OFFICE OF COUNTY COUNSEL
COUNTY OF TEHAMA

727 Oak Street
Red Bluff, California 96080
530-527-9252 Telephone
530-527-9255 Facsimile

ARTHUR J. WYLENE
County Counsel

SYLVIA DURAN, Deputy
ALAN B. COX, Deputy
PAULA BACA, Deputy

Robin Bennett, Office Manager
Tina Macdonald, Legal Secretary
Melinda Hahn, Legal Secretary

May 7, 2012

Honorable Chief Justice Tani Gorre Cantil-Sakauye
and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

VIA OVERNIGHT DELIVERY

Re: Letter Supporting Review – *City of Lake Forest v. Evergreen Holistic Collective* (Cal. Supreme Court Case No. S201454)

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, rule 8.500(g), the California State Association of Counties (CSAC)[1] and the League of California Cities (League)[2] respectfully support the Petition for Review filed by the City of Lake Forest.

The question squarely presented in this case is whether "State Medical Marijuana Law Preempts a Local Per Se Ban on Dispensaries."[3] CSAC and the League share a direct interest in this matter. Our member Counties and Cities presently face difficult decisions regarding the regulation of marijuana dispensaries and other marijuana-related land uses. Local agencies' responses to these challenges vary with the needs of each community, but all local governments are interested in ensuring that their communities retain the traditional regulatory tools necessary to address these land uses and associated impacts.

As the Court is surely aware, the state of the law in this area is profoundly unsettled, and this Court has already granted review in several cases presenting these precise issues. Review is warranted in this case for that reason alone – and for several others that will appear.

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[1] The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

[2] The League of California Cities is an association of 469 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as being of such significance.

[3] (Opn. at p. 30.)

I. THIS CASE PRESENTS THE SAME ISSUE PENDING BEFORE THIS COURT IN *CITY OF RIVERSIDE V. INLAND EMPIRE PATIENT'S HEALTH AND WELLNESS CENTER, INC.* AND *PEOPLE V. G3 HOLISTIC, INC.*

The Supreme Court commonly grants review of cases presenting issues already pending before the Court, both to ensure uniformity of decision (and prevent interim confusion among the lower courts), and to avoid signaling the Court's own intentions regarding the issue under review. This case presents exactly such issues – and exactly such concerns.

On January 18, 2012, the Court granted review in *City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc.* (*Riverside*),[4] *People v. G3 Holistic, Inc.* (*G3*),[5] and *Pack v. Superior Court* (*Pack*),[6] all of which "present issues concerning preemption, under federal or state law, of local ordinances regulating or banning the operation of medical marijuana dispensaries and related activities . . ."[7] On the same note, the instant CA considered "whether local entities may ban dispensary activities"[8] – concluding that California's medical marijuana laws[9] "authorize" "dispensary activity at collective or cooperative cultivation sites,"[10] and that local ordinances banning such activities are therefore preempted. [11] The identity of issues is readily apparent.[12]

The need for uniformity in this area is especially keen, and allowing the instant CA opinion to remain published while the Court considers the matter is virtually certain to cause disparity and confusion among the lower courts. Indeed, such confusion is already evident. For example, the Cities of Long Beach and Redding both responded to the CA decision in *Pack* by replacing their regulatory ordinances with dispensary bans,[13] and were both challenged on MMPA preemption grounds. The trial court in

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[4] (S198638, review granted January 18, 2012.)

[5] (S198395, review granted January 18, 2012.)

[6] (S197169, review granted January 18, 2012.)

[7] (*Issues Pending Before the California Supreme Court in Civil Cases* (April 27, 2012), at p. 3 [available online at http://www.courts.ca.gov/documents/apr2712civpend.pdf].)

[8] (Opn. at p. 30.)

[9] (See Health & Saf. Code, § 11362.5, hereinafter "CUA" and §§ 11362.7 et seq., hereinafter "MMPA.") All further undesignated statutory references are to the Health and Safety Code.

[10] (Opn. at pp. 2, 36.)

[11] (Opn. at pp. 2, 32, 35.)

[12] The state law preemption issue presented in this case mirrors *Riverside* and *G3* perfectly. The question of whether federal law would preempt any regulatory ordinance other than a ban – i.e., the issue under review in *Pack* – is not really presented here, because the City of Lake Forest has no such ordinance.(But see Opn. at pp. 45-46, fn. 12.)

