chase Creek Road in Clifton, Arizona to dispense marijuana. This is blatant from the
9 supporting evidence. Rodriguez and Cumbre are not allowed to enter 234 Chase Creek Road,
10 despite the fact they forged the lease agreement and named Cumbre as the lessee. Any
11 unauthorized entrance by Rodriguez and Cumbre is a violation of A.R.S. § 36-2806 and A.A.C.
§ R9-17-310.

12 Pursuant to A.R.S. § 36-2815, the State of Arizona's approval of HPWG to operate a
13 medical marijuana dispensary at 234 Chase Creek Road, Clifton, Arizona 85533, could be
14 revoked due Defendants' unauthorized and unaccompanied entrance into the Madison Property,
15 as their entrance is a violation of A.R.S. § 36-2806 and A.A.C § R9-17-310. Additionally, other
16 state-issued approvals, licenses and certificates owned by Plaintiff would also be at risk.

17 A.R.S. § 36-2815(D) states:

18 The department may revoke the registry identification card of any
19 cardholder who knowingly violates this chapter, and the cardholder
shall be subject to other penalties for the applicable offense.

20 HPWG received a certificate indicating the State of Arizona's approval of HPWG to
21 operate a medical marijuana dispensary at 234 Chase Creek Road, Clifton, Arizona 85533 and on
22 September 19, 2013, received another certificate indicating the State of Arizona's approval of
23 HPWG to cultivate marijuana at 410 S. Madison Drive, Suite 1, Tempe, AZ 85281. (See
24 Exhibits A and B) These certificates, as well as the other state-issued licenses and certificates
25 owned and maintained by HPWG are legitimate, valid and significant interests in need of
protection.

26 Arizona law is clear that "[o]nce a protectable interest is established, irreparable injury is
27 presumed to follow if the interest is not protected." *Peairs*, 164 Ariz. At 59, 790 P.2d at 757.
28 Because Plaintiffs demonstrated they have protectable interests that are exposed to critical risk if

Rodriguez and Cumbre are not enjoined, this Court may presume irreparable harm. *See Id.* As such, HPWG urges this Court to issue a preliminary injunction prohibiting HPWG from, among other things, further accessing or otherwise entering 234 Chase Creek Road and enjoin Rodriguez and Cumbre from initiating or asserting any leasehold interest in the building located at 234 Chase Creek Road.

The Balance of Hardships Heavily Favors HPWG.

Arizona law states that the “critical element in [an analysis of requested injunctive relief] is the relative hardship to the parties. To meet this burden, the moving party may establish either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and ‘the balance of hardships tip sharply’ in [its] favor.” *Shoen*, 167 Ariz. at 63, 804 P. 2d at 792. As demonstrated above HPWG is highly likely to succeed on the merits at trial on several, if not all, of their claims, and will suffer irreparable harm, in the form of loss of their approval to operate a medical marijuana dispensary and corresponding cultivation site if Rodriguez and Cumbre are allowed access to 234 Chase Creek Road and enter the facility in violation of numerous provisions of the Arizona Medical Marijuana Act. A loss of the above-mentioned licenses could and would result in the loss of millions of dollars of future revenue, and would also result in the nullity of any capital expenditures made by HPWG to procure the dispensary and cultivation facility.

Even though Arizona case law does not require it in order to obtain relief, HPWG also can establish that the “balance of hardships tips sharply” in its favor. *See Id.* The relief requested herein is narrow (HPWG seeks a preliminary injunction prohibiting Rodriguez and Cumbre from among other things, entering or otherwise accessing the 234 Chase Creek Property, performing a lockout at the 234 Chase Property and tampering and/or disabling security measures, possessing HPWG’s medical marijuana in violation of Arizona Law. Rodriguez and Cumbre cannot reasonably argue that it would be a hardship for them to comply with an order requiring them to surrender a possession of a dispensary building that they cannot legally enter because they have no license, and which they fraudulently converted through easily identifiable forgery.

