February 21, 2012

City of Long Beach
333 W. Ocean Blvd
Long Beach, CA 90802

RE: Ordinance 5.89 Ban of Medical Marijuana

Long Beach City Council Member:

I am making one last attempt to stop the City Council of Long Beach from making another "5.87" mistake in passing invalid and unconstitutional ordinance 5.89 that takes away access to sick patients for their medicine and attempts to amend The CUA and the MMPA.

The BAN the City of Long Beach is passing is inappropriate because The City has asked the Supreme Court to rule on whether Cities can ban and then takes it upon itself to say "yes" and go ahead and pass a ban ordinance without regard to patient access, Prop. 215, equal protection, due process, discrimination, vested rights, and huge legal and monetary liability.

The City Council has been misled into believing that a ban is the only answer instead of waiting for a ruling from The Supreme Court. Chapter 5.89 criminalizes medical marijuana activities in spite of of The CUA removing the criminal nature of marijuana for seriously ill patients. The City of Long Beach impermissibly amends The Compassionate Use Act, a voter-passed initiative. The ordinance violates The Federal ADA and applicable provisions of The California Disabled Persons Act.

I implore you to wait for The Supreme Court ruling and vote against any ban for the reasons enumerated in the attached Application For Temporary Restraining Order: Preliminary Injunction.

Respectfully,
Jim Theisen
Green Earth Center

No.: **S197169**

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

RYAN PACK, an individual, and ANTHONY GAYLE, an individual,

Plaintiffs-Appellees,

vs.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,

Respondent,

CITY OF LONG BEACH, a city organized under the laws of the State of California,

Real Party in Interest-Appellant.

Court of Appeal of the State of California
Second Appellate District, Division Three
2nd Civ. No.: B228781

Hon. Patrick Madden, Judge
Superior Court of Los Angeles County
Order entered Nov. 2, 2010, #NC055010/NC055053

***** IMMEDIATE RELIEF REQUESTED *****

APPELLEES' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

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APPELLEES' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

TO THE COURT AND THE PARTIES:

Plaintiffs-Appellees hereby apply for a temporary restraining order prohibiting Appellant City of Long Beach (*City*) from enforcing Long Beach Municipal Code ("LBMC") Chapter 5.89 and for an order requiring the *City* to show cause as to why a preliminary injunction should not issue barring enforcement of LBMC Chapter 5.89 through and until the Court issues its decision in this case.

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FACTUAL AND PROCEDURAL BACKGROUND

Appellee Anthony Gayle (*Gayle*) has renal failure. He endures kidney dialysis three (3) times a week and has had open heart surgery[1]. His licensed doctor recommended medical cannabis which has been effective for him. Appellee Ryan Pack (*Pack*) suffered severe and permanent injuries after being hit by a vehicle while riding his bicycle. His licensed California doctor recommended medical cannabis for continuing pain and symptoms related to his permanent injuries. *Pack* and *Gayle* do not cultivate marijuana on their own. (*fn. 1.*) Both are members of medical marijuana patient collective groups in Long Beach, California.

In 2010, Long Beach passed a marijuana permitting law. (LBMC Chapter 5.87, enacted Mar. 2010). Under the law, the patient collectives of both *Pack* and *Gayle* were ordered to close. During the times his patient collective was closed, *Gayle* was often unable to obtain the medication recommended by his doctor. *Gayle* does not have a car and is dependent on public services. He suffers from nausea, vomiting, and severe loss of appetite when he does not have access to medical marijuana. (*fn. 1.*) Periodically, when he was unable to access medication because of the City's enforcement of now invalid Chapter 5.87, *Gayle* has been confined to bed because of severe symptoms normally ameliorated by medicinal cannabis use.

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[1] *See* Ex. 3, Declaration of Anthony Gayle (12-11-2011) (original filed with Appellees' Dec. 13, 2011 application filed in this Court.)

After Long Beach began enforcing its marijuana permit law, *Pack* and *Gayle* filed suit against the City in August, 2010 alleging the law was unconstitutional. Thereafter, they sought an injunction prohibiting enforcement of LBMC Chapter 5.87. *Pack* and *Gayle* contended that the forced closure of their respective patient collectives preventing access to medication was causing them to suffer irreparable harm. The trial court denied the preliminary injunction. Thereafter, *Pack* and *Gayle* petitioned the Court of Appeal for an extraordinary writ of mandamus.

On October 4, 2011, following extensive briefing in the *mandamus* proceeding, the appellate court filed its opinion finding LBMC Chapter 5.87's permit system, substantial permit fees, and permit lottery were unconstitutional. (*Ryan Pack, et al. v. Superior Court of Los Angeles County* (2011) 199 Cal.App.4th 1070, 1093-1096 (Rev. Granted 1/18/2012) [*Pack*].) The appellate court granted the writ of mandate and remanded the case to the trial court for further proceedings consistent with the opinion. The appellate court noted that most of the regulatory provisions of 5.87 unrelated to permits and the permit lottery were likely severable and valid.

