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CITIZENS VIEW

Public Safety
Quality of Life
Property Values
Focus-Marijuana

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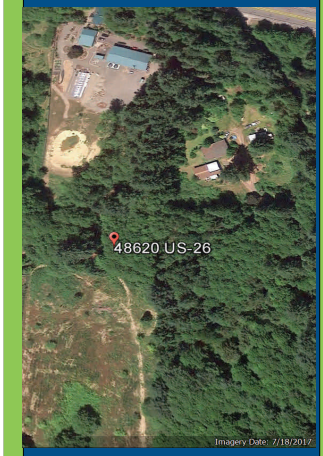
OREGON CANDY FARM FEDERAL RICO LAWSUIT VOLUNTARILY DISMISSED



Case 3:18-cv-01366-JR

Oregon Homeowner Dismisses Federal RICO Lawsuit on Thursday May 21, 2020

According to public documents Plaintiff dismissed an on-going Federal Rico Lawsuit on Thursday, May 21, 2020. Public documents show that 32 defendants took mutual settlement agreements with prejudice, which means the case is dismissed permanently. The remaining 16 were voluntarily dismissed without prejudice which means, the person whose case it is can try again.

Plaintiff filed the lawsuit on July 20, 2018 in hopes of reclaiming her public safety, quality of life, and property values after a California pot grower turned the small rural residential neighborhood into a marijuana production and dangerous ethanol processing site putting neighbors at risk.

Urban Oregon legalized marijuana, but rural Oregon is paying the price, with hundreds of out-of-state and in-state investors buying up rural farming lands to grow and process commercial marijuana. In Clackamas County alone, there has been over 574 marijuana land use applications applied for since January of 2016 with over 98% of those being for marijuana production.

According to public documents the plaintiff had successfully pleaded her case winning a Magistrate Judge's recommendation on March 5th, 2020 (docket 556) to **DENY** the defendants motion to dismiss the case based on the fact that the plaintiff did not show; (A) Concrete Financial Loss; (B) Cognizable Injury Under State Law; (C) Plausibility of Plaintiff's Allegations noting the below summations from the Magistrate Judge:

CONCRETE FINANCIAL LOSS-Defendants argue "[a]lthough [plaintiff] states that she 'decided to sell' her property and that she has failed to do so to date, she does not identify any quantifiable harm caused by defendants' conduct." The issue before the Court is whether plaintiff's intent to monetize the property's value sufficiently alleges a concrete financial loss.

In the Ninth Circuit, when evaluating whether a plaintiff has sufficiently alleged concrete financial loss, courts must "examine carefully the nature of the asserted harm. The Ninth Circuit defines concrete financial loss as a showing of actual financial loss to the plaintiff. Under similar facts and after a thorough analysis of the concrete financial loss requirement, this District found "that a plaintiff who has not alleged specific prior attempts to monetize a property interest must plausibly allege at least a present intent or desire to do so.

"Here, plaintiff has amended her complaint to conform with this pleading requirement. Plaintiff now alleges not only diminution in value, but also that defendants' conduct amounts to a barrier that prevents her from selling her property and converting the property's equity into a pecuniary form. **Accordingly, the motion to dismiss, on this basis, should be DENIED."**

CONIZABLE INJURY UNDER STATE LAW- "Plaintiff alleged that she intends to sell her house, has been attempting to sell her house continuously since April 2019, has not received any offers on her house, and her asking price is less than that of comparable properties.

