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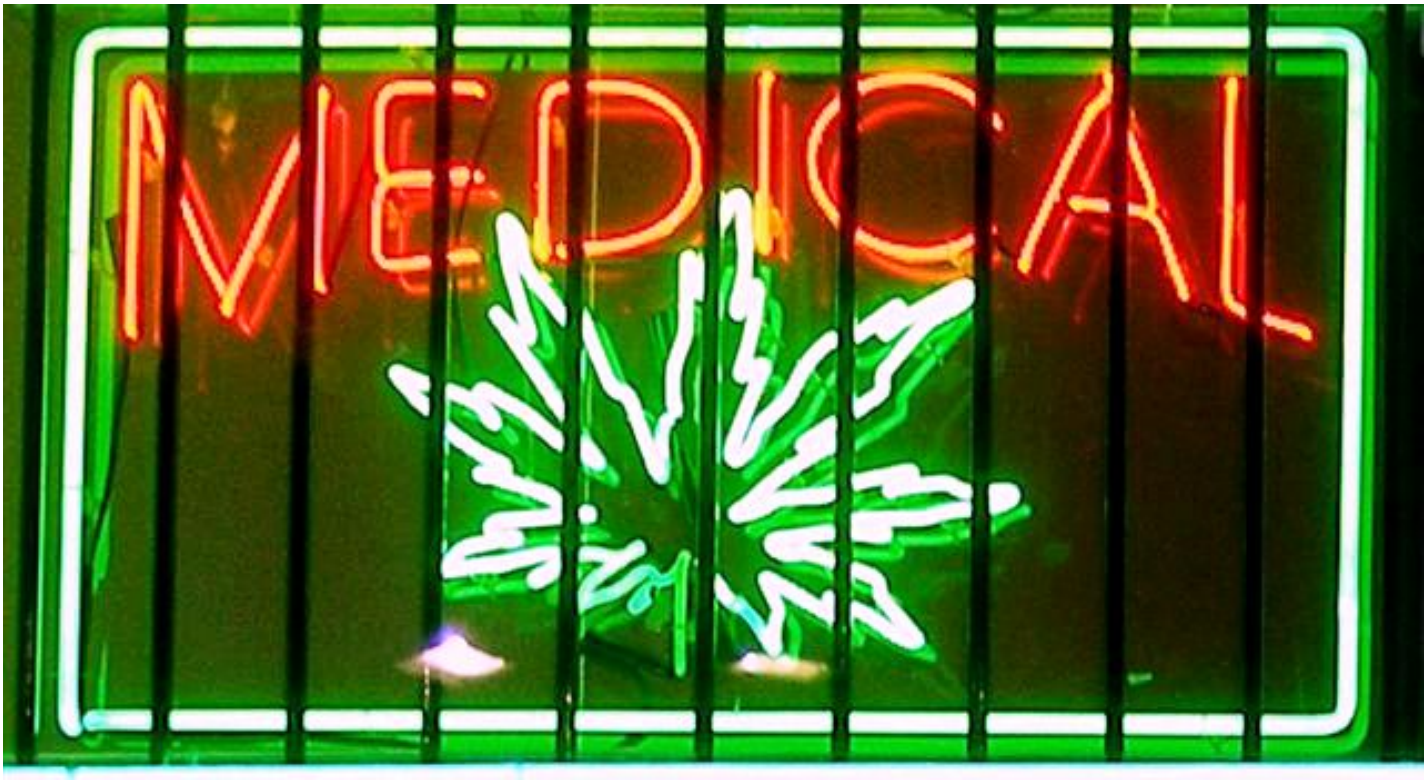

Medical Marijuana Update

By Stephen A. McEwen, Esq.

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Public Law Update

BURKE, WILLIAMS & SORENSEN, LLP

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Medical Marijuana Update

By Stephen A. McEwen, Esq.

In 2011, litigation over local regulation of medical marijuana dispensaries, collectives, and cooperatives was commonplace throughout California. These cases addressed a wide range of issues, but the most significant question was whether the Compassionate Use Act (Proposition 215) and the Medical Marijuana Program Act (MMPA) preempted local zoning regulations that banned marijuana dispensaries completely. Medical marijuana dispensary advocates continued to argue that state law legalized storefront dispensaries and, therefore, preempted most local medical marijuana regulations, including zoning prohibitions. A flurry of published and unpublished appellate decisions in late 2011 seemed to confirm the basic proposition that state law does not compel local accommodation of medical marijuana establishments or preempt local zoning prohibitions. In addition, the Federal Government's announcement of an aggressive statewide crackdown against medical marijuana businesses and their landlords signaled a very sudden and dramatic shift in the debate.

