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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF SAN BERNARDINO

9 BUBBA LIKES TORTILLAS, LLC, a
10 California Limited Liability Company,

11 Plaintiff,

12 v.

13 CITY OF SAN BERNARDINO; and DOES 1-
14 1000,

15 Defendants
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) Case No.:

) **COMPLAINT**

1 Plaintiff complains as follows:

2 **PARTIES**

3 1. Plaintiff Bubba Likes Tortillas is a California Limited Liability Corporation.

4 2. Plaintiff is informed and believes, and thereon alleges, that Defendant City of San
5 Bernardino is now, and at all times mentioned in this complaint has been, a public entity charter
6 city of the State of California organized and existing under the constitution of the State of
7 California and the Charter of the City of San Bernardino.

8 3. The true names and capacities of defendants named as Doe 1 through Doe 1000,
9 inclusive, are presently unknown to Plaintiff. Plaintiff will amend this complaint, setting forth
10 the true names and capacities of these fictitious defendants when they are ascertained. Plaintiff
11 is informed and believes, and on that basis alleges, that each of the fictitious defendants has
12 participated in the acts alleged in this complaint to have been done by the named defendants.

13 4. Plaintiff is informed and believe, and on that basis alleges, that at all relevant
14 times each of the defendants, whether named or fictitious, was the agent or employee of each of
15 the other defendants, and in doing the things alleged to have been done in the Complaint, acted
16 within the scope of such agency or employment, or ratified the acts of the other.

17 5. Plaintiff is informed and believes, and on that basis alleges, that at all relevant
18 times each of the defendants, whether named or fictitious, was the alter-ego of each of the other
19 defendants, and in doing the things alleged to have been done in the Complaint, acted with a
20 unity of interest such that the separate personalities of the corporate entity and the individual
21 defendants do not in reality exist and honoring the separate entities would result in an inequitable
22 result.

1 **VENUE**

2 6. Venue is proper in San Bernardino County because the case is seeking a
3 determination as to the validity of an ordinance enacted by the San Bernardino City Council.

4 **GENERAL ALLEGATIONS**

5 7. On or about March 7, 2018, the City of San Bernardino passed an ordinance
6 regulating commercial cannabis in the City of San Bernardino.

7 8. The City of San Bernardino’s ordinances are put forward as a “business license”
8 law rather than a land use regulation.

9 9. The City of San Bernardino’s ordinances include a variety of issues that are
10 illegal.

11 10. One of these illegal portions of the ordinances is:

12 a. “5.10.100(a) – Any persons for which any of the following actions or
13 notices have been issued in non-compliance shall be prohibited from
14 holding a cannabis commercial business permit or being employed by a
15 commercial cannabis business in the City of San Bernardino.

16 ...

17 b. “5.10.100(a)(4) – The applicant, permittee, employee, or the owner of the
18 property upon which the proposed commercial cannabis activity is to
19 occur, have conducted commercial cannabis activity in the City of San
20 Bernardino in violation of local and state law or failed to report income
21 from such activities to the federal, state, or local government in violation
22 of federal, state, or local law.”

23 11. This violates due process as guaranteed under the U.S. Constitution, California
24 Constitution, Government Code Section 65905(a), *Fuchs v. County of Los Angeles Civil Serv.*
25 *Comm’n* (1973) 34 Cal.App.3d 709 and other laws. This is because the requirement does not
26 require a conviction, administrative hearing, or any other process other than that the City of San
27 Bernardino has determined that the actions occurred. Due process requires reasonable notice and
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1 an opportunity to be heard by an impartial decision maker for administrative proceedings that
2 affect liberty or property interests.

3 12. Similarly, another section regarding renewals is also invalid:

4 a. “5.10.130(d) – An application for renewal of a commercial cannabis
5 business permit shall be rejected if any of the following exists:

6 ...

7 b. “5.10.130(d)(6) - If the City has determined, based on substantial
8 evidence, that the permittee or applicant is in violation of the requirements
9 of this Chapter, of the San Bernardino Municipal Code, or of the state
10 rules and regulations, and the City or state has determined that the
11 violation is grounds for termination or revocation of the commercial
12 cannabis business permit.

13 13. This also violates due process as guaranteed under the U.S. Constitution,
14 California Constitution, Government Code Section 65905(a), *Fuchs v. County of Los Angeles*
15 *Civil Serv. Comm’n* (1973) 34 Cal.App.3d 709 and other laws. This is because the requirement
16 does not require a conviction, administrative hearing, or any other process other than that the
17 City of San Bernardino has determined that the actions occurred. Due process requires
18 reasonable notice and an opportunity to be heard by an impartial decision maker for
19 administrative proceedings that affect liberty or property interests.

20 14. Another of the illegal portions of the ordinances is:

21 a. “5.10.080 – The number of each type of commercial cannabis business
22 that shall be permitted to operate in the City shall be established by
23 Resolution of the Mayor and City Council but at no time shall the total
24 number of permits for all license types exceed one (1) permit per twelve
25 thousand five hundred (12,500) residents of the City as determined by the
26 most recent Population Estimates for Cities, Counties and the State Report
27 generated by the State Department of Finance for the most recent year.”

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3. That a preliminary injunction issue restraining Defendants from enforcing the City of San Bernardino ordinances set forth in Municipal Code Sections 5.10.010-5.10.460.
4. That a permanent injunction issue restraining Defendants from enforcing the City of San Bernardino ordinances set forth in Municipal Code Sections 5.10.010-5.10.460.
5. For costs and fees of the suit;
6. For injunctive relief;
7. For any other, further, or different relief as the Court may deem proper.

Dated this 22nd day of March, 2018

Ben Eilenberg
Attorneys for Plaintiff Bubba Likes Tortillas,
LLC

VERIFICATION

I am an authorized agent, officer, and Director of Plaintiff. The foregoing Complaint is true to my knowledge except as to matters stated therein on information and believe, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Dated: _____

Stephanie Smith, Authorized Agent, Officer and Director
of Bubba Likes Tortillas, LLC