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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF TULARE, CIVIL DIVISION**

10 COUNTY OF TULARE, a political
11 subdivision of the State of California,

12 Plaintiff,

13 v.

14 MARIO BALTAZAR, DION BALTAZAR,
SOTERO IBARRA SALGADO, ANA YSABEL
15 RAYGOZA-MAYORGA, HORACIO
RAYGOZA and DOES 1-20,

16 Defendants.
17

Case No.

COMPLAINT FOR PRELIMINARY
INJUNCTION AND PERMANENT
INJUNCTION FOR (1) VIOLATION OF
TULARE COUNTY ZONING ORDINANCE;
(2) VIOLATION OF TULARE COUNTY
ORDINANCE CODE AND (3) MAINTAINING
A PUBLIC NUISANCE

[CCP §§ 526 and 527]

18 THE COUNTY OF TULARE, A POLITICAL SUBDIVISION OF THE STATE OF
19 CALIFORNIA, as Plaintiff and Real Party in Interest (hereinafter referred to as "COUNTY") alleges
20 as follows:

21 1. COUNTY at all times mentioned was and is a legal subdivision of the State of
22 California, duly organized and existing under and by virtue of the laws and Constitution of the State
23 of California. COUNTY is empowered, by the laws of the State of California, to enact ordinances
24 and to file suit on its behalf.

25 2. COUNTY is informed and believes that defendants, MARIO BALTAZAR, DION
26 BALTAZAR, SOTERO IBARRA SALGADO, ANA YSABEL RAYGOZA-MAYORGA,
27 HORACIO RAYGOZA and DOES 1-20, are, and at all times mentioned herein are, the owners

1 and/or operators of a Medical Marijuana Collective/Cooperative located at 38757 Road 140, Cutler,
2 CA 93615.

3 3. COUNTY is informed and believes that defendant, MARIO BALTAZAR is the
4 owner of the subject real property located at 38757 Road 140, Cutler, California.

5 4. Defendants DOES 1 through 20, inclusive are sued and designated herein by fictitious
6 names for the reason that their true names and capacities are unknown to the COUNTY. COUNTY
7 will, on ascertaining their true names and capacities, substitute said names and capacities for such
8 fictitious ones by appropriate amendment.

9 5. COUNTY is informed and believes and thereon alleges that at all times herein
10 mentioned, defendants and each of them have been and now are the owners, lessees, sub lessees,
11 occupants, users, tenants, managers, maintainers, or successors-in-interest of the real property
12 referred to in this complaint which is known by the street address 38757 Road 140, Cutler, CA
13 93615 (hereinafter, "subject property") and further identified as Tulare County Assessor's Parcel No.
14 035-270-004. The subject property is located in the unincorporated area of the County of Tulare, is
15 subject to the requirements of the Tulare County Zoning Ordinance, and is legally described in
16 Exhibit A, attached hereto and incorporated herein.

17 6. The Court has jurisdiction over this matter pursuant to Code of Civil Procedure
18 Section 526, in that pecuniary compensation would not afford adequate relief.

19 7. The Court also has jurisdiction over this matter pursuant to Civil Code Section
20 3491(2) and (3).

21 8. Venue is proper in Tulare County because the subject property is located in Tulare
22 County and the events giving rise to Plaintiff's claims occurred in this County.

23 STATEMENT OF FACTS

24 9. At all times relevant herein there was in full force and effect a Zoning Ordinance of
25 Tulare County. The Board of Supervisors of the County of Tulare passed and adopted on December
26 20, 1947, Ordinance No. 352, which, as amended, is referred to herein as the "Zoning Ordinance".
27 The Zoning Ordinance applies to, and regulates the use of the subject property.

10. The Zoning Ordinance as set forth in pertinent part in Section 1 of Ordinance 352 therein, provides an official land-use plan for the County of Tulare, established to serve the public health, safety and general welfare and to provide the economic and social advantages resulting from an orderly, planned use of land resources.

11. At all times relevant to the allegations of this Complaint, the subject property was and is currently zoned in AE-40 (Exclusive Agricultural).

12. COUNTY's medical marijuana ordinances, set forth in Section 15.3 of Tulare County Ordinance No. 352 (the Zoning Ordinance), and Chapters 11 of Part V and 21 of Part VI of the Tulare County Ordinance Code, are intended to reasonably regulate the location of medical marijuana grow sites, to promote the health, safety, and general welfare of the citizens of the County of Tulare, and to prevent the adverse secondary effects of certain medical marijuana activities from occurring within the County of Tulare.

13. COUNTY's medical marijuana ordinances are intended to prevent negative secondary effects from the cultivation and distribution of medical marijuana, including community wide adverse economic impacts, increased crime, decreased property values, and the deterioration of neighborhoods which can be brought about by medical marijuana activities, as well as medical marijuana collectives or cooperatives in close proximity to each other or proximity to other incompatible uses such as schools for minors, day care facilities, churches, parks, and residentially or agriculturally zoned districts or uses.