Continued page 2

https://www.pacermonitor.com/public/case/25133821/Underwood_v_1450_SE_Orient,_LLC_et_al

https://www.courtlistener.com/docket/7489467/underwood-v-1450-se-orient-llc/

Homeowner Dismisses Federal RICO Lawsuit *CONT.*

She does not merely allege the value of her house has decreased, but that she is wholly incapable of selling her house. Plaintiff is allegedly unable to monetize her property interest because of the Marijuana Operation. Even if the nuisance has abated, or were to cease in the future, **plaintiff has lost the ability to monetize her property at the time she wishes, which may lead to damage that cannot be remedied via a future sale when the nuisance ends.** In addition, whether the nuisance has ceased, or is temporary, is a question appropriately resolved on summary judgment. Plaintiff's allegations, taken in the light most favorable to her, **establish a past harm,** rather than a prospective or speculative harm, for which she could recover under Oregon law. **Accordingly, the motion to dismiss should be DENIED."**

PLAUSIBILITY OF PLAINTIFF'S ALLEGATIONS - "The parties have extensively briefed the Court on their interpretations of the judicially noticeable records, however, even considering these records, **plaintiff has sufficiently alleged conduct by the defendants that could constitute a RICO violation.** These records are inconclusive on the issue of whether the Marijuana Operation has abated. Specifically, the judicially noticed records do not conclusively establish that the Marijuana Operation has been abated such that it is not plausible the damage (inability to sell) is not proximately caused by the alleged RICO violation (marijuana production). The Court is sympathetic to the issues raised by defendants; however, it is not appropriate for the Court to resolve these issues on a motion to dismiss. **Accordingly, the motion to dismiss should be DENIED."**

SETTLING doesn't mean the defendants won, it means that many of the defendants and the plaintiff had both agreed to a mutual settlement, which led to the plaintiff voluntarily dismissing the case.

The most glaring **PRECEDENT** set in this case is the fact that rural homeowners can successfully bring evidence in Federal RICO lawsuits against marijuana growers and processors who impact their public safety, quality of life, and property values.

From the plaintiff's view the case was a **VICTORY**, because the property owner sold their marijuana grow and ethanol concentrate-processing businesses making the community a safer place to live..

The marijuana industry touts that this case was part of a national anti-marijuana campaign to shakedown the marijuana industry since marijuana is federally illegal, but in reality this case wasn't about that at all. It was about an elderly senior citizen homeowner who had lived on her property for years caring for her handicapped brother, fighting back to protect her public safety, quality of life, and property values, by keeping large dangerous commercial marijuana grows and dangerous extraction processing centers from showing up next to her home. These facilities do not belong in our rural residential communities.

It is also important to point out that the 10th Circuit in 2017 ruled that Neighbors may file federal RICO lawsuits against state-licensed marijuana growing operations.

Marijuana has been decriminalized and regulated by various states, but it remains forbidden by federal law. This means that state-legal marijuana growers might still face federal charges, though federal prosecutors could choose not to enforce the federal ban in such situations.

But it also means that private citizens (here, a couple named the Reillys) could sue neighboring marijuana growers under the federal RICO statute, on the theory that the growers are interfering with the neighbors' use of their land — as the U.S. Court of Appeals for the 10th Circuit just held Wednesday in *Safe Streets Alliance v. Alternative Holistic Healing, LLC*. And this would not be affected by a Justice Department policy of not enforcing the criminal ban on marijuana production and distribution in those states that allow marijuana. The decision thus further highlights the precarious status of marijuana in Colorado, Washington, California and other such states, so long as Congress declines to officially allow such state legalization.

The federal Racketeer-Influenced and Corrupt Organization Act (RICO) lets people sue "racketeering" enterprises that injure the plaintiff's "business or property." Drug growing or distribution that is a felony under federal law qualifies as racketeering activity.

And, the 10th Circuit concluded, injuries to "property" include some examples of what property law calls "nuisance" — serious interference with the enjoyment of property, often accompanied by decline in property value. In particular, plaintiffs alleged that the marijuana enterprise produced "noxious odors" that wafted onto their property; such an "odorous nuisance" could qualify as an injury to property,

https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/06/07/10th-circuit-neighbors-may-file-federal-rico-lawsuit-against-state-licensed-marijuana-growing-operation/

10th Circuit: Neighbors may file federal RICO lawsuit against state-licensed marijuana growing operation

assuming plaintiffs could show that the interference with their property was substantial enough.

