

MAR 16 2016

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F I L E D

Clerk of the Superior Court

MAR 16 2016 AM 9:28

By: S. Kreis-Trent, Deputy

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 CITY OF SAN DIEGO, a municipal
corporation,

11 Plaintiff,

12 v.

13 DARRYL COTTON, an individual, and
14 DOES 1 through 50, inclusive,

15 Defendants.

Case No. 37-2016-00005526-CU-MC-CTL

REPLY TO OPPOSITION TO *EX*
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
EX PARTE APPLICATION BY
PLAINTIFF, CITY OF SAN DIEGO,
FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY PRELIMINARY
INJUNCTION SHOULD NOT BE
GRANTED

IMAGED FILE

Date: March 17, 2016

Time: 8:30 a.m.

Dept.: C-61

Judge: Hon. John S. Meyer

Complaint Filed: February 18, 2016

Trial Date: None set

22 INTRODUCTION

23 Plaintiff, City of San Diego, replies to the opposition by Defendant, DARRYL COTTON
24 (COTTON) to the City's request for a Temporary Restraining Order (TRO) and Order to Show
25 Cause Why the Court Should not Grant the Preliminary Injunction, immediately enjoining all
26 marijuana operations at 6176 Federal Boulevard, San Diego, California (PROPERTY) or
27 anywhere in the City without a conditional use permit. This Reply will address specific matters
28

1 raised by Defendant COTTON. The City's Reply for all other points can be found in the City's
2 moving papers.

3 ARGUMENT

4 A. A STAY OF THE PROHIBITORY INJUNCTION IS INAPPROPRIATE.

5 1. Prohibitory Injunction Does Not Become Mandatory Injunction Just Because It 6 Requires Performance of an Affirmative Act.

7 A prohibitory injunctive relief does not change to mandatory in nature merely because it
8 incidentally requires performance of affirmative acts. *People v. Mobile Magic Sales*, 96 Cal.
9 App. 3d 1, 13 (1979); *People v. IMERGENT, Inc.*, 179 Cal. App. 4th 333, 324 (2009). A
10 prohibitive order seeks to restrain a party from a course of conduct or to halt a particular
11 condition. *People v. Mobile Magic Sales*, 96 Cal. App. 3d 1, 13 (1979). In *People v. Mobile*
12 *Magic Sales*, the injunction prohibited certain unlawful acts and required retail dealers to remove
13 mobile homes models displayed in violation of Vehicle Code section 11709. 96 Cal. App. 3d 1.
14 In *People v. Mobile Magic Sales*, the Court of Appeal noted that although the order required an
15 affirmative act the removal of the mobile home models, the act of removal was incidental to the
16 injunction's prohibitory objective to restrain further violation of a valid statute. *Id.* at 13. In
17 *People v. IMERGENT*, the injunction prohibited defendants from conducting further business in
18 California without complying with the Seller Assisted Market Plan Act, Civ. Code section
19 1812.200 *et. seq.* 170 Cal. App. 4th 333 (2009). In *People v. IMERGENT*, the Court of Appeal
20 court noted that "any aspects of the injunction that required defendant to engage in affirmative
21 conduct are merely incidental to the injunction's objective to prohibit defendants from further
22 violating California's consumer protection laws." 170 Cal. App. 4th 333, 342 (2009).

23 In this case, any affirmative acts that Defendant COTTON is required to perform are
24 merely incidental to the injunction's objective to prohibit and/or restrain Defendant COTTON
25 from further violation of a valid statute. Defendant COTTON is maintaining, operating, or
26 allowing a marijuana dispensary at the PROPERTY, in violation of local zoning laws. Any
27 affirmative acts that he has to perform to comply with the injunction's objectives are incidental
28 and do not change the nature of the injunction from prohibitory to mandatory.

1 Here, a stay would undermine the public interest and lawful objectives of the state and
2 local zoning laws. Local zoning laws prohibit Defendant COTTON from operating or
3 maintaining a marijuana dispensary at the PROPERTY. Defendant COTTON must stop violating
4 the City's zoning laws.

5 **B. ANY PERSON VIOLATING A COURT ORDER IS SUBJECT TO ARREST.**

6 Any person operating or maintaining an unpermitted marijuana dispensary is subject to
7 arrest for committing the crime of violating a court order, defined as a misdemeanor pursuant to
8 Penal Code section 166(a)(4). "A peace officer . . . , without a warrant, may arrest a person
9 whenever ... the officer has probable cause to believe that the person to be arrested has
10 committed a public offense in the officer's presence." Penal Code section 836(a)(1).


11 In this case, the Court will make an order. Any person who violates this Court's Order
12 commits a misdemeanor offense and is subject to arrest.

13 **CONCLUSION**

14 Plaintiff requests that the Court deny Defendant's opposition. Plaintiff may make and
15 enforce zoning regulations within its borders. The operation of a marijuana dispensary in a zone
16 where it is not permitted should be immediately enjoined for the benefit and safety of the City's
17 residents. Plaintiff respectfully requests that immediate injunctive relief be granted to prohibit
18 Defendants from operating or maintaining a marijuana dispensary in violation of zoning
19 ordinances.

20 Dated: March 16, 2016

JAN I. GOLDSMITH, City Attorney

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22 By 
23 Onuoma O. Omordia
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25 Attorneys for Plaintiff
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