

Estanislau, Robin

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From: Julie Hamill <julie@harrisbricken.com>
Sent: Monday, July 16, 2018 11:48 AM
To: Gates, Michael
Cc: Cutchen, Alisa; Estanislau, Robin; Wilson, Fred; Fikes, Cathy
Subject: Settlement Proposal and Request to Continue Item 26: Excessive Fines Assessed Against James Ishihara
Attachments: 7.16.2018.Ishihara Letter to Huntington Beach.pdf; Mechammil v City of San Jacinto 9th Cir..pdf

Mr. Gates, Ms. Cutchen, Ms. Estanislau, Mr. Wilson, and Ms. Fikes:

As you know, I represent several commercial landlords in the City of Huntington Beach, including James Ishihara. I respectfully request the City continue the above-referenced item until after the City has had a meaningful opportunity to consider Mr. Ishihara's settlement offer.

As Mr. Gates requested, I have expanded upon the constitutional violations that my client has suffered, and have included a monetary proposal of settlement in the attached letter.

Mr. Ishihara is the ground lessee at the property located at 8162 Talbert Avenue ("Property"). The City has imposed over \$740,000 in fines against Mr. Ishihara due to the operation of a cannabis dispensary by a tenant at the Property, which is closed and has been closed for over six months. Mr. Ishihara has already paid the City \$88,365.

Mr. Ishihara does not contend the City lacks authority to prohibit commercial cannabis activity, or that the City lacks authority to impose civil fines for violations of its municipal ordinances. Taken together, however, the City's administrative penalty scheme impermissibly exceeds constitutional limits by, among other things:

1. imposing strict liability against individuals for the wrongful acts of third parties over which the citee has no control,
2. imposing fines so excessive they shock the conscience, unlimited in amount and duration, even after the citee diligently pursues every available legal remedy to eliminate the offending conduct,
3. delaying and refusing to take action within its control to eliminate the alleged violations in order to maximize fees and fines, and
4. recording excessive fines and penalties as assessments against real property.

The City's administrative penalty scheme is not only unconstitutional, it is ineffective against eliminating unlawful dispensary activity. The City's enforcement strategy does not punish criminals; it punishes their landlords. Dispensaries get away without penalty, and move on to set up shop in their next location. Meanwhile, tax-paying property owners suffer, and the game of whack-a-mole continues.

If the City proceeds with recordation of this assessment tonight, Mr. Ishihara will be forced to file a cross-complaint against the City in the pending lawsuit. A summary of Mr. Ishihara's claims follows and is explained in more detail in the attached letter. In order to avoid further legal action regarding the Property, however, Mr. Ishihara is offering to pay the City an additional \$75,000 to fully and finally resolve all outstanding issues.

Claims to be advanced in the cross-complaint include but are not limited to:

1. The City has engaged in a pattern and practice of conduct depriving Mr. Ishihara of federally protected rights in violation of 42 U.S.C. section 1983.

2. The excessive fines imposed by the City violate the United States Constitution's Eighth Amendment prohibition against cruel and unusual punishment and the California Constitution's Article I, Section 17 prohibition against excessive fines.
 - o The amount and duration of fines are unlimited under the City's administrative penalty scheme, which converts a single wrongful act by a landlord into a veritable financial bonanza while allowing wrongdoers to walk away unpunished.
 - o The fines imposed by the City of Huntington Beach are grossly disproportionate to the gravity of Ishihara's offense, especially in light of the application of strict liability against Ishihara.
3. Imposing strict liability against Ishihara for the illegal conduct of a third party violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article I, Sections 7 and 15 of the California Constitution.
4. Government Code section 38773.5 allows cities to use assessments to recover costs of abatement, but an assessment cannot be used to collect fines and penalties.
5. The City has not established procedures for nuisance abatement as required under government code section 38773.5.
6. The City's fines are unenforceable absent a resolution setting the schedule of fines, interest, late payment penalties, and processing fees.
7. The City failed to provide a reasonable period of time to correct or otherwise remedy the violation prior to the imposition of administrative fines.
8. The City's assessments constitute slander of title.
9. The excessive fees guarantee a forced sale of the property, resulting in inverse condemnation without compensation.
10. City officers threaten Mr. Ishihara under color of state law in violation of 42 U.S.C. section 1983.

Please note that this law firm also represents Randy Wooten, property owner at 17731 Beach Boulevard. The City has similarly imposed excessive fines against Mr. Wooten for cannabis dispensary activity by a tenant, despite Mr. Wooten's filing an unlawful detainer action within one month after receiving a notice of violation, and physically standing in front of his property to prohibit customers from entering the premises. The City continued to assess fines and penalties against Mr. Wooten despite his attempts to intervene, even after the City obtained a lockout order that the City had the power to enforce yet refused to use to stop the dispensary activity. Mr. Wooten's assessment, subject to recurring penalties and fees, is currently in excess of \$212,880.19.

I welcome the opportunity to discuss these issues with you at your convenience.

Sincerely,

Julie Hamill - Attorney



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