

FOR IMMEDIATE RELEASE

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****PRESS RELEASE****

August 28, 2014

FEUER WINS INJUNCTION AGAINST MEDICAL MARIJUANA FARMERS MARKET

*City Attorney Also Secures Injunction Against The Operation Of The Medical
Marijuana Business*

LOS ANGELES – Superior Court Judge Joanne O'Donnell today issued a preliminary injunction against the operation of a so-called medical marijuana farmers market--and ordered the medical marijuana business that sponsored it to shut down because it fails to comply with Proposition D

"This is another victory in our continued enforcement of Proposition D," said City Attorney Mike Feuer. "L.A. residents voted to take sensible steps to limit the proliferation of medical marijuana dispensaries, and we're doing just that."

Feuer sought a Court injunction after Progressive Horizon Inc., doing business as West Coast Collective, a medical marijuana dispensary in Boyle Heights, circumvented the law to produce a "farmers market" over two consecutive weekends in early June of this year.

The Court's order is attached.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/27/14

DEPT. 85

HONORABLE JOANNE O'DONNELL

JUDGE

F. BECERRA

DEPUTY CLERK

M. CLARK, C.A.

HONORABLE
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

B. JAMES, CSR#9296

Reporter

9:31 am

BC551645

Plaintiff

ASHA GREENBERG (X)

Counsel

ANH TRUONG (X)

THE PEOPLE OF THE STATE OF
CALIFORNIA

Defendant

ARTHUR D. HODGE (X)

VS

Counsel

RICHARD H. GORDON (X)

PROGRESSIVE HORIZON INC ET AL

JAMES G. MCCONE (X)

BENJAMIN MCFADDEN (X)

DAVID R. WELCH (X)

NATURE OF PROCEEDINGS:

ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

The matter is called for hearing.

Counsel read the Court's Tentative Decision.

After argument of counsel, the Court takes the matter under submission.

LATER, the Court rules as follows:

Preliminary Injunction is granted.

Judicial Notice. Plaintiff's requests for judicial notice submitted with its ex parte application are granted. Evidence Code § 452(b), 452(h). Defendant Lee's request for judicial notice is granted as to Exhibit 1, but denied as to Exhibit 2. The City's list of timely registered medical marijuana entities (Exh. 2) is not "part of the public statutory law" of the City of Los Angeles, and therefore is not subject to judicial notice pursuant to Evidence Code § 452(c). Defendant Lee's assertion that the list is a fact not reasonably subject to dispute under Evidence Code § 452(h) is without merit.

Defendants's evidentiary objections to Plaintiff's evidence are ruled on as follows:

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NATURE OF PROCEEDINGS:

- Angel Sandoval Declaration. Objections 1 and 7-10 are overruled. Objections 2 through 6 are sustained. Plaintiff's effort to establish a hearsay exception for the statements of unidentified out-of-court declarants to the various Los Angeles Police Department Officers is poorly-taken. The statements of what the individuals purchased are offered for the truth of the matter (i.e., that they were sold and bought marijuana). The cases cited by Plaintiff are all factually inapposite.
- Vincent Bancroft Declaration. Objections 1-4, 6 and 7-10 are overruled. Objection 5 is sustained.
- Rafael Acosta Declaration. Objections 1-10 and 15 are overruled. Objections 11-14 are sustained.
- Javier Alvarado Declaration. The Objections to the Alvarado Declaration are sustained except for testimony regarding what the patrons showed to Officer Alvarado (Alvarado Decl., 4 at pp.1:27-2:3) and what certain patrons were cited for (id., 15 at p.2:9-13).

Plaintiff's evidentiary objections, filed with its reply, to the Progressive Defendants' opposition, are ruled on as follows:

- James Chen Declaration. Objections 1, 3-6, and 8-17 are overruled. Objections 2, 7, and 18 are sustained.
- Adam Agathakis Declaration. Objections 1-19, 21, 23-29, 30-50, 52, and 54-53 are overruled. Objections 20, 22, 51, 53 and 64 are sustained.

