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6	SUPERIOR COURT OF T	HE STATE OF CALIFORNIA	
7	FOR THE COUNTY OF SAN BERNARDINO		
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9	BUBBA LIKES TORTILLAS, LLC, a California Limited Liability Company,) Case No.:	
10		COMPLAINT	
11	Plaintiff,))	
12	V.)	
13	CITY OF SAN BERNARDINO; and DOES 1-		
14	1000,)	
15	Defendants)	
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	COL	MPLAINT - 1	

Plaintiff complains as follows:

PARTIES

1.

Plaintiff Bubba Likes Tortillas is a California Limited Liability Corporation.

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

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

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

5. Plaintiff is informed and believes, and on that basis alleges, that at all relevant times each of the defendants, whether named or fictitious, was the alter-ego of each of the other defendants, and in doing the things alleged to have been done in the Complaint, acted with a unity of interest such that the separate personalities of the corporate entity and the individual defendants do not in reality exist and honoring the separate entities would result in an inequitable 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.	
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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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an opportunity to be heard by an impartial decision maker for administrative proceedings that 1 affect liberty or property interests. 2 12. Similarly, another section regarding renewals is also invalid: 3 a. "5.10.130(d) – An application for renewal of a commercial cannabis 4 business permit shall be rejected if any of the following exists: 5 6 . . . 7 b. "5.10.130(d)(6) - If the City has determined, based on substantial evidence, that the permittee or applicant is in violation of the requirements 8 of this Chapter, of the San Bernardino Municipal Code, or of the state 9 10

rules and regulations, and the City or state has determined that the violation is grounds for termination or revocation of the commercial cannabis business permit.

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

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

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a. "5.10.080 – The number of each type of commercial cannabis business that shall be permitted to operate in the City shall be established by Resolution of the Mayor and City Council but at no time shall the total number of permits for all license types exceed one (1) permit per twelve thousand five hundred (12,500) residents of the City as determined by the most recent Population Estimates for Cities, Counties and the State Report generated by the State Department of Finance for the most recent year." 15. This effectively limits the number of permits to a maximum of 17 licenses (although none are required) under the current population of the City of San Bernardino.

16. While not apparent on its face, this will effectively create a monopoly for certain license types within the City of San Bernardino.

17. As the status of California cannabis licensing currently stands, there are 19 license types available (with a 20th type available as of 2023.)

18. Effectively, this means that there is a strong probability of various license types having only one permittee.

19. Proposition 64 incorporates by reference and states that cannabis licenses are subject to the Cartwright Act, the Unfair Practices Act, the Unfair Competition Law, and other provisions of Business & Professions Code Section 16600 et seq.

20. Proposition 64 also provides "It shall be unlawful for any person to monopolize, or attempt to monopolize, or to combine or conspire with any person or persons, to monopolize any part of the trade or commerce related to cannabis."

21. By creating a situation where applicants will either be applying for a monopoly license (or such a small number of licenses within a category to be an effective monopoly/duopoly), the ordinance conflicts with state law.

22. Plaintiff is informed and believes, and on that basis alleges, that the ordinances contain further invalid and illegal provisions.

23. Plaintiff further contends that because the ordinances were passed prior to the resolution of the appeal in the matters resolving Measure O. As the appeals stay the judgment in those matters, Plaintiff also contends the ordinances are invalid. Therefore, this matter is being filed with a notice of related cases as to those matters where the issue will hopefully be resolved.

FIRST CAUSE OF ACTION

(Declaratory Relief)

24. Plaintiff incorporates each of the allegations set forth in paragraphs 1 through 23.

25. A present and actual controversy now exists between Plaintiff and Defendants regarding Plaintiff's rights (as well as the rest of those within the City of San Bernardino) on commercial cannabis land uses. As such, Plaintiff contends that the Mayor and City Council were without legal authority to adopt the ordinances contained in Municipal Code Sections 5.10.010-5.10.460.

26. Notably, the ordinances do not contain a severability provision. Therefore, Plaintiff alleges that should the Court determine that part of the ordinances are invalid, they are all invalid.

SECOND CAUSE OF ACTION

(Injunctive Relief)

27. Plaintiff incorporates each of the allegations set forth in paragraphs 1 through 26.
28. Defendant, City of San Bernardino, is proceeding with the enforcement of the ordinances set forth in Municipal Code Sections 5.10.010-5.10.460.

29. The ordinances set forth in Municipal Code Sections 5.10.010-5.10.460 are illegal and invalid as set forth above.

30. Plaintiff has no adequate remedy at law for the injuries Plaintiff has suffered and will continue to suffer unless Defendant's wrongful conduct is restrained and enjoined because no amount of money can restore the constitutionally protected rights of Plaintiff.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

- A declaration of the Court that the City of San Bernardino ordinances set forth in Municipal Code Sections 5.10.010-5.10.460 are unconstitutional, invalid, and/or invalid.
 - That a temporary restraining order issue restraining Defendants from enforcing the City of San Bernardino ordinances set forth in Municipal Code Sections 5.10.010-5.10.460.

1	3.	That a preliminary injunction issue restraining Defendants from enforcing the
2		City of San Bernardino ordinances set forth in Municipal Code Sections 5.10.010-
3		5.10.460.
4	4.	That a permanent injunction issue restraining Defendants from enforcing the City
5		of San Bernardino ordinances set forth in Municipal Code Sections 5.10.010-
6		5.10.460.
7	5.	For costs and fees of the suit;
8	6.	For injunctive relief;
9	7.	For any other, further, or different relief as the Court may deem proper.
10		Dated this 22 nd day of March, 2018
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13		Ben Eilenberg Attorneys for Plaintiff Bubba Likes Tortillas,
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		COMPLAINT - 7

 true to my knowledge except as to matters stated therein on information and believe, and those matters, I believe them to be true. 				
 true to my knowledge except as to matters stated therein on information and believe, and those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that 	VERIFICATION			
 those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that 	I am an authorized agent, officer, and Director of Plaintiff. The foregoing Complaint is			
5 I declare under penalty of perjury under the laws of the State of California that	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.			
6 foregoing is true and correct to the best of my knowledge and belief.	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.			
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⁸ Dated: Stephanie Smith, Authorized Agent, Officer and	Director			
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COMPLAINT - 8				