However, two significant developments in the past two months have once again cast confusion over medical marijuana law. First, on January 19, 2012, the California Supreme Court granted review unanimously in three cases involving cities' regulation of medical marijuana dispensaries/collectives. These cases included (1) *City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc.* (Nov. 9, 2011, E052400) 200 Cal.App.4th 885, in which Division Two of the Fourth District Court of Appeal in Riverside held that state marijuana laws do not preempt local prohibitions; (2) *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070, in which the Second District held that the Federal Controlled Substances Act preempted Long Beach's ordinance allowing dispensaries subject to permit provisions, application fees, renewal fees, and a lottery system for permits; and (3) *People v. G3 Holistic* (2011) 2011 Cal.App. Unpub. LEXIS 8634 ("*G3*"), in which Division Three of the Fourth District held in an unpublished decision that state law did not preempt Upland's zoning and business license ordinance banning dispensaries.

Second, on February 27, 2012, Division Three of the Fourth District Court of Appeal issued a published opinion in *City of Lake Forest v. Evergreen Holistic Collective* (Cal.App. 4th Dist.) 2012 WL 639462, which found that Lake Forest's zoning ordinance was preempted to the extent it totally prohibited all medical marijuana dispensaries, and also held that only dispensaries that "collectively cultivate" onsite satisfy the MMPA. This was the first appellate decision to hold directly that there was a limit on local government's power to regulate medical marijuana collectives, cooperatives, and dispensaries. The opinion is not only at odds with prior decisions from the Second District Court of Appeal, but it also demonstrates a deep conflict within the Fourth District Court of Appeal on the preemption issue. The City of Lake Forest has indicated that it will petition the Supreme Court for review.

To further highlight the conflict between the appellate courts on the preemption issue, Division Two of the Fourth District Court of Appeal issued its first post-*Evergreen* decision on March 22, 2012, and again found, in an unpublished opinion, that the MMPA did not preempt local zoning prohibitions against medical marijuana establishments. *People v. Wildomar Patients Compassionate Group, Inc.* (Cal.App.4th Dist. 2012) 2012 WL 967857, which the author litigated, involved the application of Wildomar's express zoning prohibition against medical marijuana dispensaries. As it did in *Inland Empire*, Division Two examined the CUA and MMPA and concluded that there was no preemption of local zoning regulations, including *per se* prohibitions. Accordingly, *Wildomar Patients* upheld the issuance of a preliminary injunction against a medical marijuana dispensary.

These recent developments have created much confusion among city officials, planners, and code enforcement officers over how to address existing and new medical marijuana establishments and the extent to which they can initiate enforcement actions.

Definitive answers to these concerns must await the Supreme Court's analysis, which, unfortunately, is likely at least a year away. In the meantime, as will be set forth below, there are a number of enforcement options and strategies for cities to consider in addressing medical marijuana establishments.

Overview of Recent Appellate Decisions on Medical Marijuana

Prior to *Pack*, *Inland Empire* and *Evergreen*, there were three significant published appellate decisions on zoning regulation of medical marijuana establishments: (1) *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418; (2) *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153; and *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861. Although none of these cases directly addressed total zoning prohibitions of medical marijuana dispensaries, *Naulls*, *Kruse*, and *Hill* strongly supported the conclusion that the CUA and MMPA did not preempt local dispensary regulations, including complete bans. In *Naulls*, Division Three of the Fourth District Court of Appeal held that a dispensary's failure to comply with applicable business license and zoning regulations constituted a nuisance *per se* and was subject to an injunction. (*City of Corona v. Naulls*, *supra*, 166 Cal.App.4th at pp. 427, 433.) *Kruse* reached the same conclusion and rejected the argument that the CUA and MMPA preempted local zoning regulations and a temporary moratorium. *Kruse* stated: "Neither the CUA nor the MMPA compels the establishment of local regulations to accommodate medical marijuana dispensaries." (*City of Claremont v. Kruse*, *supra*, 177 Cal.App.4th at p. 1176.) In *Hill*, which addressed a CUP requirement for dispensaries, the Court concluded that the CUA and MMPA only provided limited statutory immunity for medical marijuana dispensaries and that neither the CUA nor the MMPA affected local zoning authority. (*County of Los Angeles v. Hill*, *supra*, 192 Cal.App.4th at p. 869.) Based on these decisions, the most common conclusion among counties and cities was that local agencies had the discretion

to allow, regulate, or ban medical marijuana establishments within their boundaries.

