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A MUNICIPAL CORPORATION
C/O CITY TREASURER

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CITY OF SAN DIEGO
C/O CITY TREASURER
DELINQUENT ACCOUNTS
MAIL STATION: 4A

DOC# 2018-0126301



Mar 29, 2018 02:58 PM

OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$0.00 (SB2 Atkins: \$0.00)

PAGES: 11

THIS SPACE FOR RECORDER'S USE ONLY

ABSTRACT OF JUDGMENT - CIVIL AND SMALL CLAIMS

(Please fill in document title(s) on this line)

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Additional recording fee applies)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, and State Bar number):
 After recording, return to:
MARA W. ELLIOTT, CITY ATTORNEY
PAUL PRATHER, DEPUTY CITY ATTORNEY SB# 252985
 1200 THIRD AVE SUITE 700
 SAN DIEGO, CA 92101
 ACCT# 4934429
 TEL NO.: 619-744-3103 FAX NO. (optional): 619-533-3840
 E-MAIL ADDRESS (Optional):
 ATTORNEY FOR JUDGMENT CREDITOR ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
 STREET ADDRESS: 330 WEST BROADWAY, ROOM 241
 MAILING ADDRESS: 330 WEST BROADWAY, ROOM 241
 CITY AND ZIP CODE: SAN DIEGO, CA 92101
 BRANCH NAME: CENTRAL DIVISION

FOR RECORDER'S USE ONLY

PLAINTIFF: CITY OF SAN DIEGO, A MUNICIPAL CORPORATION
 DEFENDANT: 1735 GARNET LLC, et al.


CASE NUMBER:
 37-2015-00025571-CU-MC-CTL

ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS Amended

FOR COURT USE ONLY


1. The judgment creditor assignee of record applies for an abstract of judgment and represents the following:
 a. Judgment debtor's Name and last known address
 PAUL SPENCE
 299 17TH ST
 SAN DIEGO, CA 92101
 b. Driver's license no. [last 4 digits] and state: Unknown
 c. Social security no. [last 4 digits]: 5658 Unknown
 d. Summons or notice of entry of sister-state judgment was personally served or mailed to (name and address):
 PAUL SPENCE 299 17TH ST SAN DIEGO, CA 92101

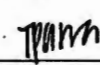
2. Information on additional judgment debtors is shown on page 2.
 3. Judgment creditor (name and address):
 CITY OF SAN DIEGO, A MUNICIPAL CORPORATION
 1010 2ND AVE, 6TH FLOOR, WEST
 SAN DIEGO, CA 92101
 Date: 03-19-18
 PAUL PRATHER, DEPUTY CITY ATTORNEY
 (TYPE OR PRINT NAME)

4. Information on additional judgment creditors is shown on page 2.
 5. Original abstract recorded in this county:
 a. Date:
 b. Instrument No.: 
 (SIGNATURE OF APPLICANT OR ATTORNEY)

6. Total amount of judgment as entered or last renewed:
 \$900,000.00
 7. All judgment creditors and debtors are listed on this abstract.
 8. a. Judgment entered on (date): 07-29-16
 b. Renewal entered on (date):

10. An execution lien attachment lien is endorsed on the judgment as follows:
 a. Amount: \$
 b. In favor of (name and address):

9. Judgment is an installment judgment.

 This abstract issued on (date):
MAR 23 2018

11. A stay of enforcement has
 a. not been ordered by the court.
 b. been ordered by the court effective until (date):
 12. a. I certify that this is a true and correct abstract of the judgment entered in this action.
 b. A certified copy of the judgment is attached.
 Clerk, by  T. Parra, Deputy

PLAINTIFF: CITY OF SAN DIEGO, A MUNICIPAL CORPORATION
DEFENDANT: 1735 GARNET LLC, et al.