On the other hand, if this Court does not issue a preliminary injunction, HPWG will suffer immense hardship and could very well lose (due to revocation by the State of Arizona through the Arizona Department of Health Services) multiple Certificate(s) of Approval to

1 operate a medical marijuana dispensary and the Certificate(s) of Approval to cultivate marijuana
2 at offsite location(s).

3 Public Policy Favors This Court Enjoining Zoned, Rodriguez and Brannigan's Improper
4 and Unlawful Conduct.

5 Arizona public policy favors the issuance of a preliminary injunction against Cumbre and
6 Rodriguez. The public policy of this State is served when parties act according to law and do not
7 intrude onto the established, legitimate private property rights of others. These values are
8 enshrined in, among other places, the Fourth Amendment to the United States Constitution.
9 Here, and as demonstrated above, Rodriguez and Cumbre have committed multiple tortious acts,
10 breached special duties, breached valid and enforceable contracts and converted and
11 misappropriated the property of others in an attempt to gain control over medicinal marijuana
12 dispensary they are not entitled to. Their objective is to sabotage HPWG's medical marijuana
13 licenses. Their efforts have put HPWG at extreme risk of the loss of their limited and valuable
14 licenses to operate in the Arizona Medical Marijuana industry. Behavior like Rodriguez and
15 Cumbre, if allowed to continue, would encourage similar illegal, fraudulent, and improper
16 trespasses and breaches like those which Rodriguez and Cumbre have already committed and
17 will continue to commit if allowed in the future. Public Policy therefore requires that Rodriguez
18 and Cumbre be enjoined from acting in a manner that is improper and illegal and puts the
19 legitimate business and other proprietary interest of others at risk

20 Finally, in, light of the clear and convincing evidence substantiating Rodriguez and
21 Cumbre's egregious misconduct that jeopardized the existence of HPWG licenses required to
22 operate a medical marijuana dispensary and cultivation site, this Court should set no bond or a
23 modest cost of defense bond in order to issue a preliminary injunction.

24 III. CONCLUSION

25 Having established each and every element required by law for a preliminary
26 injunction, Plaintiff respectfully requests that this Court issue a preliminary injunction requiring
27 the following:

- 28
- A. Enter judgment for HPWG and against Rodriguez and Cumbre for
compensatory damages in an amount to be proven at trial;
 - B. Award HPWG punitive damages as a result of Rodriguez and Cumbre's

1 illegal, fraudulent and improper conduct in an amount sufficient to punish Rodriguez and
2 Cumbre and to deter others from engaging in such conduct in the future;

3 C. Enter temporary, preliminary, and permanent injunctive relief as follows:

- 4 i. Order Cumbre, Rodriguez and (or their agents and designees) to
5 refrain from entering or otherwise accessing the dispensary located at
6 234 Chase Creek Road, in Clifton, Arizona, in any way.
- 7 ii. Order Rodriguez and Cumbre to surrender possession of the medical
8 marijuana dispensary located at 234 Chase Creek Road, in Clifton,
9 Arizona to HPWG immediately.
- 10 iii. Order Rodriguez and Cumbre to formally rescind any lease agreement
11 that exists between Cumbre and the Town of Clifton.
- 12 iv. Order Rodriguez and Cumbre to provide a detailed accounting of the
13 steps and procedures they, or their agents and designees took to
14 disable the video security system located at 234 Chase Creek Road, in
15 Clifton, Arizona.
- 16 v. Order Rodriguez and Cumbre to provide a detailed accounting of the
17 medical marijuana belonging to HPWG that Rodriguez and Cumbre
18 gained control of as a result of the April 18, 2104 lockout of HPWG
19 from 234 Chase Creek Road, in Clifton, Arizona.
- 20 vi. Order Rodriguez and Cumbre to immediately cease and correct any
21 misrepresentations regarding Rodriguez and Cumbre's affiliation with
22 HPWG.
- 23 vii. Enjoin Cumbre and Rodriguez from engaging in any activities that
24 would cause further injury to HPWG, or any of its members or
25 managers.

