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

5 Attorneys for Petitioner/Plaintiff  
6 CATALYST - FRESNO LLC

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF FRESNO

9 CATALYST - FRESNO LLC,

10 Petitioner/Plaintiff,

11 vs.

12 CITY OF FRESNO; and DOES 1-50, inclusive,

13 Respondents/Defendants,

14  
15 1261 WISHON OPCO, LLC, a California limited  
16 liability company; TAT FRESNO LLC, a  
17 California limited liability company;  
18 AUTHENTIC 559, LLC, a California limited  
19 liability company; CRESCENT CONQUEST  
20 LLC, a California limited liability company; and  
21 DOES 51-100, inclusive,

22 Real Parties in Interest.

CASE NO. 21CECG03543

CATALYST-FRESNO LLC'S REPLY IN  
SUPPORT OF EX PARTE APPLICATION  
FOR ISSUANCE OF A TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE RE PRELIMINARY  
INJUNCTION

1 For ease of reference, Catalyst-Fresno LLC (“Catalyst”) hereby provides its all-encompassing  
2 Reply in response to the Opposition arguments made by both the City of Fresno (“City”) and Real  
3 Party in Interest Authentic 559 LLC (“Authentic”)

#### 4 **I. RESPONSE TO CITY’S OPPOSITION**

5 The City in its Opposition makes two generalized arguments, neither of which actually refute  
6 anything contained in Catalyst’s Application: (1) Catalyst’s failure to bring this matter to the Court sooner  
7 somehow indicates a lack of exigent circumstances and/or strategic delay on its part which, standing  
8 alone, warrants the denial of the Application in its entirety; and (2) Catalyst must show substantial interim  
9 harm to obtain an injunction against the City (Authentic makes this same claim).

10 As for the former point, both the City and Authentic (who made a very similar argument) fail to  
11 provide critical context for the delay. While the action was filed on November 30, 2021, the City  
12 Manager did not issue Preliminary Approval to Authentic until December 17, 2021. Catalyst was (and  
13 still is) conducting an investigation into Authentic, and approximately *two months after* the action was  
14 filed Catalyst obtained information regarding certain of Mr. Huang’s disqualifying activities, which in  
15 turn triggered a larger investigation. In the interim time, the councilmember in District 1 appealed  
16 Authentic’s Preliminary Approval, and the City Council appeal was set for February 16, 2022.

17 After obtaining confirmation from the City’s counsel that it could participate in the appeal without  
18 violating the “no contact” provision of the Ordinance (FMC §9-3316(g)), Catalyst submitted an extensive  
19 written opposition to the City in the hopes of convincing the City Council to reject Authentic’s  
20 Preliminary Approval. *See* RJN Exhs. 11-13. On February 16, 2022, the City Council approved the  
21 permit for Authentic. Also in the interim time, and as noted by Authentic, Catalyst amended its Petition  
22 herein. As several parties served in early February had not yet responded to the Amended Petition  
23 (including TAT, 1261 Wishon and Crescent Conquest), Catalyst waited until the response deadline  
24 passed to ensure all parties who intended to appear did so *before* it moved ex parte (1261 Wishon  
25 appeared, but TAT and Crescent did not and Catalyst sought the entry of default against them).

26 Significantly, during that interim period Catalyst learned of additional cases – including criminal  
27 matters in both Orange County and Los Angeles County – connected to Mr. Huang. Catalyst added the  
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1 Orange County criminal matter to its Application *hours before its filing*, and because it was not able to  
2 definitively confirm (at this time) that the Los Angeles judicial matters also stemmed from the illegal  
3 operation of a dispensary, which it believes they did, it did not include those matters in its Application.  
4 And finally, Authentic admits it was aware of the scheduling of this ex parte hearing for nearly two  
5 weeks, received written of the ex parte notice 4 days prior to the hearing, and it received all of ex parte  
6 papers before 9:15 a.m. on March 28, 2022. So accusing Catalyst of not seeking a Preliminary Injunction  
7 sooner for things it was not yet even aware of (and that Authentic improperly concealed in its  
8 Application), as well as any claim Catalyst did not comply with the notice and service requirements for  
9 this Application, are both admittedly false and particularly disingenuous.