The *City* petitioned this Court for review in November, 2011. It presented three (3) issues in its Petition. Explaining that cities are unsure of what they can and can't do in respect to medical marijuana, Long Beach asked this Court to clarify what impact federal preemption has on city marijuana regulation, whether cities can outright "ban" all collectives, and what zoning

and land use authority cities have in respect to patient collectives. The *City* suggested that these issues needed to be resolved to provide clarity and consistency.

In their Answer to the Petition filed by the *City*, the Appellees agreed that the issues presented should be resolved by the Court not only because of conflicting appellate decisions and unclear state law, but also because of the issues faced daily by a large number of seriously ill and disabled Californians. On January 18, 2012, this Court granted review.

A. Action following the appellate court decision.

Several days after the appellate court filed its opinion in October, 2011, the Long Beach City Council voted to: 1) file a Petition for Review with this Court; and 2) have the City Attorney prepare an ordinance banning all medical marijuana collectives in Long Beach. Thereafter, the City Attorney drafted proposed LBMC Chapter 5.89.

In mid-November, 2011, the Appellees learned the City Attorney was ready with the "*emergency*" legislation the Council had asked him to prepare back at the beginning of October. Although suggested for inclusion on the November 15, 2011 City Council agenda, it was announced the Long Beach City Council would instead review, consider, discuss, and then decide whether

to enact proposed Chapter 5.89 banning all collectives during its December 13, 2011[2] public meeting.

B. Applications previously made (CRC 8.50[b]).

On December 13, 2011, the Appellees filed an Emergency Application in this Court seeking a temporary order prohibiting the City from *enacting* or enforcing a total ban of collectives until this Court decided whether to grant or deny review. It appears the Court did not consider that application until after (or at the same time) it accepted review of this case (January 18, 2012). It follows that the Court denied the application because the Appellees sought relief *only* through the time the Court made its review decision. Moreover, the application sought to prevent *enactment* of the ban set to be considered by the City on December 13, 2011. Since the City did not enact the ban on that date and the relief was limited in scope, the application was *moot* at the time it was considered.

C. Enactment of LBMC Chapter 5.89.

After failing to approve the ban on December 13, the City Council moved the agenda item to its January 17, 2012 meeting. It then moved the item onto its February 14, 2012 agenda. Nearly five (5) months after first proposed,

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[2] *See* Appellees' Emergency Motion, filed Dec.3, 2011 in this Court, at Ex. 4, p. 9 of Long Beach City Council Agenda, 12-13-2011.

Long Beach enacted a total ban of medical marijuana patient collectives[3] on February 14, 2012. (LBMC Chapter 5.89.) Moreover, it passed the law as an "emergency measure" that became effective upon approval[4].

D. Enactment of LBMC Chapter 5.89 as an "emergency" measure.

During the February 14, 2012 City Council meeting, the Long Beach Chief of Police stated his agency would begin enforcing the new law "immediately." He offered his response after councilmembers queried "how long" it would take to begin eradicating patient groups[5]. Apparently, as its officers have done numerous times in the past, police units have been on stand-by ready to arrest patients. Since those patients are eligible for *CUA* and

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[3] Chapter 5.89 uses the term "dispensary." Ca. Health and Safety Code § 11362.775 provides criminal liability defenses for transportation, storage, and distribution of medical marijuana. On the other hand, the *CUA* provides *specific* defenses for personal cultivation, possession, and use of medical marijuana for seriously ill patients who have a medical recommendation for marijuana from a licensed doctor. Since the *MMPA*'s collective and cooperative provisions are provided "under the *CUA*" and were contemplated by California voters when the *CUA* was approved solely to give effect to that initiative's "obtain" and state distribution mechanism provisions, the purpose of the *MMPA* can only be the "dispensing" of marijuana to member patients. Accordingly, every "collective" operating under the provisions of the *MMPA* is, by definition, an organization that "dispenses" medical marijuana.

[4] "The City Council may, by vote of five (5) of its members, pass emergency ordinances for the immediate preservation of the public peace, health and safety, to take effect at the time indicated therein." (Long Beach City Charter § 211 [3/23/2011].) *See then* LBMC § 5.89.070, sec. 5 declaring the measure an "emergency" under Charter § 211.

[5] *See* Record of Long Beach City Council Meeting, 2/14/2012; *See also* Declaration of Sergio Sandoval, Ex. 1.

MMPA criminal liability exceptions[6] provided by the voters and the Legislature, Chapter 5.89's criminal provisions were *critically* necessary before the department could reengage its patient raid and arrest units[7]. Now, after several months of "hiatus," it can jump-start its extermination efforts that were "on hold" after the appellate court decision was handed down in October, 2011. (See *fn.* 5.)