26 D. Award HPWG their reasonable attorneys' fees incurred pursuant to A.R.S. § 12-
27 341.01;

28 E. Award HPWG their taxable costs incurred herein;


F. Award HPWG pre- and post-judgment interest at the highest rate allowable by law;

G. Grant HPWG any other relief that the Court deems just and proper under the
circumstances.

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Respectfully submitted this 23rd day of April, 2014.

By


Norman C. Keyt
Attorney for Defendants

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EXHIBIT A

DUKE RODRIGUEZ
CEO

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480.246.5700 | DUKE@ZONEDPROPERTIES.COM
WWW.ZONEDPROPERTIES.COM



ZONED
PROPERTIES

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EXHIBIT B

Agenda
Town of Clifton
Regular Town Council Meeting
March 14, 2013
1:00 P.M.

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. Call to the Public
- E. Consent Agenda: The following items of a non-controversial nature have been grouped together for a single vote without Council discussion. The Consent Agenda is a time-saving device and Council member's received documentation on these items for their review prior to the open meeting. Any Council member may remove any item from the Consent Agenda for discussion and a separate vote as deemed necessary. The public may view the documentation relating to the Consent Agenda at the Clifton Town Hall; 210 N. Coronado Blvd., Clifton, Arizona.
 - 1. Approval of the February 14, 2013 Regular Meeting Minutes; and February 27, 2013 Work Session Minutes,
 - 2. Approval of Department Reports;
 - 3. Approval of February 2013 Demands.
- G. New Business
 - 1. Introduction of new town employees.
 - 2. Discussion and/or action to select service areas to target for a street improvement project to be funded by FY 2013 CDBG Grant Funds.
 - 3. Discussion and/or action to appoint members to the Local Board of the Public Safety Personnel Retirement System. TAB I
 - 4. Discussion and/or action to authorize the Mayor to execute a Lease Agreement between the Town of Clifton and Holistic Patient Wellness Group a Medical Marijuana dispensary/cultivation site. TAB II
 - 5. Discussion and/or action to seek approval from SEAGO's Executive Board to change the CDBG Funding Round Rotation between the Town of Clifton and the Town of Duncan.
 - 6. Discussion and/or action to approve Resolution No. 2013-02: DUI Grant Application TAB III
 - 7. Discussion and/or action to approve Resolution No. 2013-03: Designating a Defined Area As An Entertainment District Pursuant to A.R.S. § 4-207. TAB IV
- H. Town Manager's Report
- I. Adjournment

Minutes
Town of Clifton
Regular Town Council Meeting
March 14, 2013
1:12 P.M.

Members Present

John Decker, Mayor
Felix Callicotte, Vice-Mayor
Barbara Ahmann, Council member
Mary Beager, Council member
Armida Moir, Council member
Luis Montoya, Council member
Ray West, Council member

*Absent

Call to Order: The meeting was called to order by Mayor John Decker followed by the Pledge of Allegiance.

Call to the Public: Walter Mares stated that he is very pleased with the current working relationship between this Town Council and Mr. Schempf, Town Manager.

Daniel Cervantez commended the Council on their recent actions regarding addressing future traffic issues that will affect the Shannon Hill area.

Consent Agenda: Council member Armida Moir made a motion to approve the following items listed under Consent Agenda:

1. Approval of the February 14, 2013 Regular Meeting Minutes; and February 27, 2013 Work Session Minutes;
2. Approval of Department Reports;
3. Approval of February 2013 Demands.

Motion was seconded by Council member Mary Beager. Motion carried.

New Business

Introduction of new town employees: Mr. Schempf informed the council that two new employees have been hired by the town. Present for the introductions were Leticia Castillo, Code Enforcement Officer and Susan Mathis, RV Park Ranger.

