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E-FILED
1/30/2020 12:16 PM
Superior Court of California
County of Fresno
By: L Peterson, Deputy

*Exempt from filing fees
pursuant to Gov. Code, §6103*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF FRESNO

14 **COUNTY OF SANTA CRUZ, ET AL.,**

15 Plaintiffs,

16 v.

18 **BUREAU OF CANNABIS CONTROL;**
19 **LORI AJAX, in her official capacity as**
Chief of the Bureau of Cannabis Control;
20 **and DOES 1 through 10, inclusive,**

21 Defendants.

Case No. 19CECG01224

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO CONTINUE TRIAL
[CAL. RULES OF COURT, RULE 3.1332;
SUPER. CT. FRESNO COUNTY, LOCAL
RULES, RULE 2.1.12.]**

Date: February 25, 2020
Time: 3:30 p.m.
Dept: 403
Judge: The Honorable Rosemary
McGuire

Trial Date: April 20, 2020
Action Filed: April 4, 2019

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on February 25, 2020 at 3:30 p.m. in Department 403 of the
3 Fresno County Superior Court, located at 1130 O Street, Fresno, CA 93721-2220, defendants
4 Bureau of Cannabis Control and Lori Ajax (collectively Defendants) will move the Court for an
5 Order granting the continuance of the April 20, 2020 trial date to on or about September 21, 2020,
6 pursuant to the California Rules of Court, rule 3.1332 and Fresno County Superior Court Local
7 Rules, rule 2.1.12. This motion will be made on the grounds that good cause exists for a short
8 continuance of this action under the rules and standards set forth in the California Rules of Court,
9 rule 3.1332 and Fresno County Superior Court Local Rules, rule 2.1.12.

10 This motion is based upon this Notice and Motion, the Memorandum of Points and
11 Authorities, and the Declaration of Stacey L. Roberts; any matters of which the Court may take
12 judicial notice; upon the records and files in the respective action; and upon such further evidence
13 and argument as may be presented before or at the time of hearing on the motion.
14 Pursuant to Fresno County Superior Court Local Rule 2.2.6, tentative rulings in civil law and
15 motion matters are posted in accordance with the California Rules of Court, rule 3.1308 and
16 require notice of intent to appear. Tentative rulings are not required, but any Judicial Officer who
17 does issue tentative rulings will prepare and publish a tentative ruling by 3:00 p.m. on the day
18 before the scheduled hearing. Tentative rulings will be made available after 3:00 p.m. on the
19 court day before the scheduled hearing via the Court's website at www.fresno.courts.ca.gov. If a
20 party does not have access to the internet during the time period when tentative rulings are posted,
21 a party may call (559) 457-4943 for assistance in obtaining the tentative ruling.

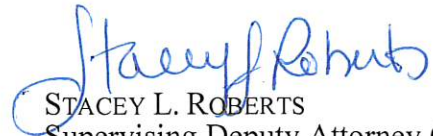
22 If the Court has not directed argument in the tentative ruling, oral argument is permitted
23 only if a party intending to appear notifies all other parties by telephone or in person by 4:00 p.m.
24 on the Court day before the hearing of the party's intention to appear. Notice may consist of a
25 phone call or email to all other parties that argument is being requested (i.e., it is not necessary to
26 speak with counsel or parties directly). A party also must notify the Court by telephone of the
27 party's intention to appear by calling Department 403 at (559) 457-6316 directly by 4:00 p.m. on
28

1 the Court day before the hearing. The tentative ruling will become the ruling of the Court if the
2 Court has not directed oral argument by its tentative ruling and notice of intent to appear has not
3 been given.

4 Dated: January 30, 2020

Respectfully Submitted,

5 XAVIER BECERRA
6 Attorney General of California
7 HARINDER K. KAPUR
8 Senior Assistant Attorney General

9 
10 STACEY L. ROBERTS
11 Supervising Deputy Attorney General
12 *Attorneys for Defendants, Bureau of*
13 *Cannabis Control and Lori Ajax, Chief of*
14 *the Bureau of Cannabis Control*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Pursuant to the California Rules of Court, rule 3.1332 (Rule 3.1332) and Fresno County
4 Superior Court Local Rules, rule 2.1.12 (Local Rule 2.1.12), defendants Bureau of Cannabis
5 Control (Bureau) and Lori Ajax (collectively Defendants), move for an Order continuing the
6 April 20, 2020 trial to on or about September 21, 2020, depending on the Court's calendar. For
7 the reasons set forth below, the Court should grant Defendants' Motion to Continue because good
8 cause exists for a continuance of the trial date.