Pack, however, cast serious doubt over local government's ability to affirmatively authorize medical marijuana dispensaries. In *Pack*, the Second District struck down Long Beach's ordinance which allowed medical marijuana dispensaries through an extensive permitting scheme. *Pack* involved a petition for writ of mandate brought by members of a medical marijuana collective to block enforcement of Long Beach's medical marijuana regulations. In a case of first impression, the Court held the local permitting scheme conflicted with federal law and, thus, could not be implemented and enforced. In the Court's view, the regulatory scheme authorized the operation of collectives, which were illegal under the Federal CSA. As a result, the Court concluded that Long Beach's ordinance created an obstacle to enforcement of the Federal CSA and was preempted. The Court also concluded that a provision in the ordinance requiring transportation of medical marijuana to a laboratory for testing was in direct conflict with the Federal CSA. *Pack* was significant because it seemed to preclude any local ordinance that would allow medical marijuana dispensaries to operate with a permit or any ordinance that listed medical marijuana dispensaries as a permitted use. In a footnote, *Pack* acknowledged the possibility that local officials who implement medical marijuana regulatory schemes could be criminally liable under the CSA based on an aiding and abetting theory.

The Fourth District's decision in *Inland Empire* followed shortly after *Pack*. *Inland Empire* involved the application of the City of Riverside's zoning ordinance, which expressly banned medical marijuana dispensaries throughout the city. A dispensary appealed a preliminary injunction and argued that the MMPA preempted Riverside's dispensary prohibition. The Court of Appeal disagreed and upheld the injunction, finding that Riverside's city-wide ban on medical marijuana dispensaries did not duplicate, contradict, or occupy the field of state law, either expressly or impliedly. The Court stated, "Nothing stated in the CUA and MMP precludes cities from enacting zoning ordinances banning MMD's within their jurisdictions." Relying heavily on *Kruse*, the Court further stated that "nothing in the CUA or MMP suggests that cities are required to accommodate the use of medical marijuana and MMD, by allowing MMD's in within every city." The Court observed that the MMPA expressly tolerated local dispensary regulations and noted that there cannot be preemption by implication where the statutory scheme recognizes local regulations.

In a critical passage of the opinion, *Inland Empire* rejected the common dispensary argument that Health and Safety Code section 11362.775 immunized medical marijuana dispensaries from all nuisance abatement actions. Section 11362.775 provides that: qualified patients and primary caregivers "who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357 [possession of marijuana], 11358 [cultivation of marijuana], 11359 [possession for sale], 11360

[transportation], 11366 [maintaining a place for the sale, giving away or use of marijuana], 11366.5 [making available premises for the manufacture, storage or distribution of controlled substances], or 11570 [abatement of nuisance created by premises used for manufacture, storage or distribution of controlled substance]." The dispensary argued that the inclusion of section 11570, which does not carry any independent criminal sanction, demonstrated the Legislature's intent to declare that dispensaries operating within the parameters of the MMPA were not a public nuisance. *Inland Empire*, however, was unwilling to give section 11362.775 such a broad reading. The Court reasoned that section 11362.775 simply 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.

Inland Empire and *Pack* provided a staggering one-two punch to medical marijuana establishments. Not only did local governments have the legal authority to exclude marijuana dispensaries from their jurisdictions, but local governments also could not take any affirmative steps to authorize dispensaries to operate lawfully. Under these circumstances, there was very little that cities could do other than ban dispensaries or adopt ordinances that imposed operational and locational restrictions on dispensaries. The Federal Government's crackdown, which commenced last fall, provided what seemed to be the knockout blow to medical marijuana establishments.