Like it did in Chapter 5.87, Long Beach has again *criminalized* medical marijuana in spite of the voter-passed *Compassionate Use Act, MMPA*, and its City Charter. (*See* Ca. Health and Safety Code § 11362.5 providing the voters intended to protect patients from marijuana related arrest and criminal prosecution; *See then* LBMC Chapter 5.89 providing that *even if* a patient group is operating under state law protections, violations under Long Beach law are *criminal* misdemeanors subjecting violators to jail time[8] and substantial fines.)

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[6] Patients properly participating in the collective and cooperative process are provided defenses to state marijuana criminal prohibitions and penalties. (Ca. Health and Safety Code § 11362.775.) Since the City has, before and after the appellate court decision in *Pack*, had the ability to arrest individuals and eliminate entities ineligible for state criminal law exceptions, it follows the police chief meant he would "immediately" begin enforcing the City's new 5.89 law rather than state law. Moreover, since it is the police department the City is relying on for enforcement, the hundreds of criminal prosecutions, raids, and arrests made under invalid Chapter 5.87 will now resume.

[7] *See also* Declaration of James Theisen, Ex. 2 ("[In November, 2010] Harvey, the manager of one of the 18 collectives that had "won" the permit lottery, called me to warn me that the Council would approve a ban, the lottery winners would be exempt from enforcement, and Eric Sund had assembled a team of officers equipped with battering rams who would raid collectives that had not paid the permit fee under 5.87 the day after the ban was passed.")

[8] "The violation of any provision of this Chapter is unlawful and constitutes a misdemeanor, punishable by a fine of not more than one thousand

By imposing criminal penalties and effectuating arrests of patients, the City has very efficiently created fear in patients and caregivers alike.

It seems the Long Beach City Council's "sentiments" the trial court[9] referred to as "contrary to the stated purpose of" the voter-passed *CUA* are ever present and even stronger given the "emergency" classification used to "rush" 5.89 into effect. The "emergency" nature of the legislation did not seem to stand in the way of multiple delays and postponements given the law was first conceived in early-October, 2011 and passed nearly five (5) months later. Perhaps those people who *framed* the City's Charter included first and second reading requirements[10] as well as implementation delay periods[11] to ensure that only *true* emergencies[12] would lead to *emergency* legislation. The present Council's decision to disregard the Charter's mandates by simply including the "emergency" imprimatur on 5.89 further confirms the anti-marijuana

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dollars ($1,000) or a jail term of six (6) months, or both." (LBMC § 5.89.060; enacted 2/14/2012, effective 2/14/2012.)

[9] "The Ordinance itself makes no mention of any ill effects from the operation of medical marijuana collectives... [and] does not suggest that collectives are being used for any non-medical purpose. **Nor has the City presented any evidence of such things. Indeed, the Ordinance, taken as a whole, conveys an impression of simply being motivated by sentiments contrary to the stated purposes of the CUA and MMPA.**" *See* Petition for Writ of Mandamus, *Trial Court Order Denying Prelim. Inj., Pack v. City of Long Beach,* NC055010 (Nov. 2, 2010), at p. 13, lines 26-28, p. 14, lns 1-4.

[10] Long Beach City Charter § 210 (3/23/2011) ("No ordinance shall be placed upon its final passage upon the same day it has been introduced ...")

[11] Long Beach City Charter § 210 (3/23/2011) ("No ordinance passed by the City Council shall go into effect before the expiration of thirty (30) days from the time of its final passage.")

[12] Long Beach City Charter § 211 (3/23/2011) ("A separate roll call on the question of the emergency shall be taken.")

stereotypes harbored by its members despite the purpose of and intent behind the voter-passed *CUA*[13].

[13] The *CUA* was established to ensure that patients "who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." Ca. Health and Safety Code §§ 11362.5(B)(1)(a) and 11362.5 (B)(1)(b) (*emphasis added*). Chapter 5.89 restricts only patients protected by the *CUA* because only patients are their primary caregivers can participate in *MMPA* collective and cooperative programs.

DISCUSSION

I. AFTER ASKING WHETHER CITIES HAVE THE "LEGAL AUTHORITY" TO BAN ALL PATIENT COLLECTIVES AND WHILE AWAITING THIS COURT'S ANSWER, LONG BEACH HAS GONE AHEAD AND LEGISLATED A TOTAL BAN.

In its Petition for Review, Long Beach presented three (3) issues to the Court including,

> "2. Whether a public entity has the **legal authority to enact a total ban on medical marijuana collectives** and related activities ... " (*Petition for Review* at p. 1.) (*emphasis added.*)

In its Petition, Long Beach asserts cities have been left "without clear-cut legal direction" that has led to an "onslaught of litigation" challenging "local regulations that ... **ban** cultivation and distribution of medical marijuana." (*Petition for Review* at p. 3.) In its conclusion, the City provides:

> "[T]he ability of a local municipality to regulate and permit (**or, if it chooses, to ban**) medical marijuana collectives and dispensaries, is an issue of deep concern to cities and counties throughout California," (*Petition for Review* at p. 20) (*emphasis added*)

and thereafter asks the Court to "clarify and settle the law." (*Id.*)

A. Admittedly without "clear-cut legal direction," Long Beach enacted Chapter 5.89 to totally bans all medical marijuana collectives.

