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Plaintiff *In Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock and Minors T.S.
and S.S.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANDREW FLORES, an individual, AMY SHERLOCK, on her own behalf and on behalf of her minor children, T.S. and S.S.

Plaintiffs,

vs.

GINA M. AUSTIN, an individual, AUSTIN LEGAL GROUP APC, a California Corporation; LAWRENCE (AKA LARRY) GERACI, an individual; TAX & FINANCIAL CENTER, INC., a California Corporation; REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; MICHAEL ROBERT WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; ELYSSA KULAS, an individual; FERRIS & BRITTON APC, a California Corporation; DAVID DEMIAN, an individual, ADAM C. WITT, an individual, RISHI S. BHATT, an individual, FINCH, THORTON, and BAIRD, a Limited Liability Partnership, JAMES D. CROSBY, an individual; ABHAY SCHWEITZER, an individual and dba

Case No.: 20-CV-000656-JO-DEB

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON (1) MOTION TO VACATE ORDER OR, (2) ALTERNATIVELY, A STAY OF ACTION

VOLUME 1 OF 3

Complaint Filed: April 3, 2020

Judge: Hon. Jinsook Ohta

TECHNE; JAMES (AKA JIM) BARTELL, an individual; BARTELL & ASSOCIATES, a California Corporation; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; A-M INDUSTRIES, INC., a California Corporation; BRADFORD HARCOURT, an individual; ALAN CLAYBON, and individual; DOUGLAS A. PETTIT, an individual, JULIA DALZELL, an individual, MICHAEL TRAVIS PHELPS, an individual; THE CITY OF SAN DIEGO, a municipality; 2018FMO, LLC, a California Limited Liability Company; FIROUZEH TIRANDAZI, an individual; and DOES 1 through 50, inclusive,

Defendants.

Pursuant to Federal Rule of Civil Procedure 201(c)(2), Plaintiff's request that this Court take judicial notice of the following documents listed below and submitted herewith in support of their EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON (1) MOTION TO VACATE ORDER OR, (2) ALTERNATIVELY, A STAY OF ACTION.

RJN EX. NO.	DOCUMENT TITLE/DESCRIPTION
1.	California Business and Professions Code Section 26055.
2.	California Business and Professions Code Section 26057.
3.	DCC SOR page 9.
4.	California Business and Professions Code Section 26053.
5.	*Cal. Code Regs. tit. 16*, § 5032.
6.	*Engebretsen v. City of San Diego*, No. D068438, 2016 Cal. App. Unpub. LEXIS 8548, at *2-3 (Nov. 30, 2016)).
7.	*Polk v. Gontmakher*, No. 2:18-cv-01434-RAJ, 2019 U.S. Dist. LEXIS 146724, at *3 (W.D. Wash. Aug. 28, 2019) (*Polk I*).
8.	*Polk v. Gontmakher*, No. 2:18-cv-01434-RAJ, 2021 U.S. Dist. LEXIS 53569, at *5 (W.D. Wash. Mar. 22, 2021) (*Polk III*)).
9.	*City of San Diego v. Lawrence E. Geraci et al,* San Diego Superior Court Case No. 37-2014-000220897-CU-MC-CTL, Stipulation for Entry of Final Judgment and Permanent Injunction: Judgment Thereon (CCP Section 664.6).
10.	*City of San Diego v. Lawrence E. Geraci (Doe 1) et al,* San Diego Superior Court Case No. 37-2015-00004430-CU-MC-CTL, Stipulation for Entry of Final Judgment and Permanent Injunction: Judgment Thereon (CCP Section 664.6)
11.	*Darryl Cotton v. City of San Diego et al,* San Diego Superior Court Case No. 37-2017-00037675-CU-WM-CTL, Judgment after Order Denying Motion for Issuance of Peremptory Writ of Mandate. *(Cotton II).*
12.	*Larry Geraci v. Darryl Cotton et al,* San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL, Judgment on Jury Verdict. *(Cotton I).*

RJN EX. NO.	DOCUMENT TITLE/DESCRIPTION
13.	*City of San Diego v. Stonecrest Plaza, LLC et al*, San Diego Superior Court Case No. 37-2014-00009664-CU-MC-CTL, Stipulation for Entry of Final Judgment and Permanent Injunction: Judgment Thereon (CCP Section 664.6) (*The Razuki Judgment).*
14.	*Salam Razuki v. Ninus Malan*, San Diego Superior Court Case No. D075028, 2021 Cal. App. Unpub. LEXIS 1168 (Feb. 24, 2021). *(The Razuki Decision).*
15.	*Larry Geraci v. Darryl Cotton et al,* San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL, 12/07/17 Minute Order re Darryl Cotton's Ex Parte Application for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction. *(Cotton I).*
16.	*Darryl Cotton v. City of San Diego et al,* San Diego Superior Court Case No. 37-2017-00037675-CU-WM-CTL, 12/07/17 Minute Order re Darryl Cotton's Ex Parte Application For an Order Shortening Time to Hear Motion for Issuance of Peremptory Writ in the First Instance. *(Cotton II).*
17.	*Larry Geraci v. Darryl Cotton et al,* San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL, *(Cotton I)* and Related Cross Action*, Darryl Cotton v. City of San Diego et al,* No. 37-2017-00037675-CU-WM-CTL *(Cotton II),* Verified Memorandum of Points and Authorities in Support of Darryl Cotton's Response to (1) Motion by Plaintiff/Cross Defendant Larry Geraci and Cross Defendant Rebecca Berry to compel the Deposition of Darryl Cotton NS (2) Motion by Real Parties in Interest, Larry Geraci and Rebecca Berry, to Compel the Deposition of Darryl Cotton.
18.	*Larry Geraci v. Darryl Cotton et al,* San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL, *(Cotton I)* and Related Cross Action*, Darryl Cotton v. City of San Diego et al,* No. 37-2017-00037675-CU-WM-CTL

RJN EX. NO.	DOCUMENT TITLE/DESCRIPTION
	(Cotton II), Verified Memorandum of Points and Authorities in Support of Darryl Cotton's Response to (1) Motion by Plaintiff/Cross Defendant Larry Geraci and Cross Defendant Rebecca Berry to compel the Deposition of Darryl Cotton NS (2) Motion by Real Parties in Interest, Larry Geraci and Rebecca Berry, to Compel the Deposition of Darryl Cotton. Notice of Ruling After Hearing in *Cotton I* and Tentative Ruling in *Cotton II*.
19.	*Larry Geraci v. Darryl Cotton et al,* San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL, Verified Statement of Disqualification Pursuant to CCP § 170.1(a)(6)(A)(iii and CCP § 170.1 (a)(6)(B). *(Cotton I).*
20.	*Larry Geraci v. Darryl Cotton et al,* San Diego Superior Court, Case No. 37-2017-00010073-CU-BC-CTL, Order Striking Defendant's Statement of Disqualification of Judge Joel R. Wohlfeil. *(Cotton I).*
21.	Cotton's May 5, 2017, email to Tirandazi that the Berry Application be transferred pursuant to *Engerbretsen*
22.	*Darryl Cotton v. City of San Diego et al,* San Diego Superior Court Case No. 37-2017-00037675-CU-WM-CTL, Respondent/Defendant City of San Diego's Answer to Petitioner's Verified Petitioner's Verified Petition for Alternative Writ of Mandate. *(Cotton II)*
23.	*Larry Geraci v. Darryl Cotton et al,* No. 37-2017-00010073-CU-BC-CTL, 06/27/19 Minute Order Denying Attorney Flores's Motions to Intervene and Stay the Case. *(Cotton I).*
24.	*Sherlock, et al. v. Austin, et al.*, San Diego Superior Court, Case No. 37-2021-0050889, First Amended Complaint for (1) Conspiracy to Monopolize in Violation of the Cartwright Act (B&P Cofe §§§ 16720 *et seq*.); (2) Conversion; (3) Civil Conspiracy; (4) Declaratory Relief; (5) Unfair Competition; and

RJN EX. NO.	DOCUMENT TITLE/DESCRIPTION
	Unlawful Business Practices (B&P Code § 17200 *et seq.*). (Referred to as *Cotton VII* in Exhibit A).
25.	*Sherlock, et al. v. Austin, et al.*, San Diego Superior Court, Case No. 37-2021-0050889, Defendant Stephen Lake's Notice of Demurrer, Demurrer, and Points and Authorities in Support of Demurrer to Complaint. (*Cotton VII).*
26.	*Sherlock, et al. v. Austin, et al.*, San Diego Superior Court, Case No. 37-2021-0050889, Plaintiff's Opposition to Defendant Stephen Lake's Demurrer to Plaintiff's First Amended Complaint. (*Cotton VII).*
27.	*Sherlock, et al. v. Austin, et al.*, San Diego Superior Court, Case No. 37-2021-0050889, Defendant Stephen Lake's Reply in Support of Demurrer to Complaint. (*Cotton VII).*
28.	*Sherlock, et al. v. Austin, et al.*, San Diego Superior Court, Case No. 37-2021-0050889, 08/19/22 Minute Order re Lake Demurrer. (*Cotton VII).*
29.	March 17, 2016, The City of San Diego, Development Services Department, (DSD) Transfers Ownership of the 8863 Balboa Ave. CUP to Amy Sherlock.
30.	*Bradford Harcourt et al v, Salam Razuki et al,* San Diego Superior Court Case No, 37-2017-00020661-CU-CO-CTL, Complaint for (1) Breach of Joint Venture Agreement; (2) Breach of Lease Agreement; (3) Anticipatory Breach of Oral Contract; (4) Breach of the Implied Covenant of Good Faith and Fair Dealing; (5) Breach of Contract with Respect to a Third Party Beneficiary; (6) Promissory Estoppel; (7) False Promise; (8) Fraud; (9) Intentional Interference with Contractual Relations; (10) Interference with Prospective Economic Advantages; (11) Breach of Fiduciary Duty; (12) Civil Conspiracy; (13) Declaratory Relief; AND (14) Injunctive Relief. *(Harcourt Relief).*

RJN EX. NO.	DOCUMENT TITLE/DESCRIPTION
31.	*Larry Geraci v. Darryl Cotton et al,* No. 37-2017-00010073-CU-BC-CTL, Defendant/Cross Complainant's Memorandum of Points and Authorities in Support of Motion for New Trial. *(Cotton I*)
32.	*Larry Geraci v. Darryl Cotton et al,* No. 37-2017-00010073-CU-BC-CTL, Plaintiff/Cross Defendants' Memorandum of Points and Authorities in Opposition to Defendant/Cross Complainant's Motion for New Trial.
33.	*Larry Geraci v. Darryl Cotton et al,* No. 37-2017-00010073-CU-BC-CTL, Defendant/Cross Complainant Reply in Support of Motion for New Trial.
34.	October 25, 2019, Motion for New Trial Transcript.
35.	*Larry Geraci v. Darryl Cotton et al,* San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL, 10/25/19 Minute Order re Defendant/Cross Complainant Motion for New Trial. *(Order)*
36.	*Sherlock, et al. v. Austin, et al.*, San Diego Superior Court, Case No. 37-2021-0050889, Defendants Gina M. Austin and Austin Legal Group's Notice of Motion and Special Motion to Strike Plaintiffs' First Amended Complaint Pursuant to Code of Civil Procedure Section 425.16 (Anti-SLAPP Statute).
37.	*Sherlock, et al. v. Austin, et al.*, San Diego Superior Court, Case No. 37-2021-0050889, Plaintiff's Opposition to Gina M. Austin and Austin Legal Group's Special Motion to Strike Plaintiffs' First Amended Complaint.
38.	*Sherlock, et al. v. Austin, et al.*, San Diego Superior Court, Case No. 37-2021-0050889, Defendants Gina M. Austin and Austin Legal Group's Reply to Plaintiffs' Opposition to Motion to Strike Plaintiffs' First Amended Complaint Pursuant to Code of Civil Procedure Section 425.16 (Anti-SLAPP Statute).

