

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT EAST 008

HON. JON R. TAKASUGI, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

01 ABRAAM [REDACTED],)

DEFENDANT.)

NO. 4JB00655

COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, JUNE 6, 2014

APPEARANCES:

FOR PLAINTIFF:

JACKIE LACEY
DISTRICT ATTORNEY
BY: JOEL R. ANDERSON
DEPUTY DISTRICT ATTORNEY
18000 FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET, 18TH FLOOR
LOS ANGELES, CALIFORNIA 90012

FOR DEFENDANT:

LAW OFFICES OF
RONALD RICHARDS & ASSOCIATES
BY: RONALD RICHARDS
ATTORNEY AT LAW
P.O. BOX 11480
BEVERLY HILLS, CALIFORNIA 90213

ALSO PRESENT:

LAW OFFICES OF
LEECH & ASSOCIATES
BY: D. WAYNE LEECH
ATTORNEY AT LAW
11001 EAST VALLEY MALL, SUITE 200
CHASE BANK BUILDING
EL MONTE, CALIFORNIA 91731

REBECA S. HORAN
CSR NO. 7183, RPR, CRR
OFFICIAL REPORTER

1 CASE NUMBER: 4JB00655-01
 2 CASE NAME: PEOPLE VS. ABRAAM [REDACTED] [REDACTED]
 3 WEST COVINA, CALIFORNIA FRIDAY, JUNE 6, 2014
 4 DEPARTMENT EAST 008 HON. JON R. TAKASUGI, JUDGE
 5 REPORTER: REBECA S. HORAN, CSR NO. 7183
 6 TIME: P.M. SESSION

7 APPEARANCES:

8 DEFENDANT ABRAAM [REDACTED] [REDACTED] PRESENT WITH COUNSEL,
 9 RONALD RICHARDS, ATTORNEY AT LAW; JOEL R. ANDERSON,
 10 DEPUTY DISTRICT ATTORNEY, REPRESENTING THE PEOPLE
 11 OF THE STATE OF CALIFORNIA.
 12 ALSO PRESENT, D. WAYNE LEECH, ATTORNEY AT LAW.

13
 14 (THE FOLLOWING PROCEEDINGS
 15 WERE HELD ON THE RECORD:)

16
 17 THE COURT: CALLING THE MATTER OF ABRAAM [REDACTED]
 18 4JB00655. MR. [REDACTED] IS PRESENT IN COURT.
 19 COUNSELS, PLEASE STATE YOUR APPEARANCES FOR THE
 20 RECORD.

21 MR. RICHARDS: GOOD MORNING, YOUR HONOR. RONALD -- OR
 22 GOOD AFTERNOON, YOUR HONOR. RONALD RICHARDS, APPEARING FOR
 23 THE DEFENDANT WHO'S PRESENT IN COURT.

24 MR. ANDERSON: JOEL ANDERSON FOR THE PEOPLE.

25 AND I ASKED MR. WAYNE LEECH TO COME BECAUSE HE DOES
 26 REPRESENT THE CITY OF GLENDORA ON THEIR MATTERS. HE'S ALSO
 27 HERE IN COURT TODAY.

28 THE COURT: OKAY. NOW, THIS IS A LITTLE BIT OF A

1 DIFFERENT SITUATION WE HAVE GOING ON HERE. DEFENSE HAS FILED
2 SOME PAPERWORK HERE CHALLENGING THE GLENDORA MUNICIPAL CODE
3 AND IT IS A LITTLE BIT DIFFERENT THAN A LOT OF THE OTHER
4 CALIFORNIA STATUTES AND A LOT OF THE OTHER LOCAL CITY
5 ORDINANCES THAT HAVE BEEN POPPING UP THROUGHOUT THE STATE IN
6 RESPONSE TO THE COMPASSIONATE USE ACT AND THE MEDICAL
7 MARIJUANA PROGRAM ACT AND ALL THE LEGISLATION THAT HAS SINCE
8 FOLLOWED FROM THAT.

9 SO AT THIS POINT, ONCE AGAIN DEFENSE IS CHALLENGING
10 THE COUNT 2 AS APPLIED TO MR. [REDACTED] ONLY. HIS SITUATION AS
11 THE COURT UNDERSTANDS IT FROM THE MOVING PAPERS, WHICH THE
12 COURT HAS REVIEWED ALL OF IT, IS THAT THERE WAS A SEARCH
13 WARRANT OF A COMMERCIAL LOCATION AND AT THAT SERVICE OF THE
14 SEARCH WARRANT A CERTAIN NUMBER OF MARIJUANA PLANTS WERE
15 FOUND, ALONG WITH SOME INDICATION THAT THERE WAS A COLLECTIVE
16 OR COOPERATIVE GOING ON THERE WITH SEVERAL DIFFERENT
17 PRESCRIPTIONS, I THINK SIX IF I RECALL CORRECTLY.

18 THE COURT ACTUALLY ISN'T DECIDING WHETHER IT'S A
19 COLLECTIVE OR A COOPERATIVE OR AN ILLEGAL BUSINESS. THE COURT
20 IS ONLY FOCUSED ON WHETHER THERE WAS A VIOLATION OF THE
21 GLENDORA STATUTE WHICH APPEARS ON ITS FACE TO DEAL WITH
22 DISPENSARIES. THE COURT NOTICED FROM DEFENSE MOVING PAPERS
23 THAT THERE WAS QUITE A BIT OF INTER-OFFICE MEMORANDUM
24 CIRCULATED ABOUT THIS PARTICULAR CODE SECTION IN COUNT 2; AND
25 MR. LEECH'S NAME APPEARS ON LOTS OF IT, AND THE COURT IS
26 FAMILIAR WITH MR. LEECH AS THE CITY PROSECUTOR AND A LOT OF
27 THE CASES.

28 COURT IS THE ONE THAT ASKED THE DISTRICT ATTORNEY,

1 MR. ANDERSON, IF GLENDORA WISHED TO COME TO COURT TO DEFEND
2 ITS OWN STATUTE. AND SO HE IS HERE ONCE AGAIN AT THE COURT'S
3 INQUIRY AS TO WHETHER GLENDORA WANTED TO DEFEND ITS OWN
4 STATUTE OR IF THEY WANTED TO DEFER TO THE PROSECUTING AGENCY,
5 WHICH IS THE DISTRICT ATTORNEY.

6 AND THE COURT HAD PREVIOUSLY ASKED MR. LEECH IF
7 THEY WERE EVEN INTERESTED IN DEFENDING THIS STATUTE HERE WHICH
8 APPEARS ON ITS FACE TO TALK ABOUT THE BANNING OF DISPENSARIES
9 AND THE DEFENSE IS CONTENDING THAT THIS WAS FOR CULTIVATION.

10 AND I KNOW THERE WAS AN OBJECTION. COUNSEL, I
11 DON'T KNOW IF YOU WANT TO PUT IT ON THE RECORD BECAUSE IT
12 WASN'T ON THE RECORD PREVIOUSLY.

13 MR. RICHARDS: THANK YOU, YOUR HONOR.

14 CAN I SIT WHEN I ADDRESS THE COURT?

15 THE COURT: YEAH, THAT'S FINE.

16 MR. RICHARDS: OKAY. BECAUSE I HAVE MY LAPTOP OUT AND
17 EVERYTHING.

18 THE ISSUE IS THAT WE'RE HERE ON A MOTION THAT THE
19 COURT HAS CABINED TO THE TEXT OF THE ORDINANCE IN THE EVIDENCE
20 THAT BOTH PARTIES HAVE FULLY BRIEFED. I DID COMMENT IN THE
21 MOVING PAPERS THAT THE CITY WASN'T HERE DEFENDING IT; BUT I
22 NOW REGRET MAKING THAT COMMENT ONLY TO THE EXTENT THAT I WAS
23 POINTING OUT THAT THE D.A. IS PROSECUTING IT AND THAT THIS IS
24 NOT BEING PROSECUTED BY A CITY PROSECUTOR, AND I DIDN'T INTEND
25 TO OPEN UP ANY DOOR OR WAIVE ANY RIGHT OF MY CLIENT.

26 THE ISSUE IS THAT IF MR. LEECH HAS SOME OPINION
27 ABOUT THE STATUTE, THAT'S NOT EVIDENCE IN THIS CASE BECAUSE IT
28 WASN'T PROVIDED IN 1054. IT'S NOT FAIR TO THE DEFENSE TO

1 FULLY BRIEF SOMETHING AND THEN AT THE 11TH HOUR, EVEN THOUGH
2 THE COURT DID MAKE A COMMENT THE CITY'S NOT HERE AND I MADE A
3 COMMENT, THAT DOESN'T MEAN THAT BECAUSE MR. LEECH SHOWS UP
4 THAT NOW HE'S GOING TO GIVE TESTIMONY SAYING, "WELL, YOU KNOW,
5 EVEN THOUGH IT'S NOT DIRECTLY IN THE STATUTE, THIS IS WHAT WE
6 MEANT," BECAUSE THAT'S NOT THE ISSUE THAT THE DEFENSE IS
7 RAISING.

8 WE'RE RAISING THAT THE SCOPE OF THIS STATUTE AS
9 WORDED A REASONABLE PERSON WOULD NOT COME TO THE CONCLUSION
10 THAT CULTIVATION IS BANNED IN GLENDORA.

11 I THINK, AND I CAN TELL YOU, I MEAN, I'VE BEEN
12 PRACTICING LAW 20 YEARS. AND ON MISDEMEANORS WE DON'T
13 NORMALLY GET TO SUCH EXTENSIVE BRIEFING, BUT I REALLY WORKED
14 HARD WITH MY STAFF TO GIVE THE COURT A LOT OF ORDINANCES AND A
15 LOT OF DOCUMENTS. AND EVEN OUR SUPPLEMENTAL BRIEF SHOWED AN
16 ARTICLE IN THE DAILY JOURNAL YESTERDAY ON THE ISSUE THAT IN
17 GENERAL LAW CITIES THROUGHOUT THE STATE OF CALIFORNIA THEY
18 UNDERSTAND WHAT CULTIVATION IS, A COOPERATIVE IS, AND A
19 COLLECTIVE IS, AND A DISPENSARY IS. AND THAT IN THIS
20 PARTICULAR CASE, WHETHER OR NOT GLENDORA THOUGHT THIS
21 ORDINANCE WOULD EVER BE CHALLENGED THIS WAY OR --

22 THE COURT: HOLD ON. CAN I INTERRUPT YOU FOR A SECOND?

23 MR. RICHARDS: YEAH.

24 THE COURT: THIS -- I DIDN'T REALLY NECESSARILY OPEN UP
25 TO ARGUMENT.

26 MR. RICHARDS: OH, SORRY.

27 THE COURT: NO, NO, NO. YOU WILL HAVE YOUR CHANCE.

28 MR. RICHARDS: OKAY.

1 THE COURT: IT'S JUST YOU OBJECTED TO MR. LEECH'S
2 PRESENCE HERE --

3 MR. RICHARDS: NO, I DON'T OBJECT TO HIS PRESENCE.

4 THE COURT: OKAY.

5 MR. RICHARDS: IT'S A PUBLIC COURTROOM. I JUST OBJECT TO
6 HIM COMING IN AND NOW WITHOUT ANY DISCOVERY TO ME AND ACTUALLY
7 HAVING THE IMPRIMATUR OF THE GLENDORA CITY COUNCIL AND YOU
8 TAKING EVIDENCE WHICH IS COMPLETE HEARSAY, HIM SAYING, "WELL,
9 THIS IS WHAT THE COUNCIL MEANT TO DO, EVEN THOUGH I MAY HAVE
10 WROTE THE STATUTE," I'M JUST SAYING I FEEL BLINDSIDED BECAUSE
11 I DON'T KNOW WHAT HE WOULD SAY.

