

August 04 2014 2:26 PM

KEVIN STOCK
COUNTY CLERK
Hon. No. 14-2-10487-7

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

MMH, LLC, a Washington limited liability
company,

Plaintiff,

vs.

CITY OF FIFE, a Washington municipal
corporation,

Defendant.

No. 14-2-10487-7

DEFENDANT CITY OF FIFE'S ANSWER TO
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF, AND WRIT OF
MANDAMUS

Defendant City of Fife answers Plaintiff MMH, LLC's complaint as follows:

I. NATURE OF ACTION

1.1 Answering the allegations contained in Paragraph 1 of Plaintiff's complaint, Defendant City of Fife admits that on July 8, 2014, the Fife City Council passed Ordinance 1872. Ordinance 1872 speaks for itself. Defendant denies each and every remaining allegation.

1.2 Answering the allegations contained in Paragraph 2, Defendant denies RCW 59.50 authorizes any marijuana retail licenses to be issued by the state. Defendant is without knowledge or information to form a belief as to the truth of the remaining allegations, and therefore denies them.

1.3 Answering the allegations contained in Paragraph 3, Defendant denies the allegations.

1.4 Answering the allegations contained in Paragraph 4, Defendant admits that the Plaintiff has filed a complaint against the Defendant in Pierce County Superior Court. Defendant denies each and every remaining allegation.

1 **II. PARTIES**

2 2.1 Answering the allegations contained in Paragraph 5 of Plaintiff's complaint, Defendant
3 is without knowledge or information to form a belief as to the truth of the allegations, and therefore
4 denies them.

5 2.2 Answering the allegations contained in Paragraph 6 of Plaintiff's complaint, Defendant
6 admits the allegations.

7 **III. JURISDICTION AND VENUE**

8 3.1 Answering the allegations contained in Paragraph 7 of Plaintiff's complaint, Defendant
9 admits the allegations.

10 3.2 Answering the allegations contained in Paragraph 8 of Plaintiff's complaint, Defendant
11 admits the allegations.

12 **IV. FACTS**

13 4.1 Answering the allegations contained in Paragraph 9 of Plaintiff's complaint, Defendant
14 admits I-502 was passed on November 6, 2012. The Defendant admits that the initiative was codified
15 in RCW 69.50 et seq. The Defendant denies that the initiative was codified in WAC 314-15. The
16 Defendant denies all remaining allegations.

17 4.2 Answering the allegations contained in Paragraph 10 of Plaintiff's complaint, RCW 69.50
18 speaks for itself. The Defendant denies that RCW 69.50 has legalized the use and possession of
19 marijuana for "all Washingtonians over ...21" as RCW 69.50 only legalizes the use and possession of a
20 limited amount of marijuana under certain conditions for certain classes of people over the age of 21 and
21 Federal law still criminalizes the use and possession of marijuana for nearly all persons. The Defendant
22 denies any remaining allegations in Paragraph 10.

23 4.3 Answering the allegations contained in Paragraph 11 of Plaintiff's complaint, RCW 69.50
24 and WAC 314-55 speak for themselves. The Defendant specifically denies that RCW 69.50 has
legalized the production, manufacture, and retail sales of marijuana because these acts are still criminal
under State law for persons not otherwise in compliance with RCW 69.50 and still criminal, in virtually

1 all cases, under Federal law regardless of compliance with RCW 69.50. The Defendant denies any
2 remaining allegations in Paragraph 11.

3 4.4 Answering the allegations contained in Paragraph 12 of Plaintiff's complaint, I-502
4 speaks for itself. The Defendant denies that I-502 has stated an intent to decriminalize the use and
5 possession of marijuana under Federal law and, therefore, must deny that I-502's stated intent is "to
6 decriminalize the use and possession of marijuana." The Defendant denies any remaining allegations in
7 Paragraph 12.

8 4.5 Answering the allegations contained in Paragraph 13 of Plaintiff's complaint, RCW
9 69.50.345 speaks for itself. The Defendant denies any remaining allegations in Paragraph 13.