[13] (Sean Longoria, No ruling in dispensary case; Judge hears arguments, says he'll issue decision within two weeks (Redding Record-Searchlight, Feb. 27, 2012, Attachment "**A**"); Sean Longoria, Judge

Redding's case issued a tentative ruling upholding the ban, but then reversed itself when the instant CA decision was issued and invalidated Redding's ordinance.[14] By contrast, the trial court in Long Beach upheld the ban.[15] This area of law was complex enough before the instant decision; it will be virtually impossible to navigate if the Court declines review in this case and the decision remains published.

Perhaps more importantly, the Court has already granted review in two published cases that supported dispensary bans. *Riverside*, of course, expressly upheld such bans, and *Pack* severely limited local regulation of dispensaries – which had the practical (and predictable) effect of encouraging bans statewide (as in Redding and Long Beach). The instant CA decision is the first published opinion holding the contrary, that local bans are preempted. Failure to grant review in this case would inevitably be perceived as signaling this Court's agreement with the instant CA, thereby generating further confusion and litigation. Whatever the Court's ultimate conclusion on these issues, it should be presented publicly when the Court renders its opinion in writing with reasons stated, not gleaned by implication from selective grants of review.

II. THE INSTANT CA OPINION CONFLICTS WITH OTHER PUBLISHED AUTHORITY, THUS INDEPENDENTLY WARRANTING SUPREME COURT REVIEW

Even if these issues were not already pending before the Court, this case would warrant review on its own merits – as it unambiguously conflicts with the other published authorities on two separate and significant issues.

To begin with, the instant CA broadly held that local dispensary bans are preempted by state law, relying largely on the MMPA provision exempting qualified collective marijuana activities from "state criminal sanctions under Section . . . 11570" (the "drug house" abatement law). The CA construed this provision remarkably broadly as protecting dispensaries from any nuisance action, whether civil or criminal, under other legal authority (not just Section 11570).[16] By contrast, *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 reached the opposite conclusion. *Kruse* was a public nuisance action brought to enforce the City's zoning and licensing ordinances, which implemented a temporary moratorium on marijuana dispensaries. As in the present case, the defendant dispensary operator challenged the ordinances, claiming preemption by the CUA and MMPA. The court methodically reviewed the CUA and MMPA in accordance with well-established principles of local police power preemption, and concluded that:

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denies Redding's injunction request; marijuana dispensaries can remain open (Redding Record-Searchlight, Mar. 15, 2012, Attachment "**B**"); Karen Robes Meeks, Judge rejects LB pot ban injunction (Long Beach Press-Telegram, March 3, 2012, Attachment "**C**.")

[14] (See Attachments "**A**" and "**B**.")

[15] (See Attachment "**C**.")

[16] (Opn. at pp. 18-19.)

> "Zoning and licensing are not mentioned in the findings and declarations that precede the CUA's operative provisions. Nothing in the text or history of the CUA suggests it was intended to address local land use determinations or business licensing issues. The CUA accordingly did not expressly preempt the City's enactment of the [dispensary] moratorium or the enforcement of local zoning and business licensing requirements."[17];
>
> "The operative provisions of the MMP, like those in the CUA, provide limited criminal immunities under a narrow set of circumstances . . .The MMP does not address the licensing or location of medical marijuana dispensaries, nor does it prohibit local governments from regulating such dispensaries. Rather, like the CUA, the MMP expressly allows local regulation . . . Nothing in the text or history of the MMP precludes the City's adoption of a temporary moratorium on issuing permits and licenses to medical marijuana dispensaries, or the City's enforcement of licensing and zoning requirements applicable to such dispensaries."[18]; and
>
> "Neither the CUA nor the MMP impliedly preempt the City's actions in this case. Neither statute addresses, much less completely covers the areas of land use, zoning and business licensing. Neither statute imposes comprehensive regulation demonstrating that the availability of medical marijuana is a matter of "statewide concern," thereby preempting local zoning and business licensing laws . . . Neither the CUA nor the MMP compels the establishment of local regulations to accommodate medical marijuana dispensaries. The City's enforcement of its licensing and zoning laws and its temporary moratorium on medical marijuana dispensaries do not conflict with the CUA or the MMP."[19]