In its enacting proclamation, LBMC Chapter 5.89 declares it is,

> "[A]n ordinance of the City Council of the City of Long Beach amending the Long Beach Municipal Code by adding Chapter 5.89 **prohibiting the establishment and operation of medical marijuana dispensaries within the City of Long Beach.**" (*Parts of LBMC Chapter 5.89*, Ex. 4 at p. 1, lns 1-8.) (*emphasis added.*)

After acknowledging an "onslaught of litigation" challenging "local regulations that ... **ban** cultivation and distribution of medical marijuana" and admitting it is without "clear-cut legal direction" in regard to its legal authority to *totally ban* all collectives, Long Beach has done just that – it has banned[14] all medical marijuana patient collectives within its borders.

B. At or around the same time it granted review of this case, this Court also ordered review in two separate appellate cases that incorrectly held that cities have the legislative authority to enact total bans of patient collectives.

In *City of Riverside v. Inland Empire Patient's Health & Wellness Center, Inc.,* (2011) 200 Cal. App. 4th 885 (rev. granted, Ca. Supreme Ct. 1/18/2012), division two of the fourth district appellate court held the City of Riverside's ban of all medical marijuana collectives did not conflict with state law under art. 11, sec. 7 of the state constitution[15]. Also at issue in that case was whether the City could *abate* the patient collective in that case as a

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[14] Before enacting Chapter 5.89, a proposal was submitted to amend the ordinance to protect the eighteen (18) dispensaries that, in 2010, paid the between $15,000 and $40,000 marijuana permit fee and won the marijuana permit lottery under invalid Chapter 5.87. The council agreed it would enact 5.89 and then *later* amend the law to ***exclude*** those eighteen collectives from enforcement action. Long Beach did this even though the appellate court declared that the substantial permit fee, permit lottery, and permitting provisions of 5.87 were unconstitutional. Essentially, the City, through Chapter 5.89 and the amendment it has said it will add to exclude the fee paying and lottery winning dispensaries from enforcement action, has: 1) **retained the invalid and unconstitutional permit and lottery system** for those "permitted" dispensaries; and 2) **repealed and removed the regulatory health, safety, and welfare parts of 5.87 the appellate court said would likely *survive* and remain *valid*.**

[15] California Constitution, Article 11, Section 7.

nuisance under its zoning code. Holding that California cities may totally ban patient collectives within their borders, the appellate court *affirmed* the trial court's decision ordering closure of the patient collective in that case. Likewise, this Court granted review in *People v. G3 Holistic, Inc.* (4th Dist. 2011) 4th Civ. No. E051663[16], an unpublished decision similarly holding that cities may totally ban collectives.

California Rule of Court 8.1105(e)(1) provides:

> "Unless otherwise ordered under [CRC 8.1105(e)](2), **an opinion is no longer considered published if the Supreme Court grants review** or the rendering court grants rehearing." (*emphasis added.*)

While the *granting* of review does not, by itself, prove this Court will *reverse* a decision, it effectively de-publishes the appellate court opinion it accepts for review. (CRC 8.1105; 8.1115.) Here, there is *substantial* support for the proposition that the decision in *Inland Empire* holding cities may totally ban collectives may be reversed or modified. First, as discussed *supra*, this Court granted review in *Pack* and, at least as of this date, issues including, *inter alia*, *whether* California cities can outright ban all medical marijuana collectives. Next, this Court granted review in the unpublished[17] case *G3* case. Given review was granted here, in *Inland Empire,* and *G3* all at the same time

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[16] The *G3* case is unpublished. The case is not being cited for its precedential value but rather for the proposition that the grant of review by the Supreme Court indicates the issue of whether cities can totally ban patient collectives is in question while review is pending. (CRC 8.1105(e)(1).)

[17] *G3* and *Inland Empire* are not cited for precedential value, but rather to illustrate the City is unlikely to succeed on the merits in respect to its 5.89 total ban of collectives.

resulting in de-publication of both *Pack* and *Inland Empire*, it is very likely the total ban imposed in LBMC Chapter 5.89 rests on grounds very likely subject to change. The City itself admitted in its Petition for Review to this Court that a city's legal authority to implement a total ban was "without clear-cut legal direction" and requires the Court's guidance lest cities will continue to be faced with an "onslaught" of litigation. (*Petition for Review* at p. 3.)