10 4.6 Answering the allegations contained in Paragraph 14 of Plaintiff's complaint, RCW
11 69.50.345 speaks for itself. The Defendant denies any remaining allegations in Paragraph 14.

12 4.7 Answering the allegations contained in Paragraph 15 of Plaintiff's complaint, RCW
13 69.50.342 speaks for itself. The Defendant denies any remaining allegations in Paragraph 15.

14 4.8 Answering the allegations contained in Paragraph 16 of Plaintiff's complaint, RCW
15 69.50.354 speaks for itself. The Defendant denies that RCW 69.50.354 decriminalized the sale of
16 marijuana under Federal law. The Defendant denies any remaining allegations in Paragraph 16.

17 4.9 Answering the allegations contained in Paragraph 17 of Plaintiff's complaint, RCW
18 69.50.360 speaks for itself. The Defendant specifically denies that RCW 69.50.360 decriminalized the
19 sale of marijuana under Federal law or, under all conditions and in all amounts under state law. The
20 Defendant denies any remaining allegations in Paragraph 17.

21 4.10 Answering the allegations contained in Paragraph 18 of Plaintiff's complaint, I-502,
22 RCW 69.50, and WAC 314-55 speak for themselves. The Defendant denies any remaining allegations
23 in Paragraph 18.

24 4.11 Answering the allegations contained in Paragraph 19 of Plaintiff's complaint, Defendant
admits the Washington State Liquor Control Board (hereafter "WSLCB") adopted rules in October 2013

1 regarding marijuana retail licenses. The adopted rules of the WSLCB speak for themselves. The
2 Defendant denies any remaining allegations in Paragraph 19.

3 4.12 Answering the allegations contained in Paragraph 20, the Defendant admits the
4 allegations.

5 4.13 Answering the allegations contained in Paragraph 21, the Defendant is without
6 knowledge or information to form a belief as to the truth of the allegations, and therefore denies them.

7 4.14 Answering the allegations contained in Paragraph 22, the Defendant is without
8 knowledge or information to form a belief as to the truth of the allegations, and therefore denies them.

9 4.15 Answering the allegations contained in Paragraph 23 of Plaintiff's complaint, RCW
10 69.50.331(7)(b) speaks for itself. The Defendant denies any remaining allegations.

11 4.16 Answering the allegations contained in Paragraph 24 of Plaintiff's complaint, Defendant
12 admits it did not file an objection to the Plaintiff's WSLCB retail marijuana application only in that
13 Defendant has not received a notice of Plaintiff's application from the WSLCB to which the Defendant
14 could object, but admits that. When notice of application is sent to the City of Fife, it will file a timely
objection. The Defendant denies any remaining allegations.

15 4.17 Answering the allegations contained in Paragraph 25 of Plaintiff's complaint, Defendant
16 admits the Fife City Council passed Ordinance 1841 on August 13, 2013. Ordinance 1841 speaks for
17 itself. The Defendant denies any remaining allegations in Paragraph 25.

18 4.18 Answering the allegations contained in Paragraph 26 of Plaintiff's complaint, Defendant
19 admits the City of Fife Planning Commission held a special meeting on January 27, 2014. The Defendant
20 is without knowledge or information to form a belief as to the truth of the allegation regarding studies
21 compiled, and therefore denies it. The Defendant admits that the Planning Commission directed the city
22 attorney to draft a proposed Ordinance 1872 for their consideration, but denies this took place on January
27, 2014. The Defendant denies any remaining allegations in Paragraph 26.

23 4.19 Answering the allegations contained in Paragraph 27 of Plaintiff's complaint, Defendant
24 admits the allegations.