Discussion and/or action to select service areas to target for a street improvement project to be funded by FY 2013 CDBG Grant Funds: Mr. Schempf reported that staff was required to attend a training session as part of the grant application process on March 6 in Benson and potential street project(s) were discussed on a one-on-one basis with a grant specialist. He continued to report that before an area would qualify for the project the neighborhood or service area must qualify as low-moderate income based on the most recent HUD income levels. Mr. Schempf recalled that the discussion from the February 27th work session resulted in prioritizing street improvements as resulted in the town's recent citizen survey, he also recalled that the council had focused on streets/roads in Shannon Hill. He reported that staff had driven the streets in the area and recommend two areas for consideration to conduct a "Special Income Survey" hoping to qualify one of them for the project area. These two streets are Shannon Road and Vista Heights.

Motion to target Shannon Road as 1st priority was made by Council member Luis Montoya. Second to the motion was made by Vice-Mayor Felix Callicotte. Motion carried.

Discussion and/or action to seek approval from SEAGO's Executive Board to change the CDBG Funding Round Rotation between the Town of Clifton and the Town of Duncan: Mr. Schempf recommended that he had discussed this option with John Basteen, Town Manager of Duncan and he too was favorable to the idea. Both entities are limited to \$100,000 in each grant cycle and would benefit more with back to back grant cycles allowing more dollars to work with. Mr. Schempf also cited that this would give each town more time to prepare the advance work needed for planning projects.

Motion to seek approval from SEAGO's Executive Board to change the CDBG Funding Round Rotation was made by Council member Armida Moir; seconded by Council member Ray West. Motion carried.

Discussion and/or action to appoint members to the Local Board of the Public Safety Personnel Retirement System: Mr. Schempf explained that the Public Safety Personnel Retirement System is requiring a more active role in local boards. Local boards must now submit minutes of at least two annual meetings and although the town's fire department who previously had one member, who is now retired remains active and minutes are submitted to cover that agency. The police must also have an active board of which the officers have recommended their representatives. Staff has provided a list of individuals who are willing to serve on the local board. They include John Decker, Esperanza Castaneda, Omar Negrete, Jason Mingura and Delfina Pilgrim.

Motion to appoint the recommended individuals was made by Council member Armida Moir. Second to the motion was made by Vice-Mayor Felix Callicotte. Motion carried.

Discussion and/or action to authorize the Mayor to execute a Lease Agreement between the Town of Clifton and Holistic Patient Wellness Group a Medical Marijuana dispensary/cultivation site: Mr. Schempf referred members of the council to the lease as drafted by the town's legal counsel. He noted that the rental fee has not yet been finalized. Although the initial rental fee as proposed by the town was \$1,000 per month for each building, the proposed tenants have counter offered \$1,700 per month for both buildings.

Vice-Mayor Callicotte questioned the distance requirement of the Freddie Fritz Park?

Mr. Schempf noted that this location is not a public park but a memorial site to honor Mr. Fritz. Mr. Schempf also reported that other individuals have also expressed interest in renting the buildings but their funding is not available.

Other concerns included the need to include parking stipulations in the lease agreement, establishing a security deposit to include first and last month(s) rent and counter offer \$1,850 in rental fees for both buildings.

Council member Barbara Ahmann made a motion to authorize the Mayor to execute an amended lease agreement to include adding parking stipulations, and setting the monthly rental fee at \$1,850.00. Second to the motion was made by Vice-Mayor Felix Callicotte. Motion carried.

Discussion and/or action to approve Resolution No. 2013-02: DUI Grant Application: Police Chief, Andrew Britton explained that he has successfully received this type of grant before. Previous awards have funded a new vehicle, overtime and other types of DUI monitoring equipment.

Motion to approve Resolution No. 2013-02 was made by Council member Luis Montoya. Second to the motion was made by Council member Armida Moir. Motion carried.

Discussion and/or action to approve Resolution No. 2013-03: Designating a Defined Area As An Entertainment District Pursuant to A.R.S. §4-207: Town Manager, John Schempf explained that the benefit of an entertainment district is to exempt the area from distance restrictions for the issuance of liquor licenses for establishments in relation to public private or charter schools or places of worship.