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Plaintiff's motions to strike the Progressive Defendants' objections to evidence on the basis that the objections were not consecutively numbered, as required by CRC 3.1354, and that the objections were excessive and meritless and therefore subject to being stricken, Reid v. Google (2010) 50 Cal.4th 512, are denied. First, both CRC 3.1354 and Reid address the requirements for objections to evidence accompanying a summary judgment motion. That lawyers frequently adopt the format for summary judgment objections in the context of other types of motion does not create a legal requirement.

Therefore, Defendant Progressive's objections are not subject to being stricken as documents "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." CCP § 436(b). Plaintiff's motions to strike on the other grounds stated are also denied. Reid affords the Court the authority to disregard abusive and improperly formatted objections in its discretion. Reid, 50 Cal.4th at 531-535. The Court declines to exercise that discretion in this case.

The Court strikes the August 15 response of the California Department of Justice to Defendants' Attorney Welch's subpoena. The envelope is labeled "Conditionally Under Seal." No motion to seal has ever been filed with respect to these documents. The Court does not accept them under seal or otherwise and hereby returns them to Attorney Welch, who is

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copied on the Department of Justice's letter responding to the subpoena. CRC 2.551(a), (b) (1), (b) (6).

On August 26, 2014, the Progressive Defendants submitted multiple declarations. They have not been considered. The Court's Minute Order of July 30, 2014 required that Defendants submit opposition to the order to show cause by August 18, 2014. The untimeliness of these submissions deprived Plaintiff of its statutory opportunity to address their contents or object to their admission. The declarations appear to be statements of Progressive Horizons' employees regarding events that took place at the marijuana farmers market in early July. There thus appears to be no good cause for their tardiness. CRC 3.1.

Plaintiff's application for further injunctive relief is granted as to proposed injunctions 1 (with respect LAMC § 45.19.6.2 only), 2, 3, 4, 7, 9, 11, 12, 13, 14, 15, and 16. Individual Defendants (Chen, Bradbury, and Lee) are only enjoined from these activities to the extent the activities are undertaken as part of Defendant Progressive Horizon's unpermitted business. The request is denied as to orders 5, 6, 8, or 17. Plaintiff's OSC omits item 10.

In determining whether to issue a preliminary injunction, the trial court considers two factors:

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(1) the likelihood that the petitioner will prevail on the merits of its case at trial, and (2) the interim harm that the petitioner is likely to sustain if the injunction is denied as compared to the harm that the respondent is likely to suffer if the court grants a preliminary injunction. Pillsbury, Madison & Sutro v. Schectman (1997) 55 Cal.App.4th 1279, 1283; Huong Que, Inc. v. Luu (2007) 150 Cal.App.4th 400, 408. An injunction will not issue unless the moving party establishes both a real threat of immediate and irreparable interim harm (Choice-in-Education League v. Los Angeles Unified School Dist. (1993) 17 Cal.App.4th 415, 431), and the inadequacy of legal remedies (Triple A Machine Shop v. California (1989) 213 Cal.App.3d 131, 138). The party seeking the injunction bears the burden of proof. O'Connell v. Superior Court of Alameda County (Valenzuela) (2006) 141 Cal.App.4th 1452, 1481.

Proposed Injunction. Plaintiff seeks to enjoin Defendants' operation of a marijuana farmers' market at the Esperanza property, asserting that it is an unpermitted use of the property and therefore a nuisance. Plaintiff's proposed injunction also seeks to enjoin the continuance of the Progressive Defendants' ongoing medical marijuana business. The former is a prohibitory injunction, requiring the Progressive Defendants to refrain from conducting further farmers' markets. Oiyee v. Fox (2012) 211 Cal.App.4th 1036, 1048 (an injunction is prohibitory

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NATURE OF PROCEEDINGS:

if "[i]t directs affirmative inaction by defendant, not affirmative action."). The latter is a mandatory injunction, requiring Defendants to discontinue an ongoing business that had apparently been operating at the Esperanza Street location at least since January 2014 (Daggenhurst Decl., 3, 4, Exh. 1). Ambrose, supra, 62 Cal.App.2d at 685. The mandatory nature of Plaintiff's proposed injunction requires Plaintiff to make an enhanced showing of the probability that it will prevail and the irreparable harm threatened in the interim. Herrera, supra, 212 Cal.App.4th at 630; Davenport, supra, 52 Cal.App.4th at 446.