The fight, however, is far from finished, as demonstrated by the Supreme Court's granting of review in *Inland Empire*, *Pack*, and *G3*, and the Fourth District's conflicting decision in *Evergreen*. In *Evergreen*, Division Three of the Fourth District Court of Appeal held that the MMPA preempted local zoning prohibitions of medical marijuana dispensaries. In reaching that conclusion, Division Three took a very different view of the meaning of section 11362.775 than Division Two did in *Inland Empire*. *Evergreen* held that section 11362.775 immunized medical marijuana establishments from both state criminal sanctions *and* civil nuisance abatement actions and thereby authorized the operation of dispensaries statewide. Unlike *Inland Empire*, *Evergreen* agreed with the dispensary argument that the inclusion of section 11570 among the immunities in the MMPA demonstrated a legislative intent to immunize dispensaries from nuisance abatement actions based on local *per se* prohibitions. The Court observed that pursuant to Civil Code section 3482, "[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance." *Evergreen* reasoned that the Legislature had immunized medical marijuana dispensaries from civil nuisance abatement actions and, therefore, had authorized medical marijuana dispensaries. Accordingly, a blanket prohibition of dispensaries contradicted the MMPA.

Evergreen also analyzed what type of medical marijuana establishment qualifies for protection under the MMPA. In a potential long-term defeat for medical marijuana advocates, *Evergreen* concluded that a dispensary may only be

located at a site where its members collectively and cooperatively cultivate their marijuana. A dispensary that stocked marijuana that was grown off-site would not qualify for protection under the MMPA. This is significant because off-site dispensaries represent the predominant business model for medical marijuana establishments throughout the state. As the Court observed, section 11362.765 immunizes marijuana transportation, but only by a qualified patient or primary caregiver in individual quantities. Section 11362.775, on the other hand, decriminalizes collective or cooperative cultivation activities, but it does not immunize collective or cooperative transportation of medical marijuana. Therefore, "section 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."

With regard to preemption, the key issue for the California Supreme Court will be the meaning of the immunities set forth in section 11362.775. Is the immunity in section 11362.775 only available to dispensaries that are operating in compliance with local zoning regulations? Furthermore, is the immunity in section 11362.775 limited strictly, as its wording suggests, to "state criminal sanctions" only, or does the inclusion of section 11570 immunize dispensaries from civil nuisance abatement actions as well? *Kruse*, *Hill*, and *Inland Empire* interpreted section 11362.775 narrowly, concluding that the immunities provided by this section were limited and specific. *Evergreen*, on the other hand, reasoned that the phrase "state criminal sanctions" must have meant something more because any other interpretation would have rendered the inclusion of section 11570 "mere surplusage."

I believe this conclusion is dubious and that *Kruse*, *Hill*, and *Inland Empire* set forth the more persuasive reasoning on the preemption issue. First, at the time the Legislature enacted the MMPA, there were numerous, well-established state and local laws pertaining to civil nuisance abatement. If the Legislature had intended to immunize collective or cooperative medical marijuana cultivation from civil nuisance abatement actions in the MMPA, it could have easily said so. Second, *Evergreen* interprets section 11362.775 in such a way that it significantly alters the plain language of the statute. *Evergreen* takes the phrase "state criminal sanctions" and expands it repeatedly to include "nuisance abatement." *Evergreen* then expands the list of statutory immunities in section 11362.775 to include local zoning regulations, even though such laws are not listed in section 11362.775. This interpretation is at odds with the plain language of section 11362.775. As the Court held in *Hill*, "[t]he *limited* statutory immunity from prosecution under the 'drug den' abatement law [section 11570] provided by section 11362.775 does not prevent [local governments] from applying [their own] nuisance laws to MMD[]s that do not comply with its valid ordinances." (*County of Los Angeles v. Hill*, *supra*, 192 Cal.App.4th at p. 868 [emphasis added].) Third, although section 11570 addresses procedures for civil nuisance abatement, a person who creates a nuisance under section 11570 is potentially subject to misdemeanor prosecution pursuant to Penal Code section 372, which states, "Every person who maintains or commits any public nuisance, the

punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor." For this reason, limiting the MMPA's immunities to criminal sanctions does not render the inclusion of section 11570 meaningless, as held in *Evergreen*.

