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FAQs — City of Los Angeles v. 420 Grand et al

What is The City Asking For on September 16?

In its Ex Parte Application filed September 13, the City asks the Court to: (i) set a hearing date and briefing schedule for motio preliminary injunction on four "test cases;" stay all responsive pleadings and discovery unless otherwise court ordered until th cases are heard; and (iii) utilize CaseHomePage, a third party interactive service, to serve and manage court filed documents electronically.

Test Cases: Rather than filing a motion for preliminary injunction against each individual Defendant, the City is proposing to f four test case motions on October 4, 2010 that are intended to provide guidance to the Court as well as the parties for the remaining litigation. These "test cases" are based on the following -what the City believes to be – "common" fact patterns: (i) complete substitution of owners/management; (ii) additions of owners/management; (iii) deletions of owners/management; an dispensary location change. Each test case will be made up of five Defendants and the specific Defendants have not been identified as of yet.

Stay of Proceedings: While these test cases are pending, the City is also requesting an order from the Court to stop all parti from filing responsive papers and conducting discovery in this case, as well as 32 other medical marijuana related actions, un decision is reached on the test cases. The city anticipates – correctly – that Defendants will file a variety of prehearing motion the same issues and it will be unfairly prejudiced by having to respond to them all. Our view is that discovery is necessary to m a proper defense to the City's request for a preliminary injunction. On Thursday, we will be vigorously opposing this request.

Case Homepage: Finally, in order to minimize the burden on the Court and parties, the City is proposing the Court utilize the services of CaseHomePage, a third party interactive service, which, through a secure website, will provide the attorneys in thi action with electronic service, storage, and delivery of court-filed and discovery-related documents.

Why is there a Case Management Conference already scheduled for January 3 2011? Is any action on my part required?

A case management conference is set by the Court after the initial filing of a case. The purpose of a Case Management Conference is to notify the Court of the status of the case. Courts must take an active role in monitoring case progress and ensuring that attorneys and/or parties take all steps necessary to prepare a case for trial or settlement as early as possible. Ju have the ultimate responsibility of controlling the pace of litigation and to compel attorneys and litigants to resolve all litigation without delay. For these reasons Case Management Conferences are scheduled early on in the litigation process to set deadl and enable proper case management by the Court, the attorneys and/or the parties.

As you will see on the Notice of Case Management Conference, you must file a Case Management Statement at least fifteen calendar days prior to the Conference. This Statement may be filed jointly by all parties/attorneys of record or individually. Thi standard four-page form available on the Court's website, and it is recommended that you consult with an attorney prior to filin your Statement.

At the Case Management Conference, counsel for each party and each self-represented party must appear personally or, if permitted by the Court, by telephone; must be familiar with the case; and must be prepared to discuss and commit the party's position on the issues. The Court may make pretrial orders regarding an order establishing a discovery schedule; an order reclassifying the case; an order referring the case to Alternative Dispute Resolution (ADR); or an order setting subsequent conference and trial dates. The Court will address issues such as: the estimated length of trial; the nature of the injuries; the amount of damages; any additional relief sought; and any other matters that should be considered by the Court. Essentially, t process is for management purposes by the Court and is the standard in litigation proceedings.

What's scheduled for September 16 at 1:30pm?

The City has filed notice of its intention to appear ex parte (i.e. without the usual requisite notice of 16 court days for a motion) on September 16, 2010 to ask Judge Anthony Mohr to set a briefing schedule on the City's motion for a preliminary injunction. If you are wondering what motion, that's a fair question. To date, the City has not filed any motion for a preliminary injunction. In the petition to be heard on September 16, however, the City discloses that it ispreparing to file — no later than September 16 — a motion for preliminary injunction shutting down the dispensing collectives/cooperatives. This confirms what we anticipated, namely that the a temporary restraining order (TRO) which merely is court-imposed preservation of the status quo was not the preferred route for the City (although it was a possibility requested in the complaint) but rather, the City desires and intends to ask the Court to issue an injunction ordering pre-ICO dispensaries to shut down after the parties have an opportunity to brief the issues.

Assuming the City can meet its self-imposed September 16 deadline, it will be asking the court to set a schedule on the briefi the preliminary injunction and a hearing date. Our firm will be representing existing clients at this hearing and will initially argu against setting a schedule at this time, on the grounds that other issues need to be addressed first. Because the court, howev likely to set a calendar, simply because one side is asking it to so, we may subsequently argue that motions must be heard fir other issues, such as, motions for severance, motions to quash service of process, and motions for writ of mandate. The litiga process favors the proactive in this regard. To the extent that dispensing collectives/cooperatives file such motions on other is then it is unlikely that the judge will view any expedited calendering proposal with favor.

Do I need to attend the September 16 hearing?

The hearing is to schedule a briefing calendar in the case, and therefore, you do not need to be at the hearing. Our firm will ha attorneys at the hearing to address a number of issues that we believe will impact the judge's calendaring decisions. Specifica we intend to make the judge aware of the many issues that need to be briefed and argued prior to a hearing on the City's requ for a preliminary injunction.

So when will the preliminary injunction be heard?

