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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. KENNETH B. STANCE, an individual; ARTILE STANCE, as an individual and Co-Trustee of the Stance Family Trust; FLORA M. STANCE, as an individual and Co-Trustee of the Stance Family Trust; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2014-00033384-CU-MC-CTL UNLIMITED JURISDICTION COMPLAINT FOR INJUNCTION, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF

Plaintiff City of San Diego, appearing through its attorneys, Jan I. Goldsmith, City Attorney, and LeAnna Shields, Deputy City Attorney, allege the following, based on information and belief:

JURISDICTION AND VENUE

1. Plaintiff City of San Diego, by this action and pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, and California Code of Civil Procedure section 526, seeks to enjoin Defendants from using or maintaining a property in violation of the SDMC as alleged in this Complaint, and seeks a preliminary injunction and permanent injunction prohibiting Defendants from operating or maintaining a marijuana dispensary, cooperative, or collective, or other distribution or sales business; and also seeks to obtain civil penalties, costs

and other equitable relief for the Defendants' violations of law.

2. The omission or commission of acts and violations of law by Defendants as alleged in this Complaint occurred within the City of San Diego, State of California. Each Defendant at all times mentioned in this Complaint has transacted business within the City of San Diego, State of California, or is a resident of San Diego County, within the State of California, or both.

3. The property where the business acts and practices described in this Complaint were performed is located in the City of San Diego.

THE PARTIES

4. At all times mentioned in this Complaint, Plaintiff, City of San Diego, is a municipal corporation and a chartered city, organized and existing under the laws of the State of California.

5. The owner of record of 4255 Market Street, San Diego, California, 92102 (PROPERTY) where a marijuana dispensary is conducting business is "Kenneth B Stance, an unmarried man and Artile Stance and Flora M Stance, as trustees of the Stance Family Trust dated October 26, 2005, all as joint tenants" pursuant to the most recent quitclaim deed filed with the County Recorder's Office on January 9, 2006, document number 2006-0014129.

6. Defendant KENNETH B. STANCE (K. STANCE), is an individual and resident of the City and County of San Diego, State of California, and at all times relevant to this action, is listed as one of the owners of record of the PROPERTY. As one of the owners of the PROPERTY, Defendant K. STANCE is a "Responsible Person" [1] within the meaning of SDMC section 11.0210 as he is maintaining violations of the SDMC at the PROPERTY. As a property owner, Defendant K. STANCE is also strictly liable for all code violations occurring at the PROPERTY per SDMC section 121.0311.

7. Defendant ARTILE STANCE (A. STANCE), is an individual and resident of the City and County of San Diego, State of California, and at all times relevant to this action, is a Trustee responsible for the PROPERTY.

[1] SDMC section 11.0210 defines "Responsible Person" as "[a] person who a Director determines is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or applicable state codes. The term "Responsible Person" includes but is not limited to a property owner, tenant, person with a Legal Interest in real property or person in possession of real property."

8. Defendant FLORA M. STANCE (F. STANCE), is an individual and resident of the City and County of San Diego, State of California, and at all times relevant to this action, is a Trustee responsible for the PROPERTY.

9. As Trustees of the Stance Family Trust, Defendants A. STANCE and F. STANCE have allowed a marijuana dispensary to illegally conduct business at the PROPERTY. Defendants A. STANCE and F. STANCE are each a "Responsible Person" under SDMC section 11.0210 as each is allowing or maintaining violations of the SDMC at the PROPERTY. Defendants A. STANCE and F. STANCE are also strictly liable for all code violations occurring at the PROPERTY pursuant to SDMC section 121.0311 and applicable California law.

10. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the provisions of California Code of Civil Procedure section 474, their true names and capacities being unknown to Plaintiff. The City is informed and believes that each of Defendants DOES 1 through 50, is in some manner responsible for conducting, maintaining or directly or indirectly permitting the unlawful activity alleged in this Complaint. Plaintiff will ask leave of the court to amend this Complaint and to insert in lieu of such fictitious names the true names and capacities of DOES 1 through 50 when ascertained.

11. At all relevant times mentioned in this Complaint, all Defendants were and are agents, principals, servants, lessors, lessees, employees, partners, associates and/or joint ventures of each other and at all times were acting within the course, purpose and scope of said relationship and with the authorization or consent of each of their co-defendants.