9 **THE COURT SHOULD CONTINUE THIS TRIAL BECAUSE GOOD CAUSE EXISTS**
10 **REQUIRING THE CONTINUANCE**

11 This Motion should be granted because Defendants' request for a continuance is supported
12 by numerous Rule 3.1332 factors and Local Rule 2.1.12. Under Rule 3.1332(c) and Local Rule
13 2.1.12, the Court may grant a continuance upon a "showing of good cause." In ruling on a
14 motion to continue trial under Rule 3.1332(d), the Court must consider all the relevant facts and
15 circumstances, which may include:

- 16 (1) The proximity of the trial date;
- 17 (2) Whether there was any previous continuance, extension of time, or delay of trial
18 due to any party;
- 19 (3) The length of the continuance requested;
- 20 (4) The availability of alternative means to address the problem that gave rise to the
21 motion or application for a continuance;
- 22 (5) ~~The prejudice that parties or witnesses will suffer as a result of the continuance;~~
- 23 (6) If the case is entitled to a preferential trial setting, the reasons for that status and
24 whether the need for a continuance outweighs the need to avoid delay;
- 25 (7) The court's calendar and the impact of granting a continuance on other pending
26 trials;
- 27 (8) Whether trial counsel is engaged in another trial;
- 28 (9) Whether all parties have stipulated to a continuance;
- (10) Whether the interests of justice are best served by a continuance, by the trial of
 the matter, or by imposing conditions on the continuance; and

1 (11) Any other fact or circumstance relevant to the fair determination of the motion
2 or application.

3 (Cal. Rules of Court, rule 3.1332(d).)

4 **I. GOOD CAUSE REQUIRES A CONTINUANCE BECAUSE THE INTERESTS OF JUSTICE**
5 **WILL BE SERVED BY A TRIAL ON THE PENDING RELATED ACTIONS IN SANTA CRUZ**
6 **COUNTY SUPERIOR COURT BEFORE THE TRIAL IN THIS CASE**

7 There is good cause of a continuance because the interests of justice will be served by a
8 continuance in order for the following pending related actions (Santa Cruz Action) to proceed in
9 the Santa Cruz County Superior Court before a trial in this matter (Fresno Action):

10 *East of Eden Cannabis Co., Plaintiff and Petitioner, v. Santa Cruz County; Santa*
11 *Cruz County Administrative Office; Santa Cruz County Cannabis Licensing Office;*
12 *Samuel LoForti, Cannabis Licensing Manager, in his Official Capacity; DOES 1-10,*
13 *Defendants, Superior Court of Santa Cruz County, Case No. 19CV0207, filed on July*
14 *12, 2019; and*

15 *Bureau of Cannabis Control, Real Party in Interest/Intervenor/Plaintiff, v. Santa*
16 *Cruz County; Santa Cruz County Administrative Office; Santa Cruz County Cannabis*
17 *Licensing Office; Samuel LoForti, Cannabis Licensing Manager, in his Official*
18 *Capacity; DOES 1-10, Defendants and Respondents, Superior Court of Santa Cruz*
19 *County, Case No. 19CV0207, filed on January 10, 2020.*

20 Both the Santa Cruz Action and the Fresno Action share a common question of law since
21 the main legal issue in the matters is the interpretation and validity of the Bureau's regulation,
22 California Code of Regulations, title 16, section 5416, subdivision (d) (Cannabis Delivery
23 Regulation). (Declaration of Stacey L. Roberts in Support of Defendants' Motion to Continue
24 Trial (Roberts Decl.) at ¶ 2.) The Bureau implemented the Cannabis Delivery Regulation
25 pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).
26 (Bus. & Prof. Code, § 26000 et seq.) The Cannabis Delivery Regulation provides that "A
27 delivery employee may deliver to any jurisdiction within the State of California provided that
28 such delivery is conducted in compliance with all delivery provisions of this division." (Cal.
Code Regs., tit. 16, § 5416, subd. (d).)