Probability of Prevailing. Plaintiff asserts that it is entitled to a preliminary injunction because it can establish: (1) that Defendants are operating an unpermitted indoor swap meet, which constitutes a nuisance and is subject to injunction; (2) that defendants are operating a medical marijuana business outside the limited immunity of Proposition D, which constitutes a nuisance and is subject to injunction; (3) that Defendants' use of the property is a nuisance under the Civil Code, which may be remedied by injunction; and (4) that Defendants' business is unlawful and is subject to injunction under Business & Professions Code § 17200.

Indoor Swap Meet. The Municipal Code defines an "indoor swap meet" as follows (LAMC § 12.24(W)(42)(c)):

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"Indoor swap meet" shall mean any event where new or secondhand goods are offered or displayed for sale or exchange by ten or more independent vendors within a completely enclosed building. An independent swap meet vendor is any individual, partnership, corporation, business association or other person or entity who is not an employee of the owner or lessee of the subject building; and

(i) A fee is charged by a swap meet operator for the privilege of offering or displaying new or secondhand goods for sale or exchange; or

(ii) A fee is charged to prospective buyers for admission to the area where new or secondhand goods are offered or displayed for sale or exchange.

Approval of a zoning administrator is required for this use. LAMC § 12.24(W). Plaintiff asserts that no approval was given for the farmers' market and, therefore, the operation of the farmers' market is a public nuisance under LAMC § 11.00(1) and subject to abatement through injunction under that section and Civil Code § 3491.

Plaintiff fails to meet its burden of proof. O'Connell, supra, 141 Cal. App. 4th at 1481. While Plaintiff provides substantial evidence that the farmers' market was conducted in a "completely enclosed" warehouse type building (Bancroft Decl.,

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19; Sandoval Decl., 6), there is no admissible evidence that vendors were charged for the privilege of offering goods. The declarations of Detective and Officer Alvarado Acosta relied upon by Plaintiff (Acosta Decl., 13, Alvarado Decl., 4), in which the officers testify that vendors said they were charged for the privilege of having a booth at the farmers' market, are inadmissible hearsay as explained above. Additionally, Plaintiff fails to provide any evidence in their opening brief that the Progressive Defendants did not apply for, or receive, the permission of a zoning administrator. They merely argue that such permission could not have been given under the Municipal Code. That is a legal argument that does not satisfy Plaintiff's burden to establish Defendants' failure to request a zoning approval or that one was requested or denied. Therefore, Plaintiff has failed to provide evidence of an unpermitted use constituting a nuisance and subject to injunction.

Operation of a Medical Marijuana Business without Immunity. The Municipal Code contains a clear and unambiguous prohibition against the operation of a medical marijuana business within the city limits (LAMC § 45.19.6.2):

A. It is unlawful to own, establish, operate, use, or permit the establishment or operation of a medical marijuana business, or to participate as an employee, contractor, agent or volunteer, or in any

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other manner or capacity in any medical marijuana business.

B.The prohibition in Subsection A., above, includes renting, leasing, or otherwise permitting a medical marijuana business to occupy or use a location, vehicle, or other mode of transportation.

With the exception discussed below, this prohibition controls the operation of a medical marijuana business within the city, irrespective of statewide laws such as the Compassionate Use Act or the Medical Marijuana Program Act, which are generally permissive of the controlled medical use of marijuana. City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729, 762. The unambiguous prohibition set forth in LAMC § 45.19.6.2(A) renders the Progressive Defendants' operation of any sort of medical marijuana business a public nuisance, subject to injunction. LAMC § 11.00(1); see also City of Corona v. Naulls (2008) 166 Cal.App.4th 418, 433 (upholding a preliminary injunction issued against a non-conforming marijuana dispensary to abate its condition as a nuisance per se).