RJN EX. NO.	DOCUMENT TITLE/DESCRIPTION
39.	*Sherlock, et al. v. Austin, et al.*, San Diego Superior Court, Case No. 37-2021-0050889, 08/12/22 Minute Order re Defendants' Gina Lake and Austin Legal Group's Motion to Strike Plaintiff's First Amended Complaint.
40.	"Tirandazi Background Check Email"

Dated: October 9, 2022 THE LAW OFFICE OF ANDREW FLORES

By /s/ Andrew Flores
Attorney for Plaintiffs
AMY SHERLOCK, T.S. S.S

RJN-1

Cal Bus & Prof Code § 26055

Deering's California Codes are current with urgency legislation through Chapter 425 of the 2022 Regular Session.

Deering's California Codes Annotated > BUSINESS & PROFESSIONS CODE (§§ 1 — 30047) > Division 10 Cannabis (Chs. Chapter 1 — 26) > Chapter 5 Licensing (§§ 26050 — 26059)

§ 26055. Issuance of license to qualified applicants; Effect of revocation; Alteration of premises; Effect of local ordinance or regulation; Proof of compliance with local jurisdiction; Denial of license; Exemption from CEQA; Fee for certain project proposals

(a) The department may issue state licenses only to qualified applicants.

(b) Revocation of a state license issued under this division shall terminate the ability of the licensee to operate pursuant to that license within California until a new license is obtained.

(c) A licensee shall not change or alter the premises in a manner which materially or substantially alters the premises, the usage of the premises, or the mode or character of business operation conducted from the premises, from the plan contained in the diagram on file with the application, unless and until written approval by the department has been obtained. For purposes of this section, material or substantial physical changes of the premises, or in the usage of the premises, shall include, but not be limited to, a substantial increase or decrease in the total area of the licensed premises previously diagrammed, or any other physical modification resulting in substantial change in the mode or character of business operation.

(d) The department shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with *Section 26200*.

(e) An applicant may voluntarily provide proof of a license, permit, or other authorization from the local jurisdiction verifying that the applicant is in compliance with the local jurisdiction. An applicant that voluntarily submits a valid, unexpired license, permit, or other authorization from the local jurisdiction shall be presumed to be in compliance with all local ordinances unless the department is notified otherwise by the local jurisdiction. The department shall notify the contact person for the local jurisdiction of any applicant that voluntarily submits a valid, unexpired license, permit, or other authorization from the local jurisdiction.

(f)

(1) A local jurisdiction shall provide to the department a copy of any ordinance or regulation related to commercial cannabis activity and the name and contact information for the person who will serve as the contact for the department regarding commercial cannabis activity within the jurisdiction. If a local jurisdiction does not provide a contact person, the department shall assume that the clerk of the legislative body of the local jurisdiction is the contact person.

(2) Whenever there is a change in a local ordinance or regulation adopted pursuant to *Section 26200* or a change in the contact person for the jurisdiction, the local jurisdiction shall provide that information to the department.

(g)

(1) The department shall deny an application for a license under this division for a commercial cannabis activity that the local jurisdiction has notified the department is prohibited in accordance with subdivision (f). The department shall notify the contact person for the local jurisdiction of each application denied due to the local jurisdiction's indication that the commercial cannabis activity for which a license is sought is prohibited by a local ordinance or regulation.

(2) Prior to issuing a state license under this division for any commercial cannabis activity, if an applicant has not provided adequate proof of compliance with local laws pursuant to subdivision (e):

(A) The department shall notify the contact person for the local jurisdiction of the receipt of an application for commercial cannabis activity within their jurisdiction.

(B) A local jurisdiction may notify the department that the applicant is not in compliance with a local ordinance or regulation. In this instance, the department shall deny the application.

(C) A local jurisdiction may notify the department that the applicant is in compliance with all applicable local ordinances and regulations. In this instance, the department may proceed with the licensing process.

(D) If the local jurisdiction does not provide notification of compliance or noncompliance with applicable local ordinances or regulations, or otherwise does not provide notification indicating that the completion of the local permitting process is still pending, within 60 business days of receiving the inquiry from the department submitted pursuant to subparagraph (A), the department shall make a rebuttable presumption that the applicant is in compliance with all local ordinances and regulations adopted in accordance with *Section 26200*, except as provided in subparagraphs (E) and (F).

(E) At any time after expiration of the 60-business-day period set forth in subparagraph (D), the local jurisdiction may provide written notification to the department that the applicant or licensee is not in compliance with a local ordinance or regulation adopted in accordance with *Section 26200*. Upon receiving this notification, the department shall not presume that the applicant or licensee has complied with all local ordinances and regulations adopted in accordance with *Section 26200*, and may commence disciplinary action in accordance with Chapter 3 (commencing with *Section 26030*). If the department does not take action against the licensee before the time of the renewal of the license, the license shall not be renewed until and unless the local jurisdiction notifies the department that the licensee is once again in compliance with local ordinances.

(F) A presumption by the department pursuant to this paragraph that an applicant has complied with all local ordinances and regulations adopted in accordance with *Section 26200* shall not prevent, impair, or preempt the local government from enforcing all

applicable local ordinances or regulations against the applicant, nor shall the presumption confer any right, vested or otherwise, upon the applicant to commence or continue operating in any local jurisdiction except in accordance with all local ordinances or regulations.

(3) For purposes of this section, "notification" includes written notification or access by the department to a local jurisdiction's registry, database, or other platform designated by a local jurisdiction, containing information specified by the department, on applicants to determine local compliance.

(h) Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with *Section 21000) of the Public Resources Code* does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with *Section 21000) of the Public Resources Code*. This subdivision shall become inoperative on July 1, 2021.

(i) A local or state public agency may charge and collect a fee from a person proposing a project pursuant to subdivision (a) of *Section 21089 of the Public Resources Code*.

History

Adopted by voters, Prop. 64 § 6.1, effective November 9, 2016. Amended *Stats 2017 ch 27 § 41 (SB 94)*, effective June 27, 2017; *Stats 2017 ch 253 § 4 (AB 133)*, effective September 16, 2017; *Stats 2018 ch 92 § 22 (SB 1289)*, effective January 1, 2019; *Stats 2019 ch 40 § 6 (AB 97)*, effective July 1, 2019; *Stats 2021 ch 70 § 43 (AB 141)*, effective July 12, 2021.

End of Document

RJN-2

Cal Bus & Prof Code § 26057

§ 26057. Denial of application

(a) The department shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division.

(b) The department may deny the application for licensure or renewal of a state license if any of the following conditions apply:

(1) Failure or inability to comply with the provisions of this division, any rule or regulation adopted pursuant to this division, or any requirement imposed to protect natural resources, including, but not limited to, protections for instream flow, water quality, and fish and wildlife.

(2) Conduct that constitutes grounds for denial of licensure under Chapter 2 (commencing with *Section 480*) of Division 1.5, except as otherwise specified in this section and *Section 26059*.

(3) Failure to provide information required by the department.

(4) The applicant, owner, or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the department determines that the applicant, owner, or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the department shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant or owner, and shall evaluate the suitability of the applicant, owner, or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the department shall include, but not be limited to, the following:

(A) A violent felony conviction, as specified in subdivision (c) of *Section 667.5 of the Penal Code*.

(B) A serious felony conviction, as specified in subdivision (c) of *Section 1192.7 of the Penal Code*.

(C) A felony conviction involving fraud, deceit, or embezzlement.

(D) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

(E) A felony conviction for drug trafficking with enhancements pursuant to Section *11370.4* or *11379.8 of the Health and Safety Code*.

(5) Except as provided in subparagraphs (D) and (E) of paragraph (4) and notwithstanding Chapter 2 (commencing with *Section 480*) of Division 1.5, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.

(6) The applicant, or any of its officers, directors, or owners, has been subject to fines, penalties, or otherwise been sanctioned for cultivation or production of a controlled substance on public or private lands pursuant to Section *12025* or *12025.1 of the Fish and Game Code*.

(7) The applicant, or any of its officers, directors, or owners, has been sanctioned by the department, the Bureau of Cannabis Control, the Department of Food and Agriculture, or the State Department of Public Health or a city, county, or city and county for unauthorized commercial cannabis activities, has had a license suspended or revoked under this division in the three years immediately preceding the date the application is filed with the department.

(8) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with *Section 6001) of Division 2 of the Revenue and Taxation Code*.

(9) Any other condition specified in law.

(c) The withdrawal of an application for a license after it has been filed with the department shall not deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any ground.

History

Adopted by voters, Prop. 64 § 6.1, effective November 9, 2016. Amended *Stats 2017 ch 27 § 45 (SB 94)*, effective June 27, 2017; *Stats 2018 ch 92 § 23 (SB 1289)*, effective January 1, 2019; *Stats 2021 ch 70 § 44 (AB 141)*, effective July 12, 2021.

End of Document

RJN-3

BUREAU OF CANNABIS CONTROL
CALIFORNIA CODE OF REGULATIONS TITLE 16, DIVISION 42
MEDICINAL AND ADULT-USE CANNABIS REGULATION

January 15, 2019

ADDENDUM TO THE FINAL STATEMENT OF REASONS

BACKGROUND

On December 7, 2017 the Bureau of Cannabis Control (Bureau) adopted emergency regulations to clarify and make specific licensing and enforcement criteria for commercial cannabis businesses under the Medicinal and Adult-Use Regulation and Safety Act (MAUCRSA or the Act). On June 6, 2018 the Bureau readopted the emergency regulations. On July 13, 2018 the Bureau issued a Notice of Proposed Rulemaking and began a 45-day comment period on the proposed regulations. The Bureau held public hearings on August 7, 2018, August 14, 2018, and August 27, 2018 in Oakland, Los Angeles, and Sacramento respectively. The Bureau submitted the proposed regulations package for review by the California Office of Administrative Law (OAL) on December 3, 2018.

The Bureau hereby incorporates this addendum as part of the final rulemaking package. Unless a specific basis is stated for any modification to the purpose, necessity, and rationale for each adoption as initially stated in the Final Statement of Reasons, the purpose, necessity, and rationale for each adoption of the regulations as set forth in the Final Statement of Reasons continues to apply to the regulations as adopted. The modified purpose, necessity, and rationale for the proposed text of the regulations are summarized below. Additionally, the Bureau has made non-substantive grammatical and format changes for accuracy, consistency and clarity.