Of particular relevance here, the *Kruse* opinion contains an extensive discussion the law of public nuisance, and specifically recognizes the distinction between the state criminal sanctions addressed by the CUA and MMPA and unaffected local nuisance regulations. Rejecting the defendants' argument that the dispensary in that case could not be enjoined because "all sales of marijuana in this case complied with California's medical marijuana laws," *Kruse* noted that: "The trial court's determination that defendants' operation of a medical marijuana dispensary constituted a nuisance per se was based not on violations of state law, however, but on violations of the City's municipal code," which the *Kruse* court found entirely appropriate.[20]

The instant CA opinion simply cannot be reconciled with *Kruse* – and the CA here did not make any serious attempt at reconciliation. The CA noted that Kruse involved a temporary moratorium (rather than a permanent ban), and that the

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[17] (*Kruse, supra,* 177 Cal.App.4th at pp. 1172-1173)

[18] (*Id.* at p. 1175.)

[19] (*Id.* at pp. 1175-1176.)

[20] (*Id.* at p. 1164.)

dispensary operator in that case had also failed to comply with the business license and permit application requirements that would have been applicable had dispensaries been a permitted use[21] – but perhaps recognizing that these facts were not essential to *Kruse*'s preemption analysis proceeded to expressly disagree with *Kruse*:

> "The *Kruse* court found that state medical marijuana law neither expressly nor impliedly preempted the City of Claremont's moratorium on medical marijuana dispensaries, and therefore did not preclude the city from denying the dispensary a business license or permit based on the moratorium. The court, however, did not address Civil Code section 3482 and, like the City here, did not confront the contradiction inherent in a local ordinance that designates as a nuisance dispensary activities the Legislature has determined in section 11362.775 are not, "solely on the basis" of those activities, a nuisance. *We therefore find the analysis in Kruse incomplete and unpersuasive on the issue presented here*." [22]

Can cities and counties prohibit dispensaries through nuisance regulations, or can they not? The conflict between the instant CA and Kruse on this issue is patent, and the issue independently warrants review today no less than it did when this Court granted review in the *Riverside* and *G3* matters.

Moreover, the conflict between the instant case and *Kruse* (and the former CA decisions in *Riverside* and *G3*) concerns whether conduct immunized from "state criminal sanctions" under the CUA and/or MMPA may be banned under civil zoning regulations. However, the instant CA also addressed the predicate issue of what activities are immunized by the medical marijuana laws in the first place. Of particular note, the CA "discern[ed] no intent in the MMPA to authorize dispensaries to operate independently from a cultivation site,"[23] and consequently held that ""the Legislature authorized dispensaries only at sites where medical marijuana is "collectively or cooperatively . . . cultivate[d]."[24]

This holding was primarily based on the CA's interpretation of Section 11362.775, which, among other things, immunizes qualified persons who "collectively or cooperatively" cultivate medical marijuana from criminal liability for *transportation* of marijuana. The CA reasoned that unlike Section 11362.765, which allows transportation of *personal quantities* of marijuana without regard to the cultivation process, "[S]ection 11362.775 requires that any collective or cooperative activity involving *quantities of marijuana exceeding a patient's personal medical need* must be tied to the cultivation site."[25] "A cooperative or collective member may thus move more

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[21] (Opn. at pp. 43-44.)

[22] (Opn. at p. 44.)

[23] (Opn. at p. 24.)

[24] (Opn. at p. 2.)

[25] (Opn. at p. 27.)

than personal quantities of marijuana *around the cultivation site*, whether in planting, tending, harvesting, storing, or dispensing the marijuana . . ."[26] – but no further. "Accordingly, we conclude off-site dispensaries are not authorized by California medical marijuana law because nothing in the law authorizes the transportation and possession of marijuana to stock an off-site location. Marijuana stocked at an off-site dispensary is held ancillary to transportation, not cultivation. State law does not authorize this."[27]

The foregoing analysis and conclusion are flatly contrary to another recent CA decision, *People v. Colvin* (2012) 203 Cal.App.4th 1029. The defendant in *Colvin* was arrested "[w]hile transporting in his car about one pound of marijuana from one medical marijuana establishment to a second."[28] "The trial court found that Colvin, although a qualified patient operating a 'legitimate dispensary,' was not entitled to the defense because the 'transportation had nothing to do with the cultivation process' and was 'outside what the law permits.'[29] The *Colvin* CA disagreed:

> "It is unclear what the trial court meant when it said that Colvin's transportation of marijuana was unrelated to the cultivation process and was outside what section 11362.775 allows. There was no evidence that Colvin's transportation of one pound of marijuana was for anything other than Holistic. To the extent the trial court ruled as it did because it believed that only cooperative or collective cultivators of marijuana can transport the product, Colvin/Holistic is a cultivator: Holistic has three on-site "grow rooms," which the LAPD visited. Fourteen members of Holistic also grow marijuana for Holistic off-site. All of the marijuana Holistic distributes is from a cooperative member; none of it is acquired from an outside source. Thus, even under a reading of section 11362.775 limiting transportation of marijuana only to cooperatives that cultivate it, then Colvin was entitled to the immunity."[30]

Relying, in part, on the statement in the California Attorney General's *Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use* (Aug. 2008)[31] that "collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers," the *Colvin* CA held that section 11362.775 applied, and reversed the conviction for transportation of marijuana.[32]

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[26] (Opn. at p. 25.)

[27] (Opn. at p. 27.)

[28] (*Colvin, supra,* 203 Cal.App.4th at p. 1032.)

[29] (*Ibid.*)

[30] (*Id.* at p. 1037.)

[31] ([http:// ag. ca. gov/ cms_ attachments/ press/ pdfs/ n 1601_ medical marijuana guidelines. pdf].)

[32] (*Colvin, supra,* 203 Cal.App.4th at p. 1041, citing *Guidelines* § IV(B)(7) at p. 10.)

The instant CA decision cannot be reconciled with *Colvin*. Must dispensaries be located at the "grow site," or may they be located anywhere, with transportation from grow site to dispensary immunized from criminal prosecution? This issue is of obvious importance to local governments responsible for "regulat[ing] the location, operation, or establishment"[33] of such activities. Just as the conflict of *Kruse* leaves unclarity regarding what may be prohibited, the conflict with *Colvin* creates converse unclarity regarding what may be tolerated. Review is necessary to resolve both issues.

III. THE INSTANT CA EMPLOYED A UNIQUE ANALYTICAL APPROACH, CONSIDERATION OF WHICH WARRANTS AN INDEPENDENT GRANT OF REVIEW

In the usual case, decisions presenting issues already before the Court may be "granted and held," and then returned to the CA upon issuance of this Court's main opinion. However, this is not the usual case. As the foregoing sections may suggest, the CA in this case forged an entirely new path, widely divergent from the other published authorities. A number of these analytical elements are not present in *Riverside*, *G3*, or *Pack*, and merit this Court's individual attention, including:

- As noted above, the CA's preemption analysis was largely premised on its interpretation of public nuisance principles, and especially the MMPA's exemption of qualified collective marijuana activities from "state criminal sanctions under Section . . . 11570." The CA construed the exemption very broadly, holding that "the Legislature in section 11362.775 intended not only to bar civil nuisance prosecutions under section 11570, but also to preclude nuisance claims under Civil Code section 3479."[34] The CA then applied Civil Code section 3482 ("[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance") to conclude that local governments may not declare marijuana dispensaries to be a *per se* nuisance.[35]

  However, the CA failed to note that Section 11362.775 is susceptible to an alternative construction that does not render the reference to "state *criminal* sanctions" meaningless. "Although section 11570 does not contain criminal penalties, it is widely recognized as quasi-criminal in nature."[36] The MMPA's references to "state criminal sanctions" and "criminal liability" under Section 11570 were thus not misplaced. The purpose of the "drug house abatement law" is to "to 'reform' the property" previously used as an instrumentality of crime.[37] It is a "specialized statute[]" that "prescribe[s] remedies not available

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[33] (§ 11362.83, subd. (a).)

[34] (Opn. at p. 19.)

[35] (Opn. at pp. 19, 30, 36-37.)

[36] (*County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 869, fn. 5.)

[37] (*People ex rel. Gwinn v. Kothari* (2000) 83 Cal.App.4th 759, 765-766.)

under the general nuisance statutes."[38] Although nominally civil, such proceedings are "in aid of and auxiliary to the enforcement of the criminal law . . ."[39] For these reasons, exemption of qualified persons from "state criminal sanctions under Section . . . 11570" can easily be read to affect only the specialized quasi-criminal remedies provided by that statute, and not to subsume the entire law of public nuisance. Review should be granted, and briefing held in this case to further examine the interaction between Sections 11362.775 and 11570 and the civil law of public nuisance.