While the Legislature may have intended the MMPA to make access to medical marijuana easier, it did so by merely removing criminal liability. It did not, however, override local zoning regulations and require every city in the state to allow medical marijuana establishments. "'[A]bsent a clear indication of preemptive intent from the Legislature,' we presume that local regulation 'in an area of which [the local government] traditionally has exercised control' is not preempted by state law." (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1242.) Under *Evergreen*, we are left with the odd proposition that, despite the absence of any express language, the MMPA compels every county and city in the State to allow a land use that is illegal under Federal law. On this issue, *Inland Empire* makes the stronger argument.

Until the Supreme Court resolves this conflict between *Inland Empire* and *Evergreen*, and resolves the important questions raised by *Pack*, local governmental agencies face some difficult legislative and enforcement questions.

In light of Evergreen, what should counties and cities do about existing zoning prohibitions?

Under *Evergreen*, the MMPA preempts a *per se* prohibition of medical marijuana dispensaries. This calls into question the enforceability of many medical marijuana ordinances throughout the state. However, we are a long way from knowing whether *Evergreen*'s interpretation of the MMPA will prevail. Given the uncertainty in the law, it would be premature for counties and cities to make legislative amendments to existing medical marijuana prohibitions. To do so now would be to act without complete information and would create the risk of being stuck with regulations that may prove to be inconsistent with state law. As noted above, we expect the California Supreme Court's decisions in *Inland Empire*, *Pack*, *G3*, and, possibly, *Evergreen*, to provide strong guidance on what local governments can and cannot do with regard to medical marijuana establishments. Although this is a policy decision, the best option in most instances will be to wait for the California Supreme Court to address the issue.

If a local government does want to act now and repeal and/or amend a medical marijuana prohibition, it would be advisable to give strong consideration to the analysis set forth in *Pack* and recent policy pronouncements by the Federal government regarding enforcement of the CSA. All medical marijuana use is illegal under Federal law and the Federal Government is currently pursuing an aggressive enforcement policy throughout California. The Federal Government has taken a dim view toward any person or entity that has sought to profit from the exchange of marijuana. Thus, the best regulatory approach would be to

avoid any provision that affirmatively approves medical marijuana dispensaries and instead enact location and operational restrictions. Such regulations could include prohibitions in certain zoning districts, separation requirements between dispensaries, distance restrictions with regard to schools, parks, and churches, security requirements, hours restrictions, and limits on the size of the dispensary.

One of the potential risks from a wait and see approach is having to defend against preemptive lawsuits from individuals or groups who claim that the City's prohibition is illegal in some manner under state law. With regard to any potential preemptive lawsuits by medical marijuana advocates, local officials will need to evaluate each such lawsuit individually to assess its potential merits and risks. In general, there would be a number of defenses to any preemptive strike lawsuit. First and foremost, many such lawsuits will be untimely under Government Code section 65009 and/or Code of Civil Procedure section 338. Second, courts throughout the state have routinely rejected constitutional challenges to medical marijuana regulations. Neither the CUA nor the MMPA elevated medical marijuana use to constitutionally protected status. In *People v. Urziceanu* (2005) 132 Cal.App.4th 747, the Court of Appeal observed that the CUA only "created a limited defense to crimes, not a constitutional right to obtain marijuana" and that there was no "constitutional right to cultivate, stockpile, and distribute marijuana." (*Id*. at p. 773.) The Supreme Court similarly rejected a "constitutional right" argument in *Ross v. Raging Wire Telecommunications*. There, a medical marijuana patient argued that his employer's decision to discharge him for using medical marijuana violated his right to use marijuana for medicinal purposes. (*Id*. at p. 926-927.) Based on this theory, the employee characterized his "right" as a constitutional right to privacy. (*Id*. at 932.) The Supreme Court observed, however, that unlike legal prescription drugs, marijuana remains illegal. (*Id*. at p. 925.) The Court, thus, refused to recognize a "right of medical self-determination" in the use of marijuana. (*Id*. at pp. 932-933.) The Court concluded that the CUA did not create "a broad right to use marijuana without hindrance or inconvenience," but rather created only a limited criminal defense to punishment under Health and Safety Code sections 11357 and 11358." (*Id*. at pp. 928-929.) Similarly, *Hill* held that neither the CUA nor the MMPA required special treatment for medical marijuana establishments and that counties and cities do not have to treat such land uses equally with other medical establishments. (*County of Los Angeles v. Hill*, *supra*, 192 Cal.App.4th at p. 871.) These authorities should provide a starting point for analyzing any preemptive lawsuits.

