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Superior Court of California  
County of Fresno  
By: Thomas Carrillo, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF FRESNO

CATALYST - FRESNO LLC, )  
 )  
Petitioner/Plaintiff, )  
 )  
v. )  
 )  
CITY OF FRESNO; and DOES 1-50, )  
inclusive, )  
 )  
Respondents/Defendants, )  
 )  
1261 WISHON OPCO, LLC, A California )  
limited liability company; TAT FRESNO )  
LLC, a California limited liability company; )  
AUTHENTIC 55, LLC, a California limited )  
liability company; CRESCENT )  
CONQUEST LLC, a California limited )  
liability company; and DOES 51-100, )  
inclusive, )  
 )  
Real Parties in Interest )  
 )

Case No. 21CECG03543

RESPONDENT'S OPPOSITION TO  
EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER

DATE: March 29, 2022  
TIME: 8:30 a.m.  
CTRM: 402

**GOVERNMENT EXEMPT**

1     **I.     PRELIMINARY STATEMENT**

2             For many years, the City of Fresno has prohibited medical cannabis dispensaries  
3     within the City limits, and has never issued a permit to a cannabis business in Fresno.  
4     However, with the evolving landscape surrounding the sale and use of cannabis in the  
5     State of California, the City has recently commenced a process to regulate cannabis  
6     businesses wishing to operate within the City limits. In doing so, the City exercised its  
7     discretion to enact legislation to govern the selection process for permits for different  
8     types of cannabis businesses - - one of which is a permit to operate a retail cannabis  
9     business.

10            The gravamen of Petitioner Catalyst - Fresno LLC's ("Petitioner") Petition is that  
11   Respondent City of Fresno ("City") allegedly did not adequately perform its obligations  
12   in the course of the City's retail commercial cannabis selection process as to the three  
13   retail cannabis permits available in Council District 1. Petitioner contends that as a  
14   result of these purported deficiencies, Petitioner was unfairly denied the ability to  
15   receive a permit to sell cannabis in Council District 1.

16            On or about September 8, 2021, the City notified Petitioner that it was not one of  
17   the initial selections for preliminary approval. Petitioner filed its Petition on November  
18   30, 2021 and its First Amended Petition ("FAP") on January 25, 2022. Petitioner's TRO  
19   application is focused on the preliminary approval to Authentic 559, LLC ("Authentic"),  
20   and is discussed in the FAP. Although it had an opportunity to so, Petitioner never filed  
21   a motion for preliminary injunction. Instead, it now proceeds by way of an ex parte  
22   TRO. Petitioner's request is simply untenable, and its request for extraordinary relief  
23   should be denied.

24     **II.    FACTUAL BACKGROUND**

25            **A.    Selection Process For Retail Applicants In District 1**

26            Petitioner completed a retail cannabis application for District 1. After Phase 1  
27   review, Petitioner and approximately twelve other applicants proceeded to Phase II for  
28

1 the application review and scoring.

2 In the application review for retail applicants under Phase II, Petitioner received a  
3 score of 75.69% - - the fifth highest score of all retail applicants in District 1. The five  
4 highest scores were allowed to proceed to the panel interview process; thus, Petitioner  
5 was allowed to proceed to Phase III.

6 Petitioner, along with the other qualified District 1 retail applicants, each  
7 separately participated in a panel interview. After Phase III, Petitioner's cumulative  
8 score was 84.78%, which ranked fourth among the District 1 retail applicants.

9 In Phase IV, Petitioner was not considered, as Petitioner did not have one of the  
10 three highest scores in District 1. Thus, in District 1, the City Manager selected for  
11 preliminary approval the highest ranked social equity applicant in the District (Fresno  
12 Cannabis Co.) and the two highest scoring retail applicants (1261 Wishon OPCO and  
13 The Artist Tree).

14 Pursuant to the Fresno Municipal Code, Councilmember Soria filed an appeal as  
15 to the selection of 1261 Wishon OPCO and The Artist Tree. After a hearing before the  
16 City Council on October 27, 2021, the CSB upheld the appeal as to The Artist Tree.  
17 Thereafter, the City Manager selected Authentic - - the next highest ranked retail  
18 applicant in District 1 - - for preliminary approval.

19 Thereafter, an appeal was filed and Authentic had a hearing before the City  
20 Council on or about February 16, 2022, which upheld Authentic's selection.

21 **III. ARGUMENT**

22 **A. Petitioner's Ex Parte Application Fails To Comply With The California**  
23 **Rules Of Court**

24 California Rules of Court, Rule 3.1206 provides that a party appearing at the ex  
25 parte hearing "**must** serve the ex parte application" on all other appearing parties "**at**  
26 **the first reasonable opportunity. Absent exceptional circumstances, no hearing**  
27 **may be conducted unless such service as been made.**" [Emphasis Added"].  
28

1 Petitioner filed his original Petition on November 30, 2021 and its FAP on  
2 January 25, 2022. Petitioner never previously sought an injunction by way of a properly  
3 noticed motion.