MODIFIED PURPOSE, NECESSITY, AND RATIONALE FOR EACH ADOPTION

§ 5001. Temporary Licenses.

The reference section has been amended to remove a reference to section 26050.1 of the Business and Professions Code. This is necessary for accuracy.

§ 5010.3 Preparation of CEQA Environmental Documents for Applicant

The title of this section has been changed from “Preparation of CEQA Environmental Documents by Applicant” to “Preparation of CEQA Environmental Documents for Applicant” for accuracy and clarity.

§ 5020. Renewal of License

Proposed subsection (c) provides that a licensee may submit a license renewal form for 30 calendar days after the license expires. Licensees are expected to renew their licenses in a timely manner and licensees that routinely submit their renewal forms late may increase the

Regulation Section	45-Day Comment Number(s) and Page Location	Summary of 45-Day Comments	Bureau Response to 45-Day Comments
5001/5002/General	19.1 (p.24)	Commenter objects to the paperwork-oriented minutiae about every aspect of a cannabis business and states that has caused huge parts of the existing black-market cannabis industry to be unable or unwilling to participate in the legal market. Commenter states that he believes the reasoning behind the detailed regulations is that the public wants safety around cannabis, but the reasoning is faulty.	The Bureau disagrees with this comment. The Act requires that the Bureau only issue licenses to qualified applicants and that the Bureau deny an application if either the applicant or the premises do not qualify for licensure. (Bus. & Prof. Code sections 26055 and 26057.) In order determine if an applicant is qualified for licensure the Act requires that an application contain certain information about the premises, the owner, and the commercial cannabis business and its operations. (Bus. & Prof. Code section 26051.5.) The Bureau cannot waive the requirements of the Act and must fulfill its duty under the Act. Lastly, the Act requires that the protection of the public shall be the highest priority for all licensing authorities in exercising licensing, regulatory, and disciplinary functions under the Act. (Bus. & Prof. Code section 26011.5.) The Act also requires licensing authorities to make and prescribe reasonable rules and regulations as necessary to implement, administer, and enforce their duties under the Act. The regulations as drafted implement the Act and provide clear rules based on the best evidence available to ensure the protection of the public health and safety.
General	26 (p.35)	Commenter states that completion of license applications and regulatory compliance tasks may require specialized skills that are beyond the reasonable capabilities of a licensee or applicant. Commenter requests that the Bureau make a provision to allow for representation of applicants and licensees by third parties. Commenter requests the Bureau create a form like CDTFA and other agencies to	The Bureau disagrees with this comment. While the Bureau has not promulgated a form like those attached to the comment, nothing in the Bureau's regulations or the Act prohibits an applicant from receiving assistance with their application, including having a third-party professional advising them on how to complete their application or preparing certain documents that must be uploaded with the application. The Act defines an applicant as an owner applying for a state license. (Bus. & Prof. Code section 26001(c).) Because the Act specifically requires that the applicant be an owner, the Bureau

RJN-4

Cal Bus & Prof Code § 26053

Deering's California Codes are current with urgency legislation through Chapter 425 of the 2022 Regular Session.

Deering's California Codes Annotated > BUSINESS & PROFESSIONS CODE (§§ 1 — 30047) > Division 10 Cannabis (Chs. Chapter 1 — 26) > Chapter 5 Licensing (§§ 26050 — 26059)

§ 26053. Conduct of cannabis activity between licensees; Limitation on licensure for person holding state testing laboratory license; Multiple licenses; License for each location

(a) All commercial cannabis activity shall be conducted between licensees, except as otherwise provided in this division.

(b)

(1) A person that holds a state testing laboratory license under this division is prohibited from licensure for any other activity, except testing, as authorized under this division. A person that holds a state testing laboratory license shall not employ an individual who is also employed by any other licensee that does not hold a state testing laboratory license.

(2) A person with a financial interest in a state testing laboratory license under this division is prohibited from holding a financial interest in any other type of cannabis license.

(c) Except as provided in subdivision (b), a person may apply for and be issued more than one license under this division.

(d) Each applicant or licensee shall apply for, and if approved, shall obtain, a separate license for each location where it engages in commercial cannabis activity.

History

Adopted by voters, Prop. 64 § 6.1, effective November 9, 2016. Amended *Stats 2017 ch 27 § 37 (SB 94)*, effective June 27, 2017; § 3; Amended *Stats 2021 ch 70 § 40 (AB 141)*, effective July 12, 2021.

End of Document

RJN-5

16 CCR 5032

This document is current through Register 2022, No. 37, September 16, 2022

CA - Barclays Official California Code of Regulations > TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS > DIVISION 42. BUREAU OF CANNABIS CONTROL > CHAPTER 1. ALL BUREAU LICENSEES > ARTICLE 3. LICENSING

§ 5032. Commercial Cannabis Activity

(a) All commercial cannabis activity shall be conducted between licensees. Licensed retailers and licensed microbusinesses authorized to engage in retail sales may conduct commercial cannabis activity with customers in accordance with Chapter 3 of this division.

(b) Licensees shall not conduct commercial cannabis activities on behalf of, at the request of, or pursuant to a contract with any person who is not licensed under the Act.

(c) Licensees may conduct business with other licensees irrespective of the M-designation or A-designation on their licenses.

(d) Licensed distributors or licensed microbusinesses authorized to engage in distribution shall only transport and sell cannabis goods designated as "For Medical Use Only," pursuant to the requirements prescribed by the State Department of Public Health in regulation, to M-designated retailers or M-designated microbusinesses authorized to engage in retail sales.

(e) Products designated as "For Medical Use Only," pursuant to requirements prescribed by the State Department of Public Health in regulation, shall only be sold to medicinal customers by M-designated retailers or M-designated microbusinesses authorized to engage in retail sales.

Statutory Authority

AUTHORITY:

Note: Authority cited: *Section 26013, Business and Professions Code*. Reference: Sections *26001*, *26013* and *26053, Business and Professions Code*.

History

HISTORY:

1. New section filed 12-7-2017 as a deemed emergency pursuant to *Business and Professions Code section 26013(b)(3)*; operative 12-7-2017 (Register 2017, No. 49). A Certificate of Compliance must be transmitted to OAL by 6-5-2018 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 6-4-2018 as an emergency, including amendment of section heading and subsection (b) and new subsections (c) and (d); operative 6-6-2018 pursuant to *Government Code section 11346.1(d)* (Register 2018, No. 23). Pursuant to *Business and Professions Code section 26013(b)(3)*, this is a deemed emergency and the emergency regulations remain in effect for 180 days. A Certificate of Compliance must be transmitted to OAL by 12-3-2018 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 6-4-2018 order, including amendment of section heading and section, transmitted to OAL 12-3-2018 and filed 1-16-2019; amendments operative 1-16-2019 pursuant to *Government Code section 11343.4(b)(3)* (Register 2019, No. 3).

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RJN-6

Engebretsen v. City of San Diego

Court of Appeal of California, Fourth Appellate District, Division One

November 30, 2016, Opinion Filed

D068438

Reporter
2016 Cal. App. Unpub. LEXIS 8548 *; 2016 WL 6996218

RICK ENGEBRETSEN, Plaintiff and Respondent, v. CITY OF SAN DIEGO, Defendant; RADOSLAV KALLA et al., Real Parties in Interest and Appellants.

Prior History: **[*1]** APPEAL from a judgment of the Superior Court of San Diego County, No. 37-2015-00017734-CU-WM-CTL, Joel M. Pressman, Judge.

Disposition: Affirmed.

Counsel: Sharif Faust Lawyers, Matthew J. Faust for Real Parties in Interest and Appellants.

Finch, Thornton and Baird, David S. Demian, for Plaintiff and Respondent.

No appearance by Defendant.

Judges: HALLER, Acting P. J.; AARON, J., IRION, J. concurred.

Opinion by: HALLER, Acting P. J.

Opinion

Plaintiff Rick Engebretsen sought a writ of mandate to compel the City of San Diego (City) to recognize him as the sole applicant for a conditional use permit (CUP) to operate a medical marijuana consumer cooperative (MMCC) on his property (the Property) and process the application accordingly. Engebretsen alleged he was the sole record owner and interest holder of the Property throughout the application process. Although real party in interest Radoslav Kalla was listed as the applicant for the CUP, Engebretsen alleged that Kalla was acting on Engebretsen's behalf as an agent, Kalla never had an independent legal right to use the Property, and Engebretsen had since revoked Kalla's agency. The City did not oppose Engebretsen's writ petition.

The trial court granted the writ, and in a statement of decision, **[*2]** discussed its basis for finding that (1) Kalla was acting as Engebretsen's agent in pursuing the CUP; (2) Kalla did not have any independent authority to pursue it or legal interest in the Property; (3) Engebretsen, as the principal, terminated Kalla's agency and became the only proper applicant; and (4) the City had a ministerial duty to process the application in Engebretsen's name.

On appeal, Kalla and real party in interest Matthew Compton contend the trial court's principal-agent finding is not supported by sufficient evidence, mandamus was not a proper remedy, and the court did not address and consider their equitable estoppel defense in the statement of decision. We conclude substantial evidence supports the court's factual finding of an agency relationship,

Engebretsen established a proper basis for a writ of mandate, and the court implicitly rejected Kalla and Compton's estoppel defense. Therefore, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Engebretsen's Property and the Initial Application for a CUP to Operate an MMCC

Engebretsen's Property, on Carroll Road in San Diego, is located in a City district where up to four properties within the district may be used to **[*3]** operate medical marijuana consumer cooperatives. Engebretsen was the sole record owner of the Property in fee simple. In early 2014, Engebretsen retained Paul Britvar to submit an application on Engebretsen's behalf for a CUP to operate an MMCC and seek out prospective parties to lease or purchase the Property. The scope of Engebretsen and Britvar's principal-agent relationship is well documented and undisputed in this case.

The Land Development Code (LDC), within the San Diego Municipal Code (SDMC), governs the City's CUP application process and sets forth the individuals who are authorized to file an application. (SDMC, § 112.0102.) On an initial CUP application form, Britvar certified he was the "Authorized Agent of Property Owner." On a required ownership disclosure form, he listed Engebretsen as the sole owner and interest holder in the Property. Compton, as vice president of Bay Front LLC, signed a separate form naming the company as the financially responsible party to cover the City's costs in processing the application.

Engebretsen Authorizes Kalla to Continue the CUP Application Process

Up until August 2014, Kalla and Compton were dealing with Britvar over lease and/or purchase negotiations, **[*4]** but Kalla and Compton wished to negotiate directly with Engebretsen. Engebretsen began communicating primarily with Kalla. Thereafter, Engebretsen terminated Britvar's agency and orally authorized Kalla as his agent to continue the CUP application process while they attempted to negotiate a lease or purchase agreement for the Property. In October 2014, unknown to Engebretsen, Britvar assigned his "interest" in the CUP application to Kalla.