10 Further, Catalyst originally calendared this hearing for March 23, 2022, but moved it to March  
11 29<sup>th</sup> at the request of Authentic's counsel, who claimed she was unavailable for hearing on March 23rd.  
12 Catalyst then took advantage of the additional time to conduct further research, which yielded the  
13 discovery of the Orange County criminal case which it added into the Application, and which further  
14 supports the mandatory denial of Authentic's permit approval.

15 As for the required level of harm, the City admits the TRO/PI assessment is a sliding scale test,  
16 and as such where the likelihood of prevailing is strong, little or no relative harm must be shown. Opp.  
17 at 3. And as for seeking such relief against government entities, Catalyst fully addressed that issue in its  
18 Application, and explained in detail why that argument is without merit. See Application at 21 (citing  
19 the same case relied on by the City – *O'Connell v. Superior Court* (2006) 141 Cal. App. 4<sup>th</sup> 1452); City  
20 Opp. at 4. Notably, neither the City nor Authentic made any effort to address or rebut Catalyst's  
21 arguments or authorities on that point.

22 Simply put, and as noted in the Application itself, Catalyst is not attempting to prevent the City  
23 from carrying out its duties; rather, it is trying to force it to perform its mandatory duties. But until a  
24 final determination on its claims is made herein, Catalyst seeks to prevent the City from *de facto* gutting  
25 its case by altering the status quo and issuing a license to Authentic or otherwise permitting it to open  
26 and operate – a concern confirmed “in spades” by Authentic's submission of a declaration from Jonathan  
27 Avidor proclaiming how much Authentic has spent and intends to spend based on the City's present and  
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1 legal improper permit approval. Indeed, the Avidor Declaration merely underscores the point that the  
2 City Manager's Preliminary Approval determination and the City Council's appellate approval were in  
3 fact final determinations – since no one in their right mind would spend \$3+ million based on preliminary,  
4 interlocutory, non-final approval decisions, as Authentic (but not the City) falsely claims.

5 Again, and notably, the City does not directly challenge Catalyst's claim of interim harm – since  
6 the City itself knows full well Catalyst would be significantly harmed by the issuance of a license to  
7 Authentic prior to the final determination of this matter challenging its entitlement to such a license.

## 8 **II. RESPONSE TO AUTHENTIC'S OPPOSITION**

9 Most of Authentic's Opposition is predicated upon distortions of Catalyst's actual arguments and  
10 on audacious, self-serving and frankly unbelievable declaration testimony from Mr. Huang.

### 11 **A. Authentic Fails to Address the Fatal Fact that Brian Mitchell was not Just** 12 **Removed as an Owner, He was Replaced as Manager of Authentic With SGI**

13 First and foremost, the Court will look in vain in Authentic's Opposition for any mention of the  
14 fact Brian Mitchell was not just removed (allegedly) as an owner of Authentic, which it claims it was  
15 permitted to do, but that he also was *replaced* as Manager of Authentic *with another manager* – SGI  
16 Management. So even assuming *arguendo* Authentic's removal argument was valid and it indeed was  
17 entitled to remove owners and managers during the appeal process -- a claim that is in direct conflict with  
18 FMC Sections 9-3318 (all owners *and managers* must submit to a backgrounds check at the time of  
19 application submission), 9-3325(a) "Any time" there is a change in ownership the applicant must reapply  
20 and no changes will even be considered until permit renewal), and 9-3325(b) (must notify City within 15  
21 days of any change in registration status of information) – the fatal fact is and remains that it **added** a  
22 new manager and did not just remove an existing manager. *That* undeniably violated the Ordinance and  
23 the so-called "FAQ" cited by Authentic, and such violations *mandate* automatic permit denial or (if it  
24 already has been issued) revocation. *See* FMC §§9-3318(a)(7) (applicant *shall be prohibited from*  
25 *holding a permit* if it "violated any provision of this Article").

26 On this subject, Catalyst also notes Authentic is simply wrong that it was permitted under the  
27 Ordinance to remove owners during the application process. In support of its argument, Authentic cites  
28 *no provision of the Ordinance or Guidelines* promulgated by the City Manager. Instead, it purports to

1 rely on a “Frequently Asked Questions” document created by the City in December 2021 – long after the  
2 City Manager made his original selections and more than a month *after* TAT’s Preliminary Approval  
3 was rejected on appeal by the City Council on October 28, 2021. Of course, “FAQ” documents do not  
4 carry the weight of law like an Ordinance or Guidelines promulgated under proper authority by the City  
5 Manager. Simply put, the FAQ document is *meaningless*, as not even the City Manager can via  
6 regulation, rules or “FAQs”, alter, expand or limit the requirements of the Ordinance. *Alameda County*  
7 *Deputy Sheriff’s Assn v. Alameda County Employees’ Retirement Assn* (2020) 9 Cal. 5<sup>th</sup> 1032, 1060  
8 (agencies have no authority to act inconsistently with governing legislation or to pursue a practice  
9 contrary thereto); *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal. 3d 1379, 1389.

