

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

CITY OF FONTANA,

Plaintiff and Respondent,

v.

COLLECTICARE PREMIER INC.,

Defendant and Appellant.

E059446

(Super.Ct.No. CIVDS1306316)

OPINION

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge.

Affirmed.

Law Office of James DeAguilera and James DeAguilera for Defendant and Appellant.

Best Best & Krieger, Kira L. Klatchko and Irene S. Zurko for Plaintiff and Respondent.

Defendant and appellant Collecticare Premier Inc. (Collecticare) appeals from an order of the trial court granting the request of plaintiff and respondent City of Fontana (City) for a preliminary injunction enjoining Collecticare from operating a medical

marijuana collective dispensary. Collecticare contends that the injunction is overly broad and infringes on its right as a collective to free speech and association. It claims that the City cannot ban activities of a medical marijuana collective, such as educational activities and promoting the lawful use and medical benefits of marijuana to members of the collective.

We are unable to find in the record any order or injunction that precludes any activity other than the operation of a medical marijuana dispensary. Accordingly, we will affirm the judgment.

## I. FACTS AND PROCEDURAL BACKGROUND

Michael Flores operates Collecticare, a business in Fontana that is located on property owned by Wendell and Rhoda Gee. In December 2012, the City's code compliance manager inspected the property and observed it being used as an illegal marijuana dispensary. The City issued a notice of violation for the illegal use. A subsequent inspection of the property on January 10, 2013, confirmed that it was still being used as an illegal marijuana dispensary. Collecticare also failed to obtain a valid business license from the City. On multiple dates in June and July 2013, Sergeant Mike Dorsey of the Fontana Police Department executed an abatement warrant at the property and observed that the dispensary was continuing to operate.

City of Fontana Municipal Code (Municipal Code) section 30-7 expressly prohibits medical marijuana dispensaries from operating in the City:

“(c) Notwithstanding any other provision of this Code, medical marijuana dispensaries shall be a prohibited use in all zones of the City.” Municipal Code section 30-11 defines

a medical marijuana dispensary as “any facility or location where medical marijuana is made available and/or distributed . . . .” However, the definition specifically excludes “collective or cooperative entities or groups described by California Health and Safety Code Section 11362.775, provided that no payment or other compensation is made for any marijuana distributed by any such entity or group, whether to members or non-members.” Municipal Code section 15-3 further prohibits “any business, trade, profession, calling or occupation any [*sic*] business, operation or use that cannot be, or is not, conducted or carried out without being in violation of any federal state, county or city law, ordinance or code.” Under Municipal Code section 1-13, any violation of the Municipal Code constitutes a public nuisance.

On June 6, 2013, the City filed a verified complaint against Collecticare, Flores, and the Gees, seeking to enjoin the defendants from using the property as a medical marijuana dispensary under state nuisance law (Civ. Code, §§ 3479, 3480, 3491 and 3494) and the Drug Abatement Act (Health & Saf. Code, § 11570 et seq.). The City asserted violations of the Municipal Code, which expressly prohibits medical marijuana dispensaries anywhere in the City. The City further alleged that (1) marijuana dispensaries are considered nuisances in the City, (2) Collecticare was operating without a business license, and (3) the City does not issue a license to any business that is conducted or carried out in derogation of any federal, state, county, or city law.

On July 9, 2013, the trial court issued a temporary restraining order and an order to show cause regarding the issuance of a preliminary injunction. Collecticare opposed the preliminary injunction, arguing that it “ha[d] already complied with the Supreme

Court’s ruling,” and that it was “no longer operating a medical marijuana dispensary or distribution facility.” Collecticare objected to the proposed injunction as being overbroad because it sought to ban use of the property as a medical marijuana cooperative or collective. The City submitted a supplemental declaration from Sergeant Dorsey, who, on July 23, 2013, observed activities consistent with an operating dispensary on the property.

On August 9, 2013, the trial court issued a preliminary injunction, which provides: “Pending the outcome of this action, you, and all of your respective officers, managers, agents, servants, employees, aiders, successors, and other related persons or entities acting with you and/or on your behalf are hereby enjoined and prohibited from using, conducting, allowing, permitting or granting authority for making any use of property in the City of Fontana, to store, distribute, give away, sell, cultivate, or grow marijuana or products containing marijuana derivatives, or from conducting, allowing, permitting, inhabiting, leasing, renting, or otherwise using or granting authority to use said property in a like manner.” Collecticare filed a timely notice of appeal.

## II. ANALYSIS

In *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729 (*Inland Empire*), the California Supreme Court held that the right of local governmental entities to exercise their police power by means of zoning ordinances to regulate or ban facilities that distribute medical marijuana is not preempted by any state law, including the Compassionate Use Act of 1996 (Health & Saf. Code, § 11362.5) and the Medical Marijuana Program (Health & Saf. Code § 11362.7 et seq.).

(*Inland Empire, supra*, at pp. 737, 752-763.) Collecticare concedes the holding in *Inland Empire*; however, it asserts that *Inland Empire* does not ban or prohibit “the collaborative efforts of patients (collective members) to promote safe access to medical marijuana” or to provide “education as to the use and benefits of medical marijuana.” This is true, but it has no bearing on this case. Collecticare was not cited for such promotional or educational activities, and the preliminary injunction enjoining it from using the property as a medical marijuana dispensary does not purport to prohibit such activities. Thus, Collecticare’s contention that the preliminary injunction is overly broad and infringes on its right to act as a collective is unfounded.

### III. DISPOSITION

The order appealed from is affirmed. Costs on appeal shall be awarded to plaintiff and respondent.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

CODRINGTON

J.