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LITIGATION UPDATE
September 23, 2009

The following report summarizes the cases reviewed by the League's Legal Advocacy Committee ("LAC") from July 2, 2009, through September 23, 2009, and the League's subsequent action. Copies of the amicus filings mentioned in this report are available at www.cacities.org/recentfilings. To submit a request for amicus assistance from the League, please visit the League's website at www.cacities.org/requestamicus. For additional information, please contact Patrick Whitnell, General Counsel, at (916) 658-8281 or pwhitnell@cacities.org, or Kourtney Burdick, Deputy General Counsel, at (916) 658-8266 or kburdick@cacities.org.

The League gratefully acknowledges all of the lawyers who volunteered their time to assist the League in advocating on behalf of cities statewide.

CHARTER CITIES

State Building and Construction Trades Council of Cal. v. City of Vista, 173 Cal.App.4th 567 (4th Dist. Apr. 28, 2009), *review granted* (Aug. 19, 2009) (S173586)
The City's charter exempts the City from paying prevailing wages. The State Building and Construction Trades Council argues the City is required to pay prevailing wages under the state's prevailing wage law. The appellate court disagreed. The California Supreme Court has granted review. The League will file a brief in support of the City.

ELECTIONS

Chula Vista Citizens for Jobs, et al. v. Norris, *pending* S.D. Cal. (09 CV 0897 BEN JMA)
Two individual plaintiffs attempted to qualify a local initiative for vote. Both are members of the two plaintiff organizations and would prefer to have the organizations listed as the proponents of the initiative rather than themselves individually. The individuals sued the city, seeking to have their names removed from the initiative petitions. The case raises two issues: whether state law may require (1) an initiative proponent be an elector (that is, a natural person); and (2) the proponent of an initiative disclose his or her identity on the petition. The League is monitoring this case.

EMPLOYMENT

International Association of Fire Fighters, Local 188 v. Public Employment Relations Board, (1st Dist., Div. 3, March 18, 2009), *petition for review granted* (July 8, 2009) (S172377)
The city laid off 18 firefighters as part of a city-wide layoff. In response, Local 188 filed an unfair practice charge with the Public Employment Relations Board (PERB) arguing that the city violated the Meyers Milias Brown Act (MMBA) by failing to meet and confer with the union over its layoff decision. PERB dismissed the charge on the ground that a layoff decision is not within the scope of representation. Local 188 filed a petition for writ of mandate challenging the decision. PERB and the city opposed the petition, arguing 1) the court lacked jurisdiction to review a PERB refusal to issue a complaint; and 2) in any event, the city's layoff decision was not a mandatory subject of bargaining under the MMBA. The trial court held it had jurisdiction to review PERB's decision not to issue a complaint, but on the merits, the court upheld PERB's determination that the city's layoff decision was outside the scope of representation. The appellate court affirmed and the Supreme Court has granted review. The League will file an amicus brief.

Retired Employees Association of Orange County, Inc. v. County of Orange, --- F.Supp.2d ----; 2009 WL 1954026 (C.D. Cal. Jun. 19, 2009)
Since approximately 1966, the County has provided health care benefits to its retired employees. In 1985, the County began "pooling" the retired employees with the active employees in the rate-setting process. Pooling the two groups allowed retires to pay lower premiums and receive greater coverage than they otherwise would (the "pooling benefit"). Facing rising health care costs, in 2006, the County decided to "split the pool," creating different premium pools for active and retired employees. Under the new system, retirees pay significantly higher premiums than they paid while receiving the pooling benefit. The Retired Employees Association brought suit, asserting a vested right to the pooling benefit. The County argues that because the board of supervisors never made an express commitment to subsidize retiree rates through pooling, there was no enforceable contract right or vested right. The trial court agreed. The Association has appealed to the Ninth Circuit. The League thanks **Jonathan Holtzman and Jeff Sloan of Renne Sloan Holtzman Sakai** for agreeing to draft the League's brief.