COURT CASE NO.:
37-2015-00025571-CU-MC-CTL

NAMES AND ADDRESSES OF ADDITIONAL JUDGMENT CREDITORS:

13. Judgment creditor (*name and address*):

14. Judgment creditor (*name and address*):

15. Continued on Attachment 15.

INFORMATION ON ADDITIONAL JUDGMENT DEBTORS:

16. Name and last known address
1735 GARNET LLC
2717 HIDDEN VALLEY ROAD
LA JOLLA, CA 92037
[]
Driver's license no. [last 4 digits] and state: Unknown
Social security no. [last 4 digits]: Unknown
Summons was personally served at or mailed to (*address*):
1735 GARNET LLC
BY SERVING TODD LESSER,
AURTHORIZED TO ACCEPT SERVICE
2717 HIDDEN VALLEY ROAD
LA JOLLA, CA 92037

17. Name and last known address
TODD LESSER
2717 HIDDEN VALLEY ROAD
LA JOLLA, CA 92037
[]
Driver's license no. [last 4 digits] and state: 4534 CA Unknown
Social security no. [last 4 digits]: 6269 Unknown
Summons was personally served at or mailed to (*address*):
TODD LESSER
2717 HIDDEN VALLEY ROAD
LA JOLLA, CA 92037

18. Name and last known address
[]
[]
Driver's license no. [last 4 digits] and state: Unknown
Social security no. [last 4 digits]: Unknown
Summons was personally served at or mailed to (*address*):

19. Name and last known address
[]
[]
Driver's license no. [last 4 digits] and state: Unknown
Social security no. [last 4 digits]: Unknown
Summons was personally served at or mailed to (*address*):

20. Continued on Attachment 20.

| | |
|---|--|
| SHORT TITLE: City v. 1735 Garnet LLC, et al. | CASE NUMBER: 37-2015-00025571-CU-MC-CTL |
|---|--|

ATTACHMENT (Number): 1*(This Attachment may be used with any Judicial Council form.)*

PAUL SPENCE
299 17TH ST
SAN DIEGO, CA 92101
ORDERED TO PAY \$700,000.00 ONLY

1735 GARNET LLC
2717 HIDDEN VALLEY ROAD
LA JOLLA, CA 92037
ORDERED TO PAY \$200,000.00 JOINTLY AND SEVERALLY WITH TODD LESSER

TODD LESSER
2717 HIDDEN VALLEY ROAD
LA JOLLA, CA 92037
ORDERED TO PAY \$200,000.00 JOINTLY AND SEVERALLY WITH 1735 GARNET LLC



(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1
(Add pages as required)

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No Fee GC §6103

FILED
SAN DIEGO SUPERIOR COURT
JUL 29 2016
CLERK OF THE SUPERIOR COURT
BY: T. RAY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,

Plaintiff,

v.

1735 GARNET, LLC., a California corporation;
TODD LESSER, an individual and as manager
of 1735 GARNET, LLC.; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2015-00025571-CU-MC-CTL
~~PROPOSED~~ JUDGMENT AND
PERMANENT INJUNCTION AS TO
DEFENDANTS 1735 GARNET LLC,
TODD LESSER AND PAUL SPENCE

IMAGED FILE

The City of San Diego's motion for summary judgment against Defendants 1735 GARNET LLC, TODD LESSER and PAUL SPENCE came on for hearing on July 8, 2016, at 10:00 a.m. in Department C-71, the Honorable Gregory W. Pollack, judge presiding. Deputy City Attorney Patricia Miranda appeared on behalf of Plaintiff, City of San Diego. R. Dale Dixon, Esq., appeared on behalf of Defendants 1735 Garnet LLC and Todd Lesser. Jeffrey Lake, Esq., appeared on behalf of Defendant Paul Spence.

After considering the moving and opposing papers and hearing oral argument from counsel, the Court GRANTED the City's motion, as specified in the Court's Minute Order dated July 8, 2016, a true copy of which is attached hereto as Exhibit 1.

1 THEREFORE, IT IS HEREBY ORDERED that Defendants 1735 GARNET LLC, TODD
2 LESSER and PAUL SPENCE, their agents, servants, employees, partners, associates, officers,
3 representatives, and all persons acting in concert or participating with or for them are permanently
4 enjoined from operating or maintaining a marijuana dispensary, collective, or cooperative in any
5 form in the City of San Diego without obtaining all required permits.