Additionally, Long Beach councilmembers, concerned with their possible arrest by federal authorities, suggested that a ban was required because of *federal* marijuana prohibitions during their public meetings concerning Chapter 5.89 held on December 13, 2011 and on January 17, 2012. However, the holding in *Qualified Patients Association v. City of Anaheim* (2010) 187 Cal.App.4th 734, excludes federal illegality as the basis for city bans of collectives. (*Id.* at holding.) Unlike *Pack* and *Inland Empire*, the *Qualified Patients* case was not accepted for review by this Court and remains valid authority. (CRC 8.1105.)

Also, since the ***issue*** in this application is the ***same*** as an issue now before the Court in this case, *Inland Empire*, and *G3*, it was **inappropriate** for the City to enact legislation that effectively "decides" that issue. This case and Court notwithstanding, the City Attorney asserted that council members were *required* to pass a ban. However, it was anomalous to pass a "total ban," as Long Beach did, after arguing to this Court to grant review because there is no "clear-cut" legal direction regarding total city bans of collectives. The City

itself has admitted serious doubt about whether it has the authority to totally ban collectives. It should not be enacting the 5.89 total ban law when it petitioned this Court asking whether it even has the authority to do so.

II. CONSIDERING ONE OF THE PRIMARY PURPOSES OF THE *CUA* WAS TO REMOVE THE CRIMINAL NATURE OF MARIJUANA FOR SERIOUSLY ILL PATIENTS, CHAPTER 5.89 IMPERMISSIBLY RE-CRIMINALIZES MEDICAL MARIJUANA ACTIVITES.

The *CUA* was established to ensure that patients "who obtain and use marijuana for medical purposes upon the recommendation of a physician are not **subject to criminal prosecution or sanction**." Ca. Health and Safety Code §§ 11362.5(B)(1)(a) and 11362.5 (B)(1)(b) (*emphasis added*). Chapter 5.89 restricts *only* patients protected by the *CUA* because *only* patients are their primary caregivers can participate in *MMPA* collective and cooperative activities.

Inapposite to the purpose of the *CUA*, LBMC § 5.89.060 provides:

> "**The violation of any provision of this Chapter** is unlawful and **constitutes a misdemeanor**, punishable by a fine of not more than one thousand dollars ($1,000) **or a jail term of six (6) months, or both**." (LBMC § 5.89.060; en. 2/14/2012, eff. 2/14/2012.) (*emphasis added.*)

The Ninth Circuit Court of Appeals has held "that an alleged constitutional infringement will often alone constitute irreparable harm." *Monterey Mech. Co. v. Wilson,* (9th Cir. 1997) 125 F.3d 702, 715. Indeed, if an individual or entity faces ***imminent threat of enforcement of a pre-empted state law***, the individual or entity is likely to suffer irreparable harm. *Morales v. Trans World Airlines, Inc.,* (1992) 504 U.S. 374 at 381 (a federal court may

properly enjoin "state officers 'who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution'" (*New Orleans Pub. Serv., Inc. v. Council of New Orleans,* (1989) 491 U.S. 350 at 366-67 (suggesting that irreparable injury is an ***inherent result of the enforcement of a state law that is pre-empted on its face***); *Chamber of Commerce v. Edmonson,* (10th Cir. 2010) 594 F.3d 742 at 771 (concluding that plaintiff is likely to suffer irreparable injury if enforcement of state law that is likely pre-empted is not enjoined); See also *Villas at Parkside Partners v. City of Farmers Branch,* (N.D. Tex. 2008) 577 F. Supp. 2d 858, 878 (concluding that there is a likelihood of irreparable injury if enforcement of a city ordinance that is pre-empted is not enjoined).

The arrest and detainment of patients[18], including the Appellees who are members of the collectives now under threat, as well as the issuance of citations under the color of Chapter 5.89 just a day after the law's passage has resulted and will continue to result in irreparable harm. Deprivation of liberty under the color of an invalid law constitutes irreparable harm. See *Morales, Edmonson,* and *Villas at Parkside Partners, supra.*

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[18] *See* Petitioners' Motion to Stay Enforcement of Selected Provisions of LBMC Chapter 5.87 in appellate case at Ex. 2, *Transcript of June 10, 2011 Proceedings*, L.A.S.C. Case No. NC055751, *City of Long Beach v. 562 Collective* (trial court finding a warrantless raid of a patient collective by Long Beach Police officers using a battering ram and resulting in arrests of patients was improper.)

The actions of Long Beach depriving the use of property, arrest of patients, searches and seizures without warrant or justifiable circumstances[19], and issuance of citations to patients and patient collectives is impermissible considering it has asked this Court to determine whether it even has the legal authority to totally ban collectives. Hopefully, stereotypes and jokes about medical marijuana patients are not so pervasive that these seriously ill citizens are placed in a class *so* far *below* that of patients for whom opiates, amphetamines, benzodiazepines, and other traditional drugs are effective that the City can, without any worry that the courts will intervene, forcibly conscribe them as liberty interest "guinea pigs" for its admittedly questionable "total ban" law. Given the many raids of patient groups and arrests of patients documented in the appellate case file and despite repeated requests to the courts for help, it seems these patients are *de facto* "guinea pigs" the cities can continue to use on an unfettered basis while they experiment with taxpayer dollars while flagrantly disregarding the intent and purpose of state voters expressed in the *CUA*.

