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F I L E D
Clerk of the Superior Court

JUN 26 2018

By: Anthony Shirley, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,

Plaintiff,

v.

QUIRINO A. GUTIERREZ, individually and as Trustee of the GUTIERREZ FAMILY TRUST DATED JUNE 28, 2004; BERTHA A. GUTIERREZ, individually and as Trustee of the GUTIERREZ FAMILY TRUST DATED JUNE 28, 2004; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2016-00015369-CU-MC-CTL

~~PROPOSED~~ JUDGMENT AND PERMANENT INJUNCTION AS TO DEFENDANTS QUIRINO A. GUTIERREZ AND BERTHA A. GUTIERREZ

Dept: C-70
Judge: Hon. Randa Trapp

The City of San Diego's motion for summary judgment against defendants Quirino A. Gutierrez and Bertha A. Gutierrez came on for hearing on June 8, 2018, at 11:00 a.m. in Department C-70, the Honorable Randa Trapp, judge presiding. Deputy City Attorney Marsha B. Kerr appeared on behalf of Plaintiff, City of San Diego. There was no appearance by defendants.

The Court GRANTED the City's motion, as specified in the Court's tentative ruling dated June 7, 2018, a true copy of which is attached hereto as Exhibit 1.

THEREFORE, IT IS HEREBY ORDERED that defendants Quirino A. Gutierrez and Bertha A. Gutierrez, individually and as trustees of the Gutierrez Family Trust dated June 28, 2004, are permanently enjoined from operating or maintaining a marijuana dispensary, collective,

1 cooperative or other marijuana-related operation in the City of San Diego, unless Defendants
2 obtain a Conditional Use Permit per the San Diego Municipal Code.

3 IT IS FURTHER ORDERED that defendants Quirino A. Gutierrez and Bertha A.
4 Gutierrez, individually and as trustees of the Gutierrez Family Trust dated June 28, 2004, shall
5 pay to the City of San Diego, jointly and severally, civil penalties in the amount of \$388,000.00
6 and costs of \$375.50, for a total Judgment of \$388,375.50.

7 IT IS SO ORDERED, ADJUDGED AND DECREED.

8 Dated: JUN 26 2018

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10 RANDA TRAPP
11 JUDGE OF THE SUPERIOR COURT
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SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - June 07, 2018

EVENT DATE: 06/08/2018

EVENT TIME: 11:00:00 AM

DEPT.: C-70

JUDICIAL OFFICER: Randa Trapp

CASE NO.: 37-2016-00015369-CU-MC-CTL

CASE TITLE: CITY OF SAN DIEGO VS GUTIERREZ [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 03/09/2018

MOTION FOR SUMMARY JUDGMENT by plaintiff City of San Diego is GRANTED.

Request for Judicial Notice is granted.

Defendants admit their tenants were operating a medical marijuana dispensary at 154 West San Ysidro Blvd in San Ysidro. Defendants knew a conditional use permit [CUP] was required before the dispensary could operate and do not dispute that no CUP had been obtained when the violations at issue occurred from March 2016 through February 2017 when it closed. Thus, the dispensary was operating in violation of San Diego Municipal Code §§ 1518.0301 and 1519.0304. (Declarations of Valverde, Sperry, Quirino A. Gutierrez and Bertha A. Gutierrez)

Defendants knew their tenants wanted to operate a medical marijuana dispensary because they included language in the lease that the tenants could not operate the dispensary until they obtained the required permits from the City. (Ex. 16) Despite this provision, they claim they relied on the tenants' counsel and believed he had submitted the application for the CUP as the tenants had paid the attorney for that service. They also claim the attorney advised the parties that the application would take 13-16 months to be processed and that it was lawful for them to conduct the business while the CUP application was pending.

Notwithstanding that this argument is contrary to the language in the lease that required the CUP before operation of the marijuana dispensary, what they were told by the tenant's attorney is not determinative. SDMC § 11.0210 defines "responsible persons" as including a property owner. And as owners of the property, defendants are strictly liable for violations of the SDMC. (*People v. Superior Court of Los Angeles County* (2015) 234 Cal.App.4th 1360, 1385)

Accordingly, summary judgment is granted in favor of the City of San Diego.

Further, defendants knew a CUP was required for the marijuana dispensary to operate at their property. They required the appropriate permits in their lease and had in fact previously had been held liable for operating a marijuana dispensary on the property. This indicates they willfully violated the SDMC in this case. As they are repeat offenders, the court will impose a penalty of \$1000/day for each day the illegal marijuana dispensary operated from February 1, 2016 until the police shut it down on February 22, 2017. (SDMC § 12.0202; See, *City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1315) Thus penalties are assessed in the amount of \$388,000.

CASE TITLE: CITY OF SAN DIEGO VS CASE NUMBER: 37-2016-00015369-CU-MC-CTL
GUTIERREZ [IMAGED]

Plaintiff to prepare the judgment and submit it to the court by June 29, 2018.