12 SO I'M OBJECTING BECAUSE THERE'S BEEN NO DISCOVERY
13 IN THE DEFENSE BY THE PEOPLE OF MY MOTION THAT SUGGESTS
14 THEY'RE GOING TO ELICIT OTHER LEGISLATIVE HISTORY OTHER THAN
15 WHAT I DOWNLOADED FROM THE GLENDORA WEBSITE. IT WOULD BE AN
16 UNFAIR SURPRISE TO THE DEFENSE AND IT WOULD PREJUDICE ME
17 BECAUSE I COULDN'T COMPETENTLY CROSS-EXAMINE THIS WITNESS
18 BECAUSE I'M NOT PREPARED TO CROSS-EXAMINE AN ATTORNEY ABOUT
19 SOME SUBJECT THAT I DON'T KNOW WHAT HE'S GOING TO SAY. THAT'S
20 MY ISSUE.

21 THE COURT: OKAY. WELL, MY ISSUE, I THINK I MAY HAVE
22 BROUGHT THIS UP OFF THE RECORD, IS THAT IT'S MY UNDERSTANDING
23 MR. LEECH IS THE AUTHOR OF COUNT 2, THE GLENDALE (SIC)
24 MUNICIPAL CODE 5.23.030. AND IT DOES SEEM TO THIS COURT TO
25 READ THAT THE ... WELL, THE STATUTE IS MEDICAL MARIJUANA
26 DISPENSARIES IS PROHIBITED, AND IT WAS THIS COURT'S BELIEF
27 THAT MAYBE IF GLENDORA CAME IN HERE AND SAID, "WE UNDERSTAND
28 ALL THE TRICK LANGUAGE OUT THERE IN THIS AREA AND, YOUR HONOR,

1 IT SAYS EXACTLY WHAT WE MEANT. WE MEANT TO ILLEGALIZE
2 DISPENSARIES ONLY," THEN IT WOULD SHORTCUT THINGS.

3 MR. RICHARDS: WELL, THEN MY OBJECTION WOULD BE BRADY,
4 BECAUSE IF THE PEOPLE HAD THAT KNOWLEDGE THEY DON'T NEED TO
5 WAIT TILL YOU ASK HIM. I'M ASSUMING THAT IF THE PEOPLE KNEW
6 THAT THEY WOULD HAVE A CONSTITUTIONAL OBLIGATION TO SAY -- AND
7 BY THE WAY, EVEN THOUGH THAT WOULD BE GREAT, I HONESTLY, TO BE
8 INTELLECTUALLY HONEST WITH THE COURT, I DON'T THINK THIS CITY
9 ATTORNEY'S OPINION IS REALLY THE END-ALL OF END-ALL.

10 IT MAY CAUSE THE EXECUTIVE TO NOT PROSECUTE IF HE
11 FEELS THAT THAT WASN'T THE THRUST OF THIS LAW. BUT HE FILED A
12 CHARGING DOCUMENT, AND THE DOCUMENT AND THE STATUTE HAVE TO
13 RISE AND FALL ON THE TEXT AND ON WHAT ELSE THE COURT COULD
14 CONSIDER AND TAKE JUDICIAL NOTICE OF, LIKE, THE OTHER STATUTES
15 AND ORDINANCES AND CASE LAW THAT I PROVIDED.

16 AND I DON'T THINK -- I MEAN, AGAIN I THINK THAT'S A
17 CONVERSATION THE PEOPLE SHOULD HAVE PRIVATELY WITH THE CITY
18 ATTORNEY AND IF THEY THINK THAT THAT WAS THE CASE THEY SHOULD
19 JUST MOVE TO DISMISS, BECAUSE THEN THE PEOPLE HAVE AN
20 OBLIGATION NOT TO KNOWINGLY PROSECUTE SOMEONE IF THAT WASN'T
21 THE SPIRIT OF THE LAW, THAT HE WASN'T THE TARGET OF THIS LAW.
22 BUT WHAT I'M AFRAID OF IS THIS RECORD BEING INFECTED WITH THE
23 CITY ATTORNEY'S VIEW. BECAUSE ONCE HE WRITES THE LAW AND THE
24 CITY COUNCIL ADOPTS IT, IT'S NOT HIS VIEW ANYMORE; IT'S THE
25 CITY COUNCIL'S VIEW.

26 THE COURT: NO, HE'S REPRESENTING THE CITY ON THEIR
27 ORDINANCE. IT'S JUST COINCIDENTAL THAT HE WROTE IT ALSO AND
28 SUBMITTED IT. AND IF IT'S THE CITY'S -- AS THE ATTORNEY FOR

1 THE CITY, IF IT'S THE CITY'S POSITION THAT "WE MEANT
2 DISPENSARIES ONLY," THEN WE'RE DONE.

3 MR. RICHARDS: BUT, AND I GUESS WHAT MY CONCERN IS, AND I
4 JUST WANT TO --

5 THE COURT: AND IF HE SAYS IT'S NOT, WE PROCEED WITH ALL
6 THE MOVING PAPER THAT YOU FILED.

7 MR. RICHARDS: WELL, I GUESS MY CONCERN IS THAT THAT
8 PROCEDURE OF ASKING A CITY ATTORNEY WHAT THE CITY'S OPINION IS
9 IS NOT APPROPRIATE WHEN WE'RE DEALING WITH A FACIAL CHALLENGE
10 OR AN OVERBREADTH CHALLENGE TO THE STATUTE ITSELF. I'M VERY
11 RELIEVED, AND I'M NOT SAYING THAT OBVIOUSLY THAT OUTCOME WOULD
12 BE OKAY. I'M JUST SAYING IT'S A CONVERSATION THE DISTRICT
13 ATTORNEY NEEDS TO HAVE WITH HIS COLLEAGUE FROM THE CITY, AND
14 IF THEY GIVE HIM THAT -- IF HE STILL WANTS TO PROCEED, THEN
15 THE RECORD WILL BE SILENT AS TO WHAT HIS VIEW IS.

16 I DON'T THINK THIS RECORD SHOULD HAVE -- IT'S
17 HEARSAY WHAT HE THINKS THE CITY INTENDED. THAT'S MY OBJECTION
18 IS THAT HE CAN'T -- THERE'S NO CONFRONTATION. THIS IS A
19 CRIMINAL CASE. THIS IS NOT A CIVIL CASE. SO I HAVE THE RIGHT
20 TO CONFRONT ANY WITNESS THAT'S GOING TO TAKE EVIDENCE AS TO
21 WHAT THE INTENT WAS OF THE CITY. AND THEY'D HAVE TO GET OVER
22 A FOUNDATIONAL HURDLE. BUT I DON'T THINK THAT THE RECORD
23 SHOULD SUGGEST THAT THE CITY HAD ANY INTENT.

24 IT'S JUST SOMETHING THAT I THINK THE PROSECUTOR IF
25 HE ASKED THEM AND THEN HE MOVES TO DISMISS, THEN WE'LL KNOW BY
26 DEDUCTION WHAT THE ISSUE WAS. BUT THE RECORD SHOULDN'T BE
27 FILLED WITH ANY OPINING BY THE CITY ATTORNEY, BECAUSE THEN
28 WE'LL BE STUCK WITH THE RECORD THAT WILL BE PREJUDICIAL TO MY

1 CLIENT WOULD THERE BE THIS SORT OF SUGGESTION THAT THIS IS
2 WHAT THE CITY MEANT AND THEN IT FORCES ME TO CROSS-EXAMINE
3 HIM. I MEAN, THAT'S JUST MY POSITION.

4 MR. ANDERSON: YOUR HONOR, BRIEFLY JUST FOR NOW, THIS IS
5 TOTALLY DISINGENUOUS. MR. RICHARDS HAS SUBMITTED A NUMBER OF
6 MUNICIPAL CODES FROM OTHER CITIES. HE'S CITED NO CASE LAW IN
7 SUPPORT OF ANY OF HIS LEGAL ARGUMENTS IN HIS MOTIONS OTHER
8 THAN THE RULE OF LENITY THAT I'M AWARE OF. NONE. ZERO. AND
9 NOW HE'S GOING TO ARGUE THAT THE PERSON WHO WROTE THE GLENDORA
10 MUNICIPAL CODE, WHICH IS WHAT'S AT ISSUE HERE, AND WHO
11 REPRESENTS THE CITY OF GLENDORA, SHOULDN'T BE ALLOWED TO GIVE
12 HIS OPINION.

13 BECAUSE IF WE DO PROCEED TO TRIAL, WE HAVE TO KNOW
14 WHAT THE DEFINITION OF THE LAW IS. WE HAVE TO CREATE JURY
15 INSTRUCTIONS BECAUSE THEY DON'T EXIST. MR. RICHARDS HAS
16 CLAIMED IN HIS MOTIONS THAT "COLLECTIVE," "COOPERATIVE," THESE
17 TERMS ARE TERMS OF ART DEFINED BY THE STATE WHICH IS
18 ABSOLUTELY NOT CLEAR -- NOT TRUE. HE'S CITED NO CASE LAW TO
19 THAT.

