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October 18, 2012

Hon. Thomas E. Hollenhorst
Hon. Manuel A. Ramirez
Hon. Jeffrey King
Justices of the Court of Appeal
Fourth Appellate District, Division Two
3389 Twelfth Street
Riverside, CA 92501

Re: *City of Temecula v. Cooperative Patients Services, Inc.*
Case No. E053310
Request for Publication

To the Honorable Justices Hollenhorst, Ramirez, and King:

Pursuant to California Rules of Court, Rule 8.1120(c), the League of California Cities ("League") and the California State Association of Counties ("CSAC") respectfully request that the opinion issued by this court in the case referenced above (the "Opinion") be certified for publication in the Official Reports.

The League is an association of 467 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 comprises 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 having such significance.

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 identified this case as being of statewide significance.

The League and CSAC believe that the Opinion meets the standards for publication under California Rules of Court, Rule 8.1105(c). The Opinion addresses the permissible scope of local regulation of medical marijuana establishments under the Compassionate Use Act ("CUA") and Medical Marijuana Program Act ("MMPA"), a legal

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issue that has a significant impact on public agencies, and therefore, is of continuing interest to the public generally. (CRC Rule 8.1105(c)(6).) In addition, the Opinion advances a new interpretation and clarifies the application of key provisions in the MMPA. (CRC Rule 8.1105(c)(4).)

The Opinion's review and analysis of the CUA and MMPA represents a significant contribution to legal literature. (CRC Rule 8.1105(c)(7).) As the Opinion states, "[t]he CUA and MMPA do not expressly mandate that medical marijuana dispensaries shall be permitted within every city and county, nor do the CUA and MMPA prohibit cities and counties from banning medical marijuana dispensaries." The Opinion further states, "Although the MMPA provides limited immunity to those using and operating lawful medical marijuana dispensaries, the MMPA does not restrict or usurp in any way the police power of local governments to enact zoning and land use regulations prohibiting medical marijuana dispensaries." This holding is significant to all cities and counties because it recognizes and clarifies that neither the CUA nor the MMPA override local governments' constitutional zoning authority to determine which land uses are appropriate for a particular community. (CRC Rule 8.1105(c)(4), (6), (7).)

The Opinion's analysis of Health and Safety Code section 11362.775 further supports this publication request. One of the most common arguments that cities and counties face in medical marijuana litigation is the argument that the narrowly-drafted criminal immunities set forth in section 11362.775 actually immunize storefront medical marijuana dispensaries from *all* nuisance abatement actions, including those brought under laws not identified in section 11362.775. The Opinion reviewed and rejected this contention. In doing so, the Opinion advanced a new interpretation and clarification of the limited immunities in section 11362.775. (CRC Rule 8.1105(c)(4).) The Opinion states that section 11362.775 did not provide immunity from nuisance abatement actions brought to enforce local zoning regulations. Rather, the MMPA's immunity extended only to lawful dispensaries and a dispensary operating in violation of a local zoning ordinance is not lawful. If published, the Opinion would be the only current published opinion that advances this interpretation of section 11362.775 in the context of a *per se* zoning prohibition.

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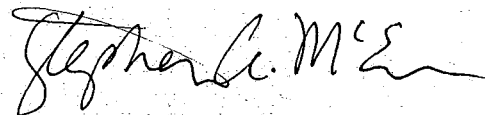
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It is respectfully submitted that, for these reasons, the Opinion meets the standards for publication under California Rules of Court, Rule 8.1105(c) and merits certification for publication in the Official Reports.

Respectfully Submitted,



STEPHEN A. MCEWEN

1 PROOF OF SERVICE BY MAIL

2 I am a citizen of the United States and employed in Orange County, California. I am over
3 the age of eighteen years and not a party to the within-entitled action. My business address is
4 1851 East First Street, Suite 1550, Santa Ana, California 92705-4067. I am readily familiar with
5 this firm's practice for collection and processing of correspondence for mailing with the United
6 States Postal Service. On October 18, 2012, I placed with this firm at the above address for
7 deposit with the United States Postal Service a true and correct copy of the within document(s):

8 LETTER DATED OCTOBER 18, 2012 TO HON. THOMAS E. HOLLENHORST,
9 HON. MANUEL A. RAMIREZ, HON. JEFFREY KING, JUSTICES OF THE
10 COURT OF APPEAL RE: REQUEST FOR PUBLICATION

11 in a sealed envelope, postage fully paid, addressed as follows:

12 T. Peter Pierce J. David Nick
13 RICHARDS, WATSON & GRESHON 345 Franklin Street
355 South Grand Ave., 40th Floor San Francisco, CA 94102
Los Angeles, CA 90071

14 *Attorneys for City of Temecula: Plaintiff* *Attorneys for Cooperative Patients'*
15 *and Respondent* *Services, Inc., Defendant and Appellant*

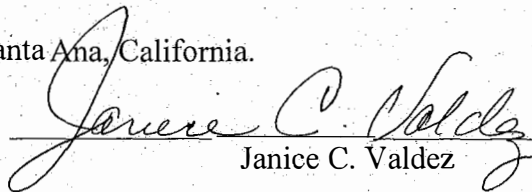
16 Jeffrey V. Dunn, Esq.
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18 *League of California Cities: Amicus*
19 *curiae for respondent and California*
20 *State Association of Counties: Amicus*
curiae for respondent

21 Following ordinary business practices, the envelope was sealed and placed for collection
22 and mailing on this date, and would, in the ordinary course of business, be deposited with the
23 United States Postal Service on this date.

24 I declare under penalty of perjury under the laws of the State of California that the above
25 is true and correct.

26 Executed on October 18, 2012, at Santa Ana, California.

27 
28 Janice C. Valdez