Technically, under court rules, Judge Mohr has the right to set it to be heard as soon as 16 court days following September 16 which could mean as early as October 8. It is unlikely the schedule will be quite that tight and it is reasonable to expect that he afford the dispensaries slightly more time. But any expectations of putting off a reckoning until 2011 are slim. It will be critical f dispensaries to be prepared to mount a strong defense to the City's claims soon.

How do I know if I've been properly served?

While some defendants in the pre-ICO dispensary have recounted that they have received a summons and complaint from a process server, we've heard from a few that a copy was simply left on their doorstep. If you're in that category, or if one of you employees was handed papers, has the City done all it needs to do? California Code of Civil Procedure Section 416.10 spells the law regarding what the City needs to do to effectuate proper service of the summons and copy of the Compliant personall City then files proof of service with Court. Section 416.10 spells out a few ways to do this on a corporate entity (which most of defendants are), including service on "the president, or other head of the corporation, a vice president, a secretary or assistan secretary, a treasurer or assistant treasurer, a general manager, or a person authorized by the corporation to receive service process." C.C.P. 416.10(b). It is not enough to just leave it with anyone; the person must hold one of the positions in the statu be authorized. Under California law, "apparent" agency (i.e. looking like someone authorized) is "insufficient to establish perso service[;] the mere fact that a person is authorized to receive mail on behalf of a corporation or to sign receipts acknowledging delivery of mail "does not mean that the same person is authorized by the corporation to accept service of process." See Dill v Berquist Const. Co., Inc. (1994) 24 Cal.App.4th 1426, 1437-1438. Similarly, it is not enough to leave it on the doorstep of a cl dispensary. There is a provision for "substituted service" if, after multiple attempts, no one is available, by which the Court can permit service by mailing. But it appears here that the City is simply looking for a shortcut to the process required by law. Wha should you do? If you receive a copy on your doorstep, you have a choice. You can ignore the City's defective service and sim appear in the case, waiving the defect. Or you can move to quash service of summons, arguing that the attempted service wa improper. Assuming the judge agrees, the City will then be forced to complete service properly. If, as appears to be the case, City is in a big hurry, it may be appropriate to ensure that it follows the law in this regard.

How long do we have to respond to the City's lawsuit?

Once you've been properly served, the law provides that you have 30 days to file a responsive pleading, such as an answer o demurrer. While the City cannot accelerate the time for responsive pleading, it is asking the Court to hold a hearing on Septer

16, 2010 at 1:30pm. While no one can be penalized for failing to appear that day, any dispensary that wants to oppose the mo needs to appear or be represented at the hearing.

What will the City need to do to obtain a preliminary injunction?

The City has announced it plans to move the court to enter a preliminary injunction to prevent the defendant from continuing t operate during the time the law suit is pending prior to trial. In order to be granted a preliminary injunction, the City must, in ad to showing "irreparable harm" by the defendants, make a "clear showing" that it is likely to succeed at trial in proving its correc interpretation of the ordinance. In deciding whether to issue a preliminary injunction, the court will then weigh the evidence of irreparable harm, the balance of the hardships to the parties if the injunction is granted or denied, and the public interest.

What is the source for the concept that there could not be an ownership/management change?

Section 45.19.6.2(B)(2) of the Ordinance sets forth five pre-requisites for eligibility to apply for pre-registration. The third one i we quote): "(3) has the same ownership and management as it identified in its registration with the City Clerk's office." The Ci Attorney has interpreted this clause to mean that no entity may have any (quoting from the City's complaint): "substitution, ad or subtraction of persons identified in the pre-ICO registration as the collective's ownership/management."

But we didn't add anybody new to our management team . . . what did the City do?

Based on what we learned during a meeting held downtown at City Hall on August 31, 2010 with representatives from the City Attorney's office and City Clerk's office, the City compared (i) the names that were written in the "Business Owner" and "Busin Operator/Manager" boxes on the 2007 "Medical Marijuana Dispensary Business Information Form" with (ii) the name written i "Business Owner(s)" box on the 2010 "Notice of Intent to Register Form" and the names of people who submitted Live Scan documentation, and if the two sets of names were not identical, then the City determined that you were Ineligible to continue v the registration process.

Is the City's position strong?

The answer to this question depends in large part on your unique set of facts, and may be impacted by principles of corporate formation and governance specifically related to your fact pattern. For example, if the dispensing collective/cooperative is orga as a Limited Liability Company under California law , and it designated in its Articles of Organization that it was to be manage all its members, then we believe the City's narrow interpretation and application of the provision in the Ordinance notes above would be very difficult to endorse. Similarly, if a dispensing collective/cooperative converted into a statutory cooperative under Section 12200 et seq. of the California Corporations Code as was recommended by the 2008 Attorney General Guidelines an to add directors to its board in order to comply with the California Corporations Code requirement to have three directors, then again believe the City's position would be difficult to support. Generally speaking, we believe that the democratic nature of corporate entities and the way executive officers are to be elected annually by directors, and the way directors are to be elect annually by shareholders/members, raises significant problems for the City's application of its narrow interpretation. Most importantly, the answer to whether the City's position is strong will require an assessment of your particular set of facts.