On October 23, 2014, Kalla filed a revised application form with the City for the CUP to operate an MMCC on the Property (the Application). As Britvar had done, Kalla marked himself as the "Authorized Agent of Property Owner" in the "Applicant" box on the Application; Engebretsen is listed on the same form as the "Property Owner." Kalla signed the Application and certified the correctness of the supplied information. Kalla did not indicate he was a property owner, tenant, or "other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application." With the Application, Kalla also filed an updated ownership disclosure form signed by Engebretsen, again showing Engebretsen as the sole owner and **[*5]** interest holder in the Property.

Between November 2014 and February 2015, Kalla and Engebretsen negotiated directly with each other on possible terms for the lease or purchase of the Property. Engebretsen sent Kalla a letter of intent for the lease of the Property (First LOI). The First LOI provides: "Tenant agrees to pay for all costs and fees related to obtaining the CUP." Further, the First LOI states: "Lease Agreement shall be contingent upon Landlord obtaining CUP and Tenant obtaining any other governmental permits and licenses required for Tenant's Use."[1] Kalla did not sign the First LOI.

In response to the First LOI, Kalla provided Engebretsen with a letter of intent for a lease and

[1] Within the exchanged documents, the "Landlord" or "Seller" is defined as Engebretsen and the "Tenant" or "Buyer" is defined as Kalla, Compton, and/or a company under their control.

purchase option (Second LOI). Kalla's Second LOI states: "Lease Agreement shall be contingent upon Tenant on behalf of Landlord obtaining CUP and Tenant obtaining any other governmental permits and licenses required for Tenant's Use." Engebretsen did not sign the Second LOI. The parties continued to exchange multiple letters **[*6]** of intent and proposed leases in good faith, but could not reach an agreement. In general, Engebretsen preferred to structure the deal as a lease while Kalla and Compton preferred an outright purchase/sale.

Engebretsen Revokes Kalla's Agency, and the City Refuses to Process the Application in Engebretsen's Name

Because negotiations with Kalla reached an impasse, Engebretsen contacted the City in March 2015 to be recognized as the sole applicant on the Application. The City responded that it did not consider Engebretsen to be the applicant. Engebretsen next met with a City representative to discuss removing Kalla's name from the Application, but the City refused. Subsequently, Engebretsen repeatedly met or communicated with City representatives, including through his counsel, to convey that he was the sole owner and interest holder in the Property, he had terminated Kalla's agency, Kalla had no independent legal right to pursue the Application, and Engebretsen would be the financially responsible party. The City continuously refused to follow Engebretsen's instructions.

In April 2015, the City informed Engebretsen that Compton had designated Kalla as the new financially responsible party **[*7]** for the Application, against Engebretsen's wishes. The City would not accept Engebretsen as the financially responsible party for the Application without Kalla's signature. Later that month, the City's hearing officer approved the Application for issuance of a CUP, with Kalla listed as the applicant and prospective permit holder. The Application was the fourth and last one approved by the City for a CUP to operate an MMCC in the district where the Property is located. A third party appealed the Application approval decision for unrelated reasons, and the hearing on that appeal was set to be heard by the City's Planning Commission on June 25, 2015.

Engebretsen's Petition for Writ of Mandate

In May 2015, Engebretsen filed a verified petition for writ of mandate directing the City to: (1) recognize Engebretsen as the sole applicant on the Application and (2) process the Application with Engebretsen as the sole applicant. The court set the matter for trial on an expedited basis. The City filed a statement of nonopposition to Engebretsen's petition for writ of mandate.

On June 16, 2015, the court conducted a trial and heard testimony from Kalla and Compton. Kalla testified he and Compton "believed **[*8]** [they] had a lease contract on the property" based on Britvar's representations, but admitted that negotiations with Engebretsen "fell completely apart" and the parties never actually executed a lease agreement. Compton confirmed he and Kalla had no lease agreement on the Property and they agreed to be financially responsible for the Application because they thought they "were going to be able to lease" the Property. The City took no position at trial.

After closing argument, the court gave its tentative ruling from the bench, granting Engebretsen's petition for a writ of mandate. As part of the ruling, Engebretsen would have to pay the City the amounts Kalla and Compton had paid for the Application's processing, so the City could then reimburse Kalla and Compton. In making its ruling, the court noted the undisputed facts that Engebretsen was the record owner of the Property and Kalla and Compton did not enter into a lease or purchase agreement for the Property. The court commented that Kalla and Compton had not shown

they had "any interest in [the] property whatsoever," and had "moved forward absent a legally binding agreement under any circumstances." Kalla and Compton requested a **[*9]** statement of decision on several disputed issues, and the court directed counsel for Engebretsen to draft a proposed statement. Following the trial, the court issued a minute order summarizing its ruling.

On June 23, 2015, Kalla and Compton filed a notice of appeal. The next day, the court ordered that the notice of appeal would not operate as a stay of execution on the judgment and writ to be issued.

On July 20, 2015, the court filed its statement of decision (SOD). Kalla and Compton did not object to the SOD, propose any revisions, or otherwise inform the trial court that the SOD failed to address an issue. On August 18, 2015, the court rendered its judgment, which attached and incorporated the SOD by reference, and issued the writ of mandate.[2]

DISCUSSION

I. *Standard of Review*

When an appellate court reviews a trial court's judgment on a petition for a writ of mandate, it applies the substantial evidence test to the trial court's findings of fact and independently reviews the trial court's **[*10]** conclusions on questions of law, which include the interpretation of a statute and its application to the facts. (*Klajic v. Castaic Lake Water Agency (2001) 90 Cal.App.4th 987, 995, 109 Cal. Rptr. 2d 454* (*Klajic*).) The substantial evidence test applies to both express and implied findings of fact. (*Rey Sanchez Investments v. Superior Court (2016) 244 Cal.App.4th 259, 262, 197 Cal. Rptr. 3d 575*.) "'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value." (*Roddenberry v. Roddenberry (1996) 44 Cal.App.4th 634, 651, 51 Cal. Rptr. 2d 907*.) When reviewing the trial court's factual findings, we ask whether it was "reasonable for a trier of fact to make the ruling in question in light of the whole record." (*Id. at p. 652*.)

II. *The Trial Court Properly Issued a Writ of Mandate*

Kalla and Compton contest the court's finding of an agency relationship, the propriety of mandamus relief, and the court's implied rejection of their equitable estoppel defense.

A. *The Court's Finding Regarding the Existence of an Agency Relationship Is Supported by Substantial Evidence*

Kalla and Compton argue insufficient evidence supported the trial court's factual finding that Kalla acted as Engebretsen's agent in pursuing a CUP application and the court placed undue weight on the application form submitted by Kalla to the City.

"An agent is one who represents another, called the principal, in dealings with third persons." **[*11]** (*Civ. Code, § 2295*.) "Any person may be authorized to act as an agent, including an adverse party to a transaction." (*Michelson v. Hamada (1994) 29 Cal.App.4th 1566, 1579, 36 Cal. Rptr. 2d 343*.) Agency may be implied from the circumstances and conduct of the parties. (*Ibid.*) Indicia of an agency relationship include the agent's power to alter legal relations between the principal and others and the principal's right to control the agent's conduct. (*Vallely Investments, L.P. v. BancAmerica Commercial Corp. (2001) 88 Cal.App.4th 816, 826, 106 Cal. Rptr. 2d 689*.) "The existence of an agency relationship is a factual question for the trier of fact whose determination must be affirmed on appeal if supported by substantial evidence." (*Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp. (2007) 148 Cal.App.4th 937, 965, 56 Cal. Rptr. 3d 177* (*Garlock*).)

Here, substantial evidence supports the court's

[2] We denied Kalla and Compton's request for judicial notice dated February 19, 2016, of a separate lawsuit filed by Engebretsen against them. Accordingly, that matter is not part of the record on appeal.

finding that Kalla was acting as Engebretsen's agent in completing the Application. Kalla certified on the Application form that he was Engebretsen's authorized agent, thereby representing and binding Engebretsen in dealings with the City regarding the CUP application. Kalla had no other basis or authority to complete a CUP application for the Property—he was neither a property owner nor a legal interest holder. In addition, Engebretsen declared under penalty of perjury that he orally authorized Kalla as his agent to continue the application process initiated by agent Britvar. Other evidence suggests **[*12]** that Kalla understood the CUP was for Engebretsen's benefit as the Property owner until Kalla executed a lease or purchase agreement. Furthermore, Engebretsen consistently believed he was able to terminate Kalla's agency with respect to the Application at any time, as a principal is entitled to do. (See *Malloy v. Fong (1951) 37 Cal.2d 356, 370, 232 P.2d 241* ["The power of the principal to terminate the services of the agent gives him the means of controlling the agent's activities."].) Kalla and Compton essentially ask us on appeal to reweigh or draw alternative inferences from the evidence, which we may not do. (*Garlock, supra, 148 Cal.App.4th at p. 966*.) The court's agency finding was reasonable.

B. *Engebretsen Established a Proper Basis for Mandamus Relief*

Kalla and Compton contend that Engebretsen did not establish a basis for mandamus relief because the City did not have a ministerial duty to recognize Engebretsen as the applicant and Engebretsen possessed a plain, speedy, and adequate legal remedy.

1. *Writs of Mandate Generally*

Under *Code of Civil Procedure section 1085, subdivision (a)*, the trial court may issue a writ of mandate "to any . . . person . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use **[*13]** and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that . . . person."

"A traditional writ of mandate under *Code of Civil Procedure section 1085* is a method for compelling a public entity to perform a legal and usually ministerial duty. [Citation.] The trial court reviews an administrative action pursuant to *Code of Civil Procedure section 1085* to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. [Citations.] 'Although mandate will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner, it will lie to correct abuses of discretion. [Citation.] In determining whether an agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld.'" (*Klajic, supra, 90 Cal.App.4th at p. 995*, fn. omitted; *California Public Records Research, Inc. v. County of Stanislaus (2016) 246 Cal.App.4th 1432, 1443, 201 Cal. Rptr. 3d 745*.)

2. *The City Had a Ministerial Duty*

Kalla and Compton argue the City did not have ministerial duty in this case because **[*14]** (1) there is no City procedure for amending a CUP application, (2) allowing amendments may allow "dangerous or untrustworthy" people to operate an MMCC, and (3) a writ of prohibition was the appropriate remedy to stop the City from processing the Application in Kalla's name. We reject these arguments.

To obtain mandamus relief, Engebretsen was required to demonstrate that the City had a "clear, present, ministerial duty" to perform the requested action. (*Alliance for a Better Downtown Millbrae v. Wade (2003) 108 Cal.App.4th 123, 129, 133 Cal.*

Rptr. 2d 249.) "A ministerial duty is an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists." (*Ibid.*) An act is not ministerial when it involves the exercise of discretion or judgment. (*County of San Diego v. State of California (2008) 164 Cal.App.4th 580, 596, 79 Cal. Rptr. 3d 489*.)