10 Hopefully it is now clear to the Court what actually occurred. TAT’s Preliminary Approval was  
11 rejected on October 28, 2021. At that point, as Authentic freely admits, it was the next highest scoring  
12 applicant and thus believed it was the “logical successor to preliminary approval.” Because Mitchell by  
13 that time *already had been criminally charged with fraud*, and because it also was fully aware of Huang’s  
14 disqualifying legal issues, Authentic *scrambled*, allegedly “notified” the City orally in early November  
15 that it would be removing Mitchell and Huang – the two biggest threats to their application – and  
16 somehow got the City to prepare the “FAQ” document on which it now relies. Why did they do that?  
17 Because they could not amend the ordinance in time, and apparently also could not get the City Manager  
18 to amend the Guidelines to permit the removal of owners/managers during the application process (an  
19 amendment everyone would have known was being made specifically to benefit Authentic). And by  
20 December 2021, most of the approvals had been completed, which begs the question: *who exactly was*  
21 *then asking the City about the removal of owners during the application process?* Only one – Authentic.

22 So to be clear, Authentic through strategic silence tacitly admits (as Catalyst claims) that it did  
23 not just remove Mitchell as an owner, it also removed him also as manager (albeit only after TAT’s  
24 approval was rejected) and replaced him with SGI. The *replacement* of Mitchell as manager with SGI  
25 was not permitted, neither the City nor Authentic argue it was permitted, and as noted in the Application  
26 Authentic, by doing so, it violated numerous provisions of the Ordinance which, as result, *mandates* the  
27 denial of its permit as it is *legally ineligible* to hold one. By focusing on the removal of owners, Authentic  
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1 has tried desperately to distract the Court’s attention *away* from its illegal replacement of Mitchell as  
2 manager with SGI. That replacement violated FMC Sections 9-3318(c), 9-3318(d), 9-3322(b), 9-  
3 3325(a), 9-3325(b),<sup>1</sup> the Guidelines at page 1 (prohibiting amendments or supplements after application  
4 submission), as well as the Guidelines at 3 (every manager must submit to background check). Those  
5 violations in turn separately triggered the *automatic denial* provisions of FMC Section 9-3318(a)(7).

6 **B. Tony Huang’s Ex Post Facto Explanations Are Simply Not Credible**

7 Nowhere in its Opposition does Authentic explain why it purported to remove Tony Huang in  
8 November 2021, immediately after it learned TAT’s permit approval had been rejected and thus it was  
9 the next logical successor for TAT. If Authentic was *completely unaware* of the legally disqualifying  
10 conduct by Mr. Huang, as it claims, they *why remove him*, and specifically why do it when it did?<sup>2</sup>

11 The answer is simple. Mr. Huang admittedly was aware of the Pasadena administrative  
12 proceedings, and Authentic knew his continued presence on the application would trigger automatic  
13 disqualification provisions under the Ordinance. Authentic also knew it had expressly and falsely denied  
14 the existence of any such administrative proceedings under oath in its application. In his supporting  
15 declaration, Mr. Huang admits he was aware of the Pasadena proceedings – indeed, he personally was  
16 challenging the City in those proceedings – but incredibly claims he did not believe they were applicable  
17 because he was merely the “property owner” and was not alleged to be the actual operator of the illegal  
18 dispensary on his property. As such, according to both Huang and Authentic, when Authentic falsely  
19 denied such proceedings, he did so “reasonably.” Opp. at 18; Huang Decl., ¶5. Nonsense.