However, the Municipal Code provides a limited immunity to medical marijuana businesses that meet certain requirements and qualifications. This limited immunity, passed by the voters of Los Angeles as "Proposition D," is codified at LAMC §

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45.19.6.3. Plaintiff's moving papers focus on subsection M of the ordinance, which provides as follows:

M. Every medical marijuana business is prohibited that fails to identify by name and residence address each of its Managers to the City Clerk by October 31 of each year and whose Managers fail to successfully pass and publicly display at the location of the medical marijuana business the results of an annual LAPD LiveScan background check to be completed by January 31 of each year. A failed LAPD LiveScan is a LiveScan that includes any felony conviction within the past ten years and/or current parole or probation for the sale or distribution of a controlled substance;

Plaintiff asserts that the managers of Defendant Progressive failed to comply with the annual LiveScan requirements (Open., pp.10:4-11:17). Plaintiff supports this contention with the testimony of Detective Bancroft, who declares that he is designated to handle the LiveScan process for medical marijuana business managers (Bancroft, 8-14). Detective Bancroft declares that (15-16):

I have reviewed my records and have no Live Scan Service form or criminal history report for any manager of "Progressive Horizon" or "West Coast Collective" that was submitted pursuant to LAMC section 45.19.6.3. Similarly, I have been unable to

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locate any such records for "Progressive Horizon," "West Coast Collective," James Chen," "Paizley Bradbury," or "Paizley Gabrielle Lee." Nor did I generate a letter to any of those persons or entities to advise them/him/her that a LiveScan application had been successfully processed pursuant to LAMC section 45.19.6.3 (M).

Since the passage of Proposition D on June 20, 2013, I have processed in excess of 200 reports from DOJ for LiveScan background checks, but none for the individuals listed in Paragraph 15.

To the extent that Defendants Chen and Bradbury were the managers of Defendant Progressive Horizon, Detective Bancroft's testimony is evidence that they failed to abide by the requirements for limited immunity under LAMC § 45.19.6.3(M) and that their operation of a medical marijuana business in any form is an unpermitted land use, and therefore a public nuisance subject to abatement by injunction. LAMC § 11.00(1); Civil Code § 3491.

In opposition, the Progressive Defendants assert that they substantially complied with the requirements of LAMC § 45.19.6.3(M), declaring that they identified Defendant Bradbury and non-party Jason Borba as managers on October 31, 2013 (Agathakis Decl., 16; Exh. D). At an unspecified point in time in January, 2014, Defendants indicate that they "amended" their manager statement to

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remove Mr. Borba (id.). No evidence of this amendment is attached to the declaration of Mr. Agathakis. On July 18, 2014 - after the instant proceeding was filed - Defendants again amended their managers, adding Defendant Chen and Mr. Agathakis instead of Defendant Bradbury (id., Exh. D). Following the amendment to add them as managers, Defendant Chen and Mr. Agathakis submitted requests for LiveScan tests (id.). Defendants effectively contend that a medical marijuana business may name managers on October 31 of Year One and then replace them with new managers before January 31 of Year Two, delay in registering that change until the following October 31 of Year Two and further delay submitting to a LiveScan test until January 31 of Year Three. This scenario presumes that new managers are not selected between October of Year Two and January of Year Three, delaying the process for another year. The scenario for which Defendants advocate, whereby the regulated entity may perpetually postpone meaningful compliance, frustrates the aim of the statute, which is to ensure that a medical marijuana business is managed by identifiable individuals without criminal records and whose identity and non-criminal character is capable of ready verification, through the display of LiveScan results. The Court will not interpret the statute in a manner that leads to such an absurd result. Mount Hawley Insurance Company v. Lopez (2013) 215 Cal.App.4th 1385, 1414. Therefore, Defendant Progressive Defendants' approach to

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complying with LAMC § 45.19.6.3(M) did not result in compliance. Nor would the scenario advocated for by Defendant constitute "substantial compliance" with LAMC § 45.19.6.3(M), as it completely frustrates the goal of that provision. "'Substantial compliance, as the phrase is used in the decisions, means actual compliance in respect to the substance essential to every reasonable objective of the statute,' as distinguished from 'mere technical imperfections of form.'" *Camp v. Mendocino County Board of Supervisors* (1981) 123 Cal.App.3d 334, 348-349.