Courts have concluded that city and county employees are engaged in ministerial acts when ascertaining whether procedural requirements have been met. (E.g., *Billig v. Voges (1990) 223 Cal.App.3d 962, 968-969, 273 Cal. Rptr. 91* [clerk correctly rejected referendum petition because it did not comply with Elections Code]; *Palmer v. Fox (1953) 118 Cal.App.2d 453, 455-456, 258 P.2d 30* [compelling county engineer to process building permit application where plaintiffs submitted all required paperwork]; see also *Shell Oil Co. v. City and County of San Francisco (1983) 139 Cal.App.3d 917, 921, 189 Cal. Rptr. 276* (*Shell Oil*) [compelling city to process a lessee's application for a conditional use permit because lessee was **[*15]** an "owner" under the city's relevant ordinance].)

In this case, Engebretsen showed that the City must process and issue applications for conditional use permits consistent with relevant laws and procedures.[3] (SDMC, § 112.0102, subds. (a) & (b).) The City's ordinances provide that the persons "deemed to have the authority to file an application [are]: [¶] (1) The *record owner* of the real property that is the subject of the permit, map, or other matter; [¶] (2) The property owner's authorized agent; or [¶] (3) Any other person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application." (SDMC, §§ 112.0102, subd. (a), 113.0103 [defining *applicant*].) The City's ordinances thus ensure that conditional use permits will only be granted to individuals having the right to use the property in the manner for which the permit is sought. (SDMC, §§ 112.0102, subd. (a), 113.0103; see *Shell Oil, supra, 139 Cal.App.3d at p. 921*; see generally 66A Cal.Jur.3d Zoning And Other Land Controls § 427 [summarizing California cases].) Any other interpretation would raise serious constitutional questions concerning property rights. (*Shell Oil, at p. 921*; see also *County of Imperial v. McDougal (1977) 19 Cal.3d 505, 510, 138 Cal. Rptr. 472, 564 P.2d 14* [holding that conditional use permits "run with the land"].)

Engebretsen demonstrated he was the only person who possessed the right to use the Property, Kalla never independently possessed such a right, Kalla was acting for Engebretsen's benefit in completing the Application (*Civ. Code, § 2330*), and Engebretsen had terminated Kalla's agency. Under the circumstances, the City had a ministerial duty to process the CUP application for Engebretsen, the Property owner.

Regarding Kalla and Compton's remaining arguments, there is no evidence in the record that requiring the City to process the Application in Engebretsen's name would lead to dangerous MMCC operations.[4] Finally, Kalla and Compton have not cited any authority to support their position that a writ of prohibition was an available remedy. A writ of prohibition "arrests the proceedings of any tribunal, corporation, board, or person *exercising judicial functions*, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." (*Code Civ. Proc., § 1102*, italics added.) A writ of prohibition may not restrain ministerial or

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[3] "[A] conditional use permit grants an owner **[*16]** permission to devote a parcel to a use that the applicable zoning ordinance allows not as a matter of right but only upon issuance of the permit." (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne (2007) 157 Cal.App.4th 997, 1006, 68 Cal. Rptr. 3d 882*.)

[4] As Engebretsen also points out, a different section of the SDMC requires background checks for people operating or working at an MMCC (SDMC, § 42.1507), which is unaffected by provisions of the LDC.

nonjudicial **[*17]** acts, including an administrative decision to grant a permit. (*Whitten v. California State Board of Optometry (1937) 8 Cal.2d 444, 445, 65 P.2d 1296*; *F.E. Booth Co. v. Zellerbach (1929) 102 Cal.App. 686, 687, 283 P. 372*.) The trial court did not err in concluding the City had a ministerial duty to process the Application in Engebretsen's name.

3. *Engebretsen Did Not Have an Adequate Legal Remedy*

Kalla and Compton next argue that Engebretsen possessed an adequate legal remedy of filing and/or pursuing a new CUP application, precluding mandamus relief.[5] This argument lacks merit.

A writ of mandate generally will not issue when the plaintiff possesses a "plain, speedy and adequate remedy in the ordinary course of law." (*Powers v. City of Richmond (1995) 10 Cal.4th 85, 114, 40 Cal. Rptr. 2d 839, 893 P.2d 1160*.) Here, Engebretsen showed he did not possess such a remedy. The City refused **[*18]** to process the Application in Engebretsen's name, and it approved the Application with Kalla named as the prospective permit holder. Also, the City would not be issuing any more conditional use permits to operate MMCC's within the same city district. (SDMC, § 141.0614.) If the CUP was granted to Kalla, Engebretsen had no other immediate means to obtain a CUP for his Property from the City. Moreover, Engebretsen showed that the parties needed a determination in time to respond to an unrelated appeal of the City's decision to approve the Application. The court did not err in granting mandamus relief.

C. *The Court Did Not Commit Reversible Error in Connection with Kalla and Compton's Equitable Estoppel Defense*

At trial, Kalla and Compton opposed the issuance of a writ of mandate under a theory of equitable estoppel. Specifically, their counsel argued that Engebretsen was estopped from obtaining the CUP in his name because Kalla and Compton relied on Engebretsen's promises to sign a lease. Under *Code of Civil Procedure section 632*, Kalla and Compton requested a statement of decision on the court's "finding and reasoning as to the application of equitable estoppel" in the case.

The SOD did not explicitly address equitable estoppel, but instead **[*19]** sets forth in significant detail the factual background supporting the court's implicit rejection of the theory. Kalla and Compton did not object to the SOD below or argue it was deficient for failing to address an issue. On appeal, they contend the trial court erred in not addressing their equitable estoppel defense in its SOD and that the evidence supports their defense. We conclude they waived the argument regarding a deficient SOD and substantial evidence supports the court's implied rejection of their defense.

1. *Kalla and Compton Waived or Forfeited Their Claim Regarding the Court's Failure to Address Equitable Estoppel in the Statement of Decision*

In a court trial, "first, a party must request a statement of decision as to specific issues to obtain an explanation of the trial court's tentative decision (*§ 632*); second, if the court issues such a statement, a party claiming deficiencies therein must bring such defects to the trial court's attention to avoid implied findings on appeal favorable to the judgment (*§ 634*)." (*In re Marriage of Arceneaux (1990) 51 Cal.3d 1130, 1134, 275 Cal. Rptr. 797, 800 P.2d 1227* (*Arceneaux*).) *Code of Civil Procedure section 634* "clearly refers to a party's need to point out deficiencies in the trial court's statement of decision as a condition of avoiding such implied findings, rather **[*20]** than merely to request such a statement initially as provided in *section 632*." (*Arceneaux, at p. 1134*.) "[I]f a party

[5] Kalla and Compton also assign error to the trial court's omitting to address the issue of alternative legal remedies in its SOD. As we discuss, *infra*, they waived the argument by failing to object to the SOD or pointing out the alleged deficiency to the trial court. Regardless, any error was harmless because Engebretsen sufficiently stated a basis to obtain writ relief.

does not bring such deficiencies to the trial court's attention, that party waives the right to claim on appeal that the statement was deficient in these regards, and hence the appellate court will imply findings to support the judgment." (*Id. at pp. 1133-1134*.)

Here, Kalla and Compton did not bring any alleged deficiencies in the SOD to the trial court's attention. If they had, the SOD could have been corrected and made part of the record on appeal. Accordingly, Kalla and Compton have waived or forfeited their argument relating to the court's alleged failure to address equitable estoppel, and we will imply all necessary findings to support the court's judgment. (*Agri-Systems, Inc. v. Foster Poultry Farms (2008) 168 Cal.App.4th 1128, 1135, 85 Cal. Rptr. 3d 917*.)

2. *The Court's Implied Rejection of Kalla and Compton's Equitable Estoppel Defense Is Supported by Substantial Evidence*

Substantial evidence supports the court's implied rejection of Kalla and Compton's equitable estoppel defense. (See *Acquire II, Ltd. v. Colton Real Estate Group (2013) 213 Cal.App.4th 959, 970, 153 Cal. Rptr. 3d 135* ["the appellate court applies the doctrine of implied findings and presumes the trial court made all necessary findings supported by substantial evidence"].) "'Generally speaking, four elements must be present in order to apply the **[*21]** doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.'" (*Golden Gate Water Ski Club v. County of Contra Costa (2008) 165 Cal.App.4th 249, 257, 80 Cal. Rptr. 3d 876* (*Golden Gate*).) The defense does not apply when even one element is missing. (*Ibid.*)

Here, it was virtually undisputed that the parties engaged in arm's-length, good faith negotiations for several months, but they simply could not reach a suitable lease or purchase agreement. The record supports that Kalla and Compton pursued the Application despite knowing they had not yet signed any agreement with Engebretsen, the Property owner. As a result, Kalla and Compton were not "ignorant of the true facts." (*Golden Gate, supra, 165 Cal.App.4th at p. 259*.) Similarly, Engebretsen only sought to be recognized as the sole applicant when he realized that the parties could not reach a mutually acceptable agreement. Consequently, Kalla and Compton failed to establish that equitable estoppel prevented the City from recognizing Engebretsen as the CUP applicant.

DISPOSITION

The judgment **[*22]** is affirmed. Engebretsen shall recover his costs on appeal.

HALLER, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.

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RJN-7

Polk v. Gontmakher

United States District Court for the Western District of Washington

August 28, 2019, Decided; August 28, 2019, Filed

Case No. 2:18-cv-01434-RAJ

Reporter
2019 U.S. Dist. LEXIS 146724 *; 2019 WL 4058970

EVAN JAMES POLK, a/k/a JAMES MOZROK, an individual, Plaintiff, v. LEONID GONTMAKHER, and JANE DOE GONTMAKHER, husband and wife, and the marital community composed thereof; CANNEX CAPITAL HOLDINGS, INC., a Canadian corporation; NORTHWEST CANNABIS SOLUTIONS, d/b/a NWCS425.COM, a Washington cannabis licensee; JOHN DOES 1-10 and JANE DOES 1-10, husbands and wives, and the martial communities composed thereof; and XYC LLCs 1-10, Defendants.

Subsequent History: Dismissed by, Without prejudice *Polk v. Gontmakher, 2020 U.S. Dist. LEXIS 89872, 2020 WL 2572536 (W.D. Wash., May 21, 2020)*

Dismissed by *Polk v. Gontmakher, 2021 U.S. Dist. LEXIS 53569 (W.D. Wash., Mar. 22, 2021)*

Core Terms

cannabis, license, federal law, allegations, marijuana

Counsel: **[*1]** For Evan James Polk, a married man as his separate property also known as James Mozrok, Plaintiff: Steven Joseph Gordon, BELLEVUE, WA.

For Leonid Gontmakher, also known as Leo Gontmakher, Jane Doe Gontmakher, husband and wife, and the marital community composed thereof, Defendants: Stacia N Lay, Venkat Balasubramani, FOCAL PLLC, SEATTLE, WA.

For Cannex Capital Holdings Inc, a Canadian corporation, Northwest Cannabis Solutions, a Washington cannabis licensee doing business as NWCS425.com, Defendants: Daniel J. Oates, Kent Michael Fandel, MILLER NASH GRAHAM & DUNN LLP (SEA), SEATTLE, WA.

Judges: Honorable Richard A. Jones, United States District Judge.