20 Unfortunately for Authentic, the applicable question it lied about did not *require* that Huang be  
21 the *operator* of an illegal dispensary. In the application, Authentic was asked whether the Applicant  
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23 <sup>1</sup> FMC Section 9-3325 makes clear all notifications of alterations in the application *must be in writing*. Notably,  
24 while Mr. Avidor claims Authentic did so on November 3, 2021, see Avidor Decl., ¶3, he tellingly submitted  
25 no documents showing it in fact notified the City in writing of its removal and/or replacement of owners or  
managers, assuming it was entitled to even do so under the ordinance, and the appellate package provided the  
City Council had no such written notification. RJN Exhs. 11-13. As such, Mr. Avidor’s testimony appears  
false, and at a minimum is weak evidence that should be viewed with mistrust. Cal. Evid. Code§ 412.

26 <sup>2</sup> Notably, while Authentic claims it did so, it never presented any actual evidence that either Mitchell or Huang  
27 was in fact removed as owner/manager of the entity or as owners on Authentic’s application. Mr. Avidor  
discusses written notification to the City (which was not attached), but there are no documents provided  
28 showing their actual removal from either the company or from its application with the City.

1 (which as defined admittedly included Huang) had been the subject of *any administrative action* during  
2 the past three years. *See* RJN, Exh. 7 at 2. Huang admits he knew he had been, but *knowingly chose not*  
3 *disclose it* because he himself (or Authentic) read into the question a non-existent requirement that the  
4 administrative proceeding must arise from Huang personally operating the illegal dispensary. Authentic  
5 and Huang *lied*, because disclosing the truth would have triggered disqualification.

6 FMC §9-3318(a)(9) also mandates disqualification if the applicant (including owners) were  
7 noticed or cited for violation of any law “relating to the operation of a commercial cannabis activity,”  
8 which Huang had been). Nothing in that section requires the person noticed or cited to have been the  
9 operator of a dispensary, contrary to Huang and Authentic’s ex post facto re-writing of the provision. *See*  
10 Opp. at 18-19 (highlighting the phrase “*operation of a commercial cannabis activity*” while *not*  
11 *highlighting* the words “relating to the” that immediately precede the highlighted language). But in any  
12 event, the lie itself separately *mandates* disqualification. FMC §§9-3318(a)(7), (a)(8), (d).

13 As for the Orange County criminal case, Mr. Huang claims to have had no knowledge of that  
14 matter until yesterday, and then conveniently claims he did not attend the arraignment which is listed on  
15 the court’s docket as having been held in April 2021 (someone clearly appeared for him). He also claims  
16 he was unaware of charges stemming from illegal cannabis activities dating back to 2019 and early 2020,  
17 *prior to* the date Authentic submitted its application. RJN, Exhs. 19-20. Catalyst submits Authentic and  
18 Huang were well aware of both these matters and their disqualifying nature, which is why it failed to  
19 disclose them as required in its Application and why Authentic claims it removed Huang *immediately*  
20 upon learning TAT had been rejected by the City Council.

21 **C. Authentic’s Own Opposition Demonstrates Catalyst’s Irreparable Harm**

22 Next, in a clear and improper effort to try to convince the Court there is insufficient exigent  
23 circumstances/irreparable harm to grant the Application, Authentic spends nearly two pages of its  
24 Opposition citing standards for ex parte applications. *See* Application at 15 (discussing applicable  
25 standard); City Opp. at 3 (City claiming the standards for TROs and PIs are the same). But in its haste  
26 to demonstrate that it, and not Catalyst, is the one that actually would suffer irreparable harm, Authentic  
27 itself has demonstrated *exactly why* a TRO is necessary. Knowing its conduct requires mandatory  
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1 disqualification, Authentic is speeding “full steam ahead” with its dispensary so it later can strategically  
2 use the amount of money and time it has spent getting the license formally issued and its dispensary open  
3 and operating as a *de facto* defense to the underlying charges. *See generally* Avidor Decl.; Opp. at 13-  
4 14. Unfortunately, claiming you have spent upwards of \$3 million developing a dispensary license to  
5 which you legally are not entitled does not constitute irreparable harm.

6 **D. Authentic Falsely Claims the City Manager’s and City Council’s Final**  
7 **Determinations are “Preliminary” and “Non-Final”**

8 Next, the City attempts to convince the Court that the City Manager’s Preliminary Approval  
9 determination, and the City Council’s appellate approval, are preliminary, non-final “interlocutory”  
10 decisions because the application process is not yet officially over in District 1 until it “formally” receives  
11 the final available permit. That argument is nonsensical and should be summarily rejected by the Court.