29 In the Fresno Action, the lead plaintiff, County of Santa Cruz, and twenty-four cities sued
30 the Defendants alleging that the Cannabis Delivery Regulation is invalid. Plaintiffs contend that
31 MAUCRSA allows a local jurisdiction to regulate or completely prohibit the operation of
32 commercial cannabis businesses within its boundaries. (Bus. & Prof. Code, § 26200, subd. (a)(1).

1 Some of the plaintiffs, such as Santa Cruz County, restrict commercial cannabis delivery within
2 their jurisdictions, while other plaintiffs completely ban such deliveries. Regardless of whether
3 there is a restriction on or a complete ban of commercial cannabis deliveries by plaintiffs, the
4 validity of the Cannabis Delivery Regulation is the sole legal issue in the case. The Fresno
5 Action does not involve any factual issues. (Roberts Decl. at ¶ 2.)

6 In the Santa Cruz Action, the plaintiff East of Eden Cannabis Co., a commercial cannabis
7 retailer licensed by the Bureau and permitted by the City of Salinas, filed suit against defendants
8 Santa Cruz County, Santa Cruz County Administrative Office, Santa Cruz County Cannabis
9 Licensing Office, and Samuel LoForti, Cannabis Licensing Manager challenging Santa Cruz
10 County Code sections 7.130.050, subdivisions (A) & (C), 7.130.090, and 7.130.110 (A) & (F)
11 (County Cannabis Codes). Plaintiff East of Eden Cannabis Co. alleges that the County Cannabis
12 Codes violate provisions of MAUCRSA and the Cannabis Delivery Regulation because the
13 County Cannabis Codes prohibit commercial cannabis retailers licensed by the Bureau and other
14 local jurisdictions from delivering cannabis in unincorporated areas of Santa Cruz County, and
15 only commercial cannabis retailers licensed by Santa Cruz County are authorized to deliver in
16 unincorporated Santa Cruz County. Plaintiff East of Eden Cannabis Co. seeks a declaration that,
17 under the Cannabis Delivery Regulation, defendants may not enforce the County Cannabis
18 Codes. On the same grounds, plaintiff East of Eden Cannabis Co. seeks a permanent injunction
19 compelling defendants to refrain from enforcing the County Cannabis Codes. (Roberts Decl. at ¶
20 3; Exhibit A.)

21 ~~Since the Santa Cruz Action involves a challenge to the Cannabis Delivery Regulation, the~~
22 Bureau filed a Motion for Leave to Intervene as a real party in interest in the lawsuit, which was
23 granted by the Court on January 2, 2020. The Bureau's complaint in intervention was filed on
24 January 10, 2020. Additionally, the Santa Cruz Action is set for trial on July 20, 2020. (Roberts
25 Decl. at ¶¶ 4-6; Exhibit B.)

26 Because the Santa Cruz Action involves a factual matter (i.e., Santa Cruz County barring a
27 commercial cannabis entity licensed by the Bureau and permitted by the City of Salinas from
28 delivering cannabis in unincorporated Santa Cruz County) and the Fresno Action does not, the

1 interests of justice will be best served by the Santa Cruz Action being tried first based on a factual
2 controversy before the Fresno Action proceeds. In the Santa Cruz Action, the Santa Cruz County
3 Superior Court will be presented with an actual factual dispute between a Salinas based
4 commercial cannabis entity being barred from carrying out licensed business activities due to
5 Santa Cruz County's prohibition on commercial cannabis deliveries by all other entities *except* a
6 few licensed entities based out of Santa Cruz County. The Santa Cruz County Superior Court's
7 decision, by virtue of assessing how the state's cannabis laws apply to the presented facts, will
8 take into account a real dispute and will be less susceptible to speculation or a broad sweeping
9 decision because no facts exist in the Fresno Action which may lead to unintended consequences
10 on the California cannabis industry and consumers. The plaintiffs in the Fresno Action chose to
11 file the case in the Fresno County Superior Court without such a factual dispute pending, which
12 has put this Court in a disadvantaged position (compared to the Santa Cruz County Superior
13 Court) by requiring this Court to analyze new laws concerning a highly regulated and evolving
14 industry in the absence of facts. Thus, the Santa Cruz Action is ripe for consideration, while the
15 Fresno Action will invite conjecture and potentially inadvertent consequences to the California
16 cannabis industry and consumers. (Roberts Decl. at ¶¶ 4-5; Exhibits A and B.)

