

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 03/21/2025

TIME: 9:00 AM

DEPT: C-67

JUDICIAL OFFICER: MICHAEL T. SMYTH

CLERK: Herlinda Chavarin

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

M. Neel

CASE NO: **24CU029405C** CASE INIT.DATE: 12/19/2024

CASE TITLE: **Torrey Holistics Inc vs City of San Diego**

CASE CATEGORY: Civil CASE TYPE: (U)Writ of Mandate: Writ of Mandamus - Other

HEARING TYPE: Motion Hearing

MOVING PARTY:

APPEARANCES

Whitney A Hodges, Attorney for Petitioner Torrey Holistics Inc, present via remote audio appearance.

Ben Syz, attorney for City of San Diego, Respondent, present in person.

Tamara Leetham Rozmus, attorney for David Seyranian, Real Party in Interest, present in person.

All parties submit(s) on the Court's tentative ruling.

The Court CONFIRMS the tentative ruling as follows:

Petitioner Torrey Holistics, Inc.'s Motion for Preliminary Injunction is **DENIED**. All requests for judicial notice are granted.

"In deciding whether to issue a preliminary injunction, a court must weigh two 'interrelated' factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. . . . The trial court's determination must be guided by a 'mix' of the potential-merit and interim harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction." (*Butt v. State of California* (1992) 4 Cal.4th 668, 677–678.) An injunction may not issue unless it is reasonably probable that the moving party will prevail on the merits. (*San Francisco Newspaper Printing Co., Inc. v. Superior Court* (1985) 170 Cal.App.3d 438, 442.) The burden is on the moving party seeking injunctive relief to show all elements necessary to support the issuance of a preliminary injunction. (*O'Connell v. Super. Ct.* (2006) 141 Cal.App.4th 1452, 1481.)

1. ***Probability of Success on the Merits***

Petitioner lacks a probability of success on the merits in numerous respects. The court disagrees with Petitioner's interpretation of San Diego Municipal Code section 141.0504(d), that there is any legal

authority requiring the City to treat the property owner's change in applicant as a new CUP amendment application, or that Real Parties failed to comply with the Cannabis Business Tax Ordinance. The court also agrees with Real Parties that the action should have been brought under Code of Civil Procedure section 1094.5 rather than Section 1085. But the motion is resolved on two more fundamental issues: (1) Petitioner's action is time barred by Government Code section 65009; and (2) Petitioner has failed to join an indispensable party.

First, the action is time-barred under Government Code section 65009. The Government Code establishes short limitations periods as to all challenges to certain public agency decisions. That includes any actions "to attack, review, set aside, void or annul any decision on the matters listed in Section 65901 or 65903 or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit or any other permit." (Gov. Code, § 65009(c)(1)(E).) A challenger must file and serve their petition or complaint within 90-days of the legislative body's decision. (Gov. Code, § 65009(c)(1).) "[A]fter expiration of the filing and service limitations period, 'all persons are barred from any further action or proceeding.' **There are no exceptions.**" (*Weiss v. City of Del Mar* (2019) 39 Cal.App.5th 609, 619 [emphasis added] [quoting *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 767-768]; see also *Royalty Carpet Mills, Inc. v. City of Irvine* (2005) 125 Cal.App.4th 1110, 1125 [Gov. Code, § 65009 "requires dismissal of any proceeding that is not filed and served by an absolute time limit"].) Thus, under section 65009(c)(E)(1), the 90-day rule applies to "any decision on the matters listed" in section 65901, and one of the "matters listed" in section 65901 is a zoning board or zoning administrator's decision on "conditional uses or other permits" or its "exercise [of] any other powers granted by local ordinance." (§ 65901(a); see *Stockton Citizens for Sensible Planning v. City of Stockton* (2012) 210 Cal.App.4th 1484, 1492.)

The SDPC's ruling was a decision on a conditional use permit. Petitioner's argument that "the City has neither a 'board of zoning adjustment' nor 'zoning administrator'" is without merit. (ROA 31, Reply at 7:19-20.) The fact the SDPC, rather than a "zoning board," exercised this power does not remove the statute's applicability because the SDPC was functionally acting in a zoning board capacity when ruling on the CUP appeal. The Legislature specifically provided that "[i]n the event that neither a board of zoning adjustment or the office of a zoning administrator has been created and established, the planning commission shall exercise all of the functions and duties of said board or said administrator." (Gov. Code, § 65902.)

The SDPC's decision was on September 19, 2024. Petitioner had until December 18, 2024 to file and serve their petition—90 days after the decision. It is undisputed that Petitioner failed to serve the City until January 2, 2025. (See ROA 9 [Proof of Service of Summons].) Because Petitioner failed to effect service within 90 days, their action is time-barred and they have no success of probability on the merits.

Second, Petitioner failed to join an indispensable party. Code of Civil Procedure section 389(a) requires joinder of a party who "claims an interest relating to the subject of the action and is so situated that the disposition of the action in her/his absence may (i) as a practical matter impair or impede her/his ability to protect that interest[.]" Here, GOAT Venture, LLC dba Buzz Cannabis became the new lessee and operator of the location on November 21, 2024. (See ROA 24, Ibrahim Decl., ¶¶ 1, 5.) The proposed order submitted by Petitioner specifies GOAT Venture, LLC by name as one of the entities to be enjoined. (ROA 22 [Proposed Order].) This proceeding would substantially affect Buzz's ability to operate and therefore they are an indispensable party that Petitioner failed to name in its action or serve.

Petitioner fails to address this argument on reply, apparently conceding its merit. For this additional reason, Petitioner has failed to show a probability of success on the merits.

For these reasons, Petitioner has failed to demonstrate a probability of success on the merits.

2. ***Relative Interim Harm***

If there is no probability of success on the merits, the court need not weigh the relative interim harms. But even if the court found some probability of success on the merits, the relative interim harms weigh heavily in favor of denying the preliminary injunction.

Petitioner fails to identify even a single concrete harm to itself. Rather, Petitioner outlines the rather severe consequences to Real Parties of the court imposing an injunction at this stage of the litigation. If an injunction is put in place, the court will interrupt the operation of a business that lawfully used a CUP for approximately seven years, with authorization from the San Diego Planning Commission, and “[a]ny operation permitted to go forward will constitute ‘black market’ operations that would expose SVIG, Mr. Seyranian and any third-party tenant to criminal and civil enforcement action and penalties.” (Motion at p. 13:4-6.) To turn a lawful business into a “black market” operation by preliminary injunction seems to this court to be a significant harm.

The only purported harms raised by Petitioner are general policy-level harms to the City and taxpayers. No evidence is provided in support of such harms other than counsel’s argument. In contrast, Real Parties have provided a declaration from Deputy Director Lara Gates of the Development Services Department stating that the City and consumers would be harmed if a preliminary injunction is entered. (ROA 27, Gates Decl., ¶¶ 2-3.)

The motion is denied.

IT IS SO ORDERED:

Michael T. Smyth

Judge Michael T. Smyth