

Legal Marijuana Shops Are Taking on the Black Market

The strength of the illicit market has been a significant thorn in the side of legal operators, who pay high licensing fees and taxes in order to stay legit. They're hoping a civil lawsuit, and bolstered criminal enforcement, can turn the tide.

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[August 19, 2021](#)



March & Ash in City Heights / Photo by Megan Wood

After years of [advocating for stronger policing of the illegal cannabis industry](#), some local legal cannabis operators are taking matters into their own hands.

On July 6, the dispensary chain [March & Ash](#) filed a lawsuit against former [San Diego County Sheriff's Capt. Marco Garmo](#) and a long list of alleged co-conspirators. The lawsuit alleges violations of anti-racketeering, false advertising and unfair competition laws. One of the defendants is a local media outlet that regularly runs advertisements for illegal dispensaries.

The seeds for the civil action were planted in September 2020, when Garmo pleaded guilty in federal court to illegally trafficking firearms from his office in the sheriff's Rancho San Diego station. Garmo was [sentenced to two years in federal prison](#) in March "for years of unlawful

firearms transactions and for an array of corrupt conduct relating to unlicensed marijuana dispensaries operating in his former jurisdiction,” the U.S. attorney’s office wrote in a press release.

As part of his plea, Garmo admitted that he tipped off an illegal cannabis dispensary to an imminent search by other law enforcement officials. Called Campo Greens, it was owned in part by his cousin. The business avoided any negative outcomes from the raid thanks to the tip. Garmo also admitted to pressuring another illegal dispensary to hire his friend and co-defendant in the federal case, Wael Anton, as a “consultant,” along with another person who had agreed to pay Garmo a kickback and worked for the county at the time. That deal ultimately fell through.

Garmo’s criminal case highlighted the struggle by local law enforcement, as well as lawmakers, to stamp out the same illegal cannabis market that he was part of. Though it’s difficult to quantify, California’s cannabis market — which is widely considered to be the largest in the world — totals \$11.9 billion, a 2019 [industry report](#) claims. About \$3 billion of that is legal and nearly \$9 billion is not. The same report projects that, by 2024, California’s total market will be worth \$13.6 billion, split into \$7.6 billion legal and \$6.4 billion illicit.

The reasons for this discrepancy are many, but stem from California being the historic home of cannabis cultivation in the United States. A mature and highly functional cannabis market has existed in the state for many decades, well before the passage of Proposition 215 in 1996, which legalized medical cannabis in California.

While Prop. 215 brought many previously illicit operators into compliance, it was still easier and more profitable for many to remain unlicensed, especially considering that, since the 1960s, California’s weed has been supplying black markets around the country. It still does, even after the passage of Proposition 64 in 2016, which legalized adult-use cannabis in California and superseded Proposition 215. State-legal cannabis markets are not allowed to engage in interstate commerce, meaning that legal weed has to be sold solely within state lines. Black markets follow no such rules.

California continues to be the weed grower and seller for the rest of the nation in these quasi-legal times.

Prop. 64 caused its own headaches, in large part because it gave municipalities the ability to opt out. Sales, distribution, manufacturing and cultivation of cannabis are currently [banned](#) in the unincorporated areas of San Diego County, where most of Garmo’s dispensary-related activity took place and where the majority of the county’s illegal dispensaries are housed.

Another [cannabis industry report](#) compiled by California State University San Marcos this year counted 83 unlicensed cannabis dispensary busts by the Sheriff’s Department since 2018, with the total cost of enforcement around \$215,000. County Supervisor Joel Anderson told me that 64 of those unlicensed dispensaries were in his district, which covers the large eastern swath of the county.

With Anderson's support in January, the board voted 4-1 to effectively overturn the ban and since then has been working to [finalize the finer points](#) of an ordinance, which is expected to come back for a second vote in the fall.

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"For people who don't live here, it's hard to grasp how out of control this got in Spring Valley and certain areas of El Cajon and Lakeside," said Bret Peace, general counsel of March & Ash. "There were stores on seemingly every major street with blinking green lights, [open 24 hours](#), with sign spinners and ads in the [San Diego] Reader," the alt-weekly newspaper named in the civil case. Jim Holman, owner and publisher of the San Diego Reader, said that he did not have a comment on the matter at this time.

"The continued proliferation of illegal dispensaries and associated violence was right out in the open in this very specific area of the unincorporated East County, even where they have been shut down elsewhere," Peace said. "We all complained but were told nothing could be done. Yet they're selling mislabeled, untested and contaminated products [while attracting violence](#), including the murder of an innocent man related to one of my colleagues."

Peace also said that, following the removal of Garmo from his position in 2019, "all hell broke loose," and illegal dispensaries continued to proliferate. Because of that, he and March & Ash felt the need to pursue more drastic measures because they didn't see law enforcement stepping up in a meaningful way.

Peace and March & Ash's attorney, Cory Briggs, puts it more bluntly.