20 I'VE CITED THE SOLIS CASE AND, YOUR HONOR, I ALSO
21 NOW INCLUDE PEOPLE VERSUS COLVIN, C-O-L-V-I-N, WHICH IS (2012)
22 203 CAL.APP.4TH, 1029. AND THIS CITE IS AT 1036 AND THE QUOTE
23 IS "WE REFER BROADLY TO 'COOPERATIVE,' 'COLLECTIVE,' AND
24 'DISPENSARY' WITHOUT DISTINGUISHING BETWEEN TECHNICAL
25 DIFFERENCES THAT MAY EXIST BETWEEN THEM." THE SOLIS CASE IN
26 MY SUPPLEMENTARY SHOWS THAT YOU CAN'T JUST -- THAT THESE TERMS
27 "COLLECTIVE" AND "COOPERATIVE" ARE NOT TERMS OF ART. THEY
28 HAVE TO BE DEFINED. AND NOT ONLY THAT, IF YOU'RE GOING TO

1 ASSERT THE M.M.P.A. OR THE COMPASSIONATE USE ACT, THAT'S AN
2 AFFIRMATIVE DEFENSE AT TRIAL.

3 YOU CAN'T JUST SAY -- AND IN THIS CASE MR. ROGERS
4 HAS AGREED WITH ME, AND BASED ON THE STATEMENTS HE'S MADE IN
5 HIS MOTIONS --

6 THE COURT: RICHARDS.

7 MR. ANDERSON: I MEAN MR. RICHARDS. -- THAT MR. MIKHAEL
8 WAS PART OF A COLLECTIVE. NOW, IS THAT IMPORTANT? YES, IT
9 IS, BECAUSE THAT WORD IS ACTUALLY IN THE STATUTE, THE
10 COMPASSIONATE USE ACT, AND/OR THE M.M.P.A.

11 THE COURT: OKAY. JUST SO WE DON'T GET TOO FAR ASTRAY, I
12 STILL WOULD LIKE TO HEAR FROM MR. LEECH WITH REGARD TO THIS
13 SET OF FACTS. DOES THE CITY WISH TO DEFEND ITS STATUTE?

14 MR. LEECH: WELL, I'M NOT SURE I UNDERSTAND WHAT THE SET
15 OF FACTS ARE IN THIS PARTICULAR CHARGING ALLEGATION. I'M NOT
16 SO SURE IT'S NECESSARILY RELEVANT FOR PURPOSES OF WHAT I AM
17 HERE FOR WHICH IS TO, AS I UNDERSTAND IT, TO ADVISE THE COURT
18 WHAT THE CITY'S LEGISLATIVE INTENT WAS IN ADOPTING THE
19 ORDINANCE.

20 THE COURT: ACTUALLY, I THINK THAT'S NOT WHAT I'M LOOKING
21 FOR.

22 MR. LEECH: OKAY.

23 THE COURT: OKAY? THAT'S WHERE MR. RICHARDS IS CORRECT
24 ABOUT A LOT OF HEARSAY. BUT WHAT I AM INTERESTED IN IS, BE IT
25 THAT THIS IS NOT, AND EXCUSE ME IF I'M WRONG BECAUSE I ONLY
26 HAVE TO GO BY THE MOVING PAPERS AND THERE'S A SLIGHT
27 DIFFERENCE IN FACTS THERE, OKAY? BUT ASSUMING JUST FOR A
28 SECOND THAT IT IS A COMMERCIAL SPACE RENTED SOLELY FOR

1 CULTIVATION, OKAY -- NOT FOR DISTRIBUTION OR NOT TO ACT AS A
2 DISPENSARY OR ANY FOOT TRAFFIC SALES TYPE OR DISTRIBUTION ON
3 THAT BASIS -- DO YOU FEEL ON BEHALF OF THE CITY THAT YOU WANT
4 TO DEFEND COUNT 2 WITH REGARDS TO THAT SOLELY?

5 MR. LEECH: WELL, I WOULD NEED TO ASK A FEW QUESTIONS.

6 THE COURT: OKAY. WELL, LET US KNOW WHAT YOUR ISSUE IS.

7 MR. LEECH: IF THE MEDICAL MARIJUANA -- "MEDICAL
8 MARIJUANA," WHATEVER THAT MEANS -- IF THE MARIJUANA PLANTS ARE
9 MADE AVAILABLE TO OR DISTRIBUTED BY OR DISTRIBUTED TO ONE OR
10 MORE OF THE FOLLOWING: A PRIMARY CAREGIVER, A QUALIFIED
11 PATIENT OR A PERSON WITH AN ID CARD. SO ARE THE PLANTS BEING
12 MADE AVAILABLE FOR ONE OF THOSE INDIVIDUALS?

13 THE COURT: AT THAT LOCATION?

14 MR. LEECH: AT THAT LOCATION.

15 THE COURT: I DON'T THINK WE HAVE EVIDENCE OF THAT.

16 MR. LEECH: OR ANYWHERE. THEN I WOULD SAY IT PROBABLY
17 FALLS WITHIN THE FOUR CORNERS OF THAT CODE.

18 I WOULD ALSO ADD UNDER OUR 9.36 STATUTE OR
19 ORDINANCE IF THERE'S A VIOLATION OF FEDERAL LAW, IT'S A
20 VIOLATION OF GLENDORA MUNICIPAL CODE. THAT'S OUR CATCHALL IF
21 YOU WOULD.

22 THE COURT: RIGHT. RIGHT. AND, UNFORTUNATELY, THAT IS
23 ABOVE MY PAY GRADE AND IT'S STILL AT THE SUPREME COURT. SO
24 OTHER THAN THAT, I MEAN, UNDER THE STRICT -- JUST ASSUMING
25 THAT THEY'RE JUST ONLY DOING CULTIVATION THERE, OKAY, IS THIS
26 SOMETHING THAT THE CITY WISHES TO DEFEND WITH REGARD TO ITS
27 STATUTE HERE?

28 IN OTHER WORDS, THE CITY USED THE TERM

1 "DISPENSARY," OKAY? THERE'S A WHOLE BODY OF LAW OUT THERE
2 REGARDING COOPERATIVES, COLLECTIVES. THEN THERE'S ALL -- THE
3 WAY THE COURT LOOKS AT THAT IS THAT IS THE BUSINESS
4 ORGANIZATION MODEL, OKAY? AND THOSE ARE DEFINITIONS THERE,
5 OKAY? AND THE COURT ALSO IN ITS MIND SEPARATES HOW THE
6 BUSINESS ORGANIZATION IS SET UP, WHETHER IT'S, LIKE I SAID,
7 COOPERATIVE OR COLLECTIVE FROM THE ACTUAL CONDUCT ITSELF. SO
8 WHAT I'M TALKING ABOUT IS IF THE CONDUCT ITSELF IS STRICTLY
9 CULTIVATION IS THE CITY GOING TO WANT TO ARGUE THAT THE
10 STATUTE IN COUNT 2 COVERS CULTIVATION?

11 MR. ANDERSON: WELL, YOUR HONOR --

12 THE COURT: NO, NO, NO. LET ME JUST GET -- I'LL HEAR
13 FROM BOTH OF YOU GUYS. I WANT TO JUST KNOW IF THE CITY WANTS
14 TO DEFEND ITS STATUTE WITH REGARD TO OUR FACTS OF THE CASE.
15 NOW, I KNOW OUR FACTS MIGHT BE A LITTLE BIT IN DISPUTE. I
16 ACKNOWLEDGE THAT. I READ THE PAPER. I KNOW YOU TALK ABOUT
17 TEXT MESSAGES AND --

18 MR. ANDERSON: COLLECTIVES.

19 THE COURT: OKAY. SO WE'RE THERE. I'M JUST SAYING
20 SPECIFICALLY IF IT'S JUST STRICTLY CULTIVATION. I'M REMOVING
21 IT FROM THE BUSINESS MODEL FOR A SECOND; TAKING IT STRAIGHT
22 OVER TO THE ACTUAL CONDUCT. DOES THE CITY FEEL THAT THIS
23 PARTICULAR STATUTE CHARGED IN COUNT 2 COVERS CULTIVATION?

24 MR. LEECH: YOU'RE CULTIVATING THE PRODUCT TO MAKE IT
25 AVAILABLE TO SOMEBODY. SO I WOULD SAY YES.

26 MR. RICHARDS: OH, COME ON.

27 THE COURT: OKAY. ALL RIGHT. NO, NO, NO. IT'S OKAY.
28 IT'S OKAY. THAT'S FINE.

1 MR. LEECH: IT'S NOT JUST GOING TO SIT THERE AND YOU'RE
2 GOING TO BURN IT. YOU'RE MAKING IT AVAILABLE --

3 THE COURT: NO, NO, NO, BECAUSE -- AND JUST BECAUSE BY
4 READING OF THE STATUTE THE, WELL, WE DON'T HAVE TO GET INTO
5 IT.

6 THE ANSWER IS THAT YOU FEEL THAT "CULTIVATION" IS
7 INCLUDED IN YOUR DEFINITION?

8 MR. LEECH: CORRECT.

9 THE COURT: THAT'S WHERE WE ARE NOW.

10 NOW WE'RE GOING TO MOVE FORWARD WITH THE REST OF
11 THE ARGUMENTS HERE. AND I DO HAVE A CONSIDERABLE AMOUNT OF
12 THE LEGISLATIVE HISTORY. WELL, I'VE READ ALL THE MOVING
13 PAPERS. SO WHO WISHES TO GO FIRST?

14 MR. RICHARDS: IT'S MY MOTION.

15 THE COURT: NO, NO. I MEAN YOU WISH TO ARGUE YOUR MOTION
16 FIRST, GO AHEAD, MR. RICHARDS.

17 MR. RICHARDS: IF YOU'VE READ EVERYTHING --

18 MR. LEECH: IF I MIGHT INTERRUPT.

19 THE COURT: SURE.

20 MR. LEECH: DOES THE COURT NEED ME ANY FURTHER?

21 THE COURT: YOU CAN STAY; YOU CAN GO. YOU ARE
22 REPRESENTING THE CITY UNDER THE CITY STATUTE. THE
23 CONSTITUTIONALITY OF THE STATUTE IS NOT AT ISSUE. IT'S ONLY
24 AS APPLIED TO MR. [REDACTED].

25 MR. LEECH: THAT'S MY UNDERSTANDING.

26 THE COURT: SO IT'S UP TO YOU.

27 MR. LEECH: AND I KNOW THE D.A.'S OFFICE IS IN GOOD HANDS
28 WITH MR. ANDERSON HERE.

1 MR. ANDERSON: I WOULDN'T GO THAT FAR.

2 THE COURT: ALL RIGHT.

3 MR. ANDERSON: THANK YOU, MR. LEECH.

4 MR. RICHARDS: WHEN COUNSEL KEEPS SAYING THESE TERMS
5 AREN'T APPLIED, IN 11362.768 THEY DELINEATE -- DID THE COURT
6 READ THAT?