- Having concluded that the MMPA restricts civil nuisance abatement, the CA further relied upon "preemptive effect of Civil Code section 3482"[40] to support its conclusion that dispensaries could not be declared nuisances per se, and therefore could not be banned. The use of Civil Code section 3482 to challenge a local ordinance appears somewhat novel. A local agency's police power "is not limited to the regulation of such things as have already become nuisances," but rather extends to any thing or act "of such a nature that it may become a nuisance or may be injurious to the public health if not suppressed or regulated."[41] "Entirely independently of the question of nuisances, the legislative body . . . is vested with authority to adopt such ordinances as it may deem expedient for the promotion of public morals and the suppression of vice within its corporate limits."[42] It is therefore "not particularly relevant" whether an ordinance violation can strictly be called a nuisance, "it is enough that the authority has the power to act."[43] Consequently, even if Section 3482 did actually prevent marijuana dispensaries from being deemed a "nuisance," it would not necessarily preclude the application of the local police power – which extends beyond nuisances. Review should be granted to consider the effect (if any) of Civil Code section 3482 on police power regulation in general, and dispensary bans in particular.
- More broadly, the essential heart of the CA's analysis is the repeated statement that the MMPA "authorizes" "dispensary activities," and that "[a] local ordinance that prohibits what a statute authorizes . . . is inimical to the statute."[44] However, the assertion that the MMPA (or CUA) "authorizes" anything warrants

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[38] (*Ibid.*)

[39] (*Board of Sup'rs of Los Angeles County v. Simpson* (1951) 36 Cal.2d 671, 674 [construing the analogous provisions of the "red light" abatement law, Penal Code sections 11225 et seq.].)

[40] (Opn. at p. 37.)

[41] (*Sullivan v. City of Los Angeles* (1953) 116 Cal.App.2d 807, 810; *Laurel Hill Cemetery v. City & County of San Francisco* (1907) 152 Cal. 464, 474-475; *Ex parte Shrader* (1867) 33 Cal. 279, 284.)

[42] (*Ex parte Lawrence* (1942) 55 Cal.App.2d 491, 495.)

[43] (*Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 255-256.)

[44] (Opn. at p. 31.)

further examination. "Authorization," in this context, means legislative encouragement of an activity with such force to override local prohibitions. Any holding that state law "authorizes" an activity for purposes of preempting local prohibitions necessarily entails a conclusion that the Legislature *intended* to prevent local governments from banning that activity.[45] Does exempting the activity from state criminal penalty necessarily evince such an intention? There is considerable authority to the contrary.[46] Do the MMPA's prefatory statements – which, though broadly phrased, do not mention local land use regulation – themselves evince such an intent? Again, this Court's own approach to construing the medical marijuana laws suggests otherwise.[47] These are the questions that the CA should have asked, and upon which this Court's guidance is necessary.

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[45] The importance of precision when describing the effect of a state statute is underscored by *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, which the instant CA cited for the proposition that "a contradiction arises when a local ordinance prohibits what a statute authorizes rendering the local ordinance inimical to the statute." (Opn. at pp. 35-36.) However, that's not exactly what *Big Creek* held. Rather, the *Big Creek* court actually stated that "a local ordinance is not impliedly preempted by conflict with state law unless it *mandates* what state law expressly forbids, or forbids what state law expressly mandates. That is because, when a local ordinance does not prohibit what the statute *commands* or command what it prohibits, the ordinance is not 'inimical to' the statute." (*Big Creek, supra,* 38 Cal.4th at p. 1161.) This difference is directly relevant here. No one would contend that the MMPA "mandates" or "commands" any person to engage in dispensary activities. This is not to suggest that a state statute can never evince an intention to preempt local bans on a voluntary activity. However, the CA's casual assumption that criminal immunity necessarily translates into "authorization" of the nature that preempts local ordinances requires further and more precise scrutiny by this Court.