14. The growing and cultivation of medical marijuana is not an agricultural use allowed pursuant to Section 9.7 of the Tulare County Zoning Ordinance.

15. Marijuana is a Schedule I Controlled Substance [HSC § 11054(d)(13)].

16. The COUNTY may expressly adopt ordinances that restrict the location or establishment of a medical marijuana cooperative or collective [HSC § 11352.768].

17. Section 15.3 of the Zoning Ordinance requires Medical Marijuana Collectives and Cooperatives to be established and located in C-2 (General Commercial), C-3 (Service Commercial), M-1 (Light Manufacturing), or M-2 (Heavy Manufacturing) zone districts.

18. At all times relevant herein there was in full force and effect Tulare County Ordinance code section 5-11-1000(d) that sets the standards for the cultivation, growth and distribution of medical marijuana.

19. Section 5-11-1000(d) of the Tulare County Ordinance Code requires that “at all times” the cultivation, growing, or distribution of medical marijuana within the County shall be “within a secure, locked, and fully enclosed structure.”

20. Section 5-11-1000(d) 1 makes the distribution of medical marijuana to two (2) or more qualified patients, persons with an identification card or primary caregivers, combined, unlawful in the unincorporated areas of the County of Tulare unless the distribution is from and within a collective or cooperative.

21. The COUNTY is informed and believes, and thereupon alleges, that the subject property is used for the purpose of growing and cultivating medical marijuana for two (2) or more qualified patients and/or primary caregivers.

22. Defendants have not applied for a variance or a change of zone for the non-conforming use of the subject property.

23. The current use of the subject property by defendants as set forth herein is unlawful and a violation of section 15.3 of the Zoning Ordinance and 5-11-1000(d) of the Tulare County Ordinance Code.

24. Plaintiff has requested the defendants refrain from the prohibited uses set forth herein, but defendants have refused and continue to refuse to comply with Plaintiff's request. See true and correct copies of the following exhibits attached hereto and incorporated herein:

a. Notice of Violation, Order to Correct, Cease and Desist Letter to Mario Baltazar and Dion Baltazar, dated May 4, 2012 (Exhibit B)

b. Declaration of Bob Brantley, Marijuana and Code Compliance Officer dated May 17, 2012. (Exhibit C)

25. Defendants' use of the subject property and their conduct thereon as set forth herein causes irreparable harm to property owners and residents of Tulare County in that such use of the

1 property endangers the public health, safety and welfare, is contrary to the Zoning Ordinance and the
2 Tulare County Ordinance Code, is destructive to the proper use of the land; and depreciates the value
3 of real property in the County, particularly the real property of the defendant's neighbors.

4 26. COUNTY has no plain, speedy or adequate remedy at law to prevent defendants from
5 continuing their unlawful use of the subject property and their conduct as set forth herein. Pecuniary
6 compensation would not afford adequate relief. Criminal prosecution is an inadequate remedy
7 because fining or incarcerating the defendants may not eliminate the violation nor prevent its
8 recurrence. The unlawful use of the subject property and unlawful conduct will continue unless
9 restrained and enjoined by this Court.

10 FIRST CAUSE OF ACTION

11 (Violation of County's Zoning Ordinance)

12 27. COUNTY re-alleges and incorporates paragraphs 1 through 26 above, as though fully
13 set forth herein.

14 28. Defendants are in violation of Tulare County Zoning Ordinance section 9.7 ("AE-40"
15 Exclusive Agricultural Zone) by using the subject property for the purpose of growing and
16 cultivating medical marijuana which is not an authorized use under zoning ordinance.

17 29. Defendants are acting in violation of Tulare County Zoning Ordinance section 15.3
18 by establishing and operating a medical marijuana collective and/or cooperative at the subject
19 property in a zone that does not allow such use.

20 30. Defendants have been notified of the zoning ordinance violation. However,
21 defendants, and each of them, have indicated to the COUNTY they do not intend to permanently
22 refrain from operating in violation of the zoning ordinance as follows. On May 4, 2012, defendants,
23 MARIO BALTAZAR AND DION BALTAZAR, were given Notice to Cease and Desist from
24 operating their medical marijuana cooperative and/or collective in violation of the zoning ordinance.
25 On May 15, 2012, Marijuana and Code Compliance officer Bob Brantley, with the Tulare County
26 Resource Management Agency, visited the site and confirmed that the medical marijuana
27 cooperative and/or collective has not been abated. Therefore, the COUNTY is informed and

1 believes and thereon alleges that Defendants will continue to maintain the subject property in
2 violation of the zoning ordinance to the detriment of the public's health, safety and welfare.

3 SECOND CAUSE OF ACTION

4 (Violation of Tulare County Ordinance Code § 5-11-1000 (d))

5 31. Plaintiff re-alleges and incorporates by reference as if fully set forth herein the
6 allegations contained in paragraphs 1 through 26 and 28 through 30, above.

7 32. Defendants acted in violation of Tulare County Ordinance Code section 5-11-1000 by
8 failing to meet the requirement in subsection (d) stating that "at all times" the growing, cultivation,
9 and distribution shall occur within a "secure, locked, and fully enclosed structure."