7 THE COURT: I'VE READ MANY OF THEM. MOST OF THEM
8 MULTIPLE TIMES.

9 MR. RICHARDS: I'M NOT GOING TO REPEAT MY PAPERS BECAUSE
10 I SPENT ACTUALLY A LOT OF TIME ON THEM, AND IF THE COURT READ
11 THEM THERE'S NO REASON TO REPEAT THEM. BUT I DO WANT TO POINT
12 OUT A FEW HIGHLIGHTS. 11362.768, IT ACTUALLY DELINEATES
13 DISPENSARY COLLECTIVES. DOES THE COURT SEE THAT?

14 THE COURT: OH, YEAH. SECTION (B).

15 MR. RICHARDS: SO WHEN I SAID THEY'RE WORDS OF ART, THEY
16 ARE WORDS OF ART. I MEAN, I DON'T KNOW WHY THIS IS IN ISSUE.
17 I DON'T REALLY THINK IT IS.

18 THE OTHER POINT I WANTED TO MAKE IN MY PAPERS, IN
19 MY SUPPLEMENTAL PAPER THAT I FILED, WAS THAT WE HAD A
20 DISCUSSION ABOUT WHETHER THERE WAS A COOPERATIVE OR WHAT IT
21 WAS. AND THERE'S NO REQUIREMENT UNDER THE LAW THAT A
22 COOPERATIVE OR A COLLECTIVE HAVE, LIKE, BE INCORPORATED OR
23 ANYTHING LIKE THAT. IT'S -- AND I ONLY CITE, I CITED THE
24 JACKSON CASE IN MY SUPPLEMENTAL BRIEF YESTERDAY ON PAGE 2,
25 LINE 11, WHICH I THINK WAS IMPORTANT FOR THE COURT TO SEE SO
26 YOU COULD SEE HOW THE LAW IS REALLY BEING APPLIED. RECENTLY
27 JACKSON WAS A --

28 THE COURT: HOLD ON. HOLD ON. I'M NOT SEEING --

1 MR. RICHARDS: YEAH, NO PROBLEM.

2 THE COURT: PAGE 2?

3 MR. RICHARDS: PAGE 2 OF MY SUPPLEMENTAL BRIEF THAT I
4 FILED THIS MORNING.

5 THE COURT: OH.

6 MR. RICHARDS: NOT LITTLE.

7 THE COURT: YOU HAVE TWO SUPPLEMENTALS.

8 MR. RICHARDS: I SHOULDN'T. I HAVE A REPLY BRIEF AND A
9 SUPPLEMENTAL BRIEF.

10 THE COURT: AND THE ORIGINAL MOTION?

11 MR. RICHARDS: AND THAT'S CORRECT.

12 THE COURT: OKAY.

13 MR. RICHARDS: IF YOU LOOK AT --

14 THE COURT: ALL RIGHT. HOLD ON. OH, NO, I READ THIS.

15 MR. RICHARDS: OKAY. SO IN JACKSON THERE WAS 1676
16 QUALIFIED PATIENTS AND THEY HAD TO PAY A MEMBERSHIP FEE. AND
17 THE COURT SAID IN THAT CASE THAT ... THEY GAVE YOU THE
18 ELEMENTS, AND I LISTED THE THREE ELEMENTS FOR A COLLECTIVE.
19 THAT THERE'S QUALIFIED PATIENTS, THEY ASSOCIATE TO CULTIVATE
20 MARIJUANA, AND ARE NOT ENGAGED IN A PROFIT-MAKING ENTERPRISE.
21 THAT'S THE ONLY REQUIREMENT FOR A COLLECTIVE. AND THAT'S IN
22 JACKSON. AND THEY HAD TO PAY A MEMBERSHIP FEE. AND THEY HAVE
23 THAT STATUS AS LONG AS THEY MEET THOSE THREE PRONGS. WE HAD A
24 DISCUSSION AS TO SIZE AND I WANT TO SHOW THE COURT THAT WAS
25 THE LARGEST.

26 NOW, IN THIS CASE THERE'S ONLY SIX. AND THERE'S NO
27 EVIDENCE, I MEAN, NOTWITHSTANDING COUNSEL'S, YOU KNOW, SORT OF
28 MARRIAGE TO HIS ORDINANCE, THERE'S NO EVIDENCE -- THE FACT

1 THAT IN THIS CASE CULTIVATION ALONE WAS NEVER INTENDED TO BE
2 BANNED. AND UNDER THAT STATUTE THERE'S NOTHING IN THE
3 LEGISLATIVE ISSUE. THEY DON'T EVEN MENTION THE WORD
4 "CULTIVATION."

5 AND A REASONABLE PERSON WOULD NEVER THINK THAT IF
6 UNDER STATE LAW YOU'RE ALLOWED TO CULTIVATE MARIJUANA BECAUSE
7 YOU CAN'T BUY IT IN A STORE THAT'S THE WHOLE POINT OF ALL
8 THESE ALTERNATE STATUTES, SO PEOPLE CAN GET TOGETHER AND GROW
9 THEIR OWN MEDICINE. AND THEN ONCE THEY GROW IT THEY CAN THEN
10 USE IT. IT'S NOT -- YOU CAN'T CHARGE SOMEONE FOR WHAT THEY'RE
11 GOING TO DO IN THE FUTURE.

12 SO EVEN WHEN YOU JUST LISTEN TO THE CITY ATTORNEY,
13 WHEN HE SAID, "WELL, EVEN THOUGH IT MIGHT BE CULTIVATION I
14 WOULD THINK IT'S IN THE STATUTE BECAUSE IN THE FUTURE IT COULD
15 BE AVAILABLE," WELL, YOU CAN'T CHARGE SOMEONE IN THE FUTURE.
16 THE POLICE DIDN'T OBSERVE ANYBODY AND THE PUBLIC GOING IN
17 THERE AND BUYING MARIJUANA AND DISTRIBUTING IT.

18 WE UNDERSTAND WHAT A DISPENSARY IS. I MEAN, IT'S
19 REALLY ... IF YOU LOOK AT THE EVIDENCE IN THIS CASE, EVERYONE
20 UNDERSTANDS WHAT CULTIVATING MARIJUANA IS AND EVERYBODY
21 UNDERSTANDS WHAT GOING TO A DISPENSARY IS. EVEN THE PEOPLE IN
22 THEIR LAST BRIEF MENTIONED THAT MY CLIENT SHOULD REALLY GO TO
23 CLAREMONT AND BUY HIS MARIJUANA AT A DISPENSARY. AND
24 THEREFORE, WHY WOULD HE TRAVEL TO GLENDORA TO GROW IT? I
25 MEAN, BESIDES THE FACT THAT IT COULD BE FULL OF PESTICIDES AND
26 ADULTERATED AND ALL SORTS OF OTHER PROBLEMS. I'M JUST SAYING
27 EVERYBODY KNOWS -- INCLUDING A REASONABLE PERSON, INCLUDING
28 YOUR HONOR, INCLUDING US ATTORNEYS -- KNOW THE DIFFERENCE.

1 SO THE ISSUE IS IN THE SUPPLEMENTAL BRIEF WHAT WAS,
2 AMAZINGLY, JUST A FORTUNE OF LUCK, WE HAD FRESNO JUST THE
3 OTHER DAY SAY "WE'RE GOING TO BAN CULTIVATION NOW. FIRST WE
4 ALLOWED DISPENSARIES BUT NOW WE'RE GOING TO GO TO THE REAL
5 EXTREME AND BAN CULTIVATION," AND THE A.C.L.U. FILED A LAWSUIT
6 SAYING THAT "YOU CAN'T DO THAT." AND THEN I CITED FROM
7 YESTERDAY THE DAILY JOURNAL ANOTHER COLLEAGUE WROTE A VERY
8 GOOD ARTICLE OUTLINING ALL THE ISSUES ON THE FRESNO GROWING
9 POT BAN GOES TOO FAR.

10 AND THE ONLY REASON I'M OFFERING ALL OF THIS IS WE
11 GO BACK TO MY CLIENT, JOE CITIZEN. THERE'S -- HE'S A REAL
12 DILIGENT CITIZEN. HE LOOKS AT THE GLENDORA ORDINANCE. HE'S
13 LIKE, "HUM, I JUST WANT TO GROW SOME MEDICAL MARIJUANA WITH MY
14 PATIENTS. WE'RE NOT HAVING IT -- WE'RE CLOSED TO THE PUBLIC.
15 THE DOORS ARE LOCKED. IT'S A CLOSED CIRCUIT. WE'RE NOT
16 ADVERTISING. NO ONE'S PICKING UP MARIJUANA HERE. WE'RE NOT
17 DELIVERING MARIJUANA HERE. WE'RE NOT DISTRIBUTING MARIJUANA
18 HERE. IS THIS ILLEGAL IN GLENDORA?"

19 HOW WOULD ANYONE KNOW IT'S ILLEGAL? IT DOESN'T SAY
20 IT'S ILLEGAL. THERE WOULD BE -- NO REASONABLE PERSON WOULD
21 THINK THAT CULTIVATION WITH A COLLECTIVE IS BANNED IN THAT
22 CITY. AND THAT'S THE RULE OF LENITY. I DIDN'T NEED TO CITE A
23 LOT OF LAW. I JUST NEED TO CITE ONE PIECE OF LAW, THAT IF
24 THERE'S TWO REASONABLE INTERPRETATIONS OF A STATUTE, THE
25 LENITY GOES TO THE DEFENDANT. THAT'S THE ONLY LAW I NEEDED TO
26 CITE.

27 NOW, I CITED -- I GAVE THE COURT ALL THESE OTHER
28 ORDINANCES FOR THE SOLE DEMONSTRATIVE PURPOSE TO SHOW YOU THAT

1 IN OTHER GENERAL LAW CITIES EVERYBODY KNOWS THE DIFFERENCE
2 BETWEEN COLLECTIVES, CULTIVATION, COOPERATIVES AND
3 DISPENSARIES. THAT WAS IT. THAT WAS -- I WANTED TO OVERWHELM
4 YOU WITH BORING ORDINANCES TO SHOW YOU THAT THE DRAFTERS OF
5 THESE ORDINANCES, IF THEY WANT TO MAKE THESE THINGS ILLEGAL,
6 THEY CLEARLY KNOW HOW TO DO PRESCRIBED CONDUCT.