6 IT IS FURTHER ORDERED that pursuant to San Diego Municipal Code section
7 12.0202(b), Defendants 1735 GARNET LLC and TODD LESSER, jointly and severally, shall
8 pay to the City of San Diego civil penalties in the amount of \$200,000.00.


9 IT IS FURTHER ORDERED that pursuant to San Diego Municipal Code section
10 12.0202(b), Defendant PAUL SPENCE shall pay to the City of San Diego civil penalties in the
11 amount of \$700,000.00.

12 The Court will retain jurisdiction for the purpose of enabling any of the parties to this
13 Final Judgment to apply to this Court at any time for such order or directions that may be
14 necessary or appropriate for the construction, operation or modification of this Final Judgment; or
15 for the enforcement or compliance therewith; and,

16 The clerk of the Court is directed to immediately enter this Final Judgment.

17 **IT IS SO ORDERED, ADJUDGED AND DECREED.**


18 Dated _____


7/29/16

JUDGE OF THE SUPERIOR COURT
GREGORY W. POLLACK

19
20 Approved as to form and content:

21 Dated 7/18/16

22
23 
24 R. Dale Dixon
25 Attorney for Defendants 1735 Garnet LLC and Todd Lesser

26 Approved as to form and content:

27 Dated _____

28 Jeffrey A. Lake, Esq.
Attorney for defendant Paul Spence

L:\CBUCASE.ZM1864 pm\Filed in MS/Judgment/Judgment and PI w-
approval by attorney.docx



CLERK'S CERTIFICATE

The foregoing document, consisting of
0 page(s), is a full, true, and correct
copy of the original copy on file in
this office.

Clerk of the Superior Court

3/23/18 by TPM T. Parra
Date Deputy

EXHIBIT 1



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 07/08/2016 TIME: 10:00:00 AM DEPT: C-71
JUDICIAL OFFICER PRESIDING: Gregory W Pollack
CLERK: Terry Ray
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT: L. Wilks

CASE NO: 37-2015-00025571-CU-MC-CTL CASE INIT.DATE: 07/30/2015
CASE TITLE: City Of San Diego vs. 1735 Garnet LLC [IMAGED]
CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)
MOVING PARTY: City Of San Diego
CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 04/22/2016

APPEARANCES

Patricia Miranda, counsel, present for Plaintiff(s).
R Dale Dixon, counsel, present for Defendant(s).
Jeffrey A Lake, counsel, present for Defendant(s).

The Court orally advises the parties of its tentative ruling, after which oral argument is conducted. Upon completion of oral argument, the court makes the below ruling:

RULING AFTER ORAL ARGUMENT: The Court rules on the plaintiff City of San Diego's (City) motion for summary judgment as follows:

Preliminarily, the City's request for judicial notice is granted and the City's objections are sustained. Defendant Paul Spence's (Spence) evidentiary objections are overruled.

The City moves for summary judgment pursuant to Code of Civil Procedure section 437c on the grounds that there is no defense to the Complaint and Plaintiff is entitled to judgment as a matter of law on its claim for permanent injunctive relief and civil penalties for Defendants' violations of the San Diego Municipal Code (SDMC).

In the City of San Diego, medical marijuana dispensaries (MMD) and cooperatives are regulated by SDMC section 141.0614, which provides that marijuana cooperatives may be permitted with a conditional use permit in certain zones in the City. The property at issue in this case is located at 1735 Garnet Avenue, San Diego, California, which was within the Community Commercial (CC-4-2) zone. A medical marijuana consumer cooperative (MMCC), marijuana dispensary, cooperative, or collective is not a permitted use in either of these zones.