What enforcement strategies are available for counties and cities to deal with medical marijuana establishments?

Selecting the best enforcement strategy will depend on local policy direction and on whether the Supreme Court accepts review in *Evergreen* and depublishes the opinion. If *Evergreen* is depublished, a county or city could continue to enforce a prohibition on medical marijuana dispensaries based on *Naulls*, *Kruse*, and *Hill*, and based on the clear language of the MMPA, which recognizes local authority

to regulate the location *and* establishment of medical marijuana dispensaries. If *Evergreen* is not depublished, the opinion will undoubtedly pose a challenge until the Supreme Court resolves the issue. However, as demonstrated in *Wildomar Patients*, there are potential strategies to carry out any necessary enforcement despite *Evergreen*.

First, *Wildomar Patients* demonstrates that there is a continuing, deep disagreement between the appellate courts about whether the MMPA preempts local zoning regulations. Not every jurisdiction is going to agree with *Evergreen* (indeed, there is disagreement within the Fourth District itself) and some jurisdictions may continue to adopt the preemption analysis set forth in *Kruse* and *Hill*. Second, regardless of whether an appellate district follows *Evergreen*, *Wildomar Patients* highlights the importance of including alternative grounds for injunctive relief against medical marijuana dispensaries. Whenever a new dispensary opens and local staff is directed to proceed with enforcement, the recommended course of action is to investigate the site for evidence of nuisance conditions and municipal code violations, as identified in *Wildomar Patients*, that will provide a basis for an injunction that is independent from any violation of a zoning prohibition. These nuisance conditions or code violations could include building code violations and failure to comply with business license requirements. In addition, local officials should determine whether the business is a prohibited off-site dispensary and whether the dispensary is located within 600 feet of a school (both of which are prohibited under the MMPA). Any one of these grounds could provide an independent basis for an injunction.

In addition, depending on the policy direction in your jurisdiction, another enforcement option is to notify the U.S. Attorney's office of any new dispensary. The U.S. Attorney's office has sent numerous warning letters to landlords that they risk forfeiture of their property if they do not evict the medical marijuana use. Such warning letters have been highly effective in closing medical marijuana dispensaries without the need of litigation by the city. For the most part, the risk of a Federal forfeiture action is more than sufficient to eliminate medical marijuana dispensaries.

Conclusion

We are hopeful that the California Supreme Court will clarify this state law preemption issue once and for all, as well as the federal preemption issues raised in *Pack*. As noted above, it is anticipated that Lake Forest will seek Supreme Court review and depublication in *Evergreen*. Decisions on these requests could take two to four months and final decisions on the merits in *Inland Empire*, *Pack*, *G3*, and *Evergreen* may not be issued until early next year.

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PUBLIC LAW

CALIFORNIA COURT OF APPEAL

Where city contracted with investor-owned utility to deliver electric power, and contract allowed utility to charge end users for "commercial load," but not "municipal load," utility was entitled to reclassify load delivered to city building formerly used by port authority as commercial after building was renovated; while the renovation itself served public purposes, the city's supply of power to the commercial tenants of the renovated building did not.

Pacific Gas and Electric Company v. City and County of San Francisco, First District, Div. Five; filed March 26, 2012
http://www.metnews.com/sos.cgi?0312%2FA127554
Cite as A127554

In determining whether a property transaction constituted a "change in ownership" for purposes of Proposition 13, the superior court does not conduct a trial de novo on the facts, but rather reviews the findings of the assessment appeals board for substantial evidence. Taxpayer's claim that no change of ownership occurred because the purchaser of the property was acting as agent for a public entity was forfeited where not presented to assessment appeals board.

Duea v. County of San Diego; Fourth District, Div. One; filed February 29, 2012, publication ordered March 27, 2012
http://www.metnews.com/sos.cgi?0312%2FD058333
Cite as D058333

Oregon did not commit a taking, in the constitutional sense, when it modified the remedies available under voter-enacted initiative--which required state and local governments to compensate private property owners for the reduction in the fair market value of their real property that results from any land use regulations of those governmental entities that restrict the use of the subject properties--

because any potential property interest that property owners had for compensation or a specific type of land use had not yet vested. Modification of the remedies available did not contravene substantive due process because it did not implicate fundamental rights; for this reason, and also because the regulatory classification created by the modification is not based on a suspect class, the modification survives rational basis scrutiny and does not violate equal protection.