7 NOW WE'RE HERE IN A CRIMINAL COURT. WE'RE NOT HERE
8 WHERE THE CITY ATTORNEY'S TRYING TO EVICT HIM FOR A NUISANCE
9 AND THIS IS A CIVIL COURT. THIS IS THE HIGHEST STANDARD OF
10 LAW, BEYOND A REASONABLE DOUBT. HE'S LOOKING AT JAIL TIME FOR
11 THIS OFFENSE. HE HAS A LICENSE. I MEAN, IT'S A SERIOUS
12 MATTER FOR HIM. AND HE WAS, YOU KNOW, LIKE I POINTED IN MY
13 PAPERS -- HE WAS ARRESTED ON A FELONY. HE HAD TO GO TO JAIL.
14 THEN, FORTUNATELY, THE DETECTIVE TOOK A DEEP BREATH AND SAID,
15 "OH, YOU KNOW, IF THIS IS A LEGITIMATE DISPENSARY --" OR, I
16 MEAN, "... COLLECTIVE AND YOU HAD A RIGHT TO GROW THIS. LET
17 ME TAKE A LOOK AT THIS STUFF.

18 AND TO THE DETECTIVE'S CREDIT, HE ASSISTED ME
19 BEFORE THE CHARGES WERE FILED IN GETTING HIM DISCHARGED WITH
20 THIS ORDINANCE.

21 NOW, I DON'T WANT TO ARGUE WITH THE DETECTIVE WHEN
22 HE TOLD ME, "I'M GOING TO RECOMMEND A MISDEMEANOR MUNI CODE
23 VIOLATION." I DIDN'T WANT TO LITIGATE THAT ISSUE THEN. I
24 SAID, "NO PROBLEM. WHEN I SEE THE ORDINANCE, IF I THINK IT
25 MEETS MY CLIENT'S CONDUCT, I'LL WORRY ABOUT THAT THEN." AND
26 SO THAT'S WHERE WE'RE AT. WE'RE HERE WITH THIS ONE ORDINANCE,
27 AND I DON'T THINK THAT THERE'S A BASIS TO PROSECUTE HIM UNDER
28 THESE FACTS. THE TEXT MESSAGE THE DETECTIVE FOUND IN HIS

1 PAGER, IT'S SPECULATION. THERE WAS NO -- THERE WAS NO
2 EVIDENCE THAT ANY MARIJUANA WAS PICKED UP FROM THERE.

3 AND AGAIN, EVEN IF, HYPOTHETICALLY, HE WAS GOING TO
4 TAKE MARIJUANA BACK TO CLAREMONT AND GIVE IT TO THE DISPENSARY
5 THAT THIS D.A. REFERRED TO, EVEN IF THERE WAS SOME
6 HYPOTHETICAL POSSIBLE CRIME HE COULD HAVE COMMITTED, NOTHING
7 OCCURRED IN GLENDORA. AND THERE'S NOTHING ILLEGAL ABOUT BEING
8 IN GLENDORA AND CULTIVATING MARIJUANA.

9 NOW, IF IN THE FUTURE GLENDORA DECIDES THEY WANT TO
10 GO TO THE SAME EXTREME AS FRESNO AND SAY CITIZENS IN THEIR
11 CITY CAN'T EVEN GROW IT IN THEIR OWN HOME, BECAUSE I WILL TELL
12 THE COURT THE ORDINANCE MAKES NO DISTINCTION BETWEEN GROWING
13 IT IN YOUR OWN HOME OR GROWING IT IN A COMMERCIAL. WE'RE NOT
14 EVEN AT THAT TYPE OF SPLITTING HAIRS.

15 TO BAN SOMETHING THAT IS LEGAL UNDER STATE LAW, I
16 WOULD HAVE MADE A PREEMPTION ARGUMENT. I REMEMBER WHEN MY
17 ASSOCIATE FIRST CAME TO YOU YOU SORT OF SUGGESTED "LET'S SEE
18 IF THIS IS PREEMPTION." BUT WHEN I DID THE RESEARCH, I
19 ACTUALLY CAME TO THE CONCLUSION THAT LOCALITIES CAN DRAFT
20 ORDINANCES BANNING SPECIFIC CONDUCT. AND AS I WAS GOING
21 THROUGH WITH MY LAW CLERKS ABOUT HOW TO ATTACK THIS, I SAID,
22 "HEY, THE ISSUE IS NOT PREEMPTION; IT'S SCOPE." THAT IS THE
23 PROBLEM, IN THAT THE STATUTE IS TRYING TO PRESCRIBE CONDUCT
24 THAT IS NOT IN THE STATUTE.

25 AND THAT'S HOW WE MAKE A LAW SO WE DON'T HAVE THIS
26 ARGUMENT LATER. AND I THINK THAT IN GOOD CONSCIENCE YOU
27 REALLY CAN'T RULE OUT THAT A REASONABLE PERSON LOOKING AT THE
28 STATUTE WON'T COME TO THE REASONABLE CONCLUSION THAT THE ONLY

1 CONDUCT BANNED IS DISPENSARY CONDUCT, NOT CULTIVATION CONDUCT,
2 AND I THINK THAT'S A REASONABLE VIEW THAT WE'RE OFFERING TO
3 THE COURT IN OUR BRIEF.

4 THE COURT: MR. ANDERSON.

5 MR. ANDERSON: WELL, A COUPLE THINGS BASED ON WHAT
6 MR. RICHARDS JUST SAID.

7 FIRST OF ALL, WHAT'S NOT REASONABLE IS THAT ANY
8 REASONABLE PERSON AS MR. LEECH ALLUDED TO WOULD LOOK AT A
9 75 PLANT MARIJUANA GROW IN A COMMERCIAL SPACE WITH ALL THE
10 ACCOUTREMENT TO GROW IT. NOTHING ELSE GOING ON THERE.
11 INDICIA OF DISTRIBUTION BASED ON THE TEXT MESSAGES AND OTHER
12 THINGS, WE HAVE MULTIPLE DOCTORS' RECOMMENDATIONS FOR OTHER
13 PEOPLE THERE. AND NOT -- AND BY THE WAY, THE DEFINITION FROM
14 WEBSTER'S OF "DISTRIBUTION" IS "AN ACTION OF SHARING SOMETHING
15 OUT AMONG A NUMBER OF RECIPIENTS."

16 WHAT'S NOT REASONABLE AS MR. LEECH SAID AND WHAT
17 SEEMS OBVIOUS JUST BY COMMON SENSE IS YOU'RE JUST SIMPLY GOING
18 TO GROW IT THERE AND EVEN THE PEOPLE, LET'S JUST ASSUME THERE
19 IS A COLLECTIVE, ARE NOT GOING TO SHOW UP AND GET IT.

20 THE BASIS OF THE SEARCH WARRANT IN THIS CASE WAS
21 BECAUSE A CONFIDENTIAL INFORMANT'S NEIGHBORS HAD SEEN MULTIPLE
22 PEOPLE COMING AND GOING FROM THIS SPACE MOSTLY IN THE
23 NIGHTTIME. SO THAT'S THE REASON THEY INVESTIGATED THE SPACE
24 TO BEGIN WITH. SO THE IDEA THAT IT'S NOT GOING TO BE SHARED
25 OR MADE AVAILABLE TO EVEN THE PEOPLE OF THE SO-CALLED, QUOTE,
26 "COLLECTIVE" IS SIMPLY ILLOGICAL.

27 SO THE IDEA THAT THERE'S NO EVIDENCE THAT
28 DISTRIBUTION OR MAKING AVAILABLE OR SIMPLY HANDING IT OUT AT

1 THE MINIMUM IS NOT THERE, I DO NOT AGREE WITH UNDER THE FACTS
2 OF THIS CASE. THAT'S NO. 1.

3 SECONDLY, AS -- AND, BASICALLY, I'M GOING TO SUBMIT
4 ON MY WRITTEN RESPONSE TOO. BUT COUNSEL KEEPS ARGUING AN
5 AFFIRMATIVE DEFENSE BASED ON THE COMPASSIONATE USE ACT AND/OR
6 THE MEDICAL MARIJUANA PROGRAM ACT. THOSE ARE POTENTIAL
7 AFFIRMATIVE DEFENSES AT TRIAL TO CERTAIN ENUMERATED CODE
8 SECTIONS IN THE STATE LAW OF DRUG CASES WHICH ARE ENUMERATED
9 IN MY BRIEF AND CERTAINLY IN THE LAW ITSELF.

10 GLENDORA MUNICIPAL CODE IS NOT ONE OF THOSE ENUMERATED CODE
11 SECTIONS, THEREFORE, THE AFFIRMATIVE DEFENSE DOESN'T EVEN
12 APPLY TO THIS CASE. THAT'S NO. 1.

13 BUT LET'S JUST ASSUME IT DOES, THEN THE PREEMPTION
14 BECOMES VERY IMPORTANT, ALONG WITH THE IDEA OF THE COLLECTIVE.
15 LET'S PUT IT THIS WAY. IF MR. [REDACTED] WAS NOT OPERATING AS A
16 COLLECTIVE, HE PROBABLY IS SUBJECT TO PENAL CODE 11358 BECAUSE
17 THERE IS A QUANTITY LIMIT THAT UNDER THE CODE ITSELF THAT
18 YOU'RE ALLOWED TO GROW OR POSSESS. HERE WE HAVE 75 PLANTS AND
19 OTHER THINGS GOING ON.

20 NOW, IN HIS MOTION HE'S ARGUED THAT HE'S PART OF
21 THE COLLECTIVE. SO LET'S JUST ASSUME WE DO GO TO TRIAL AND HE
22 TRIES TO ASSERT THAT DEFENSE, HOW IS HE GOING TO LAY
23 FOUNDATION FOR THAT?

24 HE CAN'T SIMPLY GET OUT OR JUST ASSUME OR PUT IN
25 THE JURY INSTRUCTIONS HE'S OPERATING AS A COLLECTIVE. HE HAS
26 TO BRING IN THOSE OTHER PEOPLE. HE HAS TO BRING IN A DOCTOR.
27 I'VE SEEN NO EVIDENCE THAT THERE'S ANY CARDS, IDENTIFICATION
28 CARDS, UNDER THE M.M.P.A. THAT WERE DISTRIBUTED TO THIS

1 DEFENDANT OR ANY OF HIS POSSIBLE ASSOCIATES BY THE CALIFORNIA
2 DEPARTMENT OF PUBLIC HEALTH, WHICH IS WHAT THEY REQUIRE TO DO.
3 IT'S NOT JUST SIMPLY A DOCTOR'S RECOMMENDATION LETTER, YOU
4 KNOW. SO THAT'S ONE THING.

5 SO HE CAN'T BRING IN EVEN -- EVEN IF WE SHOW
6 THERE'S EVIDENCE OF OTHER PEOPLE'S RECOMMENDATION LETTERS
7 BEING FOUND AT THE LOCATION, WHICH IS WHAT THE DETECTIVES
8 FOUND ALONG WITH ALL THE OTHER STUFF, WE'RE OFFERING THAT AS
9 EVIDENCE OF WHAT'S GOING ON IN THIS CRIME. THAT'S DIFFERENT
10 THAN THE DEFENDANT CLAIMING HE'S A COLLECTIVE. THAT'S ALL
11 HEARSAY. WHO'S HE GOING TO BRING IN TO ASSERT THAT DEFENSE?
12 THAT IS A DEFENSE. AS I SAID EARLIER, IT'S NOT A DEFENSE
13 UNDER THE GLENDORA MUNICIPAL CODE. IT'S ONLY A DEFENSE IF WE
14 STILL HAVE COUNT 1, WHICH WE DON'T.