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable

EXHIBIT 1

DATE: 07/08/2016
DEPT: C-71

MINUTE ORDER

Page 1
Calendar No. 12

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., §437c(c).) From commencement to conclusion, the party moving for summary judgment bears the burden of persuasion, "the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact." (*Agullar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) If the movant meets its burden of production, the movant "causes a shift, and the opposing party is then subjected to a burden of production of [its] own to make a prima facie showing of the existence of a triable issue of material fact." (*Id.*) If the motion for summary judgment is brought by the plaintiff, the plaintiff "has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action." (Code Civ. Proc., §437c(p)(1).)

This Court issued a temporary restraining order (TRO) on February 24, 2016 and then a preliminary injunction on March 18, 2015, as to Spence. On August 16, 2015, and August 21, 2015, respectively, the Court issued a TRO and preliminary injunction against the 1735 Garnet, LLC and Todd Lesser (sometimes collectively Lesser Defendants). Both injunctions enjoined Defendants from operating or maintaining a marijuana dispensary, collective, or cooperative at the subject property.

The issue before the Court is whether City has established each element of its sole cause of action for violations of the SDMC.

There is no question that Defendants' operation of an unpermitted medical marijuana dispensary at the premises constitutes a violation of the SDMC. The operation of the MMD has been established by declarations filed by the City which included information regarding undercover purchases at the subject property.

Spence also contends the relief sought is moot. However, it is well-established that cessation of conduct does not necessarily render conduct such as a zoning violation moot. As City points out, in its recent ruling in *People v. Superior Court (Cahuenga's the Spot)* (2015) 234 Cal.App.4th 1360 (*Cahuenga*), the Court of Appeal agreed that the "claim that the action is moot because he is no longer leasing to a marijuana dispensary is without merit." (*Id.* at 1385.) "While voluntary cessation of conduct may be a factor in a court's discretion of its equitable jurisdiction to issue an injunction, it is not determinative; the trial court must also decide if an injunction affecting future conduct should be a part of the relief it grants." (*Ibid.*) The Court disagrees with Defendants' position.

Spence and the Lesser Defendants also argue that the City has not presented admissible evidence to establish whether they were responsible persons for the alleged use of the subject property and whether a transfer of marijuana occurred at the subject property. However, as noted above, the Court has overruled Spence's objections and found the City's evidence to be admissible and sufficient to establish that the City has met its burden as to these issues.

Finally, as to the issue of whether a MMCC, as defined in SDMC section 113.0103 was ever operated at the subject property, the City has, as noted above, presented evidence establishing that a marijuana dispensary selling marijuana products was operating at the subject property and that it is in a zone that does not permit MMCCs.

Based on the foregoing, the Court grants the motion for summary judgment and hereby enjoins Spence and the Lesser Defendants from operating an MMD, cooperative, or collective in any form in the City of

San Diego without a permit.

With regard to the issue of civil penalties, SDMC section 12.0202 subd. (b) provides for as much as \$2,500/day. The court offered defendant an opportunity for a separate post-judgment evidentiary hearing. (See *People v. Super. Ct. of Los Angeles County* (2015) 234 Cal.App.4th 1360, 1387 ("The trial judge may need to hear additional evidence that, while not relevant to proof of the elements of the offenses, is relevant to the proper exercise of his or her equitable powers in ... assessing appropriate amounts of civil penalties.")) The Defendants declined, choosing an immediate determination of the amount, if any, of the civil penalties. Thus, the Court orders civil penalties as follows: \$200,000 jointly and severally liable as to the Lesser Defendants (landlord) only, and \$700,000 as to Spence (operator/tenant) only.

The high amount of these penalties (\$900,000) is based on a number of factors, the most significant of which were the fact that this illegal drug operation defiantly continued in operation for many months *after* the Court had already issued a TRO and preliminary injunction enjoining such conduct, the high volume of sales (\$131,528 over an 11-day period), the fact that the landlord had previously rented the same premises to a different illegal marijuana dispensary, the sham unlawful detainer action filed by the landlord, the fact that the landlord has allowed the tenant to continue his tenancy even after the expiration of the lease and the undercover police identification information found on the premises. *Decisions made, consequences paid.*

IT IS SO ORDERED.



Judge Gregory W Pollack