Those patients who were charged and who have **pled guilty**[20] despite the constitutional invalidity of 5.87 during the more than year-long period Long Beach improperly enforced that law *unabated* have already and continue to suffer irreparable harm. To allow Long Beach to pass an ordinance under its

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19 *Fn. 17.*

20 *See* Petitioners' Motion to Stay Enforcement of Selected Provisions of LBMC Chapter 5.87 in appellate case at Ex. 11, *Declaration of Charles Farano*, "I witnessed one person, who I did not represent, but who worked for a medical marijuana collective dispensary that I do represent, plead guilty in Dept. 1 on September 15, 2011." at p.1.

Emergency authority as provided in the City's Charter totally banning collectives with its police chief commenting at a public meeting on February 14, 2012 that police enforcement can begin "immediately" is simply inviting the City to continue the abuses referred to by the trial court. (See *fn.17*, trial court finding a warrantless raid of a patient collective by Long Beach Police officers using a battering ram and resulting in arrests of patients was improper.) Moreover, it is inappropriate to allow these abuses and arrests when considering Long Beach has asked this Court whether it even has the authority to pass the total ban it enacted in Chapter 5.89.

III. THE PLAINTIFFS-APPELLEES ARE LIKELY TO PREVAIL IN ASSERTING THAT A TOTAL BAN BY THE CITY OF LONG BEACH IMPERMISSIBLY AMENDS THE *COMPASSIONATE USE ACT*, A VOTER-PASSED INITIATIVE.

In its enacting language, the *Medical Marijuana Program Act* ("*MMPA*") refers specifically to the *CUA* and provides that, "the [*CUA*] called upon the state and the federal government to develop a plan for the safe and affordable distribution of marijuana to **all patients in medical need thereof.**" (Stats. 2003 Ch. 875 § 1(a)(4); Ca. Health and Safety Code § 11362.7, *et seq*) (*emphasis added*). The *MMPA* also provides that its purpose is to "promote uniform and consistent application of the [*CUA*] among the counties within the state [and] **enhance** the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." (Stats. 2003 Ch. 875 § 1(b)(2)-(3)).

It is hard to imagine that a total **ban** of medical marijuana collectives by a city can be rectified against the *CUA*'s command that the Legislature ensure safe and affordable access for **all Californians**. Perhaps the state's voters meant to exclude[21] the Californians living in Long Beach from the definition of "**all seriously ill Californians**" when they enacted the *CUA*[22]? Perhaps seriously ill Californians, like those with cancer, AIDS, or who use wheelchairs, are perfectly able to travel large distances when cities decide their citizens are

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[21] In *dicta*, the court in *Ross v. Raging Wire Telecommunications*, (2008) 42 Cal.4th 920 ("*Ross*"), analyzed voter pamphlets and related information provided in support of Proposition 215 (the *CUA*) before the voters enacted that law. The *Ross* court itself stated it reviewed this material to determine what the voters intended. However, "[i]f the intention of the [voters] is so apparent from the face of the statute that there can be no question as to its meaning, then there is no need for the court to apply canons of construction." *Overseas Education Ass'n v. Federal Labor Relations Authority* (D.C. Cir. 1989) 876 F.2d 960; *Connecticut Nat'l Bank v. Germain* (1992) 112 S. Ct. 1146 at 1149. Here, there "can be no question" as to what the voters meant by the phrase "ensure that all seriously ill Californians have the right to obtain ..." as they expressed in H&S § 11362.5(B)(1)(a) and H&S § 11362.5(B)(1)(c). Likewise, there "*can be no question*" as to what the voters meant by "**all**" seriously ill Californians in medical need ..." in H&S § 11362.5(B)(1)(c). Unlike the issues here, *Ross* involved a specific question related to *employment rights*. Here, the issues are directly related to the provisions of the voter-passed law and how that law operates in conjunction with the *MMPA*, a law passed by the Legislature.

[22] *Ross*, *supra*, is distinguishable because the plaintiffs in that case sought to ensure for patients certain *employment rights* and benefits from private employers under the Ca. *Fair Employment and Housing Act* ("FEHA"). The court in *Ross* wrote that the "right to obtain" expressed in 11362.5(B)(1)(a) was not so broad as to operate to prevent private employers from considering marijuana use under *FEHA*. Likewise, the *Ross* court did not have before it the issue of whether the *MMPA* collective and cooperative system operated "under the *CUA*" to facilitate that voter-passed initiative. Unlike *Ross*, the court in *Hochanadel, supra*, has held the collective and cooperative provisions of the *MMPA* are, in fact, provided "*under the CUA*."

not part of the "**all seriously ill**" Californians referred to by the voters in the *CUA*?