LAND USE

City of Claremont v. Kruse, --- Cal.Rptr.3d ----, 2009 WL 2622611 (2 Dist. Aug. 27, 2009) (B210084)
The city filed suit against Kruse for operating a medical marijuana dispensary without a business license, which the city previously denied. Kruse made several arguments, including that the Compassionate Use Act (CUA) and Medical Marijuana Program (MMP) preempted the city's moratorium on dispensaries and precluded the city from denying Kruse a business license. The trial and appellate courts disagreed. The appellate court held, "Neither the CUA nor the MMP compels the establishment of local regulations to accommodate medical marijuana dispensaries. The City's enforcement of the licensing and zoning laws and its temporary moratorium on medical marijuana dispensaries do not conflict with the CUA or the MMP." The decision was originally unpublished. The League thanks **Arthur J. Wylene with the Tehama County Counsel's Office** for drafting the League and California State Association of Counties' joint letter in support of publication.

Los Angeles Unified School District (LAUSD) v. Pulgarin, 175 Cal.App.4th 101 (2d Dist. Jun. 23, 2009) (B206892)
LAUSD filed an eminent domain action to acquire a certain commercial property owned by an investment company. Mid Town Recycling, a tenant of that property, occupied space under a month-to-month tenancy and did not have a written lease. LAUSD argued that in the absence of a lease, Mid Town had no legally enforceable interest in the property and thus was not entitled to compensation for loss of goodwill. The trial court agreed and the appellate court reversed. The appellate court concluded a written lease is not a prerequisite to recovering compensation for loss of goodwill. Rather, a business owner is simply required to prove that the loss is caused by the taking of the property. The League learned of this case after the decision came out and began monitoring the case. LAUSD decided not to appeal.

Mammoth Lakes Land Acquisition v. Town of Mammoth Lakes, *pending* 3d Dist. (filed June 27, 2008) (C059239)
This case raises several issues including 1) whether a developer must exhaust his administrative remedies (i.e. obtain decisions from the planning commission and city council) prior to suing an agency for failure to approve a project contemplated by a development agreement (the Town argues the answer is yes); and 2) whether a city employee can bind the city to a particular course of action (in this case, disavowing a development agreement) absent formal action by the planning commission and/or city council (the Town argues the answer is no). The League thanks **Steve Meyers and Julia Bond of Meyers Nave** for agreeing to draft the League's brief in support of the Town.

Palmer/Sixth Street Properties, LP v. City of Los Angeles, 96 Cal.Rptr.3d 875 (2d Dist. Div. 4, July 22, 2009) (B206102), *petition for review pending* (filed Aug. 31, 2009) (S175955)
Developer proposed to build a mixed-use project on a site that previously contained a 60-unit low income apartment hotel. The hotel was demolished in 1990. The city approved the project on the condition that Developer provide 60 affordable housing units that would be subject to rent restrictions for 30 years, or pay an in-lieu fee that the city would use to build affordable housing units elsewhere. The trial and appellate courts held the city's conditions are preempted by the Costa Hawkins Act, which allows residential landlords to set initial rent levels at the commencement of a tenancy. The city has petitioned the Supreme Court for review. The League filed a letter, drafted by **Tom Brown of Hanson Bridgett**, in support of review and depublication.

Tracy First v. City of Tracy, 2009 WL 2623319 (Cal.App. 3 Dist.) (Mar. 24, 2009) (C059227)
The previously unpublished portion of this decision analyzed the situation where a particular project would have a substantial environmental impact on an area outside the city's jurisdiction. Specifically, Tracy First contended the city acted unlawfully because an EIR found that the project at issue would substantially impact two intersections outside the city's jurisdiction, in an unincorporated area, but did not provide funding for improvement of the intersections. The court held the city was not required to provide funding for improvements to the intersections because they were not under the control of the city and the county did not have an existing plan to improve the intersections. The League thanks **M. Katherine Jenson with Rutan & Tucker** for drafting the League's request for publication of the unpublished portion of the opinion.