Plaintiffs also alleged that "the open operation of the Marijuana Growers' criminal enterprise has caused the value of their land to decline, independent of the harms attending the nuisance"; that too could be a sufficient "injury to property," the court concluded, if the decline in value could be shown. Perhaps "the value of the Reillys' land" has actually "increased because of the now-booming market in Colorado for land on which to cultivate marijuana," but that is a factual question to be determined later — for now, the Reillys' claim can go forward:

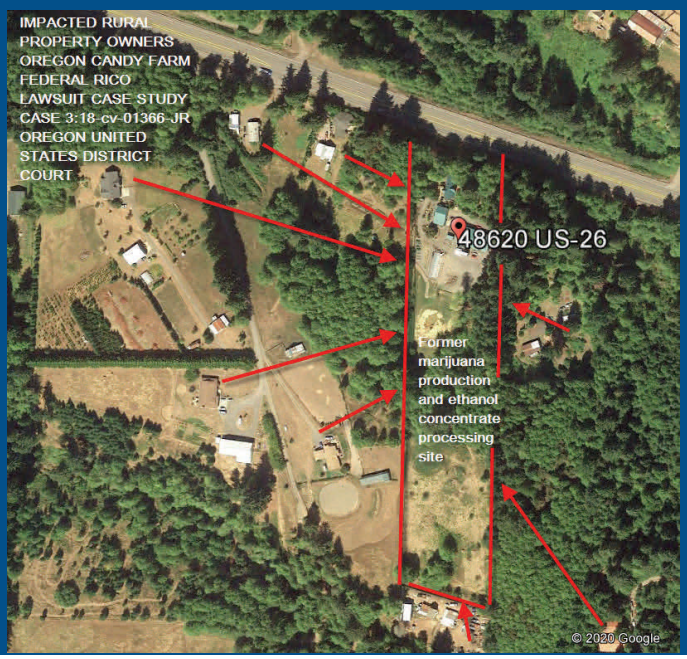
At this stage in the litigation, we conclude that it is reasonable to infer that a potential buyer would be less inclined to purchase land abutting an openly operating criminal enterprise than she would be if that adjacent land were empty or occupied by a lawfully-operating retailer. Based on the Reillys' assertion that the Marijuana Growers' operation is anything but clandestine, the Reillys' land plausibly is worth less now than it was before those operations began. Therefore, we conclude that the Reillys pled a plausible diminution in the value of their property caused by the public operation of the Marijuana Growers' enterprise.

In principle, this same claim could be made by neighbors of a wide range of marijuana growers and distributors, assuming they could show substantial interference with enjoyment of land or decline in property value. And while some such claims could have in any event been brought under state nuisance law in state court, RICO provides much better remedies — potentially, a recovery of three times the actual damages plus a reasonable attorney's fee — and likely isn't subject to any state law defenses (as there might be against some nuisance claims brought against licensed, regulated businesses). So the decision is bad news for marijuana businesses, and for the uneasy coexistence between state legalization regimes and the federal marijuana prohibition.

Though the plaintiff in the Oregon Case met the 9th Circuit pleading requirements based on the Magistrate Judge's recommendation that the **plaintiff has sufficiently alleged conduct by the defendants that could constitute a RICO violation** noting specifically, this District has held, "in order to plausibly allege a concrete financial loss in this case, Plaintiffs 'must make good faith allegations that they attempted or currently desire to convert those [property] interests into a pecuniary form.'" Shoultz v. Derrick, 369 F. Supp. 3d 1120, 1128 (D. Or. 2019) (quoting Ainsworth, 326 F. Supp. 3d at 1126) (alteration in original). Previously, this Court recognized plaintiff had not "alleged a desire to sell her property and thus any alleged diminution in value represents a purely speculative loss." Findings & Recommendations, p. 7 (ECF #486).