Considering the *MMPA* declares its purpose is to "promote uniform and consistent application of the [*CUA*] among the counties within the state [and] **enhance** the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects" as well as sections 11362.5(B)(1)(a) and 11362.5(B)(1)(c) of the *CUA*, it is axiomatic that the *MMPA* implements non-specific rights already present in the *CUA*. To be sure, in *People v. Hochanadel, supra*, the Fourth District appellate court held that "the *MMPA*'s authorization of cooperatives and collectives did not amend the *CUA*, but rather was a distinct statutory scheme intended to facilitate the transfer of medical marijuana to qualified medical marijuana patients **under the *CUA*** ..." *Id.* at 1002 (*emphasis added*). The *Hochanadel* court further held that the collective and cooperative provisions in § 11362.775 were "**expressly contemplated**" by the *CUA* and thus an *implementation* of that voter-passed law. *Id.* at 1014.

As noted in *Hochanadel*, the "system" provided by the Legislature in the *MMPA* does not provide an additional **right to obtain** but rather implements the non-specific 11362.5(B)(1)(a) and 11362.5(B)(1)(c) provisions of the *CUA* itself. It follows the system provided in the *MMPA* must be *inclusive* of **all** patients and **not *exclusive*** for just those patients living in certain California cities. (*See* H&S § 11362.5(B)(1)(c) [encouraging the state to ***implement*** a safe and affordable system providing for **all patients**]; *See* also *Hochanadel, supra*,

at. 1002, 1014 [showing the collective and cooperative provisions of the *MMPA* merely implemented non-specific provisions of the *CUA*]). Accordingly, the ***collective and cooperative*** cultivation system provided for at 11362.775, insofar as that system facilitates both 11362.5(B)(1)(a) and 11362.5(B)(1)(c), is subject to analysis under art. 2, sec. 10, sub. (C) of the state constitution rather than just analysis under art. 11, sec. 7.

In *People v. Kelly* (2010) 47 Cal.4th 1008 ("*Kelly*"), this Court held that a legislative act that "takes away from" an initiative statute that does <u>not</u> allow legislative amendment is unconstitutional under article 2, section 10, subsection (C) of the California constitution. In that case, this Court deemed the Legislature's replacement of "a difficult-to-apply 'reasonable amount' test" with "seemingly reasonable" standards and restrictions [eight ounce limit on marijuana possession] improperly amended the *CUA*. The *Kelly* court held that although the right to possess free from state criminal liability was not *eliminated* by the *MMPA's* eight-ounce provision, the Legislature "**took away from**" the very general "*reasonable amount*" standard included in the *CUA*. Hence, the eight ounce limitation in the *MMPA* violated the article 2, section 10, subsection (C) prohibition against legislative amendment of a voter passed initiative.

The *Kelly* court held:

> "It is sufficient to observe that for purposes of article II, section 10, subdivision (C), an amendment includes a legislative act that changes an

existing initiative statute **by taking away from it**. (*Cooper*[23], *supra,* 27 Cal.4th 38, 44; *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, 22 (*Knight*); *Proposition 103 Enforcement Project, supra,* 64 Cal.App.4th 1473, 1484-1486; *Mobilepark West Homeowners Assn., supra,* 35 Cal.App.4th 32, 40 [construing the related initiative power of city voters under Cal. Const., art. II, § 11, and Elec. Code, § 9217]; *Cory, supra*, 80 Cal.App.3d 772, 776.)" *Id.* (*emphasis added*).

Noting that it would seem the more specific and concrete eight-ounce limitation specified in the *MMPA* was preferable to the very general "reasonable" amount term in the *CUA*, the *Kelly* court rejected the *MMPA*'s specific eight-ounce limit as an impermissible amendment of the voter passed *CUA*.

In *Hochanadel, supra*, the appellate court essentially deemed the *MMPA*'s *collective and cooperative* system a ***specific*** mechanism facilitating distribution **"under the *CUA*."** Before enactment of the *MMPA*, although the "right to obtain" was inclusive of the future and specific 11362.775 provisions, the courts were properly unwilling to *imply* such specific exceptions given the "plenary power" of the state in respect to its criminal laws. (*People v. Mower* (2002) 28 Cal.4th 457, 122 Cal.Rptr.2d 326, 49 P.3d 1067). However, now that the *MMPA* specifically facilitates the collective and cooperative system and associated criminal liability exceptions "*under the CUA*" (*Hochanadel* at 1002, 1014), the *CUA* "right to obtain" itself incorporates not only the two (2)

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[23] *People v. Cooper* (2002) 27 Cal.4th 38; *Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772; *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32; *Knight v. Superior Court* (2005) 128 Cal.App.4th 14; and *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798.

criminal liability exceptions explicit in 11362.5(D), but also *contemplates* as well as incorporates the additional *collective and cooperative* mechanism and related criminal liability exceptions provided for in H&S § 11362.775.