PROPERTY

12. The PROPERTY where the marijuana dispensary is operating is located at 4255 Market Street, San Diego, California, 92102, also identified as Assessor's Parcel Number 547-102-01-00, according to San Diego County Recorder's Quitclaim Deed, document number 2006-0014129, recorded January 9, 2006.

13. The legal description of the PROPERTY is:

> LOT 1, BLOCK 10 OF MORRISON'S MARSCENE PARK, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1844,

FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 10, 1925.

14. The Quitclaim Deed lists the owner of the PROPERTY as "Kenneth B Stance, an unmarried man and Artile Stance and Flora M Stance, as Trustees of the Stance Family Trust dated October 26, 2005, all as joint tenants."

15. The PROPERTY is located in the Mount Hope Planned District Subdistrict II, within the City of San Diego.

FACTUAL ALLEGATIONS

16. SDMC section 1515.0306 lists what are the permitted uses in the Mount Hope Planned District Subdistrict II in the City of San Diego where the PROPERTY is located. The operation or maintenance of a marijuana dispensary, collective, or cooperative is not one of the enumerated permitted uses.

17. Medical Marijuana Consumer Cooperatives (MMCC) are regulated by the SDMC Section 141.0614 and Chapter 4, Article 2, Division 15. Per the newly adopted MMCC ordinance, the operation or maintenance of a marijuana dispensary, collective, or cooperative is not a permitted use in the Mount Hope Planned District Subdistrict II.

18. On or about November 13, 2013, the City of San Diego's Development Services Department, Code Enforcement Division (CED), received a complaint of a marijuana dispensary known as "Market Greens" operating at the PROPERTY in violation of local zoning laws.

19. On or about December 12, 2013, Land Development Investigator Leslie Sennett (SENNETT) and Combination Building Inspector Robert Cervantes (CERVANTES), went to the PROPERTY to investigate the complaint of a marijuana dispensary operating in violation of local zoning laws.

20. Upon arriving at the PROPERTY, SENNETT observed security cameras and customers entering into the building at the PROPERTY. Two males seated under a canopy in the rear lot of the PROPERTY, refused to identify themselves and indicated the dispensary manager was not available. SENNETT left her business card for the manager.

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21. On or about December 24, 2013 and February 25, 2014, SENNETT returned to the PROPERTY to confirm the dispensary was still operating. On both dates, SENNETT observed a group of males under the canopy in the rear lot area where they greet customers before directing them into the dispensary through the rear entrance. On both dates, SENNETT observed the cameras were still mounted around the PROPERTY.

22. On or about April 2, 2014, SENNETT mailed a request for inspection to property owner, Kenneth Stance.

23. On or about April 9, 2014, K. STANCE spoke to SENNETT and confirmed a marijuana dispensary was operating at the PROPERTY. SENNETT explained to K. STANCE that a marijuana dispensary was not a permitted use at this location.

24. SENNETT also researched and determined the marijuana dispensary known as "Market Greens" was advertising in the San Diego Reader magazine as operating at the PROPERTY.

25. SENNETT also conducted internet research and discovered a dispensary known as "Market Greens" was listed on www.weedmaps.com, a website commonly used to locate marijuana dispensaries, as operating at the PROPERTY.

26. On or about August 8, 2014, SENNETT issued a Notice of Violation (NOV) to the Defendants and to Market Greens, as the tenant. The NOV outlined the violations observed at the PROPERTY. The NOV required Defendants to immediately cease operating or maintaining the marijuana dispensary at the PROPERTY in violation of zoning laws.

27. On or about August 19, 2014, an undercover detective with the San Diego Police Department went to the PROPERTY to purchase marijuana. Upon arriving at the PROPERTY, the detective observed security cameras posted around the PROPERTY and multiple individuals enter and exit the PROPERTY in a short time span.

28. When the detective approached the PROPERTY, he discovered the main entrance was locked and noticed several pieces of paper with green arrows directing people to the back of the PROPERTY.

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29. Upon entering the business through the rear entrance, the detective immediately smelled a strong odor of marijuana. The detective provided a male at the reception window with his undercover marijuana recommendation and identification. The detective then received paperwork designating him a member of "Market Greens" collective.