4 Further, more than a week prior to the ex parte hearing date, Petitioner reserved  
5 the hearing date for this ex parte application with the Court; nevertheless, it did not  
6 serve papers until March 28, 2022. Petitioner's setting of this ex parte application so far  
7 in advance underscores the lack of exigency surrounding its application for  
8 extraordinary relief.

9 In sum, Petitioner's conduct is violative of Rule 3.1206.

10 **B. Petitioner Cannot Meet Its Burden For Issuance Of A TRO**

11 Even if the Court were to find that Petitioner satisfied its obligations under the  
12 California Rules of Court, the Court should still deny the ex parte application under the  
13 applicable standards.

14 The standards for granting a temporary restraining order ("TRO") and a  
15 preliminary injunction are identical. Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.  
16 (9<sup>th</sup> Cir. 2001) 240 F.3d 832, 839 n. 7. Injunctive relief, including a TRO, is not a matter  
17 of right, but is a form of extraordinary relief. Mallon v. City of Long Beach (1958) 164  
18 Cal.App.2d 178, 190. "To issue an injunction is the exercise of a delicate power,  
19 requiring great caution and sound discretion, and rarely, if ever, should [it] be exercised  
20 in a doubtful case." Ancora-Citronelle Corp. v. Green (1974) 41 Cal.App.3d 146, 148.

21 In ruling on a TRO/preliminary injunction, trial courts consider two interrelated  
22 questions: (1) is the petitioner likely to suffer greater injury from a denial of the  
23 injunction than the respondents are likely to suffer from its grant; and (2) is there a  
24 reasonable probability that the petitioner will prevail on the merits. IT Corp. v. Cty. of  
25 Imperial (1983) 35 Cal.3d 63, 69-70. The two factors are an interrelated sliding scale -  
26 the more one factor is shown, the less the other must be proven. Common Cause v.  
27 Bd. of Sups. (1989) 49 Cal.3d 432, 446-7.  
28

1 Moreover, due to the "separation of powers doctrine," the standard for enjoining  
2 a governmental act is unusually restricted. O'Connell v. Sup.Ct. (Valenzuela) (2006)  
3 141 Cal.App.4th 1452, 1464. For an injunction to issue against a government, a  
4 "significant" showing of irreparable injury is required because there is a general rule  
5 against enjoining public officers or agencies from performing their duties. See  
6 O'Connell, supra, 141 Cal.App.4th at 1471; Orantes-Hernandez v. Thornburgh (9<sup>th</sup> Cir.  
7 1990) 919 F.2d 549, 557. "The injury or threat of injury must be both 'real and  
8 immediate,' not 'conjectural' or 'hypothetical.'" City of Los Angeles v. Lyons (1983) 461  
9 U.S. 95, 102.


10 Under the appropriate standards, Petitioner's ex parte application should be  
11 denied.

12 **IV. CONCLUSION**

13 For the foregoing reasons, Respondent City of Fresno requests that this Court  
14 deny Petitioner's Application for TRO.  
15

16 Dated: March 28, 2022

BETTS & RUBIN

17  
18 By   
19 \_\_\_\_\_  
20 Joseph D. Rubin  
21 Attorneys for Respondent CITY OF FRESNO  
22  
23  
24  
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27  
28

1 PROOF OF SERVICE

2 I am a citizen of the United States of America, a resident of Fresno County,  
3 California, over the age of 18 years and not a party to the within-entitled cause or  
4 matter. My business address is 907 Santa Fe Avenue, Suite 201, Fresno, California.  
5 On March 28, 2022, I served **RESPONDENT'S OPPOSITION TO EX PARTE**  
6 **APPLICATION FOR TEMPORARY RESTRAINING ORDER** on the parties in this action  
7 by placing an original/a true copy in an envelope and delivering it as follows:

8 \_\_\_\_\_ **(By Overnight Courier)** I caused such envelope with postage fully prepaid, to be  
9 sent by \_\_\_\_\_.

10 \_\_\_\_\_ **(By Mail)** I deposited the envelope, with postage fully prepaid, with the United  
11 States Postal Service at Fresno, Fresno County, California.

12 \_\_\_\_\_ **(By Mail)** I placed the envelope for collection and processing for mailing following  
13 this business' ordinary practice with which I am readily familiar. On the same  
14 day correspondence is placed for collection and mailing, it is deposited in the  
15 ordinary course of business with the United States Postal Service with postage  
16 fully prepaid.

17 \_\_\_\_\_ **(By Hand)** I caused each envelope to be delivered by hand.

18 Each envelope was addressed as follows:

19 Jeff Augustini, Esq.  
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\_\_\_x\_\_\_ **(By E-Mail)** I caused each document to be sent by e-mail.

I declare under penalty of perjury under the laws of the State of California that  
the above is true and correct. Executed on March 28, 2022, at Fresno, California.

  
Debbie Mazza