"The purpose of the lawsuit is to put an end to the illegal competition that the legitimate dispensaries are having to face," Briggs said. "It's law enforcement's job to do that, but Marco Garmo had some sort of mob monopoly on the law enforcement and laws weren't being enforced in his part of the county like they were supposed to be. So, entities like March & Ash are responding to unfair pressures."

Briggs also said unlicensed dispensaries don't have to pay their employees a living wage, taxes or workers' compensation, to give just a few examples. They also sell unlicensed and untested products, like those with certain illegal pesticides or growth hormones that have been proven to be harmful for human consumption, especially when combusted, as weed usually is.

Furthermore, like in any shadow industry, the lack of oversight and legality makes unlicensed cannabis operations a prime target for organized crime. Anderson told me he believes organized crime could be a factor in the specific incidents that concern Garmo, but couldn't point to any hard evidence and is not familiar with the details of Garmo's involvement. Instead, he cited his time as the vice chair of the California Senate Public Safety Committee and conversations there.

"I know that throughout the state, it is an issue," he said.

As for the lawsuit, which is styled after federal RICO cases, both Briggs and Peace believe theirs is a first of its kind, at least in the cannabis world and certainly in California's cannabis industry. Briggs said they are seeking to set a precedent other private operators can use to combat the black market, especially in situations where they feel they are not adequately being served by law enforcement.

RICO, which stands for Racketeer Influenced and Corrupt Organization, refers to a type of federal criminal charge that is applied to so-called organized crime entities and came about as part of the Organized Crime Control Act of 1970. Despite the name, charging a person or persons under RICO provisions is less about whether they are involved in an established organized crime organization and more about the conduct and types of business activities that lead to a network of illegal economic and criminal activity. In popular culture, RICO charges often show up in books and movies about the mafia.

Civil suits that mimic federal RICO cases seek to include the umbrella of actors and entities that support the network's activities. In the case of a civil suit, it makes them monetarily liable. The goal is to show that by supporting unlawful economic activity in any way, they are therefore on the hook for economic damages incurred.

Briggs and the team supporting March & Ash said they did their own detective work by hiring a private investigator, and gathering phone records and video surveillance from a variety of businesses that illustrated a web of interconnected people and money streams. None of it has been made public yet as part of the case.

"All of this was out in the open," Briggs said of Garmo and the co-defendants named in the new lawsuit. "They just got used to operating with impunity."

In addition to Garmo and the San Diego Reader, the six other defendants in the case brought by March & Ash include ATM operators, landlords and bootleg edibles companies. By knowingly supporting an illegal dispensary's activity by doing business with them, even if they are not selling contraband themselves, they are complicit, the suit alleges.

Last week, Anderson also announced along with San Diego County District Attorney Summer Stephan that he will deliver a board letter to be introduced at the Aug. 18 County Board of Supervisors meeting that seeks additional funding for the DA's office specifically to counter illegal pot shops in the county. The ordinance in the works would expedite the receivership process for county counsel to take control of properties that law enforcement has identified for illegal cannabis sales in the unincorporated communities. It would also allocate an additional \$1.2 million in funding for the district attorney to help prosecute the individuals involved.

"I'm in a tough spot," Anderson said. "I absolutely support legal cannabis businesses, but I also have a duty to my constituents, who are rightly and loudly complaining about the harm done to them by these illegal dispensaries. It is affecting quality of life and the safety of their communities."

Another issue, Anderson said, is not merely that these dispensaries exist, but also that they quickly proliferate. Unlicensed dispensaries in eastern San Diego County have been opening much faster than the Sheriff's Department has been able to shut them down, which Anderson attributes to a lack of funding and manpower. "It's like whack-a-mole with these pot shops," he said.

For their part, the San Diego Sheriff's Department declined to comment on anything specifically related to Garmo or his cases, but reiterated its commitment to stamping out illegal pot shops.

"The enforcement of ceasing operations of illegal marijuana dispensaries follows community concerns about illegal dispensaries near schools and residential areas. We want to assure those we serve that the San Diego County Sheriff's Department is listening to the community and recognizes the negative impact illegal marijuana dispensaries have on our neighborhoods," a spokesperson said in a statement.

The spokesperson also reiterated that the Sheriff's Department is particularly concerned with halting the sale of illegal edibles that are branded to resemble existing brands of candies and snacks, something that is illegal for licensed cannabis products per Prop 64. One of those bootleg companies, Dabzilla Sour Bears, was named in the suit.

While Garmo remains imprisoned, it's because of gun charges, not anything to do with his involvement in illegal cannabis sales. His admissions under oath, however, revealed a blind spot in the Sheriff Department's enforcement strategy against illegal cannabis dispensaries. It remains to be seen whether the department can bring it under control. If it can't, Peace and Briggs believe their civil suit will provide the public with a different way to combat illegal cannabis businesses going forward.

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