Bowers v. Whitman; filed February 28, 2012
http://www.metnews.com/sos.cgi?0212%2F10-35966
Cite as 10-35966

City may not use its zoning powers to absolutely ban a medical marijuana collective, operating at a cultivation site pursuant to the Medical Marijuana Program Act.

City of Lake Forest v. Evergreen Holistic Collective; Fourth District, Div. Three; filed February 29, 2012
http://www.metnews.com/sos.cgi?0312%2FG043909
Cite as G043909

Where application was filed for leave to submit a late tort claim under Government Code Sec. 911.8(a), and public entity gave applicant a purported notice of denial of his application and of his right to petition the superior court for leave to sue, entity's failure to advise applicant of the date on which the application was denied raised triable issue as to whether entity was estopped from relying on Sec. 946.6(b), which requires applicant to petition for leave to sue within six months of the date of the denial.

D.C. v. Oakdale Joint Unified School District; Fifth District; filed March 1, 2012
http://www.metnews.com/sos.cgi?0312%2FF062010
Cite as 2012 S.O.S. 1103

Testimony on the accuracy and reliability of computer hardware and software making up a red-light camera system was not required as a prerequisite to admission of records generated by the computer. Photographs and video from red light camera, and data imprinted on them, were not hearsay and their admission into evidence was not an abuse of discretion. Investigator's testimony that tests conducted at intersection where defendant was ticketed showed average yellow light intervals in excess of four seconds, above the Department of Transportation minimum standard of 3.9 seconds where the posted speed is 40 miles per hour, established compliance with Vehicle Code Sec. 21455.7.

People v. Goldsmith; Second District, Div. Three; filed February 28, 2012, publication ordered March 1, 2012
http://www.metnews.com/sos.cgi?0312%2FB231678
Cite as 2012 S.O.S. 1081

Civil Code Sec. 3186, which states that a public entity upon receipt of a stop notice must withhold an amount "sufficient to answer the claim stated in the stop notice and to provide for the public entity's reasonable cost of any litigation thereunder," does not authorize an award of attorney fees.

Tri-State, Inc. v. Long Beach Community College District; Second District, Div. Three; filed March 12, 2012
http://www.metnews.com/sos.cgi?0312%2FB231848
Cite as 2012 S.O.S. 1209

Federal Aviation Administration safety "standards" in an "advisory circular" do not preempt state tort law on the standard of care applicable to an airport's "runway protection zone;" such nonmandatory federal standards are not FAA regulations and do not have the force and effect of law.

Sierra Pacific Holdings, Inc. v. County of Ventura; Second District, Div. Six; filed March 20, 2012
http://www.metnews.com/sos.cgi?0312%2FB232307
Cite as B232307

LABOR AND EMPLOYMENT LAW

Education Code Sec. 44909, which applies to credentialed employees hired for a categorically funded project, allows temporary classification of employees only if its terms are strictly followed. Where employees were hired under Sec. 44909, but were not terminated at the expiration of a categorically funded project, employees were improperly classified as temporary and were entitled to be classified as probationary.

Stockton Teachers Association CTA/NEA v. Stockton Unified School District; Third District; filed March 1, 2012
http://www.metnews.com/sos.cgi?0312%2FC066039
Cite as 2012 S.O.S. 1086

In trial of wrongful termination suit by psychologist, whom county terminated on ground that she failed to obtain licensure, trial court committed reversible error by excluding county's evidence that defendant was unlicensed; trial court erred as a matter of law in concluding that plaintiff was exempt from licensing under

Business and Professions Code Sec. 2910, when in fact plaintiff violated the condition of the exemption that she "not provide direct health or mental health services."

Brown v. County of Los Angeles; Second District, Div. Two; filed March 1, 2012
http://www.metnews.com/sos.cgi?0312%2FB229993
Cite as 2012 S.O.S. 1093

ENVIRONMENTAL LAW

Property owner's failure to appeal Coastal Commission's denial of his vested rights claim precluded judicial review of his claims of vested rights, whether under the Coastal Act or under a stipulated judgment that preceded the commission proceedings.

Jamieson v. City Council of the City of Carpinteria; Second District, Div. Six; filed February 28, 2012, publication ordered March 28, 2012
http://www.metnews.com/sos.cgi?0312%2FB232348
Cite as B232348

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