Motion to approve Resolution No. 2013-03 was made by Vice-Mayor Felix Callicotte. Second to the motion was made by Council member Armida Moir. Motion carried.

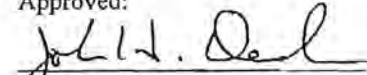
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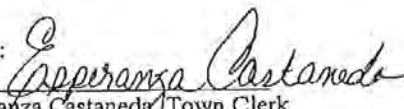
Town Manager's Report: Town Manager, John Schempf reviewed his list of activities/projects for the month of February to include reporting on the Kitchen Auction results. He made special note that only two of the kitchen items had not been sold, but will attempt to offer the convection oven in another bidding attempt to sell it. The grease trap will be donated to Mendoza's restaurant which will benefit the town's sewer system. Noted that the Growing Greenlee Event was a success and that we are considering a town visitors center in the future.

Adjournment: Motion to adjourn was made by Council member Moir. Seconded by Council member Beager. Motion carried. Meeting adjourned at approximately 2:15 p.m.

Approved:


John Decker, Mayor

Attest:


Esperanza Castaneda, Town Clerk

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EXHIBIT C



ARIZONA DEPARTMENT OF HEALTH SERVICES
MEDICAL MARIJUANA PROGRAM

MEDICAL MARIJUANA DISPENSARY

DOCUMENTATION OF COMPLIANCE WITH LOCAL JURISDICTION ZONING

TO BE COMPLETED BY AN AUTHORIZED REPRESENTATIVE OF THE LOCAL JURISDICTION
IN WHICH THE PROPOSED DISPENSARY IS LOCATED

Name of Individual or Entity Applying for a Dispensary Registration Certificate: HOLISTIC PATIENT WELLNESS GROUP	
Physical Address of Proposed Dispensary: 400 Chase Creek, Clifton AZ 85533	Legal Description of the Property: West Clifton Town Site Lot 2. Lot 3
Name of Local Jurisdiction: Clifton AZ - Duncan/Morenci Chaa ID 83	

☐ There are no local zoning restrictions for a proposed dispensary at the above location.

OR

☒ The location of the proposed dispensary is in compliance with local zoning restrictions related to where a dispensary may be located.

Planning and Zoning Administrator/Town Manager

TITLE OF THE AUTHORIZED REPRESENTATIVE OF THE LOCAL JURISDICTION

John B. Schempf

928-865-4146

PRINTED NAME

TELEPHONE NUMBER


SIGNATURE

5/10/12
DATE SIGNED



ARIZONA DEPARTMENT OF HEALTH SERVICES
MEDICAL MARIJUANA PROGRAM

DOCUMENTATION OF COMPLIANCE WITH LOCAL JURISDICTION ZONING

TO BE COMPLETED BY AN AUTHORIZED REPRESENTATIVE OF THE LOCAL JURISDICTION
IN WHICH THE PROPOSED DISPENSARY IS LOCATED.

Name of Individual or Entity Applying for a Dispensary Registration Certificate: HOLISTIC PATIENT WELLNESS GROUP			
Physical Address of Proposed Dispensary: 234 CHASE CREEK RD			
City: CLIFTON	County: GREENLEE	State: AZ	Zip Code: 85533
Legal Description of the Property: San Francisco Townsite Lot 4 (Property Parcel 200-88-003)			
Name of Local Jurisdiction: CLIFTON AZ- DUNCAN/MORENCI CHAA ID 83			

☐ There are no local zoning restrictions for a proposed dispensary at the above location.

OR

☒ The location of the proposed dispensary is in compliance with local zoning restrictions related to where a dispensary may be located.

Town Manager

TITLE OF THE AUTHORIZED REPRESENTATIVE OF THE LOCAL JURISDICTION

JOHN B. SCHEMPF

PRINTED NAME

928-865-4146

TELEPHONE NUMBER

Joan Blum

SIGNATURE

6/3/2013

DATE SIGNED