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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE LOUIE,

Plaintiff,

No. CIV S-09-1709 JAM KJM PS

vs.

STEVE RIKALA, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Defendants’ motion to dismiss came on regularly for hearing September 2, 2009. Plaintiff appeared in propria persona. Ronald Scholar appeared for defendants. Upon review of the documents in support and opposition, upon hearing the arguments of plaintiff and counsel, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

In this action, plaintiff alleges his due process rights were denied in connection with his application to the City of West Sacramento for a cannabis club. Defendants move to dismiss, contending this action is both moot and unripe.

Defendants assert this action is moot because the City of West Sacramento has passed an ordinance establishing a temporary moratorium on the establishment of medical marijuana dispensaries. In light of the temporary nature of the moratorium, the court will not recommend dismissal on mootness grounds.

1 Defendant also contends this action is unripe because plaintiff has not yet
2 submitted a completed application and has not sought a waiver of the permit fee from the City
3 Council. This argument is well-taken. Plaintiff submitted as an exhibit to the complaint a letter
4 from the City Planner advising plaintiff that any waiver of the permit fee must be approved by
5 the City Council. Plaintiff presents no evidence that he has submitted complete plans or sought a
6 permit fee waiver, and conceded at the hearing that he has not yet done so. As such, this action is
7 not ripe for adjudication. See Manufactured Home Communities, Inc. v. City of San Jose, 420
8 F.3d 1022, 1033 (9th Cir. 2005) (due process cannot be denied where no due process is pursued).

9 Accordingly, IT IS HEREBY RECOMMENDED that defendants' motion to
10 dismiss be granted and this action be dismissed.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within ten
13 days after being served with these findings and recommendations, any party may file written
14 objections with the court and serve a copy on all parties. Such a document should be captioned
15 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
16 shall be served and filed within ten days after service of the objections. The parties are advised
17 that failure to file objections within the specified time may waive the right to appeal the District
18 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: September 10, 2009.

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23 U.S. MAGISTRATE JUDGE
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