Opinion by: Richard A. Jones

Opinion

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter comes before the Court on Defendant Leonid Gontmakher's Motion to Dismiss (Dkt. # 6). Defendants Cannex Capital Holdings, Inc. and Northwest Cannabis Solutions d/b/a NWCS425.com join the Motion. Dkt. # 14. Having considered the submissions of the parties, the relevant portions of the record, and the applicable law, the Court finds that oral argument is unnecessary. For the reasons stated below, Defendant's Motion is GRANTED.

I. BACKGROUND

The following is taken from Plaintiff's Complaint **[*2]** (Dkt. # 1), which is assumed to be true for the purposes of this motion to dismiss.[1] *Sanders v. Brown, 504 F.3d 903, 910 (9th Cir. 2007)*. Plaintiff Evan James Polk ("Mr.

[1] As an initial matter, the Court notes that Mr. Polk submitted a factual declaration in support of his Opposition. Dkt. # 16. A court typically cannot consider evidence beyond the four corners of the complaint, without converting the motion to a motion for summary judgment. *Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001)*. There are two exceptions to this rule: (1) the court may consider a document to which the complaint refers if the document is central to the party's claims and its authenticity is not in question, and (2) the court may consider evidence subject to judicial notice. *Id. at 688*. Because Mr. Polk's declaration does not meet either of the exceptions, the Court declines to consider the declaration in ruling on this motion.

Polk" or "Plaintiff") and Defendant Leonid Gontmakher ("Mr. Gontmakher" or "Defendant") are in the cannabis business. In late 2012 or early 2013, Mr. Gontmakher approached Mr. Polk about starting a cannabis growing and processing business in Washington. Dkt. # 1 at ¶ 3.2. At the time, Washington voters had just passed Initiative 502 regulating the production, distribution, and sale of marijuana and removing related state criminal and civil penalties—codified in the *Washington Uniform Controlled Substances Act* as *RCW § 69.50*.

Under *RCW § 69.50*, individuals or entities intending to produce, process, or distribute cannabis must obtain either a producer/processor license or a retail license from the Liquor and Cannabis Board ("LCB"). *RCW § 69.50.325*. There are, of course, restrictions to who can obtain these licenses. Individuals with a criminal history are generally restricted from obtaining a license if they have 8 or more points under the LCB's point system. *WAC 314-55-040*. Felony convictions are assigned 12 points, while misdemeanors are assigned 4 or 5 points. *WAC 314-55-040(1)*. During the application **[*3]** process, prior state or federal convictions may be considered for mitigation on an individual basis. *WAC 314-55-040(3)(b)*.

Mr. Polk and Mr. Gontmakher initially launched their growing operation from a relative's house. Dkt. # 1 at ¶ 3.4. After the new cannabis regulations were promulgated, they decided to purchase a producer/processor license. Dkt. # 1 at ¶ 3.3. But they soon ran into a problem. Prior to starting the business with Mr. Gontmakher, Mr. Polk pled guilty to possession of marijuana with intent to dispense in Virginia (a felony), and possession of drugs in Nevada (a misdemeanor). Dkt. # 7, Exs. A—C. As such, he was prohibited from obtaining a producer or processor license under *WAC 314-55-040(3)(b)*, absent mitigation of his criminal convictions. After Mr. Polk and Mr. Gontmakher realized that Mr. Polk could not be listed as an owner of their licensed business, Northwest Cannabis Solutions ("NWCS"), they agreed to move forward with the business anyway, orally agreeing to be "equal partners" in their cannabis growing venture. *Id.* at ¶ 3.5. They ultimately agreed that Mr. Polk would receive a 30% ownership interest in NWCS, Mr. Gontmakher would receive a 30% interest, and the **[*4]** other investors would receive a 40% interest. *Id.* at ¶ 3.10. Mr. Polk's "interest" would be held in the name of one of Mr. Gontmakher's relatives. *Id.*

Over time, Mr. Polk explored different ways to make his interest in NWCS legal. Dkt. # 1 at ¶¶ 3.11-3.12, 3.17, 3.20. Although these efforts were unsuccessful, he stayed with NWCS at Mr. Gontmakher's encouragement. Dkt. # 1 at ¶ 3.16. Finally, in September 2015, Mr. Polk left NWCS. Dkt. # 1 at ¶ 3.28. After his departure, Mr. Gontmakher disputed what he owed Mr. Polk for his alleged interest in NWCS. *Id.* at ¶ 3.29. As a result, in 2018, Mr. Polk sued Mr. Gontmakher, NWCS, and the other investors in NWCS, alleging, among other things, that he is entitled to an ownership interest in NWCS and past and future profits. Dkt. # 1. Mr. Gontmakher moves to dismiss causes of action one to four, and cause of action six, for failure to state a claim under *Fed. R. Civ. P. 12(b)(6)*.

II. LEGAL STANDARD

A. *FRCP 12(b)(6)*

Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a complaint for failure to state a claim. The court must assume the truth of the complaint's factual allegations and credit all reasonable inferences arising from those allegations. *Sanders v. Brown, 504 F.3d 903, 910 (9th Cir. 2007)*. A court "need not accept as true conclusory allegations that are **[*5]** contradicted by documents referred to in the complaint." *Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008)*. Instead, the plaintiff must point to factual allegations that "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 568, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*. If the plaintiff succeeds, the complaint avoids dismissal if there is "any set of facts consistent with the allegations in the complaint" that would entitle the plaintiff to relief. *Id. at 563*; *Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*.

III. DISCUSSION

A. Federal Law Precludes Enforcement of the Agreement

In the absence of a federal statute or treaty, a federal court sitting in diversity generally applies the law of the forum state. *Erie R. R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938)*. But where it is alleged that an agreement violates a federal statute, courts look to federal law. *See Kelly v. Kosuga, 358 U.S. 516, 519, 79 S. Ct. 429, 3 L. Ed. 2d 475 (1959)*

("the effect of illegality under a federal statute is a matter of federal law"). Contracts that violate a federal statute are illegal and unenforceable. *Kaiser Steel Corp. v. Mullins, 455 U.S. 72, 102 S. Ct. 851, 70 L. Ed. 2d 833 (1982)*. Here, Mr. Polk alleges that he is entitled to an ownership interest in NWCS. Dkt. # 1 at ¶¶ 3.37, 3.40, 3.42, 3.44. Under the *Federal Controlled Substances Act ("CSA")*, however, the production, distribution, and sale of marijuana remains illegal. *21 U.S.C. § 801 et seq.* So any agreement giving Mr. Polk an equity interest in NWCS is illegal under federal law.

Mr. Polk argues that the CSA is not an absolute **[*6]** bar to enforcement where the requested remedy does not require a violation of the CSA. Dkt. # 17 at 10 (citing *Bassidji v. Goe, 413 F.3d 928 (9th Cir. 2005)* ("Nuanced approaches to the illegal contract defense, taking into account such considerations as the avoidance of windfalls or forfeitures, deterrence of illegal conduct, and relative moral culpability, remain viable in federal court ... as long as the relief ordered does not mandate illegal conduct."). The Court agrees. However, Mr. Polk's characterization that he is only requesting monetary damages is inconsistent with his Complaint. Mr. Polk is not requesting monetary damages that can be obtained legally. He is asserting an equity interest in NWCS and a right to its past and future profits. Dkt. # 1 at ¶¶ 3.37, 3.40, 3.42, 3.44. NWCS is a company that produces/processes marijuana. Dkt. # 1 at ¶ 1.4. Thus, awarding Mr. Polk an ownership interest in, or profits from, NWCS contravenes federal law.

B. Washington Law Precludes Enforcement of the Agreement

Even if the Court could enforce the agreement under federal law, Mr. Polk's agreement is also illegal under Washington law. He admits as much. Dkt. # 1 at ¶ 3.7. Still, he argues, the Court should enforce the agreement because **[*7]** he is the less "morally guilty" party under the doctrine of *in pari delicto*. Dkt. # 17 at 13-16. At its core, *in pari delicto* is based on public policy considerations such as whether the court's decision is likely to prevent future illegal transactions and whether the public good will be enhanced. *Golberg v. Sanglier, 96 Wash. 2d 874, 883, 639 P.2d 1347*, *amended*, *96 Wash. 2d 874, 639 P.2d 1347 (1982)* ("Ultimately, a decision as to whether a party is *in pari delicto* relies on public policy considerations ... [t]he fundamental concern that should guide a court in making its decision is whether the 'public good (will be) enhanced.'").

Here, the Court finds that the public good is not served by enforcing this agreement. *Id. at 883*. The purpose of Initiative 502 was to take "marijuana out of the hands of illegal drug organizations and bring it under a tightly regulated, state-licensed system ..." *Haines-Marchel v. Washington State Liquor & Cannabis Bd., 1 Wn. App. 2d 712, 406 P.3d 1199, 1218 (Wash. Ct. App. 2017)*, *review denied*, *191 Wn.2d 1001, 422 P.3d 913 (2018)*, *cert. denied*, *139 S. Ct. 1383, 13 S. Ct. 1383, 203 L. Ed. 2d 617 (2019)*. Enforcing Mr. Polk's agreement undermines this purpose by allowing him to profit from an illegal agreement intentionally forged outside the bounds of the state regulatory system.

The Court sympathizes with Mr. Polk's plight. He helped to build a successful business from the ground up and is now being deprived of the fruits of his labors. Dkt. # 1 at ¶ 3.34. But this **[*8]** is a crisis of his own making. Mr. Polk's interest in NWCS was illegal from the very beginning and he knew it. Dkt. # 1 at ¶ 3.7. As he notes, there was a legal path to obtain the license, he just chose not to pursue it. Dkt. # 17 at 4. The Court will not enforce an illegal contract. Because Mr. Polk's claims are based on an unenforceable agreement, the Court finds that he has failed to state a claim under *Fed. R. Civ. P. 12(b)(6)*.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss for Failure to State a Claim is **GRANTED**. Dkt. # 6. Plaintiff shall have **ten days** from the date of this Order to file an amended pleading or the Court will dismiss this action.

DATED this 28th day of August, 2019.

/s/ Richard A. Jones

The Honorable Richard A. Jones

The Honorable Richard A. Jones United States District Judge

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RJN-8

Polk v. Gontmakher

United States District Court for the Western District of Washington

August 28, 2019, Decided; August 28, 2019, Filed

Case No. 2:18-cv-01434-RAJ

Reporter
2019 U.S. Dist. LEXIS 146724 *; 2019 WL 4058970

EVAN JAMES POLK, a/k/a JAMES MOZROK, an individual, Plaintiff, v. LEONID GONTMAKHER, and JANE DOE GONTMAKHER, husband and wife, and the marital community composed thereof; CANNEX CAPITAL HOLDINGS, INC., a Canadian corporation; NORTHWEST CANNABIS SOLUTIONS, d/b/a NWCS425.COM, a Washington cannabis licensee; JOHN DOES 1-10 and JANE DOES 1-10, husbands and wives, and the martial communities composed thereof; and XYC LLCs 1-10, Defendants.