12 First, as Authentic itself notes, finality can be expressed in the ordinance itself. Opp. at 15. Here,  
13 both the City Council and the City Manager made clear that the City Manager’s Preliminary Approval  
14 was a ***final administrative determination*** by *expressly stating it numerous times in writing*. *See* FMC  
15 §§9-3317(a), (c) (describing it as a “final determination” that can be appealed – the hallmark of finality);  
16 Guidelines at 5 (City Manager describing Preliminary Approval as a “final decision” and calling  
17 applicants who receive Preliminary Approvals “permit awardees,” again reflecting the finality of the  
18 decision). Similarly, there is no mechanism provided to administratively challenge the City Council’s  
19 appellate decision, because that decision too is final. FMC §9-3317(c).

20 Authentic attempts (poorly) to perform a “bait and switch” on the Court, focusing on the City’s  
21 written statement that Catalyst’s application theoretically remains “open” until the last permit in District  
22 1 is issued. Opp. at 15-16. To be clear, this Application does not address the City’s decision not to award  
23 it a permit, but rather the City Manager’s and City Council’s final decisions to ***approve*** a permit for  
24 Authentic. In other words, Authentic is attempting to draw the Court’s attention *away from its own*  
25 *permit approvals* by discussing determinations made or not made instead on Catalyst’s application. And  
26 on that issue, the fact Authentic must obtain further approvals from *other departments* before it formally  
27 receives an issued permit does not make the City Manager’s or the City Council’s challenged final  
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1 decisions vis-à-vis its application non-final, particularly where both the Ordinance and the Guidelines  
2 clearly and expressly state they are final determinations.


3 In its Opposition, Authentic argues that the City Manager can “change his mind” about the  
4 Preliminary Approval and decide after-the-fact to withdraw his prior approval, thus demonstrating that  
5 the application process is “still ongoing” and/or “in flux.” Opp. at 16-17. Authentic not surprisingly  
6 fails to cite any provision of the Ordinance or Guidelines that gives discretion to the City Manager to  
7 review or reverse his Preliminary Approval decision, absent a circumstance where an automatic  
8 disqualification provision is triggered.

9 **VI. CONCLUSION**

10 For all the foregoing reasons, the Court should grant the present Application and provide the relief  
11 contained in the Catalyst’s [Proposed] Order.

12 DATED: March 29, 2022

LAW OFFICE OF JEFF AUGUSTINI

13 By: 

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15 JEFF AUGUSTINI  
16 Attorneys for CATALYST – FRESNO LLC  
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1 **CERTIFICATE OF SERVICE**

2 I, **Jeff Augustini**, declare as follows:

3 I am employed in the County of Orange, State of California; I am over the age of eighteen years and am  
4 not a party to this action; my business address is 9160 Irvine Center Drive, Suite 200, Irvine, California 92618,  
in said County and State. On **March 29, 2022**, I served the following document(s):

5 **CATALYST-FRESNO LLC'S REPLY IN SUPPORT OF EX PARTE APPLICATION FOR**  
6 **ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE**  
**RE PRELIMINARY INJUNCTION**

7 on the following parties:

8 **SEE ATTACHED SERVICE LIST**

9 by the following means of service:

- 10 ☐ **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-  
11 mentioned date. I am familiar with the firm's practice of collection and processing correspondence  
12 for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of  
business. I am aware that on motion of party served, service is presumed invalid if postal  
cancellation date or postage meter date is more than one day after date of deposit for mailing in  
affidavit.
- 13 ☐ **BY PERSONAL SERVICE:** I emailed a true copy of this document to a messenger with  
14 instructions to personally deliver it to each person[s] named at the address[es] shown before 5:00 p.m.  
on the above-mentioned date.
- 15 ☐ **BY OVERNIGHT SERVICE:** On the above-mentioned date, I placed a true copy of the above  
16 mentioned document(s), together with an unsigned copy of this declaration, in a sealed envelope or  
17 package designated by FedEx with delivery fees paid or provided for, addressed to the person(s) as  
indicated above and deposited same in a box or other facility regularly maintained by FedEx or  
delivered same to an authorized courier or driver authorized by FedEx to receive documents.
- 18 ☒ **BY ELECTRONIC SERVICE:** On the above-mentioned date, I caused each such document to be  
19 transmitted by electronically mailing a true and correct copy through One Legal's electronic service  
function to the e-mail address(s) set forth above.
- 20 ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct. Executed on **March 29, 2022**, at Irvine, California.

22 

23 **Jeff Augustini**

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