[46] (See, e.g., *Nordyke v. King* (2002) 27 Cal.4th 875, 883-884 [Penal Code section 171b, subdivision (b)(7) "merely exempts gun shows from the state criminal prohibition on possessing guns in public buildings, thereby permitting local government entities to authorize such shows. It does not mandate that local government entities permit such a use"]; *People v. Mason* (1968) 261 Cal.App.2d 348, 352-354 [express exemption of pinball machines "which are predominantly games of skill" from state gambling laws does not preempt local prohibition of such machines]; *In re Benson* (1985) 172 Cal.App.3d 532, 537 ["panguingue has been expressly found to be excluded from Penal Code section 330 . . . A local government may, however, prohibit gambling on panguingue because the state has not preempted the entire field of gambling. By enacting section 7.125.010, Fullerton has successfully expanded statewide prohibitions against gambling and outlawed the playing of panguingue for money."]; *People v. Commons* (1944) 64 Cal.App.2d Supp. 925, 929-930 ["neither law nor ordinance contains any provision in any way authorizing or declaring lawful the acts which are specified in any exception thereto. As to such acts, the situation is simply that they are not prohibited by the enactment containing the exception. Consequently, a prohibition of such excepted acts contained in the other enactment does not conflict with the enactment in which the exception appears"]. See also *In re Hubbard* (1964) 62 Cal.2d 119, 126-127, overruled on other grounds in *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63, fn. 6.)

[47] (See *Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 928-929 ["We thus give full effect to the limited 'right to obtain and use marijuana' granted in the [CUA's findings and declaration] *by enforcing it according to its terms*"].)

IV. CONCLUSION

The instant CA decision touches off a virtual stampede of uncertainty and litigation in the crowded theater of medical marijuana law. This Court should grant review both to ensure present and future uniformity of decision, and to provide the Court with a vehicle to fully explore and articulate the jurisprudential nuances of this complicated area. For all of these reasons, CSAC respectfully requests that the Petition for Review be granted. Thank you for your consideration.

Very truly yours,

ARTHUR J. WYLENE
Tehama County Counsel

AJW/rb

cc: Service List

CERTIFICATE OF SERVICE

Title of Action: *City of Lake Forest v. Evergreen Holistic Collective*
Cal. Supreme Court Case No. S201454

I, the undersigned, am employed in the City of Red Bluff, County of Tehama, State of California; my business address is 727 Oak Street, Red Bluff, CA 96080. I am over the age of eighteen years and not a party to the within action. On the date below I caused the following papers to be served as follows:

Letter Supporting Review – City of Lake Forest v. Evergreen Holistic Collective (Cal. Supreme Court Case No. S201454)

Causing a true copy thereof to be delivered to the office of each party shown below at the address indicated and by leaving the same with a person apparently in charge and over the age of eighteen years;

(X) Placing a true copy thereof, enclosed in a sealed envelope with first-class postage thereon fully prepaid, in the United States mail at Red Bluff, California, addressed as follows:

(4 COPIES)
California Supreme Court
350 McCallister Street Rm 1295
San Francisco, CA 94102

Court of Appeal
Fourth Appellate District, Division Three
601 West Santa Ana Blvd
Santa Ana, CA 92701

Eric E. Reynolds, D.A.G.
Office of the Attorney General
300 South Spring Street
Fifth Floor, North Tower
Los Angeles, CA 90013

Hon. David Chaffee
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Lawrence S. Strauss, Esq.
Strauss & Long, PC
8447 Wilshire Blvd., Ste. 204
Beverly Hills, CA 90211

David R. Welch, Esq.
DR Welch Attorneys at Law
555 West Fifth St. 31st Floor
Los Angeles, CA 90013

Kamala D. Harris
Calif. Dept. of Justice
Office of the Attorney General
455 Golden Gate Ave
San Francisco, CA 94102

Jeffrey V. Dunn
Scott C. Smith
Best Best & Krieger LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614

I declare under penalty of perjury that the foregoing is true and correct, executed at Tehama County, California, on May 7, 2012.

Robin Bennett

ATTACHMENT A

LATEST LOCAL NEWS

NO RULING IN DISPENSARY CASE; JUDGE HEARS ARGUMENTS, SAYS HE'LL ISSUE DECISION WITHIN TWO WEEKS

By Sean Longoria
Published Monday, February 27, 2012

Shasta County Superior Court Judge Stephen Baker said Monday he'll issue a ruling within two weeks on Redding's request for a court order to shut down some 10 medical marijuana dispensaries that haven't complied with the city's recent ban on the businesses.

In the meantime, at least seven dispensaries will remain open and the case is likely to be appealed by either side, an attorney for the dispensaries said.