15 NOW, IF HE'S NOT PART OF A COLLECTIVE, I SAID, THEN
16 HE COULD STILL BE SUBJECT TO 11358 BECAUSE HE'S WAY GONE OVER
17 THE QUANTITY ALLOWED BY THOSE BY THE M.M.P.A. OR THE C.U.A.
18 SO HE'S OBVIOUSLY ARGUING THAT HE'S PART OF THE COLLECTIVE.

19 THE COLLECTIVE IS USED EXPRESSLY, AND YOU'LL SEE IN
20 MY MOTION, CALIFORNIA PENAL CODE SECTION 11360.6, I MEAN,
21 768(F) SAYS, "NOTHING IN THIS SECTION SHALL PREEMPT LOCAL
22 ORDINANCES ... THAT REGULATE THE LOCATION OR ESTABLISHMENT OF
23 A MEDICAL MARIJUANA COOPERATIVE, COLLECTIVE, DISPENSARY,
24 OPERATOR, ESTABLISHMENT, OR PROVIDER." SIMPLY FURTHER PROOF
25 THAT THE GLENDORA MUNICIPAL CODE IS WHAT IT SAYS IT IS.

26 AND, OF COURSE, UNDER RIVERSIDE WE GO TO THAT NEXT
27 STEP. SO MY FIRST LEVEL OF ARGUMENT IS IT'S NOT EVEN SUBJECT
28 TO THE M.M.P.A. OR C.U.A. POTENTIAL AFFIRMATIVE DEFENSE

1 BECAUSE IT'S NOT -- GLENDORA MUNICIPAL CODE SECTION IS NOT
2 ENUMERATED WITHIN EITHER ONE OF THOSE STATUTES. SO THAT'S MY
3 FIRST LEVEL.

4 IF WE GO PAST THAT, AS I'VE SAID AND I'VE WRITTEN
5 IN THESE RESPONSES THOSE TWO STATUTES DO NOT PREEMPT LOCAL
6 ORDINANCES AND, THEREFORE, WE'RE BACK TO THE DEFINITION.

7 THERE IS WHEN COLLECTIVE AND COOPERATIVE, AND
8 CULTIVATION ON ALL THESE THINGS DO COME INTO PLAY. COUNSEL
9 KEEPS ARGUING THEY'RE TERMS OF ART WITH A -- ABSOLUTELY
10 DEFINED BY STATE LAW. THEY'RE NOT. THEY'RE NOT ANY MORE THAN
11 HIS IDEA THERE'S NO DISTRIBUTION. OR "WHAT DOES THIS MEAN?"
12 OR "WHAT DOES THAT MEAN?" THE ONLY THING HE'S OFFERED IN
13 SUPPORT OR WHAT OTHER CITIES HAVE DONE WHICH IS ALSO HEARSAY
14 AND IRRELEVANT, NO CASE LAW HAS DECIDED IN SUPPORT OF ANYTHING
15 HE'S ARGUED IN ANY OF HIS MOTIONS. NONE. OTHER THAN AS HE
16 POINTED OUT EARLIER POSSIBLY THE RULE OF LENITY, WHICH I
17 CONSIDER TO BE IRRELEVANT AS WELL.

18 I MEAN, IF YOU'RE GOING TO ARGUE THAT, YOU KNOW,
19 THE COURT SHOULD ABSOLUTELY PROCEED ONLY ON EXACTLY THE
20 LANGUAGE OF THE LAW; BUT THAT LANGUAGE HAS NOT BEEN DEFINED BY
21 STATUTE, WHICH IS CERTAINLY THE CASE HERE WITH ALL THESE OTHER
22 TERMS. THE ONLY THING -- THE ONLY TERMS THAT THE STATUTES
23 ABSOLUTELY DEFINED ARE "WHAT'S A QUALIFIED PATIENT," "WHAT'S A
24 QUALIFIED CAREGIVER," "A PERSON WITH AN IDENTIFICATION CARD."
25 I THINK THERE'S ONE OTHER --

26 THE COURT: DISPENSARY.

27 MR. ANDERSON: RIGHT. WELL, I'M NOT EVEN SURE IT'S THAT
28 ONE. I THINK "COLLECTIVE" AND "COOPERATIVE" CERTAINLY AREN'T

1 DEFINED TO MY KNOWLEDGE. AND BASED ON THE COLVIN CASE THAT
2 YOU DO NOT HAVE THAT I CITED, I ACTUALLY PUT IT IN -- CANCELED
3 MY RESPONSE TO HIM BECAUSE I HAD A CHANCE TO ADD THAT BEFORE
4 THE MESSENGER TOOK IT BACK TO HIM TODAY. BUT THAT CASE AND
5 THE RIOS CASE OR THE SOLIS CASE CLEARLY SHOW THAT THESE ARE
6 NOT TERMS OF ART DEFINED BY STATE LAW; THEY'RE DEFINED ON A
7 CASE-BY-CASE BASIS.

8 SO IF MR. MIKHAEL IS OPERATING BY WAY OF A
9 COLLECTIVE, WHICH HE IS BY WHAT THEY'RE ARGUING, THEN THAT
10 BRINGS IN A WHOLE DIFFERENT SET OF ISSUES. HE CAN'T JUST
11 SIMPLY ASSERT THAT. AND, BECAUSE HE'S SAYING THAT HE'S PART
12 OF A COLLECTIVE IN THIS CASE, THE FACTS OF THIS CASE, THEN IT
13 ALSO AS I SAID BRINGS IN THE ENUMERATED LANGUAGE OR THE
14 EXPRESSED LANGUAGE OF EVEN THE C.U.A., THE M.M.P.A., AND
15 SECTION 11362.768(F) AND OTHER SECTIONS. IT CERTAINLY ALSO
16 BRINGS IN THE SPECIFIC LANGUAGE OF THE GLENDORA MUNICIPAL
17 CODE.

18 SO I STILL HAVEN'T HEARD ANY CASE LAW IN SUPPORT OF
19 ANYTHING THE DEFENDANT IS CLAIMING HERE. THESE ARE ALL
20 SPECULATIVE CLAIMS BASED ON WHAT OTHER CITIES ARE DOING AND SO
21 FORTH AS WE'VE ALREADY ARGUED.

22 THE COURT: DO YOU WISH TO RESPOND, MR. RICHARDS?

23 MR. RICHARDS: JUST VERY BRIEFLY.

24 11358 DEFINES CULTIVATION. SO THAT'S A TERM THAT'S
25 BEEN AROUND FOR 50 YEARS. THERE'S NOTHING ABOUT CULTIVATION
26 IN THE STATUTE. 11350 OF THE HEALTH & SAFETY CODE IS NOT A
27 NEW TERM. AND THE CASES THAT COUNSEL'S REFERRING TO ABOUT
28 BLURRING THE TERMS TOGETHER, HE'S TAKING THEM OUT OF CONTEXT.

1 IF THERE'S CERTAIN ORDINANCES THAT DO DEFINE ALL THREE AND
2 THOSE CASES WERE JUST MERELY RESPONDING, THEY WEREN'T
3 CONCERNED WITH THE SPECIFICS BECAUSE THE ISSUES RAISED IN THE
4 COURT OF APPEAL WERE DIFFERENT.

5 AND, LASTLY, THIS WHOLE THING THAT I NEED TO KEEP
6 CITING CASE LAW, I MEAN, WE'RE IN THE JUDICIAL BRANCH. JUDGES
7 INTERPRET ORDINANCES ALL THE TIME AS APPLIED TO FACTS. THAT'S
8 WHY YOU'RE HERE. I'VE POINTED OUT I -- I -- NOT EVERY TIME TO
9 WIN A MOTION YOU NEED TO ACTUALLY FIND A CASE. IN FACT, IT
10 WOULD BE ODD IF THERE WAS A LOT OF CASES ON THE GLENDORA
11 MUNICIPAL CODE. IT'S A SMALL CITY IN THE EASTERN L.A. COUNTY
12 AND NOT A LOT OF LAWYERS MAY PROPERLY CHALLENGE THE ORDINANCE.

13 AND, YOU KNOW, THERE'S A LOT OF REASONS WHY YOU
14 WOULDN'T SEE CASES ON THIS ORDINANCE. BUT WHAT WE DID PROVIDE
15 IS A PLETHORA OF LEGISLATIVE HISTORY AND ORDINANCES THAT THE
16 COURT COULD TAKE JUDICIAL NOTICES OF, AND ALSO MANY COURT OF
17 APPEAL OPINIONS JUST TO SEE HOW THIS IS FLUSHED OUT IN THE
18 REAL WORLD. AND I THINK WE'VE MET OUR BURDEN. I MEAN, THE
19 BURDEN IS ON THE PEOPLE TO PROVE BEYOND A REASONABLE DOUBT
20 THAT THERE'S NOT ONLY ONE INTERPRETATION OF THE STATUTE.

21 AND I REALLY THINK IT DEFIES LOGIC TO SUGGEST THAT
22 ALL THESE OTHER COMMENTS ABOUT WHAT COULD HAPPEN, THE FACT
23 SOME PEOPLE WERE GOING THERE AT NIGHT, SOMEONE OBSERVED THAT.
24 THAT'S NOT CONSISTENT WITH DISTRIBUTION. THAT MEAN'S
25 SOMEONE'S GOING THERE TO LOOK AT THEIR CULTIVATION. THESE
26 THINGS ARE JUST CIRCULAR SPECULATION. WE'RE REALLY JUST
27 SIMPLY DEALING WITH SOME STATUTORY CONSTRUCTION OF AN
28 ORDINANCE OF WHETHER OR NOT IT PRESCRIBES CULTIVATION. THAT'S

1 WHAT WE'RE LOOKING AT HERE.

2 AND THAT'S WHAT JUDGES DO ALL THE TIME. AND IF THE
3 PEOPLE -- THERE'S OTHER WAYS OF LAWS MADE AND I THINK WE'VE
4 PRESENTED MORE EVIDENCE THAN WE NORMALLY WOULD ATTACKING AN
5 ORDINANCE. AND I HOPE, YOU KNOW, THE COURT FEELS WE GOT THE
6 COURT EVERYTHING IT NEEDS TO SEE THAT THE STATUTE DOESN'T
7 REACH THE SCOPE OF MR. [REDACTED]'S CONDUCT. IT'S THAT SIMPLE.
8 THIS IS NOT -- CULTIVATION IS NOT ILLEGAL IN GLENDORA UNDER
9 THIS STATUTE AS APPLIED TO THESE FACTS. JUST SIMPLY GROWING
10 SOME MARIJUANA PLANTS WITH SOME OTHER PATIENTS IS NOT A CRIME
11 UNDER THIS ORDINANCE. AND THAT'S WHAT WE'RE DEALING WITH.
12 WE'RE NOT DEALING WITH ANYTHING ELSE.