RENT CONTROL

MHC Financing v. City of San Rafael, *pending* 9th Cir. (filed July 31, 2009) (09-16612)
The city's mobilehome rent stabilization ordinance limits annual rent increases that mobilehome park owners may charge existing "pad" (i.e. plots of land) lessees. In addition, the ordinance's vacancy control provision prevents park owners from raising rents when a resident transfers his or her home to a third-party. A mobilehome park owner challenged the ordinance, asserting it yielded a regulatory and private taking. The court agreed. In its opinion, the court concludes the city's proffered interests supporting the ordinance: (1) protection of mobilehome owner equity; 2) protection of fixed-income residents; and 3) creation of more affordable housing were all undermined by the ordinance's effect of transferring wealth from the park owner to the residents. The League thanks Henry Heater of **Endeman, Lincoln, Turek & Heater LLP** for agreeing to draft the League's brief.

TAXES

Ardon v. City of Los Angeles, 174 Cal.App.4th 369 (May 28, 2009), *review granted* (Sept. 9, 2009) (S174507)
Ardon contends the City's telephone users tax is an illegal tax and brought a class action lawsuit "on behalf of himself and all others similarly situated" for a tax refund. The appellate court held Ardon cannot present a claim on behalf of the entire purported class. Rather each individual must bring a separate claim. The Supreme Court has granted review. The League thanks **Peter Keith of the San Francisco City Attorney's Office** for drafting all of the League's filings in this case.

City of Alhambra v. County of Los Angeles, *pending* 2d Dist. (filed August 24, 2009) (B218347)
This case challenges the County of Los Angeles' method of calculating the Property Tax Administration Fee ("PTAF") for each city within the county. Plaintiffs, 46 cities within the county, contend the county improperly calculated the PTAF they owed by including funds each city was paid under the Triple Flip and Vehicle License Fee Swap, thereby increasing each city's proportionate share of the entire tax administration costs a county may recover. The trial court ruled in favor of the county. The cities have appealed. The League thanks **Ben Fay of Jarvis, Fay, Doporto & Gibson** for agreeing to draft the League's brief in support of the cities.

Tracfone Wireless v. City of Los Angeles, *pending* 2d Dist. Jun. 23, 2009 (B207288)
This case presents the issue of whether a tax collector who voluntarily paid a local tax (telephone users' tax) on behalf of its customers, but did not collect the tax as required by local ordinance, has standing to sue for a refund. The appellate court requested additional briefing on whether the local claims procedure is preempted by the Government Claims Act. The League thanks **Peter Keith of the San Francisco City Attorney's Office** for drafting the League's response to the court's inquiry.

TORT LIABILITY

County of Butte, et al. v. Superior Court, 175 Cal.App.4th 729 (3d Dist., July 1, 2009), *petition for review denied* (Sept. 23, 2009) (S175219)
Williams belonged to a seven-member collective of medical marijuana patients. The marijuana was grown at Williams' home. In September, 2005, a sheriff came to Williams' home without a warrant. Williams produced notes from physicians for himself and other members of the collective that recommended the use of medical marijuana. The deputy ordered Williams, under threat of arrest and prosecution, to destroy 29 of the 41 plants. Williams complied and later brought a civil suit against the county, alleging various constitutional violations. The county argues Williams has no basis for bringing a civil suit; rather, Williams may only assert a right to grow medical marijuana as a defense in a criminal case. The trial and appellate courts disagreed. The League filed a joint letter with the California State Association of Counties in support of review. The letter did not take a position on the substantive issues, but instead focused on the need for guidance in this area. The court denied review.

Laabs v. Southern California Edison Co., 175 Cal.App.4th 1260 (4th Dist., Div. 2, July 20, 2009) (E044917), *petition for review pending* (filed Sept. 9, 2009) (S175969)
Plaintiff sustained serious injuries as a passenger in a vehicle that struck a utility pole 18 inches off the roadway. Plaintiff sued the city and county that maintained the roadway, as well as Southern California Edison (SCE) and its parent company. The city prevailed on summary judgment, which was affirmed on appeal. As for SCE, it prevailed on summary judgment on the ground that it owed Plaintiff no duty of care in the placement of the utility pole. On appeal, the appellate court reversed, based in part on the foreseeabilty of the event (a car leaving the roadway and careening into a light pole), regardless of the circumstances under which the collision occurred (e.g. a front tire blowout that caused a driver to lose control of his car; a car careening out of control following a collision with another car; etc.). The League thanks **Joe Mascovich with Randolph, Cregger & Chalfant** for agreeing to draft the League's letters in support of depublication and review.