Baker heard arguments Monday on Redding's request for a preliminary injunction - a court order for the dispensaries to comply with the ban.

The City Council passed the ban in November and it took effect in December. That council decision prompted a pair of lawsuits filed on behalf of some of the city's dispensaries.

At stake in the case is whether the dispensaries can remain open or the city's ban will stand with court backing. Dispensary owners and operators claim the ban will eliminate safe access for hundreds of medical marijuana patients.

"This case is not about whether marijuana should be or should not be legal," Baker said. "It's essentially a land use case."

Redlands attorney James DeAguilera said he believes the operating permits issued to 16 dispensaries in the city are still valid despite the ban.

Redding issued permits for dispensaries for two years before enacting the ban, which was based on an appellate court ruling that a permitting system for dispensaries in Long Beach went far beyond Proposition 215 and conflicted with federal law.

Redding's ban is now in question since that appellate court ruling has since been de-published as the California Supreme Court has decided to hear the Long Beach case, DeAguilera said.

Lower-court decisions are automatically de-published when the Supreme Court hears a case unless justices decide otherwise, according to the office of the clerk for the Supreme Court.

"It's all very, very muddy water," said DeAguilera, who's representing Cannabis Club, on Westside Road; California Patient Collective, on Churn Creek Road; Nature's Nexus, on Hartnell Avenue; Planet Herb, on Hilltop Drive; and Family Tree Care Center, on Bechelli Lane.

Permitting dispensaries may still be illegal under federal law – which considers all marijuana illegal –

even though the ruling in the Long Beach case was de-published, Assistant City Attorney Barry De Walt said.

"We want to wait until the Supreme Court acts," De Walt said.

Neither Proposition 215 nor the Medical Marijuana Program – commonly known as SB 420 – requires cities to permit dispensaries, De Walt said.

"There's no state obligation to the city to adopt ordinances to facilitate" dispensaries, he said.

A new state law that went into effect Jan. 1 allows Redding to regulate the location, operation and establishment of dispensaries, giving the city purview on whether to allow the storefronts, De Walt said.

"There is clear authority for the city to do what it's done despite (the Long Beach case) being de-published," he said.

Attorney Alec Henderson – who's representing Trusted Friends on Pine Street and Herbs and Edibles on Lake Boulevard – disagreed. He said nothing in state law allows cities to ban dispensaries.

"The basis of this was the fear instilled by the city attorney into the City Council that they'd be arrested," Henderson said.

Redding still allows patients to collectively grow medical marijuana in groups of nine or less, though Henderson said the city's limit is both "arbitrary and capricious."

Baker said he'll issue a ruling by March 12 if not well before then. DeAguilera said he'll appeal Baker's ruling should the judge rule in favor of the city. He expects Redding will do the same if Baker rules the other way.

De Walt has said the City Council would have to approve his office filing an appeal on the city's behalf.

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ATTACHMENT B

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Judge denies Redding's injunction request; marijuana dispensaries can remain open

By Sean Longoria

Originally published 11:36 p.m., March 15, 2012
Updated 09:04 a.m., March 16, 2012

A Shasta County Superior Court judge has denied the Redding's request for a court order that would have closed down medical marijuana dispensaries across the city.

The ruling surprised city officials, who had said they didn't believe a recent Southern California appellate court decision striking down a dispensary ban in Lake Forest would have any impact on the local case.

Judge Stephen Baker's ruling late Wednesday relies heavily on the 4th District Court of Appeal decision in city of Lake Forest v. Evergreen, a ruling published Feb. 29 — two days after Baker heard arguments and took the local case under submission.

The appellate court in Lake Forest ruled the city violated state law with its attempt to ban dispensing medical marijuana by declaring the dispensaries nuisances. Lake Forest tried to label its dispensaries nuisances solely because of their existence and not because anything they were doing was illegal, the court ruled.

"Under the (Lake Forest's) ban, a medical marijuana dispensary always constitutes a nuisance, though the Legislature has concluded otherwise," a panel of judges said in the appellate ruling.

State law allows dispensaries to operate, provided the medical marijuana is grown on site, according to the ruling.

"The Lake Forest case is persuasive, and stands for the proposition that an outright ban that declares a dispensary a nuisance merely by virtue of its existence is impermissible," Baker said in his ruling. "Also, there is no evidence here as to whether the dispensaries are violating any regulations, such as the requirement that dispensary activities be tied to a cultivation site."