17 Furthermore, if the Santa Cruz Action is resolved first, then that outcome may very well
18 result in the resolution of the Fresno Action without the need for a trial. On these grounds, there
19 is good cause for a continuance because a short postponement of trial serves the interest of
20 justice.

21 **II. THE COURT SHOULD GRANT THIS MOTION BECAUSE MULTIPLE OTHER RULE**
22 **3.1332(D) FACTORS SUPPORT A CONTINUANCE**

23 Defendants have good cause for a continuance because their need for a continuance
24 satisfies numerous other Rule 3.1332(d) factors. First, there has been no prior continuance or
25 delay of trial in this case. (Roberts Decl. at ¶ 8.) Defendants are only seeking a continuance of
26 approximately five months. Also, a continuance would have a minimal, if any, impact on the
27 Court's calendar because this matter involves a trial lasting one day or less. (Roberts Decl. at ¶
28 8.)

1 Even though the case is set for trial on April 20, 2020, the plaintiffs will not be prejudiced
2 and there are no witnesses that will suffer as a result of a continuance. Because the Fresno Action
3 involves purely a legal question (i.e., whether the Cannabis Delivery Regulation promotes or
4 violates the purpose and intent of Proposition 64 and MAUCRSA), discovery is not necessary,
5 there has been no discovery to date, and the Court exempted the parties from the Alternative
6 Dispute Resolution requirements. Further, the parties have met and conferred regarding the scope
7 of the administrative record, and Defendants are still preparing the administrative record. Also,
8 the Court set a hearing on February 7, 2020 regarding the proposed trial briefing schedule
9 submitted by the parties. Since there is no court ordered briefing schedule, no trial briefing has
10 been filed or served by the parties to date. As discussed above, there is no factual controversy.
11 Therefore, Plaintiffs will sustain no harm by a continuance. (Roberts Decl. at ¶ 7.)


12 CONCLUSION

13 Defendants are only seeking a short five-month continuance of the trial date in the Fresno
14 Action. This is the first request for a continuance as there have been no prior delays or
15 continuances. The plaintiffs will not be prejudiced by a short delay. The interest of justice will
16 be served by the Santa Cruz Action proceeding first since that action involves a present and
17 ongoing factual controversy, which will lead to a decision based on the application of facts to the
18 law rather than a decision devoid of facts. Ultimately, the Santa Cruz Action may moot the
19 Fresno Action. Therefore, good cause supports a continuance of this matter.

20 Dated: January 30, 2020

Respectfully Submitted,

21 XAVIER BECERRA
22 Attorney General of California
23 HARINDER K. KAPUR
24 Senior Assistant Attorney General

25 
26 STACEY L. ROBERTS
27 Supervising Deputy Attorney General
28 *Attorneys for Defendants, Bureau of
Cannabis Control and Lori Ajax, Chief of
the Bureau of Cannabis Control*

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **County of Santa Cruz, et al. v. Bureau of Cannabis Control, et al.**

Case No.: **19CECG01224**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On January 30, 2020, I served the attached **DEFENDANTS' NOTICE OF MOTION AND MOTION TO CONTINUE TRIAL [CAL. RULES OF COURT, RULE 3.1332; SUPER. CT. FRESNO COUNTY, LOCAL RULES, RULE 2.1.12.]** by placing a true copy thereof enclosed in a sealed envelope with **FEDEX**, addressed as follows:


Steven G. Churchwell
Attorney at Law
Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, CA 95814
Counsel for Plaintiffs

Todd Noonan
NOONAN LAW GROUP
980 9th Street, 16th Floor
Sacramento CA 95814

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 30, 2020, at Sacramento, California.

Traci Routt

Declarant



Signature