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Tentative Ruling

Re: **County of Santa Cruz v. Bureau of Cannabis Control**
Superior Court No. 19CECG01224

Hearing Date: August 6, 2020 (Dept. 502)

Motion: Complaint for declaratory and injunctive relief

Tentative Ruling:

The court intends to continue the hearing to allow further briefing on the issue of ripeness. The hearing will be continued for approximately one month, to a date which is amenable to the parties.

The court acknowledges that plaintiffs filed a complaint for declaratory and injunctive relief. The court elects to treat the complaint as a writ of mandate.

Explanation:

The challenger of the validity of a regulation may bring a declaratory relief action against the state agency that adopted the regulation in accordance with the Code of Civil Procedure section 1060. (Gov't. Code, § 11350, subd. (a).) However, under the Code of Civil Procedure section 1060, a party seeking a declaration of rights and duties with respect to another may only do so in cases where there is an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) Courts therefore should decline to exercise their power where a "declaration or determination is not necessary or proper at the time under all the circumstances." (Code Civ. Proc., § 1061.) Declaratory judgments and injunctive remedies are discretionary, and "courts traditionally have been reluctant to apply them to administrative determinations unless these arise in the context of a controversy 'ripe' for judicial resolution." (*Pacific Legal Foundation v. Cal. Coastal Comm.* (1982) 33 Cal.3d 158, 171 ("*Pacific Legal*").)

"[A] basic prerequisite to judicial review of administrative acts is the existence of a ripe controversy." (*Pacific Legal Foundation v. Cal. Coastal Comm, supra*, 33 Cal.3d 158 at p. 169.) The ripeness doctrine prevents the courts from issuing purely advisory opinions or engaging in premature adjudication of abstract disagreements. (*Ibid.*) "The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. [Citation.] It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical set of facts. [Citation]." (*Id.* at pp. 170-71.) "A controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made." (*Cal. Water & Telephone Co. v. County of L.A.* (1967) 253 Cal.App.2d 16, 22.) "[T]he ripeness doctrine is primarily bottomed on the recognition that judicial decision-making is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make

a decree finally disposing of the controversy." (*Pacific Legal Foundation v. Cal. Coastal Comm*, *supra*, 33 Cal.3d 158 at p. 170.)

Here, plaintiffs' challenge to California Code of Regulations, title 16 section 5416, subdivision (d) is not ripe under the two-pronged test set forth by the California Supreme Court in *Pacific Legal*, which calls on a court to evaluate (1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration. (*Pacific Legal Foundation v. Cal. Coastal Comm*, *supra*, 33 Cal.3d 158 at p. 171; see also *Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540.) Under the first prong of the *Pacific Legal* test, the issues here are not yet appropriate for judicial resolution due to the hypothetical nature of plaintiffs' alleged injury. This is because some of the plaintiffs either do not have an ordinance regarding commercial cannabis delivery (e.g., City of Ceres) or do not ban such delivery (e.g., City of Angels Camp, City of Vacaville). (See plaintiffs' RJN Exh. 3, 13, 35.)

Defendant makes this point in opposition, but does not brief the issue of ripeness with regard to every plaintiff (e.g., not every city is evaluated for standing – just a few examples are provided). On reply, plaintiffs concede the point (that not all of the cities have ordinances), but argue that the issue is ripe nonetheless. Plaintiffs' argue that depriving localities of their statutorily preserved local control through 5416, subdivision (d) *per se* damages California localities, *both* as to any present conflicting or inconsistent ordinance *and* as to any future ordinance, presently contemplated or not. This court does not find plaintiffs' argument compelling. Plaintiffs must have an ordinance in place which is contrary to California Code of Regulations, title 16 section 5416, subdivision (d), or there is no dispute.

Accordingly, the parties are ordered to brief the issue of ripeness with regard to each and every plaintiff and to submit such briefing according to the schedule agreed upon by the parties at the upcoming hearing. Plaintiffs that do not have standing are invited to withdraw. Plaintiffs that allege standing must submit evidence to show that they have an ordinance in place which is contrary to California Code of Regulations, title 16 section 5416, subdivision (d). Plaintiffs must also point to the exact place in record where the evidence is located (e.g., volume, page number, line number). Plaintiffs who cannot establish standing will be dismissed.

The court notes that plaintiffs made representations with regard to ripeness, which are not supported by the evidence. In the complaint, plaintiffs allege: "5. Plaintiffs are cities and one county within the State of California. Plaintiffs have adopted ordinances and resolutions regulating—or prohibiting—commercial cannabis activity within their jurisdictions." (Complaint, ¶15.) In their trial brief, plaintiffs state, "Each Plaintiff alleges that it has adopted ordinances or resolutions regulating—or in some cases prohibiting—commercial cannabis deliveries within its jurisdiction." (Trial Brief, page 11, lines 10-12.) Plaintiffs are reminded that by "presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney . . . is certifying that to the best of the person's knowledge . . . the allegations and other factual contentions have evidentiary support." (Code Civ. Proc., § 128.7, subd. (b)(3).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

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Issued By: RTM **on** 8/3/20 .
(Judge's initials) (Date)