13 I'M NOT TRYING TO CHANGE THE WORLD. I'M JUST
14 SIMPLY TRYING TO SAY THAT I JUST SHOWED YOU THAT OTHER CITIES
15 KNOW HOW TO MAKE THINGS ILLEGAL AND GLENDORA MISSED THE BOAT
16 ON THIS CRIMINAL CASE IN THIS CASE.

17 THE COURT: ANYTHING FURTHER, MR. ANDERSON?

18 MR. ANDERSON: WELL, THE ONLY THING I WOULD SAY IS
19 COUNT 1 WAS THE UNLAWFUL CULTIVATION; COUNT 2, IT JUST SIMPLY
20 SAYS IT'S A DISPENSARY AS DEFINED BY GLENDORA. SO THAT'S ANY,
21 ANY FACILITY, YOU KNOW, SO FORTH BASED, SO, YOU KNOW, I'M NOT
22 GOING TO READ IT ALL, BUT WHEN MEDICAL MARIJUANA IS EVEN MADE
23 AVAILABLE TO EVEN A QUALIFIED PATIENT. SO THERE AGAIN IT'S
24 NOT NECESSARILY JUST CULTIVATION HERE UNDER THE MUNICIPAL CODE
25 ORDINANCE OR SECTION THAT'S BEEN CHARGED.

26 MR. RICHARDS: COUNT 1 WAS DISMISSED AND WRONGLY CHARGED.

27 MR. ANDERSON: RIGHT.

28 MR. RICHARDS: THAT WAS NEVER THE INTENT OF THE PEOPLE TO

1 CHARGE WITH 11350. SO IT'S IRRELEVANT. IT'S BEEN DISMISSED.

2 MR. ANDERSON: WELL, SO THEN IS THEIR ELEMENT THE
3 ARGUMENT THAT THIS IS ONLY ABOUT CULTIVATION? BECAUSE
4 CULTIVATION WAS COUNT 1.

5 MR. RICHARDS: YEAH. AND IT SHOWS YOU THAT -- THAT THE
6 PEOPLE'S INTENTION, EVEN THOUGH THEY WRONGLY FILED IT, WAS
7 THAT THE CONDUCT THAT THEY WERE GOING TO ATTEMPT TO CHARGE HIM
8 AS A MISDEMEANOR WAS CULTIVATION. IT'S CONSISTENT WITH WHAT
9 WE'RE SAYING, THAT THE CONDUCT IS CULTIVATION. BUT, I MEAN,
10 AGAIN I WAS JUST POINTING OUT THAT THAT COUNT'S GONE.

11 MR. ANDERSON: WELL, THE PEOPLE IS ME, AND AFTER TALKING
12 TO THE FILING DEPUTY AND THE DETECTIVE THAT WASN'T THE ONLY
13 REASON WHY WE DECIDED TO DISMISS COUNT 1.

14 MR. RICHARDS: ALL RIGHT. WELL --

15 THE COURT: ALL RIGHT. ANYTHING FURTHER --

16 MR. RICHARDS: NO.

17 THE COURT: -- WITH REGARD TO COUNT 2 IS THE ONLY THING
18 THAT'S BEING CHALLENGED BEFORE THE COURT RIGHT NOW.

19 MR. ANDERSON: NOTHING FURTHER FROM THE PEOPLE.

20 THE COURT: ALL RIGHT.

21 (READING:) WELL, THE COURT ACKNOWLEDGES THE
22 DIVISION IN FEDERAL AND STATE LAW WITH REGARD TO THE MEDICAL
23 USE OF MARIJUANA. THE FEDERAL CONTROLLED SUBSTANCES ACT OF
24 1970, CODIFIED IN 21 U.S.C. SECTION 801, ET SEQ, MAKES IT
25 UNLAWFUL TO MANUFACTURER, DISTRIBUTE, DISPENSE, OR POSSESS
26 MARIJUANA.

27 GONZALES VERSUSR RAICH, R-A-I-C-H, (2005) AT 125
28 S.CT. 2195 AFFIRMED THE SUPREMACY OF FEDERAL LAW ADDRESSING

1 THE REGULATION OF MARIJUANA AS A CONTROLLED SUBSTANCE OVER
2 STATE REGULATIONS; HOWEVER, IT DID NOT SPECIFICALLY OVERRULE
3 THE COMPASSIONATE USE ACT, WHICH WE'VE BEEN REFERRING TO AS
4 THE "C.U.A.," OR THE MEDICAL MARIJUANA PROGRAM ACT, WHICH
5 WE'VE BEEN REFERRING TO AS THE "M.M.P.A.," AND THAT HAS NOT
6 BEEN DECIDED AS OF TODAY. SO WE'RE GOING TO ASSUME THAT STATE
7 LAW IS STILL ACTIVE.

8 IN 1996, CALIFORNIA VOTERS PASSED THE COMPASSIONATE
9 USE ACT CODIFIED UNDER HEALTH & SAFETY CODE SECTION 11362.5.
10 IT ENSURES THE RIGHTS OF PATIENTS AND/OR THEIR PRIMARY
11 CAREGIVER TO OBTAIN AND USE MARIJUANA FOR MEDICAL PURPOSES.
12 THE C.U.A. ALSO PROTECTS PHYSICIANS WHO PRESCRIBE, AND
13 POSSESSION AND CULTIVATION LAWS SHALL NOT APPLY TO THE PATIENT
14 OR PRIMARY CAREGIVER.

15 IN 2003, THE CALIFORNIA LEGISLATURE ENACTED A
16 MEDICAL MARIJUANA PROGRAM ACT, CODIFIED IN HEALTH & SAFETY
17 CODE SECTION 11362.7, ET SEQ., AS GUIDELINES FOR THE
18 COMPASSIONATE USE ACT. HEALTH & SAFETY CODE SECTION 11362.765
19 EXCLUDES FROM CRIMINAL LIABILITY FOR SECTIONS 11357, 11358,
20 11359, 11360, 11366, 11366.5 OR 11570 FOR QUALIFIED PATIENTS,
21 PRIMARY CAREGIVERS, AND THOSE THAT ASSIST SUBJECT TO CERTAIN
22 OTHER CRITERIA THAT'S NOT RELEVANT HERE. THERE ARE NO CHARGES
23 FOR THESE ENUMERATED OFFENSES, AND THE COURT UNDERSTANDS THE
24 GLENDORA MUNICIPAL CODE IS NOT ON THAT LIST.

25 THE COURT ALSO ACKNOWLEDGES A LOCAL JURISDICTION
26 LIKE GLENDORA'S RIGHT TO ZONE, RESTRICT, OR OTHERWISE PROHIBIT
27 MARIJUANA DISTRIBUTION AND POSSIBLY CULTIVATION AS SET FORTH
28 IN RIVERSIDE VERSUS INLAND EMPIRE PATIENTS HEALTH AND WELLNESS

1 CENTER, INCORPORATED, AT 56 CAL.4TH 729, AND THAT WAS A 2013
2 CASE, AND THAT UNDER THE M.M.P.A., PATIENTS AND CAREGIVERS DO
3 NOT HAVE A RIGHT TO CULTIVATE OR DISPENSE MARIJUANA ANYWHERE
4 THEY CHOOSE AS SUPPORTED BY COUNTY OF LOS ANGELES VERSUS HILL,
5 THAT'S A 2011 CASE LOCATED AT 192 CAL.APP.4 AT 861.

6 THE ONLY QUESTION BEFORE THIS COURT IS WHETHER
7 GLENDORA MUNICIPAL CODE 5.23.010 BANS DISPENSARIES ONLY, OR
8 INCLUDES CULTIVATION. THE APPLICABLE PART OF THE GLENDORA
9 MUNICIPAL CODE READS "(A), NO PERSONS MAY OPERATE A MEDICAL
10 MARIJUANA DISPENSARY WITHIN THE CITY OF GLENDORA."

11 GLENDORA MUNICIPAL CODE 5.23.020 INDICATES
12 "'MEDICAL MARIJUANA DISPENSARY' MEANS ANY FACILITY OR
13 LOCATION, WHETHER FIXED OR MOBILE, WHERE MEDICAL MARIJUANA IS
14 MADE AVAILABLE TO OR DISTRIBUTED BY OR DISTRIBUTED TO ONE OR
15 MORE OF THE FOLLOWING: A PRIMARY CAREGIVER, A QUALIFIED
16 PATIENT, OR A PERSON WITH AN IDENTIFICATION CARD ..." AND IT
17 GOES ON AND IT'S NOT SIGNIFICANT TO THIS COURT'S
18 DETERMINATION.

19 TERMS LIKE "COLLECTIVE" AND "COOPERATIVE," IN THIS
20 COURT'S OPINION, ARE TERMS OF ART AND WE HAVE NOT BEEN GIVEN
21 SOME GUIDANCE AS TO THEIR LEGAL DEFINITIONS. FOR DEFENDANT
22 MIKHAEL TO MISUSE THEM WHILE THE POLICE ARE EXECUTING THEIR
23 SEARCH WARRANT IS NOT BEING HELD AGAINST HIM BY THIS COURT.
24 THE COURT IS ALSO NOT PERSUADED BY PEOPLE VERSUS SOLIS (2013)
25 WEST LAW 2646309, I'M SORRY, THAT'S 2013, AND THE ATTORNEY
26 GENERAL'S GUIDELINE THAT A COOPERATIVE SHOULD INCORPORATE WITH
27 THE STATE AND REGISTER WITH THE DEPARTMENT OF FOOD AND
28 AGRICULTURE. IF THESE ARE VIOLATIONS OF LAW, THEY HAVE

1 NOTHING TO DO WITH THE GLENDORA MUNICIPAL CODE.

2 THE PEOPLE HAVE ARGUED IN THEIR MOVING PAPERS THAT
3 A "MEDICAL DISPENSARY" IS AN ALL-ENCOMPASSING TERM WHICH
4 INCLUDES "A DISPENSARY," "A COLLECTIVE," AND "COOPERATIVE."
5 THE PROBLEM IS THERE IS A DIFFERENCE BETWEEN THE BUSINESS
6 MODEL VERSUS THE POTENTIAL UNLAWFUL ACT OF CONDUCT. THE
7 BUSINESS ORGANIZATION OF BEING A "DISPENSARY," "COLLECTIVE,"
8 OR "COOPERATIVE," WHILE APPLIED DEFINITIONS MAY OVERLAP, IT IS
9 DIFFERENT FROM THE QUESTIONABLE CONDUCT OF DISTRIBUTING,
10 DISPENSING, CULTIVATION, PROCESSING, ET CETERA.

