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April 12, 2012

VIA FEDEX

Honorable Kathryn Doi Todd, Acting Presiding Justice
Honorable Judith Ashmann-Gerst, Associate Justice
Honorable Victoria M. Chavez, Associate Justice
Court of Appeal of the State of California
Second Appellate District
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: *People v. Joseph*
Second Appellate District, Case No. B232248
Los Angeles County Superior Court, Case No. BC432005
Request for Publication Pursuant to California Rules of Court,
Rule 8.1120

To the Honorable Acting Presiding Justice and Associate Justices:

On behalf of the League of California Cities (“LOCC”), and pursuant to California Rules of Court, rule 8.1120, I respectfully request that the Court order publication of the case of *People v. Joseph* (2nd Dist., Case No. B232248), which was filed on March 26, 2012.

I. League of California Cities’ Interest

The LOCC 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 LOCC is interested in maintaining local agency regulatory control to allow cities to make their own regulatory choices, and to ensure the proper application of state law as it concerns California cities.

The LOCC 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 it identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as being of such significance, and has authorized the submission of this request for publication of the case.

II. The Opinion Meets the Standards for Publication.

The opinion in *People v. Joseph* meets the standards for publication set forth in California Rules of Court, rule 8.1105(c)(4), (6), and (8) because it advances clarifications of the Compassionate Use Act (Health & Saf. Code, § 11362.5) (the “CUA”) and the Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7 to 11362.83) (the “MMPA”), reaffirms principles of law not applied in a recently reported decision, and involves a legal issue of continuing public interest.

A. The opinion clarifies the operational parameters of medical marijuana collectives, cooperatives, and dispensaries.

People v. Joseph clarifies the limits of the legal protections provided under the CUA and the MMPA. By the decision, the Court explains that Health and Safety Code section 11362.775¹ “protects group activity ‘to cultivate marijuana for medical purposes,’” but “does not cover dispensing or selling marijuana.” (Opinion, p. 10.) In doing so, the Court clarified and extended the holding of *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, which held that the CUA does not authorize the sale of marijuana. (*Id.* at pp. 1389-1390.)

The opinion also clarifies and confirms that any “reasonable compensation” to be paid for services by a qualified patient or other person authorized to use marijuana “may only be given to a ‘primary caregiver.’” (Opinion, p. 11). Recently, the Fourth District Court of Appeal decided the case of *City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413, petition for review filed April 9, 2012 (“*Lake Forest*”). *Lake Forest* held that, in order for a medical marijuana dispensary to be lawful under the MMPA, the operators must cultivate the marijuana on-site. (*Lake Forest, supra*, 203 Cal.App.4th 1413, 1442.) Dispensaries that cultivate at one site and transport the medical marijuana to another site for distribution are unlawful and prohibited under the MMPA. (*Ibid.*) *People v. Joseph* builds on this principle of law by further clarifying the manner in which such dispensaries may lawfully operate in the collective cultivation of medical marijuana and the payment for services associated with such cultivation. Publication of the opinion will help guide local government agencies and dispensary operators in understanding the parameters of their operations and curb unlawful nuisance activities such as those found in the *People v. Joseph* case.

B. The opinion confirms that cities may pursue civil injunction relief under Health and Safety Code section 11570 and Civil Code section 3479.

People v. Joseph also confirms that cities may continue to utilize Health and Safety Code section 11570 and Civil Code section 3479 in tandem to prosecute civil cases to abate unlawful medical marijuana dispensaries as nuisances per se. (Opinion, pp. 11-12). In *Lake Forest*,

¹ Any further undesignated statutory references shall be to the Health and Safety Code.

supra, 203 Cal.App.4th 1413, the Fourth District Court of Appeal concluded that the MMPA and, specifically, Section 11362.775 “supplants the purely civil remedies afforded by section 11570,” even though the text of Section 11362.775 provides limited protection to groups or individuals against “state criminal sanctions.” (*Id.* at 1436.) The *People v. Joseph* decision properly limits the scope of these potentially broad sweeping proclamations of the *Lake Forest* case by clarifying that medical marijuana dispensaries operating in violation of Section 11570 by unlawfully selling, serving, storing, keeping, manufacturing, or giving away marijuana “constitute nuisances per se under Civil Code section 3479” and may be enjoined by civil action. (Opinion, pp. 12, 13-15.)

C. The opinion confirms that cities may pursue remedies under the Unfair Competition Law to enjoin unlawfully operating medical marijuana dispensaries.

Finally, *People v. Joseph* concludes that a violation of the Narcotics Abatement Act and Public Nuisance Law may properly support a violation of the Unfair Competition Law contained at Business and Professions Code, sections 17200, *et seq.* Our research has not located another published appellate case so holding, thus providing this Court with an opportunity to publish an opinion which presents a new interpretation of law. The ability of cities to pursue remedies under the Unfair Competition Law, including its attendant civil penalties (Bus. & Prof. Code §§ 17206, 17206.1, 17207), provides a valuable tool to ensure that any operators of medical marijuana dispensaries do so within the confines of the law.

D. The opinion addresses an issue of continuing public interest, and publication of the opinion would add to the body of law clarifying the permissible scope of medical marijuana dispensary operations and regulations.

The scope of permissible activities and local regulation under the CUA and MMPA is a matter of public interest that has been the subject of several recently published appellate court decisions. (*Lake Forest v. Evergreen Holistic Collective, supra* [finding a local ban of medical marijuana dispensaries preempted by state law, but holding that dispensaries must cultivate on-site to be in compliance with state law]; *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861 [holding that state law does not preempt local ordinances regulating medical marijuana dispensaries]; *City of Claremont v. Krause* (2009) 177 Cal.App.4th 1153 [upholding an injunction against a medical marijuana dispensary operating in violation of local prohibition, and finding a local ban of dispensaries by a moratorium not preempted]; *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418 [upholding a preliminary injunction against operation of a medical marijuana dispensary in the city in violation of the city’s zoning code provisions].) As the body of law in this area continues to expand, local agencies will continue to develop and refine policies and practices conforming to the developing case law. Publication of *People v. Joseph* would add to this body of jurisprudence and help local agencies and dispensary operators understand their regulatory and operational parameters.

Honorable Kathryn Doi Todd, Acting Presiding Justice
Honorable Judith Ashmann-Gerst, Associate Justice
Honorable Victoria M. Chavez, Associate Justice
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III. Conclusion

For all the reasons presented, the LOCC respectfully requests that the court order publication of *People v. Joseph*. Thank you for your consideration of this request.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation



Jonathan P. Hobbs

JPH/dlc

1 **PROOF OF SERVICE**

2 I, Deborah Clark, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On April 12, 2012, I served a
6 copy of the within document(s):

7 **LETTER DATED APRIL 12, 2012 TO HONORABLE KATHRYN DOI TODD,
8 HONORABLE JUDITH ASHMANN-GERST, HONORABLE VICTORIA M. CHAVEZ,
9 COURT OF APPEAL, SECOND APPELLATE DISTRICT**

- 10 by transmitting via facsimile the document(s) listed above to the fax number(s) set
11 forth below on this date before 5:00 p.m.
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14 forth below.
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21 to the person(s) at the e-mail address(es) set forth below.

22 **ATTORNEY FOR**
23 **PLAINTIFF/RESPONDENT**
24 **PEOPLE OF THE STATE OF**
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 12, 2012, at Sacramento, California.



Deborah Clark