1 4.20 Answering the allegations contained in Paragraph 28 of Plaintiff's complaint, Defendant
2 admits that on May 5, 2014, the City of Fife Planning Commission voted 5-1 to recommend proposed
3 Ordinance 1872 as drafted at that time to the City Council. Ordinance 1872, as recommended on May
4 5, 2014, speaks for itself. The Defendant admits that the Planning Commission considered public
5 comment, the WSLCB's adopted rules, federal law, state law, and secondary impacts as part of their
6 deliberation. Ordinance 1841 as referenced speaks for itself. As the Plaintiff did not attach or file what
7 they refer to as "Attached as Exhibit 1" and "Attached as Exhibit 2", the Defendant has not seen the
8 documents, and is therefore without knowledge or information to form a belief as to the truth of the
9 allegations regarding "Exhibit 1" and "Exhibit 2", and therefore denies them. Defendant denies any and
10 all other allegations contained in Paragraph 28.

11 4.21 Answering the allegations contained in Paragraph 29 of Plaintiff's complaint, FMC
12 19.92.040 speaks for itself. The Defendant admits Ordinance 1872 is in compliance with FMC
13 19.92.040. The Defendant denies any other allegations contained in Paragraph 29.

14 4.22 Answering the allegations contained in Paragraph 30 of Plaintiff's complaint, Defendant
15 admits the allegations insofar as they describe proposed Ordinance 1872. The Defendant denies all
16 remaining allegations contained in Paragraph 30.

17 4.23 Answering the allegations contained in Paragraph 31 of Plaintiff's complaint, Defendant
18 admits the Fife City Council held a public hearing on June 10, 2014 regarding proposed Ordinance 1872
19 recommended by the Planning Commission and accepted public testimony. The Defendant denies any
20 other allegations contained in Paragraph 31.

21 4.24 Answering the allegations contained in Paragraph 32 of Plaintiff's complaint, Defendant
22 denies the Fife City Council held a public hearing regarding proposed Ordinance 1872 on June 24, 2014.
23 Defendant admits Ordinance 1872 was on the June 24, 2014 agenda under Ordinances, to be presented
24 for 1st Reading. Defendant denies any and all other allegations contained in Paragraph 32.

 4.25 Answering the allegations contained in Paragraph 33 of Plaintiff's complaint, Defendant
admits that, at the June 24, 2014 council meeting, Fife Councilmember Johnson moved to amend

1 proposed Ordinance 1872 to ban marijuana production, processing, and retail businesses in the City of
2 Fife. The Defendant denies each and every remaining allegation in Paragraph 33.

3 4.26 Answering the allegations contained in Paragraph 34 of Plaintiff's complaint, Defendant
4 admits the Council voted 5-2 to approve Councilmember Johnson's amendment. The Defendant denies
5 all other allegations in Paragraph 34.

6 4.27 Answering the allegations contained in Paragraph 35 of Plaintiff's complaint, Defendant
7 denies the Fife City Council took any action on July 24, 2014. Defendant admits that on July 8, 2014,
8 the Fife City Council voted to approve Ordinance 1872 as amended. The Defendant denies each and
9 every remaining allegation in Paragraph 35.

10 4.28 Answering the allegations contained in Paragraph 36 of Plaintiff's complaint, Defendant
11 admits the allegations.

12 4.29 Answering the allegations contained in Paragraph 37 of Plaintiff's complaint, Defendant
13 admits the allegations.

14 4.30 Answering the allegations contained in Paragraph 38 of Plaintiff's complaint, Defendant
15 is without knowledge or information to form a belief as to the truth of the allegations, and therefore
16 denies them.

17 4.31 Answering the allegations contained in Paragraph 39 of Plaintiff's complaint, Defendant
18 is without knowledge or information to form a belief as to the truth of the allegations, and therefore
19 denies them.

20 4.32 Answering the allegations contained in Paragraph 40 of Plaintiff's complaint, Defendant
21 is without knowledge or information to form a belief as to the truth of the allegations, and therefore
22 denies them.

23 4.33 Answering the allegations contained in Paragraph 41 of Plaintiff's complaint, Defendant
24 admits the allegations.

1 4.34 Answering the allegations contained in Paragraph 42 of Plaintiff's complaint, Defendant
2 is without knowledge or information to form a belief as to the truth of the allegations, and therefore
3 denies them.