30. The male employee directed the detective to the back room where he observed five large display cases containing several glass jars of marijuana. The detective purchased a gram of "wax" (a form of concentrated cannabis) called "Chocolate Chunk Indica" for $45.00.

31. The detective transported the "wax" to San Diego Police Headquarters where he photographed the "wax" which was separated into two vials and impounded the wax in the SDPD Headquarters Property Room.

32. Plaintiff is informed and believes that Defendants are blatantly and willfully in violation of the SDMC and will continue to maintain the unlawful code violations in the future unless the Court enjoins and prohibits such conduct. Absent the relief requested by Plaintiff, the City is unable to enforce its zoning laws and therefore unable to ensure the compatibility between land uses for its residents. The land use scheme and regulations under the Municipal Code become meaningless and the public is left unprotected from the direct and indirect negative effects associated with unpermitted and incompatible uses in their neighborhoods. Absent injunctive relief, the City will be irreparably harmed and the ongoing violations will continue to harm the public health, safety and welfare.

I

FIRST AND ONLY CAUSE OF ACTION

VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST ALL DEFENDANTS

33. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1 through 32 of this Complaint as though fully set forth here in their entirety.

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34. SDMC section 121.0302(a) states, "It is unlawful for any person to maintain or use any premises in violation of any of the provisions of the Land Development Code[2], without a required permit, contrary to permit conditions, or without a required variance."

35. The PROPERTY is located in the Mount Hope Planned District Subdistrict II. SDMC section 1515. 0306 governs and lists what are the permitted uses in the Mount Hope Planned District Subdistrict II where the PROPERTY is located. The operation or maintenance of a marijuana dispensary, collective, or cooperative is not one of the enumerated permitted uses.

36. Beginning on an exact date unknown to Plaintiff, but since at least December 12, 2013, and continuing to the present, Defendants have operated, maintained and used the PROPERTY for a purpose or activity not listed in SDMC section 1515.0306 in direct violation of SDMC sections 1515.0306 and 121.0302.

37. Absent the relief requested by Plaintiff, the City is unable to enforce its zoning laws and therefore unable to ensure the compatibility between land uses. Irreparable harm will be suffered by Plaintiff in that the City's land use scheme and regulations under the Municipal Code become meaningless and the public is left unprotected from the direct and indirect negative effects associated with unpermitted and incompatible uses in their neighborhoods.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. That the PROPERTY be declared in violation of:

San Diego Municipal Code sections

121.0302
1515.0306

2. That pursuant to SDMC sections 12.0202, and 121.0311, Code of Civil Procedure section 526, and the Court's inherent equity powers, the Court grant a preliminary injunction and permanent injunction enjoining and restraining Defendants and their agents, servants, employees,

[2] SDMC §111.0101 (a) Chapters 11, 12, 13, and 14 of the City of San Diego Municipal Code shall be known collectively, and may be referred to, as the Land Development Code.

partners, associates, officers, representatives and all persons acting under or in concert with or for Defendants, from engaging in any of the following acts:

a. 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;

b. Maintaining, operating, or allowing the operation of any unpermitted use at the PROPERTY;

c. Advertising in any manner, including on the Internet, the existence of 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 Health and Safety Code at the PROPERTY;

d. Violating any provisions of the SDMC at the PROPERTY.

3. That immediately from the date of entry of judgment, Defendants cease the operation of the marijuana dispensary at the PROPERTY and remove all signs advertising the business.

4. That Defendants allow personnel from the City of San Diego access to the PROPERTY to inspect and monitor 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.

5. That Plaintiff City of San Diego, recover all costs incurred by Plaintiff, including the costs of investigation, as appropriate.

6. That pursuant to SDMC section 12.0202(b), Defendants are assessed a civil penalty of $2,500 per day for each and every SDMC violation maintained at the PROPERTY.

7. That Plaintiff be granted such other and further relief as the nature of the case may require and the Court deems appropriate.

Dated: September 30, 2014

JAN I. GOLDSMITH, City Attorney

By

LeAnna Shields
Deputy City Attorney
Attorneys for Plaintiff