In this Oregon case plaintiff had amended her complaint to conform with this pleading requirement. Plaintiff alleged not only diminution in value, but also that defendants' conduct amounts to a barrier that prevents her from selling her property and converting the property's equity into a pecuniary form. **Accordingly, the Magistrate Judge's recommendation was that the motion to dismiss, on this basis, should be DENIED.**

Though this meets the 9th Circuit pleading requirements there are some inconsistencies in relation to the 10th Circuit decision, in that a homeowner should not have to sell their home to show injury to their property.



https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/06/07/10th-circuit-neighbors-may-file-federal-rico-lawsuit-against-state-licensed-marijuana-growing-operation/

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CONNECTIONS

- **Monthly Connections**
- **Quarterly Citizen View Newsletter**
- **Quarterly Community Educational Forums –Focus Marijuana**
- **Annual Nat'l Safe Drug Policy Summit-Focus Marijuana**
- **Web Trainings**
- **Small groups meetings**

We believe we are socially responsible for preserving public safety, quality of life, and protection of property values on behalf of our communities and for the legacy of our children.

LAWSUIT SEEKS TO SHUT DOWN BUSY BEE'S ORGANICS IN WINE COUNTRY SANTA BARBARA-CALIFORNIA

Taking aim at an industry it views as disruptive and out-of-control, a citizens' coalition is suing the Board of Supervisors and the owner of Busy Bee's Organics, a 22-acre cannabis project on Highway 246 that was unanimously approved for a zoning permit last month.

In a lawsuit filed on April 23 in county Superior Court, the Santa Barbara Coalition for Responsible Cannabis, Inc., a nonprofit group, alleges that Sara Rotman, the owner of Busy Bee's, and her agents, illegally expanded a medicinal operation from a single greenhouse in early 2016 to more than seven acres in 2018 – and that the supervisors broke their own zoning rules by validating that expansion with an after-the-fact permit.

The coalition claims that the county failed to properly review the environmental impacts of cannabis on the lucrative wine-tasting business in and around Buellton, including the pungent smell of marijuana plants; and that the county broke state law by allowing cannabis operations such as Busy Bee's to qualify for tax breaks as agricultural preserves.

Coalition backers are seeking a court order to void Busy Bee's permit and halt its operations, pending further review.

"This lawsuit is a last resort," said Debra Eagle, a coalition board member and the general manager of Alma Rosa Winery at 7250 Santa Rosa Road. "Respect and moderation is all we are asking for."

More than 200 vintners, farmers and homeowners from Carpinteria to the Santa Ynez Valley wine country and the foothills of the San Rafael Mountains make up the coalition. It is the second major lawsuit brought by the group this year, and it is sure to widen the fissures in the community over how and whether to crack down on the booming industry.

On one hand, the Board of Supervisors majority views cannabis as a tax bonanza and strives at every turn to accommodate the growers, most of whom continue to operate here without county permits or business licenses, three years after California voters legalized marijuana for recreational use.

On the other hand, residents who say the proliferation of cannabis "grows" is ruining their quality of life are fighting on multiple fronts: they are routinely challenging cannabis permits at county hearings on policy grounds, and, as a political matter, an active faction campaigned hard but unsuccessfully last fall to oust Supervisor Das Williams, the chief architect of the county's cannabis ordinance.

This January, joined by several homeowner groups, the coalition filed a formal complaint with the U.S. Attorney's Office, requesting a federal investigation into cannabis operations in Carpinteria.

County Counsel Michael Ghizzoni said Tuesday that the county had not yet received a copy of the coalition's latest lawsuit.

"We generally don't discuss our litigation posture," he said, adding that the county would likely file a formal response in May.

But Susan Petrovich, a Santa Barbara land-use attorney who represented Busy Bee's during county review, said the owners were disappointed that the coalition had decided to file suit. Busy Bee's, she said, is a "model, outdoor, sun-grown cannabis farm that is frequently held as the gold-standard by government officials."

Blair Pence, the owner of Pence Vineyards & Winery on Highway 246 and a co-founder of the Santa Barbara Coalition for Responsible Cannabis, fears that the sights and smells of the new industry will drive away the tourists who flock to the region for its scenic vistas and outdoor tasting rooms. (Courtesy photo) *To read rest pf article hit below link.*

https://www.edhat.com/news/lawsuit-seeks-to-shut-down-busy-bees-organics-in-wine-country