

Re: Motion for Preliminary Injunction

Date: December 5, 2017

Plaintiff County of San Luis Obispo (the “County”) filed its Complaint for Preliminary Injunction, Permanent Injunction, and Order to Abate a Public Nuisance and Unfair Business Practice; Injunctive Relief (“Complaint”) against Kou Lee (“Defendant”) on October 4, 2017. The County seeks to enjoin and abate alleged public nuisances related to marijuana cultivation occurring on property owned by Defendant and located in an unincorporated area of San Luis Obispo County.¹

On October 6, 2017, the County filed an Ex Parte Application for an Order to Show Cause re Preliminary Injunction (“OSC”), concurrently with this Motion for Preliminary Injunction and supporting documents (“Motion”). The OSC was filed by the Court on October 25, 2017. The County’s Proof of Substituted Service shows that service on Defendant was complete on November 16, 2017. The Motion is unopposed.

The County moves here for a preliminary injunction to enjoin Defendant and his officers, agents, employees, representatives, and all persons acting in concert or participating with him from 1) any and all activities related to the cultivation of cannabis on the Property without first complying with all relevant County and state laws, ordinances, statutes, and regulations and without first obtaining any and all necessary licenses, permits, and approvals from the County of San Luis Obispo and the State, 2) any and all operating, conducting, using, occupying, or in any way permitting the Property and structures at the Property to be used for any unlicensed business, and 3) any and all transfer of any ownership or leasehold interest relating to the Property, and structures thereon, unless there is compliance with all applicable orders of this Court and unless there is prior written approval of the Court. The Motion is supported by declarations from Enforcement Officers Harley Voss and Art Trinidad, and a Request for Judicial Notice of Interim Zoning/Urgency Ordinance No. 3334 (“Ordinance”), which regulates cannabis cultivation, and Board of Supervisors meeting agendas regarding extending and considering the Ordinance.²

The County makes a prima facie showing that it is entitled to temporary injunctive relief. The Ordinance bans cannabis cultivation unless the cultivator registered with the County and met one of the three exemptions, and defined cultivation that does not meet these requirements as a public nuisance. The County argues that it had the authority to enact the Ordinance under Government Code section 65858, the California Constitution, Business and Professions code section 26000 et seq., and relevant case law. The injunction sought is prohibitory and designed to restrain illegal conduct. The County

¹ The property at issue is located at 00000 Gleason Road, Santa Margarita, California, 93453, APN 082-291-048 (the “Property”).

² The County’s Request for Judicial Notice is granted.

makes a sufficient showing that it is likely to prevail on the merits of its public nuisance, nuisance per se, and unfair business practice causes of action, setting forth in accompanying declarations that Defendant is cultivating cannabis on the Property despite failure to register the Property and meet one of the required exemptions, thereby causing a public nuisance. Further, the County establishes that Defendant will not suffer irreparable harm if injunctive relief is granted, as Defendants are currently cultivating cannabis on the Property with the knowledge that their registration was denied and that the cultivation is prohibited. The County further shows that it and the public are likely to be harmed by illegal cannabis cultivation. Defendant's lack of opposition is construed as an admission that the motion is meritorious. (Weil & Brown, *California Practice Guide, Civil Pro. Before Trial*, §9:105.10.)

The County's Motion for Preliminary Injunction is granted.