Subsequent History: Dismissed by, Without prejudice *Polk v. Gontmakher, 2020 U.S. Dist. LEXIS 89872, 2020 WL 2572536 (W.D. Wash., May 21, 2020)*

Dismissed by *Polk v. Gontmakher, 2021 U.S. Dist. LEXIS 53569 (W.D. Wash., Mar. 22, 2021)*

Core Terms

cannabis, license, federal law, allegations, marijuana

Counsel: **[*1]** For Evan James Polk, a married man as his separate property also known as James Mozrok, Plaintiff: Steven Joseph Gordon, BELLEVUE, WA.

For Leonid Gontmakher, also known as Leo Gontmakher, Jane Doe Gontmakher, husband and wife, and the marital community composed thereof, Defendants: Stacia N Lay, Venkat Balasubramani, FOCAL PLLC, SEATTLE, WA.

For Cannex Capital Holdings Inc, a Canadian corporation, Northwest Cannabis Solutions, a Washington cannabis licensee doing business as NWCS425.com, Defendants: Daniel J. Oates, Kent Michael Fandel, MILLER NASH GRAHAM & DUNN LLP (SEA), SEATTLE, WA.

Judges: Honorable Richard A. Jones, United States District Judge.

Opinion by: Richard A. Jones

Opinion

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter comes before the Court on Defendant Leonid Gontmakher's Motion to Dismiss (Dkt. # 6). Defendants Cannex Capital Holdings, Inc. and Northwest Cannabis Solutions d/b/a NWCS425.com join the Motion. Dkt. # 14. Having considered the submissions of the parties, the relevant portions of the record, and the applicable law, the Court finds that oral argument is unnecessary. For the reasons stated below, Defendant's Motion is GRANTED.

I. BACKGROUND

The following is taken from Plaintiff's Complaint **[*2]** (Dkt. # 1), which is assumed to be true for the purposes of this motion to dismiss.[1] *Sanders v. Brown, 504 F.3d 903, 910 (9th Cir. 2007)*. Plaintiff Evan James Polk ("Mr.

[1] As an initial matter, the Court notes that Mr. Polk submitted a factual declaration in support of his Opposition. Dkt. # 16. A court typically cannot consider evidence beyond the four corners of the complaint, without converting the motion to a motion for summary judgment. *Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001)*. There are two exceptions to this rule: (1) the court may consider a document to which the complaint refers if the document is central to the party's claims and its authenticity is not in question, and (2) the court may consider evidence subject to judicial notice. *Id. at 688*. Because Mr. Polk's declaration does not meet either of the exceptions, the Court declines to consider the declaration in ruling on this motion.

Polk" or "Plaintiff") and Defendant Leonid Gontmakher ("Mr. Gontmakher" or "Defendant") are in the cannabis business. In late 2012 or early 2013, Mr. Gontmakher approached Mr. Polk about starting a cannabis growing and processing business in Washington. Dkt. # 1 at ¶ 3.2. At the time, Washington voters had just passed Initiative 502 regulating the production, distribution, and sale of marijuana and removing related state criminal and civil penalties—codified in the *Washington Uniform Controlled Substances Act* as *RCW § 69.50*.

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III. DISCUSSION

A. Federal Law Precludes Enforcement of the Agreement

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("the effect of illegality under a federal statute is a matter of federal law"). Contracts that violate a federal statute are illegal and unenforceable. *Kaiser Steel Corp. v. Mullins, 455 U.S. 72, 102 S. Ct. 851, 70 L. Ed. 2d 833 (1982)*. Here, Mr. Polk alleges that he is entitled to an ownership interest in NWCS. Dkt. # 1 at ¶¶ 3.37, 3.40, 3.42, 3.44. Under the *Federal Controlled Substances Act ("CSA")*, however, the production, distribution, and sale of marijuana remains illegal. *21 U.S.C. § 801 et seq.* So any agreement giving Mr. Polk an equity interest in NWCS is illegal under federal law.

Mr. Polk argues that the CSA is not an absolute **[*6]** bar to enforcement where the requested remedy does not require a violation of the CSA. Dkt. # 17 at 10 (citing *Bassidji v. Goe, 413 F.3d 928 (9th Cir. 2005)* ("Nuanced approaches to the illegal contract defense, taking into account such considerations as the avoidance of windfalls or forfeitures, deterrence of illegal conduct, and relative moral culpability, remain viable in federal court ... as long as the relief ordered does not mandate illegal conduct."). The Court agrees. However, Mr. Polk's characterization that he is only requesting monetary damages is inconsistent with his Complaint. Mr. Polk is not requesting monetary damages that can be obtained legally. He is asserting an equity interest in NWCS and a right to its past and future profits. Dkt. # 1 at ¶¶ 3.37, 3.40, 3.42, 3.44. NWCS is a company that produces/processes marijuana. Dkt. # 1 at ¶ 1.4. Thus, awarding Mr. Polk an ownership interest in, or profits from, NWCS contravenes federal law.

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Here, the Court finds that the public good is not served by enforcing this agreement. *Id. at 883*. The purpose of Initiative 502 was to take "marijuana out of the hands of illegal drug organizations and bring it under a tightly regulated, state-licensed system ..." *Haines-Marchel v. Washington State Liquor & Cannabis Bd., 1 Wn. App. 2d 712, 406 P.3d 1199, 1218 (Wash. Ct. App. 2017)*, *review denied*, *191 Wn.2d 1001, 422 P.3d 913 (2018)*, *cert. denied*, *139 S. Ct. 1383, 13 S. Ct. 1383, 203 L. Ed. 2d 617 (2019)*. Enforcing Mr. Polk's agreement undermines this purpose by allowing him to profit from an illegal agreement intentionally forged outside the bounds of the state regulatory system.

The Court sympathizes with Mr. Polk's plight. He helped to build a successful business from the ground up and is now being deprived of the fruits of his labors. Dkt. # 1 at ¶ 3.34. But this **[*8]** is a crisis of his own making. Mr. Polk's interest in NWCS was illegal from the very beginning and he knew it. Dkt. # 1 at ¶ 3.7. As he notes, there was a legal path to obtain the license, he just chose not to pursue it. Dkt. # 17 at 4. The Court will not enforce an illegal contract. Because Mr. Polk's claims are based on an unenforceable agreement, the Court finds that he has failed to state a claim under *Fed. R. Civ. P. 12(b)(6)*.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss for Failure to State a Claim is **GRANTED**. Dkt. # 6. Plaintiff shall have **ten days** from the date of this Order to file an amended pleading or the Court will dismiss this action.

DATED this 28th day of August, 2019.

/s/ Richard A. Jones

The Honorable Richard A. Jones

The Honorable Richard A. Jones United States District Judge

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RJN-9

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. THE TREE CLUB COOPERATIVE, INC., a California corporation; JONAH McCLANAHAN, an individual; JOHN C. RAMISTELLA, an individual; JL 6th AVENUE PROPERTY, LLC, a California limited liability company; LAWRENCE E. GERACI, also known as LARRY GERACI, an individual; JEFFREY KACHA, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2014-00020897-CU-MC-CTL JUDGE: RONALD S. PRAGER STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6] IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and by Marsha B. Kerr, Deputy City Attorney, and Defendants JL 6th AVENUE PROPERTY, LLC, a California limited liability company; LAWRENCE E. GERACI, aka LARRY GERACI, an individual; and JEFFREY KACHA, an individual, appearing by and through their attorney, Joseph S. Carmellino, enter into the following Stipulation for Entry of Final Judgment in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered:

1. This Stipulation for Entry of Final Judgment (Stipulation) is executed between and among Plaintiff City of San Diego, a municipal corporation, and Defendants JL 6th AVENUE PROPERTY, LLC; LAWRENCE E. GERACI, aka LARRY GERACI; and JEFFREY KACHA only, who are named parties in the above-entitled action (collectively, "Defendants").

2. The parties to this Stipulation are parties to a civil suit pending in the Superior Court of the State of California for the County of San Diego, entitled *City of San Diego, a municipal corporation v., The Tree Club Cooperative, Inc., a California corporation; Jonah McClanahan, an individual; John C. Ramistella, an individual; JL 6th Avenue Property, LLC, a California limited liability company; Lawrence E. Geraci, also known as Larry Geraci, an individual; Jeffrey Kacha, an individual; and DOES 1 through 50, inclusive,* Case No. 37-2014-00020897-CU-MC-CTL. This Stipulation does not affect *City of San Diego v. Tycel Cooperative, Inc., et al.*, San Diego Superior Court case No. 37-2014-00025378-CU-MC-CTL, which is a separate case to be considered separately.

3. The parties wish to avoid the burden and expense of further litigation and accordingly have determined to compromise and settle their differences in accordance with the provisions of this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent Injunction by the Superior Court.

4. The address where the tenant Defendants were maintaining a marijuana dispensary business is 1033 Sixth Avenue, San Diego, California, 92101, also identified as Assessor's Parcel Number 534-186-04-00 (PROPERTY).

5. The PROPERTY is owned by JL 6th AVENUE PROPERTY, LLC (JL), according to San Diego County Recorder's Grant Deed, Document No. 2012-0184893, recorded March 29, 2012. Defendants GERACI and KACHA are members of JL and hereby certify they have authority to sign for and bind JL herein.

///

6. The legal description of the PROPERTY is:

THE NORTH HALF OF LOT D IN BLOCK 34 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MADE BY L.L. LOCKLING FILED JUNE 21, 1871 IN BOOK 13, PAGE 522 OF DEEDS, IN THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY.

7. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties to this Stipulation.

INJUNCTION

8. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,** Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent equity powers, from engaging in or performing, directly or indirectly, any of the following acts:

a. Keeping, maintaining, operating, or allowing the operation of an unpermitted marijuana dispensary, collective or cooperative at the PROPERTY, including but not limited to, a marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code.

b. Defendants shall not be barred in the future from any legal and permitted use of the PROPERTY.

COMPLIANCE MEASURES

DEFENDANTS agree to do the following at the PROPERTY:

9. **Within 24 hours from the date of signing this Stipulation,** cease maintaining, operating, or allowing at the PROPERTY any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the California Health and Safety Code.

10. The Parties acknowledge that where local zoning ordinances allow the operation of a marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then Defendants will be allowed to operate or maintain a marijuana dispensary, collective or cooperative in the City of San Diego as authorized under the law after Defendants provide the following to Plaintiff in writing:

a. Proof that the business location is in compliance with the ordinance; and

b. Proof that any required permits or licenses to operate a marijuana dispensary, collective or cooperative have been obtained from the City of San Diego as required by the SDMC.

11. **If the marijuana dispensary that is operating at the PROPERTY, including but not limited to, The Tree Club Cooperative, Inc., Jonah McClanahan and John C. Ramistella, does not agree to immediately voluntarily vacate the premises, then within 24 hours from the date of signing this Stipulation,** DEFENDANTS shall in good faith use all legal remedies available to evict the marijuana dispensary business known as The Tree Club Cooperative, Inc., Jonah McClanahan and John C. Ramistella or the appropriate party responsible for the leasehold and operation of the marijuana dispensary, including but not limited to, prosecuting an unlawful detainer action.

12. **Within 24 hours from the date of signing this Stipulation,** remove all signage from the exterior of the premises advertising a marijuana dispensary, including but not limited to, signage advertising The Tree Club Cooperative.