Redding's dispensary owners were pleased with the decision that lets them continue to operate as their challenge to the city's ban continues toward a possible trial.

Only about seven storefronts remain open in the city.

"I think the judge made a fair decision," said Natalie Fuellenbach, spokeswoman for Herbs and Edibles on Lake Boulevard.

Jess Brewer, executive director for Trusted Friends on Pine Street, said early Thursday afternoon he'd already received congratulatory phone calls from his members. Brewer is a plaintiff in the legal challenge to Redding's ban.

"I'm just happy with the judge's decision," Brewer said. "We'll be able to stay in business and hopefully be able to serve our patients and Shasta County."

Assistant City Attorney Barry DeWalt, who's representing the city in the local case, said his office was aware of the Lake Forest case but he didn't think it would affect Baker's decision.

That echoes comments made recently by City Attorney Rick Duvernay.

"This case stands for a proposition that a total ban is not permitted and the city didn't enact a total ban," DeWalt said.

Redding still allows patients to collectively grow medical marijuana in groups of nine or less.

"I was certain that would be the result," Redlands Attorney James DeAguilera said of Baker's ruling. He's representing Cannabis Club, on Westside Road; California Patient Collective, on Churn Creek Road; Nature's Nexus, on Hartnell Avenue; Planet Herb, on Hilltop Drive; and Family Tree Care Center, on Bechelli Lane.

Officials in Lake Forest are asking the California Supreme Court to review that case, according to the Orange County Register.

"What better thing could happen than have Lake Forest come," said Alec Henderson, who's representing Trusted Friends and Herbs and Edibles.

Baker issued a tentative ruling Feb. 27 to grant the city's request for the injunction. That ruling wasn't adopted when he took the case under submission after a hearing the same day.

The Lake Forest case hadn't been published at that point.

"Then this case comes that saves the day, which is fantastic," Henderson said.

DeWalt said his office will update the City Council on the case in closed session at Tuesday's meeting. Council members will then decide how to proceed.

'This motion is not the end of the case by any stretch of the imagination," he said.

ATTACHMENT C

Long Beach Press-Telegram (CA)

Judge rejects LB pot ban injunction

COURTS: Groups sought restraining order during appeal.

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Karen Robes Meeks, Staff Writer

SAN PEDRO - A Los Angeles Superior Court judge on Friday denied an attempt by medical **marijuana** collectives to block Long Beach's two-week-old **ban** on the operations.

Judge Judith A. Vander Lans, who heard the matter at the San Pedro Courthouse, sided with the city of Long Beach and denied the temporary restraining order request of Green Earth Collective Inc., NatureCann Inc., Industry Green Collective Inc. and Organic Market Garden.

"They're of course disappointed, but this is not by any means the loss of this case," said Charles M. Farano, attorney for the collectives. "This isn't the only step that will be taken to maintain the law, which is stated under (Lake Forest v. Evergreen Holistic Collective)."

The Long Beach groups sought the injunction after the Fourth Appellate District's decision Wednesday that the city of Lake Forest couldn't use its nuisance abatement law to **ban** medical **marijuana** dispensaries and collectives. The South Orange County city can use its nuisance abatement law to regulate collectives, but it can't declare them a nuisance and **ban** them, the court decided.

"That's all there is to it," Farano said. "That's the law."

The city said the temporary restraining order had no merit.

Long Beach enacted a partial **ban**, under which a collective can be created with three or fewer people. Also, a six-month exemption was granted to 18 dispensaries that secured a license in the city's 2010 permitting process. The permit statute was killed after an appeals court ruled that the law forced applicants to violate federal law.

So the Long Beach City Council on Feb. 14 rescinded its law and prohibited dispensaries while the state Supreme Court considers an appeal.

"There was a need for interim restriction on dispensaries - at least during the

time that the Supreme Court is considering its decision," said City Attorney Bob Shannon. "And the (Superior) Court, as it does with most temporary restraining orders, determined that they weren't likely to win on the merits."

In 1996, California voters approved Proposition 215, which legalized medical **marijuana**.

Staff Writer Eric Bradley contributed to this report. karen.robes@press telegram.com, 562-714-2088, twitter.com/KarenMeeksPT