4 **V. FIRST CAUSE OF ACTION – STATUTORY PREEMPTION**

5 5.1 Answering the allegations contained in Paragraph 43 of Plaintiff's complaint, Defendant
6 incorporates by reference all responses contained in the preceding paragraphs.

7 5.2 Answering the allegations contained in Paragraph 44 of Plaintiff's complaint, Defendant
8 admits that, via RCW 69.50.608, the State of Washington only fully occupies and preempts the field for
9 setting penalties for violations of the State's controlled substances act. Defendant specifically denies
10 that RCW 69.50.608 fully occupies and preempts any other field, especially those in conflict with Federal
11 laws. The Defendant denies any remaining allegations in Paragraph 44.

12 5.3 Answering the allegations contained in Paragraph 45 of Plaintiff's complaint, RCW 69.50
13 speaks for itself. The Defendant denies any remaining allegations in Paragraph 45.

14 5.4 Answering the allegations contained in Paragraph 46 of Plaintiff's complaint, RCW
15 69.50.608 speaks for itself. The Defendant denies any remaining allegations in Paragraph 46.

16 5.5 Answering the allegations contained in Paragraph 47 of Plaintiff's complaint, the
17 Defendant is without knowledge or information to form a belief as to the truth of the allegation regarding
18 Plaintiff's businesses, and therefore denies it. Defendant denies each and every other allegation
19 contained in Paragraph 47.

20 5.6 Answering the allegations contained in Paragraph 48 of Plaintiff's complaint, RCW
21 69.50.608 speaks for itself. Defendant denies any remaining allegations in Paragraph 48.

22 **VI. SECOND CAUSE OF ACTION – CONSTITUTIONAL PREEMPTION**

23 6.1 Answering the allegations contained in Paragraph 49 of Plaintiff's complaint, Defendant
24 incorporates by reference all responses contained in the preceding paragraphs.

1 6.2 Answering the allegations contained in Paragraph 50 of Plaintiff's complaint, Article XI,
2 Section 11 of the Washington State Constitution speaks for itself. The Defendant denies any remaining
3 allegations in Paragraph 50.

4 6.3 Answering the allegations contained in Paragraph 51 of Plaintiff's complaint, Defendant
5 denies the allegations.

6 6.4 Answering the allegations contained in Paragraph 52 of Plaintiff's complaint, Defendant
7 denies the allegations.

8 6.5 Answering the allegations contained in Paragraph 53 of Plaintiff's complaint, Defendant
9 denies the allegations.

10 **VII. THIRD CAUSE OF ACTION – INJUNCTIVE RELIEF**

11 7.1 Answering the allegations contained in Paragraph 54 of Plaintiff's complaint, Defendant
12 incorporates by reference all responses contained in the preceding paragraphs.

13 7.2 Answering the allegations contained in Paragraph 55 of Plaintiff's complaint, Defendant
14 is without knowledge or information to form a belief as to the truth of the allegations, and therefore
15 denies them.

16 7.3 Answering the allegations contained in Paragraph 56 of Plaintiff's complaint, Defendant
17 is without knowledge or information to form a belief as to the truth of the allegations, and therefore
18 denies them.

19 7.4 Answering the allegations contained in Paragraph 57 of Plaintiff's complaint, Defendant
20 denies the allegations.

21 **VIII. FOURTH CAUSE OF ACTION MANDAMUS RELIEF**

22 8.1 Answering the allegations contained in Paragraph 58 of Plaintiff's complaint, Defendant
23 incorporates by reference all responses contained in the preceding paragraphs.

24 8.2 Answering the allegations contained in Paragraph 59 of Plaintiff's complaint, Defendant
is without knowledge or information to form a belief as to the truth of the allegations, and therefore
denies them.

1 8.3 Answering the allegations contained in Paragraph 60 of Plaintiff's complaint, Defendant
2 denies the allegations.

3 8.4 Answering the allegations contained in Paragraph 61 of Plaintiff's complaint, Defendant
4 is without knowledge or information to form a belief as to the truth of the allegations, and therefore
5 denies them.