13. **Within 24 hours from the date of signing this Stipulation,** post a sign for a minimum of 60 calendar days, conspicuously visible from the exterior of the PROPERTY stating in large bold font and capital letters that can be seen from the public right way, that "The Tree Club Cooperative" is permanently closed and that there is no dispensary operating at this address.

14. Allow personnel from the City of San Diego access to the PROPERTY to inspect for compliance upon 24-hour verbal or written notice. Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m.

15. When this Stipulation has been filed with the Court, Jeffrey Kacha will personally pick up a conformed copy of the Stipulation and Order from the Office of the City Attorney. He or his attorney will contact the City's investigator, Connie Johnson, at 619-533-5699 within 15 days of the filing of this Stipulation to set a time for Mr. Kacha to pick up the conformed copy.

MONETARY RELIEF

16. **Within 15 calendar days from the date of signing this Stipulation,** Defendants shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's investigative costs, the amount of $281.93. Payment shall be in the form of a certified check, payable to the "City of San Diego," and shall be in full satisfaction of all costs associated with the City's investigation of this action to date. The check shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

17. Commencing within 30 days of signing this Stipulation, Defendants shall pay to Plaintiff City of San Diego civil penalties in the amount of $25,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past violations alleged by Plaintiff in this action. **$19,000 of these penalties is immediately suspended.** These suspended penalties shall only be imposed if Defendants fail to comply with the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if imposition of the penalties will be sought by Plaintiff and on what basis. Civil penalties in the amount of **$6,000** shall be paid in 15 monthly installments of $400.00 each, at 30-day intervals following the date of the first payment as specified above, in the form of a certified check, payable to the "City of San Diego," and delivered to the Office of the City Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention: Marsha B. Kerr.

ENFORCEMENT OF JUDGMENT

18. In the event of default by Defendants as to any amount due under this Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the

enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid in full.

19. Nothing in this Stipulation shall prevent any party from pursuing any remedies as provided by law to subsequently enforce this Stipulation or the provisions of the SDMC, including criminal prosecution and civil penalties that may be authorized by the court according to the SDMC at a cumulative rate of up to $2,500 per day per violation.

20. Defendants agree that any act, intentional or negligent, or any omission or failure by their contractors, successors, assigns, partners, members, agents, employees or representatives to comply with the requirements set forth in Paragraphs 8-17 above will be deemed to be the act, omission, or failure of Defendants and shall not constitute a defense to a failure to comply with any part of this Stipulation. Further, should any dispute arise between any contractor, successor, assign, partner, member, agent, employee or representative of Defendants for any reason, Defendants agree that such dispute shall not constitute a defense to any failure to comply with any part of this Stipulation, nor justify a delay in executing its requirements.

RETENTION OF JURISDICTION

21. The Court will retain jurisdiction for the purpose of enabling any of the parties to this Stipulation to apply to this Court at any time for such order or directions that may be necessary or appropriate for the construction, operation or modification of the Stipulation, or for the enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

RECORDATION OF JUDGMENT

22. A certified copy of this Judgment shall be recorded in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

KNOWLEDGE AND ENTRY OF JUDGMENT

23. By signing this Stipulation, Defendants admit personal knowledge of the terms set forth herein. Service by mail shall constitute sufficient notice for all purposes.

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24. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: Oct. 21, 2014

JAN I. GOLDSMITH, City Attorney

By Marsha B Kerr
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 9/26, 2014

JL 6TH AVENUE PROPERTY, LLC

By
Member

Dated: 10-21-14, 2014

Lawrence E. Geraci aka Larry Geraci, an individual

Dated: 9/26, 2014

Jeffrey Kacha

Dated: 9/26, 2014

Joseph S. Carmellino, Attorney for Defendants JL 6th Avenue Property, LLC, Lawrence E. Geraci aka Larry Geraci and Jeffrey Kacha

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ORDER

Upon the stipulation of the parties hereto and upon their agreement to entry of this Stipulation without trial or adjudication of any issue of fact or law herein, and good cause appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 10/27/14

JUDGE OF THE SUPERIOR COURT
RONALD S. PRAGER

RJN-10

No Fee GC §6103

FILED
Clerk of the Superior Court
JUN 17 2015

FILED
Clerk of the Superior Court
JUN 17 2015
By: H. CHAVARIN, Deputy
'15 JUN 11 PM 1:37

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. CCSQUARED WELLNESS COOPERATIVE, a California corporation; BRENT MESNICK, an individual; JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2015-00004430-CU-MC-CTL STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6] IMAGED FILE

1. Plaintiff, City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and Marsha Kerr, Deputy City Attorney; and Defendants, JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI (Doe 1) (collectively, "Defendants"), appearing by and through their attorney, Joseph Carmellino, Esq., enter into the following Stipulation for Entry of Final Judgment (Stipulation) in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered.

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2. The parties to this Stipulation are parties in two civil actions pending in the Superior Court of the State of California for the County of San Diego. It is the intention of the parties that the terms of this Stipulation constitute a global settlement of the following cases:

a. *City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-00004430-CU-MC-CTL.

b. *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-000000972.

3. The parties wish to avoid the burden and expense of further litigation and accordingly have determined to compromise and settle their differences in accordance with the provisions of this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent Injunction by the Superior Court.

4. The address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Avenue, San Diego, also identified as Assessor's Parcel Number 452-407-17-00 (PROPERTY). The PROPERTY is currently owned by JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC.

5. The legal description of the PROPERTY is:

> Lot 3 in block 45 of loma grande, in the city of San Diego, County of San Diego, State of California, according to Map thereof No. 692, filed in the Office of the County Recorder of San Diego County, November 23, 1891.

6. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties to this Stipulation.

INJUNCTION

7. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this

Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,** Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent equity powers, from engaging in or performing, directly or indirectly, any of the following acts:

Keeping, maintaining, operating or allowing any commercial, retail, collective, cooperative or group establishment for the growth, storage, sale or distribution of marijuana, including, but not limited to, any marijuana dispensary, collective or cooperative organized anywhere in the City of San Diego without first obtaining a Conditional Use Permit pursuant to the San Diego Municipal Code.

COMPLIANCE MEASURES

DEFENDANTS agree to do the following at the PROPERTY:

8. **Immediately** cease maintaining, operating, or allowing any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the California Health and Safety Code.

9. The Parties acknowledge that where local zoning ordinances allow the operation of a marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then Defendants will be allowed to operate or maintain a marijuana dispensary, collective or cooperative in the City of San Diego as authorized under the law after Defendants provide the following to Plaintiff in writing:

a. Proof that the business location is in compliance with the ordinance; and

b. Proof that any required permits or licenses to operate a marijuana dispensary, collective or cooperative have been obtained from the City of San Diego as required by the SDMC.

10. **Within 24 hours from the date of signing this Stipulation,** remove all signage from the exterior of the premises advertising a marijuana dispensary, including but not limited to, signage advertising CCSquared Wellness Cooperative or CCSquared Storefront.

11. **No later than 48 hours from signing this Stipulation** cease advertising on the internet, magazines or through any other medium the existence of CCSquared Wellness Cooperative or CCSquared Storefront at the PROPERTY.

12. **No later than 48 hours from signing this** Stipulation remove all fixtures, items and property associated with a marijuana dispensary business from the PROPERTY.

13. **Within one week of signing this Stipulation,** Defendant will contact City zoning investigator Leslie Sennett at 619-236-6880 to schedule an inspection of the PROPERTY.

MONETARY RELIEF

14. Defendants, jointly and severally, shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's investigative costs, the amount of **$2,438.03.** All other attorney fees and costs expended by the parties in the above-captioned case are waived by the parties. The parties agree that payment in full of the monetary amount referenced as investigative costs is applicable to and satisfies payment of investigative costs for both cases referenced in paragraph 2 above.

15. Defendants shall jointly and severally pay to Plaintiff City of San Diego civil penalties in the amount of $75,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past violations alleged by Plaintiff in this action. **$37,500 of these penalties is immediately suspended.** Payment in the amount of $37,500 in civil penalties plus $2438.03 in investigative costs referenced in paragraph 14, totaling $39,938.03, shall be made in 24 monthly installments of $1,664.09 each beginning on or before June 5, 2015, and continuing on the fifth of each successive month until paid in full. Receipt of Defendants' initial monthly payment of $1,664.09 on June 4, 2015 is acknowledged. The parties agree that payment in full of the monetary amounts referenced as civil penalties is applicable to and satisfies payment of civil penalties for both of the cases referenced in paragraph 2 above. All payments shall be made in the form of a certified check payable to the "City of San Diego," and shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

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16. The suspended penalties shall only be imposed if Defendants fail to comply with the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if imposition of the penalties will be sought by Plaintiff and on what basis.

ENFORCEMENT OF JUDGMENT

17. In the event of default by Defendants as to any amount due under this Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid in full. Service by mail shall constitute sufficient notice for all purposes.

18. Nothing in this Stipulation shall prevent any party from pursuing any remedies as provided by law to subsequently enforce this Stipulation or the provisions of the SDMC, including criminal prosecution and civil penalties that may be authorized by the court according to the SDMC at a cumulative rate of up to $2,500 per day per violation occurring after the execution of this Stipulation.

19. Defendants agree that any act, intentional act, omission or failure by their contractors, successors, assigns, partners, members, agents, employees or representatives on behalf of Defendants to comply with the requirements set forth in Paragraphs 7-15 above will be deemed to be the act, omission, or failure of Defendants and shall not constitute a defense to a failure to comply with any part of this Stipulation. Further, should any dispute arise between any contractor, successor, assign, partner, member, agent, employee or representative of Defendants for any reason, Defendants agree that such dispute shall not constitute a defense to any failure to comply with any part of this Stipulation, nor justify a delay in executing its requirements.

RETENTION OF JURISDICTION

20. The Court will retain jurisdiction for the purpose of enabling any of the parties to this Stipulation to apply to this Court at any time for such order or directions that may be necessary or appropriate for the construction, operation or modification of the Stipulation, or for the enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

RECORDATION OF JUDGMENT

21. This Stipulation shall not be recorded unless there is an uncured breach of the terms herein, in which instance a certified copy of this Stipulation and Judgment may be recorded in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

KNOWLEDGE AND ENTRY OF JUDGMENT

22. By signing this Stipulation, Defendants admit personal knowledge of the terms set forth herein. Service by regular mail shall constitute sufficient notice for all purposes.

23. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

By Marsha Bkerr
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 6-10, 2015

JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC

By
Jeffrey Kacha, General Partner

Dated: 6-10, 2015

Jeffrey Kacha, an individual

Dated: 6-8, 2015

Lawrence E. Geraci, aka Larry Geraci, an individual

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Dated: 6/11/15, 2015

By _____
Joseph S. Carmellino
Attorney for Defendants Jeffrey Kacha and JL India Street LP, formerly known as JL India Street, LLC

JUDGMENT

Upon the stipulation of the parties hereto and upon their agreement to entry of this Stipulation without trial or adjudication of any issue of fact or law herein, and good cause appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 6-17-15

JOHN S. MEYER
JUDGE OF THE SUPERIOR COURT