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December 11, 2013

VIA OVERNIGHT MAIL

The Honorable Tani Gorre Cantil-Sakauye,
Chief Justice and the Honorable
Associate Justices of the
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-7303

Re: Opposition to Request for Depublication of *Maral v. City of Live Oak* (Nov. 26, 2013, C071822) ___ Cal.App.4th ___ [2013 WL 6179289]

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Under California Rules of Court, rule 8.1125(b), the League of California Cities ("League") submits this opposition to Kimberly R. Olson's November 30, 2013 request for depublication of the Third District Court of Appeal's decision in *Maral v. City of Live Oak* (Nov. 26, 2013, C071822) ___ Cal.App.4th ___ [2013 WL 6179289] (the "Opinion").

The League's Interest In The Opinion

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 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 having such significance.

Summary Of The Opinion

In the Opinion, the Third District addressed the novel issue of whether the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA) preempted the City of Live Oak's complete prohibition against marijuana cultivation. At the trial court, appellants argued that that Live Oak's cultivation ordinance violated the

rights of qualified patients and primary caregivers to cultivate medical marijuana under the CUA and MMPA and deprived them of due process and equal protection. The trial court sustained Live Oak's demurrer without leave to amend and dismissed appellants' complaint.

In affirming the trial court's dismissal order, the Third District applied the preemption analyses set forth in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, and *Browne v County of Tehama* (2013) 213 Cal.App.4th 704. In *Inland Empire*, the Supreme Court ruled unanimously that the CUA and the MMPA do not preempt local ordinances that completely and permanently ban medical marijuana distribution facilities. In *Browne*, the Third District upheld a county ordinance that regulated, but did not prohibit, medical marijuana cultivation. Both *Inland Empire* and *Browne* observed that the CUA and MMPA provided narrow immunities to specific groups of people for specific activities and did not create any right to cultivate and distribute marijuana. Furthermore, *Inland Empire* concluded that neither the CUA nor the MMPA required local governments to accommodate medical marijuana dispensaries. Based on *Inland Empire* and *Browne*, the Third District held in the Opinion that there was no right to cultivate medical marijuana and that Live Oak could implement and enforce a complete ban on marijuana cultivation.

There Are No Grounds For Depublication

Ms. Olson argues in her request that the Opinion should be depublished because it is inconsistent with the intent of the CUA and MMPA and "effectively recriminalizes" the cultivation of medical marijuana by qualified patients, card holders, and primary caregivers. This request is without merit.

California Rule of Court 8.1105(c) states that an opinion may be published if it establishes a new rule of law, applies an existing rule to a significantly new set of facts, modifies or criticizes an existing rule of law, resolves or creates a conflict in the law, involves a legal issue of continuing public interest, or makes a significant contribution to legal literature. Publication of an opinion is warranted when the opinion advances the progressive development of the law and/or the uniformity of the law in the jurisdiction. (*People v. Garcia* (2002) 97 Cal.App.4th 847, 850-851.)

The Opinion meets the requirements for publication because it applied the rules set forth in *Inland Empire* and *Browne* to a "significantly new set of facts" and advanced "the progressive development of the law." While *Inland Empire* addressed the legality of medical marijuana dispensary bans and *Browne* analyzed specific regulations on

medical marijuana cultivation, *Maral* is the first published opinion to determine whether a local government can prohibit marijuana cultivation completely. This opinion is significant, therefore, because it provides needed guidance to counties and cities throughout the State whose elected City Councils and Boards of Supervisors have determined, as an exercise of their constitutional police power over land use pursuant to article XI, section 7 of the California Constitution, that marijuana cultivation has negative, and potentially dangerous, secondary effects on their communities and citizens, and thus should be prohibited outright.

Ms. Olson's argument for depublication is based on what she perceives to be an inconsistency between the Opinion and the intent of the CUA and MMPA. Preliminarily, that argument provides no basis for depublication under the Rules of Court. Moreover, *Inland Empire* flatly rejected an identical argument with regard to medical marijuana dispensaries, and Ms. Olson does not explain why the result should be any different in this case. *Inland Empire* observed repeatedly that, despite the broad statements of intent in the CUA and MMPA, the substantive provisions in both measures were narrow in scope and did not limit local agencies' constitutional land use authority. (*Inland Empire*, *supra*, 56 Cal.4th at pp. 744-745, 759-760.) The Court stated: "We cannot employ the Legislature's expansive declaration of aims to stretch the MMP's effect beyond a reasonable construction of its substantive provisions." (*Id.* at p. 760.) Notably, Ms. Olson does not address *Inland Empire*, much less explain how *Maral* is inconsistent with *Inland Empire* or the substantive provisions in the CUA and MMPA.

Ms. Olson states that "[t]he fact that a local government body is now permitted by this decision to criminalize the cultivation of medical marijuana by patients and caregivers is a direct contradiction to the laws of this State." In making this argument, Ms. Olson acknowledges implicitly that *Maral* addressed a new set of facts and a legal issue of continuing public interest. Both of these are grounds for publication and undermine Ms. Olson's depublication request.

Conclusion

By publishing the Opinion, the Court of Appeal clarified a legal issue that remained unresolved following *Inland Empire*: the ability of counties and cities under the CUA and MMPA to prohibit marijuana cultivation sites. As the Live Oak City Council found in adopting its cultivation prohibition, medical marijuana cultivation activities can produce multiple negative effects. Not every community can accommodate such a land use. Counties and cities, therefore, needed judicial guidance on whether the CUA and

MMPA preempted local cultivation prohibitions. The Opinion provided this guidance and should remain published.

Thank you for considering this opposition to the depublication request.

Sincerely,

STEPHEN A. McEWEN

SAM:jcv

PROOF OF SERVICE

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1851 East First Street, Suite 1550, Santa Ana, California 92705-4067. On December 12, 2013, I served a copy of the within document(s): **OPPOSITION TO REQUEST FOR DEPUBLICATION OF *MARAL v. CITY OF LIVE OAK*** in a sealed envelope, addressed as follows: **SEE SERVICE LIST**

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Santa Ana, California addressed as set forth below.

☒ by placing the document(s) listed above in a sealed Norco Overnite Delivery envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Norco Overnite Delivery agent for delivery.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on December 12, 2013, at Santa Ana, California.

Janice C. Valdez

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