6 **VIX. FIFTH CAUSE OF ACTION EQUITABLE ESTOPPEL**

7 9.1 Answering the allegations contained in Paragraph 62 of Plaintiff's complaint, Defendant
8 incorporates by reference all responses contained in the preceding paragraphs.

9 9.2 Answering the allegations contained in Paragraph 63 of Plaintiff's complaint, Defendant
10 denies the allegations.

11 9.3 Answering the allegations contained in Paragraph 64 of Plaintiff's complaint, Defendant
12 denies the allegations.

13 9.4 Answering the allegations contained in Paragraph 65 of Plaintiff's complaint, Defendant
14 is without knowledge or information to form a belief as to the truth of the allegations, and therefore
15 denies them.

16 9.5 Answering the allegations contained in Paragraph 66 of Plaintiff's complaint, Defendant
17 denies the allegations.

18 9.6 Answering the allegations contained in Paragraph 67 of Plaintiff's complaint, Defendant
19 denies the allegations.

20 **X. SIXTH CAUSE OF ACTION – INVERSE CONDEMNATION**

21 10.1 Answering the allegations contained in Paragraph 68 of Plaintiff's complaint, Defendant
22 incorporates by reference all responses contained in the preceding paragraphs.

23 10.2 Answering the allegations contained in Paragraph 69 of Plaintiff's complaint, Article 1,
24 Section 16 of the Washington State Constitution speaks for itself. The Defendant denies any remaining
allegations in Paragraph 69.

1 10.3 Answering the allegations contained in Paragraph 70 of Plaintiff's complaint, Defendant
2 denies the allegations.

3 10.4 Answering the allegations contained in Paragraph 71 of Plaintiff's complaint, Defendant
4 denies the allegations.

5 10.5 Answering the allegations contained in Paragraph 72 of Plaintiff's complaint, Defendant
6 denies the allegations.

7 10.6 Answering the allegations contained in Paragraph 73 of Plaintiff's complaint, Defendant
8 denies the allegations.

9 **XI. REQUEST FOR RELIEF**

10 11.1 Answering the allegations contained in Section XII [*sic*], Paragraphs 1-7 of Plaintiff's
11 complaint, Defendant denies the Plaintiff is entitled to any relief, including, but not limited to, the relief
12 sought by Plaintiff.

13 **FOR FURTHER ANSWER AND BY WAY OF AFFIRMATIVE DEFENSES THIS** 14 **ANSWERING DEFENDANT ALLEGES:**

15 **FIRST AFFIRMATIVE DEFENSE**

16 Plaintiff's claim is barred under primary assumption of risk.

17 **SECOND AFFIRMATIVE DEFENSE**

18 Plaintiff has failed to mitigate his damages and protect himself from avoidable consequences.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Plaintiff's unclean hands bar equitable relief in the form sought by the Plaintiff.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 The inability of the Court to enforce the equitable relief sought by the Plaintiff against third
23 parties, e.g. the United States government, without violating the Supremacy Clause of the United
24 States Constitution and Federal laws, bars the granting of such equitable relief.

FIFTH AFFIRMATIVE DEFENSE

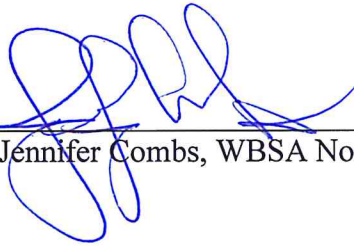
1 The failure, under state law, to preempt the entire field of regulation from City and County
2 regulation bars the granting of equitable relief in the form sought by the Plaintiff.

3
4 **WHEREFORE**, having fully answered the allegations contained in Plaintiff's complaint
5 Defendant prays as follows:

- 6 1. The Plaintiff's complaint be dismissed with prejudice and without costs;
7 2. The Defendant be awarded attorneys' fees and costs as provided by RCW 4.84; and
8 3. The Defendant be afforded such other and further relief as the Court may deem just and
equitable under the circumstances.

9 On Dated this 4th day of August, 2014

10 VSI LAW GROUP, PLLC

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Jennifer Combs, WBSA No. 36264