10 33. Defendants have been repeatedly notified of the ordinance violation. However,
11 defendants, and each of them, have not indicated to the COUNTY any intention to comply. On April
12 17, 2012, Bob Brantley (see Declaration of Bob Brantley, attached as Exhibit C) observed a large
13 fenced area on the property. The area was surrounded by sheets of plywood and covered with white
14 netting. On May 15, 2012, Bob Brantley confirmed that the medical marijuana grow site has
15 remained unabated and is operating in a manner that does not comply with ordinance code section 5-
16 11-1000 (d). Therefore, the COUNTY is informed and believes and thereon alleges that Defendants
17 will continue to maintain the subject property in violation of the zoning ordinance and the ordinance
18 code to the detriment of the public's health, safety and welfare.

19 THIRD CAUSE OF ACTION

20 (Public Nuisance)

21 34. Plaintiff re-alleges and incorporates by reference as if fully set forth herein the
22 allegations contained in paragraphs 1 through 26 and 28 through 30, and 32 through 33 above.

23 35. Defendants, through their wrongful and unlawful activity previously described in this
24 complaint and continuing to the present, have maintained a public nuisance pursuant to the Zoning
25 Ordinance section 9.7 and 15.3 and Sections 3479 and 3480 of the Civil Code in that such uses of
26 the property affect at the same time an entire community or neighborhood, or a considerable number
27

1 of persons and constitutes an obstruction so as to interfere with the comfortable enjoyment of life or
2 property.

3 36. Defendants, through their wrongful and unlawful activity previously described in this
4 complaint, have maintained a public nuisance pursuant to the Zoning Ordinance section 9.7 and
5 15.3, in that such uses of the property affect at the same time an entire community or neighborhood,
6 and endangers the public health and safety of that community.

7 37. Zoning Ordinance Section 19 specifically declares that any building or use operated
8 or maintained contrary to the provisions of the Zoning Ordinance is a public nuisance and shall be
9 subject to appropriate remedies. As such, the operation of a medical marijuana cooperative and/or
10 collective in a zone where such use is not permitted under the Zoning Ordinance Sections 9.7 and
11 15.3 constitutes a public nuisance per se.

12 38. Defendants' activities and their willful and unjustifiable failure and/or refusal to
13 immediately and permanently cease and desist the use of the subject property by closure of the
14 unpermitted medical marijuana cooperative and/or collective have thereby continued and continue to
15 cause, maintain, and permit conditions prohibited by the Zoning Ordinance section 9.7 and 15.3 and
16 constitute a public nuisance per se, which use should be enjoined.

17 39. As the prevailing party in this action to enjoin the unlawful activity and abate the
18 public nuisance, COUNTY will be entitled to award of costs and attorneys fees [HSC § 11570;
19 Civ.Code § 3495].

20 40. Plaintiff is a public entity as described in Section 995.220 of the Code of Civil
21 Procedure (CCP) and is exempt under CCP Section 529(b)(3) from the requirement to post a bond
22 for a preliminary injunction.

23 WHEREFORE, COUNTY prays as follows:

24 1. For a preliminary and permanent injunction to issue ordering defendants to:

25 a. Immediately close any and all business and other activities occurring at the
26 subject property that are in violation of the Tulare County Zoning Ordinance;
27

1 b. Immediately cease and desist from using, conducting, allowing, permitting or
2 granting permission to use the subject property for the purpose of possessing, selling,
3 serving, storing, keeping, cultivating, giving away, and/or distributing cannabis or marijuana
4 at the subject property unless and until defendants obtain a zoning variance permitting the
5 use of the subject property in the AE-40 zone (Exclusive Agricultural).

6 2. The Court declare the subject property and the conditions existing thereon a public
7 nuisance based on the violations of Tulare County Zoning Ordinance, Sections 9.7 and 15.3 and
8 Tulare County Ordinance Code Section 5-11-1000(d).

9 3. The Court issue a preliminary injunction prohibiting defendants from maintaining the
10 aforementioned conditions on the subject property.

11 4. That if Defendants fail to abate the unlawful conditions on the property within three
12 (3) days, the Resource Management Agency and the Tulare County Sheriff's Office is authorized to
13 enter the property and abate the violations. Costs of abatement shall be assessed against defendants.

14 5. That the Court find the current use of the subject property to be the first violation of
15 the County Zoning Ordinance, and order that Defendants be prohibited from operating a medical
16 marijuana collective and/or cooperative or other such establishment for the period of one (1) year,
17 from the date of judgment, pursuant to the Tulare County Ordinance Code section 6-21-2030.

18 6. For costs of suit, including reasonable attorney fees.

19 7. For such other and additional relief as may be proper and just.

20
21 Dated: May 21, 2012

KATHLEEN BALES-LANGE
Tulare County Counsel

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25 _____
26 Julia Langley
27 Deputy County Counsel
28 Attorneys for Plaintiff, County of Tulare

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