11 SO THE QUESTION IS WHAT IS GLENDORA LEGISLATING?
12 AND, QUITE FRANKLY, WHAT CAN MR. MIKHAEL, WHILE READING THE
13 LEGISLATION, OBVIOUSLY GLEAN FROM THEM? WELL, FIRST OF ALL,
14 THE TITLE INDICATES THAT THEY ARE MOVING TO OUTLAW
15 DISPENSARIES. THE COURT ALSO HAS LOOKED AT THE LEGISLATIVE
16 INTENT.

17 GLENDORA DEFINITELY KNEW THE DIFFERENCE BETWEEN
18 CULTIVATION AND DISTRIBUTION BECAUSE THEY DISCUSS IT IN THEIR
19 INTEROFFICE MEMOS FROM THE DEPARTMENT OF PLANNING AND
20 DEVELOPMENT TO THE PLANNING COMMISSION. AND, APPARENTLY, THEY
21 TALK ABOUT THE CITY ATTORNEY, WHICH WE LATER FOUND OUT
22 MR. LEECH WHO WAS HERE EARLIER IS THE ONE WHO PREPARED THE
23 ORDINANCE, BUT THEY DIRECTED HIM TO PREPARE SOMETHING THAT
24 BANS THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES.
25 THIS IS ALL IN THE INTEROFFICE DECLARATIONS OR MEMORANDUMS
26 THAT WERE INCLUDED IN THE DEFENSE'S ORIGINAL MOTION.

27 THE CALIFORNIA STATUTES DISTINGUISH BETWEEN
28 "DISTRIBUTION" AND "CULTIVATION." THE COMPASSIONATE USE ACT

1 ENSURES A RIGHT OF A PATIENT AND PRIMARY CAREGIVER TO OBTAIN,
2 USE, AND CULTIVATE FOR MEDICAL PURPOSES. HEALTH & SAFETY CODE
3 SECTION 11362.768 RESTRICTS COOPERATIVES, COLLECTIVES,
4 DISPENSARIES, OPERATORS, ESTABLISHMENTS, OR PROVIDERS WHO
5 POSSESS, CULTIVATE, OR DISTRIBUTE WITHIN 600 FEET OF A SCHOOL.
6 HEALTH & SAFETY CODE SECTION 11362.775 SPECIFICALLY RESERVES
7 THE RIGHTS OF COLLECTIVES AND COOPERATIVES TO CULTIVATE (WITH
8 NO MENTION OF DISPENSARIES).

9 SO THERE'S A BUNCH OF LAWS OUT THERE THAT ALL
10 ADDRESS CERTAIN PARTS OF THE WHOLE MEDICAL BUSINESS.

11 THE COURT SEES A STRONG DISTINCTION BETWEEN
12 DISTRIBUTION AND A NUISANCE AND CRIME THAT CAN BE ASSOCIATED
13 WITH THE DISTRIBUTION PROCESS ITSELF AND THAT IS SEPARATE FROM
14 QUIET CULTIVATION IN A BUSINESS STRUCTURE WHERE THERE MIGHT
15 NOT BE ANOTHER SOUL AROUND THAT IS DISTURBED NOR HAVE THAT
16 SAME CRIME PROBLEM. MANY CITIES HAVE SPECIFICALLY INCLUDED
17 CULTIVATION IN BANNING THEIR STATUTES AND OTHERS HAVE IN
18 RESPONSE TO LITIGATION AND POSSIBLE QUESTIONS ABOUT WHAT THE
19 LAW REALLY MEANS.

20 GLENDORA'S ORDINANCE SAYS WHAT IT SAYS ABOUT
21 DISPENSARIES, THE LEGISLATIVE INTENT IS CONSISTENT WITH
22 DISPENSARIES, AND IT IS SPECIFICALLY SILENT ON CULTIVATION.
23 THE COURT IS NOT LOOKING INTO THE BUSINESS MODEL END OF
24 COLLECTIVES OR COOPERATIVES; BUT THE COURT IS LOOKING AT THE
25 ACTUAL CONDUCT HERE. GLENDORA MAY WANT TO INCLUDE
26 CULTIVATION; BUT AS IT STANDS RIGHT NOW, THIS COURT FINDS THAT
27 IT HAS NOT.

28 NOW, THE COURT IS MAKING ABSOLUTELY NO FINDINGS OF

1 FACT INVOLVED IN THIS, ONLY THE LEGAL ARGUMENT WITH REGARD TO
2 COUNT 2, AND TO WHAT THE COURT BELIEVES WITH REGARD TO
3 CULTIVATION ONLY.

4 THE INTERESTING PART ABOUT THIS IS THAT THE COURT
5 HAS DECIDED, BUT IT DOESN'T REALLY KNOW THE EFFECT OF ITS
6 DECISION. IT'S KIND OF LIKE WHEN YOU DECIDE A SUPPRESSION
7 MOTION, SOMETIMES THE PEOPLE CAN STILL MOVE FORWARD WITHOUT
8 THE SUPPRESSED ITEM; OTHER TIMES IT'S NOT. BUT THE COURT HAS
9 RULED THAT COUNT 2, THE GLENDORA MUNICIPAL CODE, WHEN IT
10 REFERS TO "DISPENSARIES" MEANS "DISPENSARIES" AND NOT TO THE
11 FUTURE CONDUCT LIKE DEFENSE HAD BROUGHT UP.

12 IT IS THE COURT'S OPINION, REFERRING TO THE
13 "DISPENSARY" DEFINITION, THAT "MEDICAL MARIJUANA DISPENSARY"
14 MEANS A FACILITY OR LOCATION WHERE MEDICAL MARIJUANA IS MADE
15 AVAILABLE TO OR DISTRIBUTED BY OR DISTRIBUTED TO ONE OR MORE
16 OF THE FOLLOWING: QUALIFIED PATIENTS, CAREGIVER ..." AND AT
17 THIS POINT, FROM WHAT THE COURT HAS WITH REGARD TO STRAIGHT
18 CULTIVATION ALONE THAT THAT IS NOT THE CASE.

19 OKAY. SO THAT'S WHERE WE ARE RIGHT NOW. AND ONCE
20 AGAIN, THE COURT DOES NOT KNOW ITS EFFECT ON HOW IT CHANGES
21 THE JURY INSTRUCTIONS OR WE'RE NOT DECIDING CONSTITUTIONALITY
22 OF COUNT 2 BY ITSELF, JUST AS TO WITH REGARD TO CULTIVATION.

23 MR. RICHARDS: WELL, I WOULD -- BASED ON THAT RULING, I
24 WOULD INVITE THE PEOPLE TO DISMISS THE CASE.

25 THE COURT: WHY DON'T WE DO THIS: LET'S GO OFF THE
26 RECORD. WE'LL LET YOU GUYS CONFER. WE CAN PUT IT OVER IF WE
27 NEED TO. IF THERE'S A FACTUAL CHALLENGE TO THAT, SUCH AS
28 EVIDENCE OF ACTUAL SALES AT THAT LOCATION OR DISTRIBUTION AT

1 THAT LOCATION THAT WOULD CHANGE EVERYTHING, BUT WITH REGARD TO
2 STRAIGHT CULTIVATION, THAT'S WHAT THE COURT BELIEVES THE
3 STATUTE SAYS.

4 MR. ANDERSON: WELL --

5 THE COURT: IN LIGHT OF ALL THE OTHER CALIFORNIA
6 STATUTES, IN LIGHT OF ALL THE ORDINANCES THAT CITIES HAVE
7 INITIALLY PASSED AND THEN AMENDED TO ADD "CULTIVATION" WHEN I
8 WOULD ASSUME THEIR STATUTES WERE STRUCK DOWN, TOO.

9 MR. ANDERSON: WELL, I'M NOT SURE WE NEED TO GO OFF THE
10 RECORD.

11 THE COURT: OKAY.

12 MR. ANDERSON: SINCE COUNT 2 IS ONLY ABOUT DISPENSARIES,
13 WE'VE BASICALLY DECIDED THAT THAT ONE IS NOT PROPERLY CHARGED
14 UNDER THE COURT'S RULING OF WHAT "DISPENSARY" MEANS, BECAUSE
15 IT'S NOT -- I DON'T KNOW HOW THE JURY INSTRUCTION UNDER THIS
16 PARTICULAR MUNICIPAL CODE SECTION WOULD INCLUDE "CULTIVATION,"
17 YOU KNOW, BECAUSE IT'S NOT IN THE LANGUAGE OF THE STATUTE.

18 SO IF A "DISPENSARY" TO THE COURT'S OPINION DOES
19 NOT INCLUDE "CULTIVATION" THEN I'M NOT SURE WHAT THE CHARGE
20 WOULD BE. IT PROBABLY WOULDN'T BE THAT PARTICULAR CODE
21 SECTION; THEREFORE, I'M NOT GOING TO BE ABLE TO PROCEED.

22 THE COURT: NO. THE REASON WHY I'M NOT FORCING YOUR HAND
23 IS THAT YOU HAVE A RIGHT TO WRIT THIS AND THAT'S WHY THE COURT
24 WAS SPECIFIC IN ITS RULINGS.

25 SO YOU GUYS WANT TO CHAT?

26 MR. RICHARDS: HE SAID HE WOULDN'T BE ABLE TO PROCEED.

27 MR. ANDERSON: THAT'S CORRECT.

28 THE COURT: THAT'S TRUE.

1 MR. ANDERSON: I DON'T INTEND TO PROCEED.

2 THE COURT: OKAY. SO THE MOTION TO DISMISS?

3 MR. RICHARDS: WE'RE NOT -- I'M NOT MAKING THE MOTION.
4 COUNSEL'S MAKING THE MOTION.

5 THE COURT: ALL RIGHT. COURT DISMISSES THIS MATTER.

6 MR. RICHARDS: OKAY.

7 THE COURT: IS THERE A BOND?

8 MR. RICHARDS: NO, THERE WAS BUT I THINK IT EXPIRED. ARE
9 WE STILL ON THE RECORD?

10 THE COURT: NO, NO, WE'RE OFF THE RECORD.

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12 (END OF PROCEEDINGS)

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