LAMC § 45.19.6.3 confers limited immunity "only if [the] medical marijuana business does not violate any of the medical marijuana business restrictions." As explained above, at the time of the farmers market, Defendant Progressive Horizon failed to comply with the requirements for Proposition D's limited immunity. In the absence of such limited immunity, Defendant's business is an unpermitted use, a nuisance, and properly subject to abatement through injunction. LAMC §§ 45.19.6.2, 11.00(1). Therefore, Plaintiff has established its probability of prevailing.

Balancing of Harms. Because Plaintiff has demonstrated the probability that it will prevail on the merits of its suit, Plaintiff is entitled to the rebuttable presumption that the potential harm to the public outweighs the potential harm to the defendant. *IT Corp. v. Imperial County* (1983) 35

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DAVID R. WELCH (X)

NATURE OF PROCEEDINGS:

Cal.3d 63, 72.

If the defendant shows that it would suffer grave or irreparable harm from the issuance of the preliminary injunction, the court must then examine the relative actual harms to the parties. Id. The argument raised in oral argument by Progressive's counsel that Progressive's patients will be irreparably harmed by the preliminary injunction is not supported by any evidence in the record. Progressive's effort to establish irreparable harm to Progressive is not supported by any evidence either - Progressive only asserts that its business will be destroyed by the Court's preliminary injunction. This argument is meritless as a matter of law. Irreparable harm does not arise from an order that an enjoined party comply with the law. People v. Morehouse (1946) 74 Cal.App.2d 870, 875. In any event, the harm to defendants' business does not outweigh the harm that would be suffered by the City if Defendants were permitted to flaunt the City's police powers and maintain a business enterprise that is prohibited by the Municipal Code. Therefore, imposition of an injunction is appropriate.

Scope of Injunction. As Plaintiff has prevailed by establishing that Defendant Progressive Horizon's medical marijuana business is not permitted and therefore a nuisance, it is entitled to a broad injunction that is both prohibitory and mandatory,

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/27/14

DEPT. 85

HONORABLE JOANNE O'DONNELL

JUDGE

F. BECERRA
M. CLARK, C.A.

DEPUTY CLERK

HONORABLE
2

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

B. JAMES, CSR#9296

Reporter

9:31 am

BC551645

Plaintiff ASHA GREENBERG (X)

Counsel ANH TRUONG (X)

THE PEOPLE OF THE STATE OF
CALIFORNIA
VS
PROGRESSIVE HORIZON INC ET AL

Defendant ARTHUR D. HODGE (X)

Counsel RICHARD H. GORDON (X)

JAMES G. MCCONE (X)

BENJAMIN MCFADDEN (X)

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NATURE OF PROCEEDINGS:

essentially eliminating Defendant's ability to operate its non-conforming business. With reference to the proposed Order to Show Cause filed on July 15, 2014, Plaintiff is entitled to the injunctions enumerated: 1 (with an interlineation indicating that the proscribed nuisance is one arising from LAMC § 45.19.6.2); 2; 3; 4; 7; 9; 11; 12; 13; 14; 15; and 16. These injunctions are only effective on the individual Defendants with respect to their affiliation with Defendant Progressive Horizons or any of its other trade names. The injunction does not prohibit the individual Defendants from engaging in the enumerated forms of conduct in relation to another collective. Plaintiff has not established an entitlement to injunctive orders 5; 6; 8 or 17. The OSC omits item 10.

Bond. Plaintiff is not required to post an injunction bond as the suit is being brought by the People of the State of California. CCP § 529(b); 995.220.

A copy of this minute order is mailed to counsel via U.S. mail, addressed as follows:

↙
Asha Greenberg
Anh Truong
Office of the City Attorney
200 N. Main Street, Room 966
Los Angeles, CA 90012

MINUTES ENTERED 08/27/14 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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NATURE OF PROCEEDINGS:

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