In reviewing H&S § 11362.775, the *Hochanadel* court held:

> "[S]ection 11362.775, relating to cooperatives and collectives, did not constitute an amendment of the CUA as it was not intended to, and did not, alter the rights provided by the CUA ... Thus, it was **designed to *implement*,** not amend the CUA." (*Id.* at 1013) (*emphasis added*).

The court then provides:

> "Indeed, the CUA itself directed the state to create a statutory plan to provide for the safe and affordable distribution of medical marijuana to qualified patients. (§ 11362.5, subd. (b)(1)(C).) Thus, in enacting section 11362.775 the Legislature **created what the CUA expressly contemplated**." (*Id.* at 1014) (*emphasis added*).

Although the *Hochanadel* court uses the term "qualified patients," it refers specifically to H&S § 11362.5(b)(1)(C) which provides for the "safe and affordable distribution of marijuana to **all patients in medical need of marijuana**." It follows that, at the time of its enactment, the *CUA* **expressly contemplated** the "safe and affordable distribution of marijuana to ***all patients*** **in medical need of marijuana**" through the collective and cooperative system *implemented* in the *MMPA*. Accordingly, city legislation that outright "bans" the *collective cultivation* system contemplated by the *CUA* necessarily excludes patients in that city who are "in medical need of marijuana" and thus impermissibly violates art. 2, sec. 10, sub. (C) of the state constitution. A city ban necessarily "takes away from" what was, as expressed in *Hochanadel*, expressly contemplated and generally provided for in the *CUA*.

If, as the *Kelly* court held, the express eight-ounce limit imposed in the *MMPA* "took away from" the "reasonable amount" standard in the *CUA*, then surely a city ban of *all* collectives, in light of the relationship between the *CUA* and § 11362.775, impermissibly "takes away from" the parts of the *CUA* that ensure ***all*** seriously ill Californians with a licensed doctor's recommendation who are in need of medication can *obtain* it. Accordingly, a city or county law that wholesale prohibits **all** *collectives and cooperatives* necessarily takes away from the "obtain" and "all patients in need" provisions of the *CUA* in contravention of art. 2, sec. 10, sub. (C).

Like the "difficult-to-apply 'reasonable amount' test" referred to by the *Kelly* court, the non-specific provisions in the *CUA* are, following enactment of the *MMPA*, not limited to personal cultivation and possession. Nor is the "right to obtain" limited to the *collective and cooperative* process provided in the *MMPA*. However, because the *MMPA* provides the specific *collective and cooperative* process, the entire mechanism provided in the *MMPA* was **necessarily** and at the very least part of the general provisions included by the voters in the *CUA*. It follows that the specific "*collective and cooperative*" process cannot be "banned" because a ban not only takes away from the general "right to obtain" provided for in the *CUA*, it completely eliminates that right for many seriously ill Californians and annuls the guarantee provided by the voters to **all** seriously ill Californians in need of medical cannabis.

IV. THE PLAINTIFFS-APPELLEES ARE LIKELY TO PREVAIL IN ASSERTING THAT A TOTAL BAN OF PATIENT COLLECTIVES VIOLATES THE FEDERAL *ADA* AND APPLICABLE PROVISIONS OF THE CALIFORNIA *DISABLED PERSONS ACT.*

The *Americans with Disabilities Act* (*ADA*) (42 U.S.C. §§ 12101, *et. seq.*) protects individuals who meet its definition of disability from discrimination on the basis of disability in a wide variety of situations. Title II of the *ADA* protects individuals with disabilities from discrimination in programs, services, or activities of state and local government entities, including zoning and land use decisions[24]. Title II provides that no qualified[25] individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.[26] A public entity covered by title II is not required, however, to permit an individual to

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[24] 42 U.S.C. § 12132; 28 C.F.R. § 35.130; *Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, (2d Cir. 2002) 294 F.3d 35, 45-46 (*RECAP*); *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, (9th Cir. 1999) 179 F.3d 725, 730; *Innovative Health Sys., Inc. v. City of White Plains*, (2d Cir. 1997) 117 F.3d 37, 44-46; Start, Inc. v. Baltimore Cnty., (D. Md. 2003) 295 F. Supp. 2d 569, 576.

[25] In *James v. City of Costa Mesa*, (2010) U.S. Dist. LEXIS 53009 (C.D. Cal. 2010), the District Court held medical marijuana patients are disqualified from *ADA* protection through an "implied" *CSA* (21 U.S.C. § 801, *et seq.*) authorization requirement. The matter is now before the Ninth Circuit U.S. Court of Appeals. The disabled patients in that case allege that the 42 U.S.C. § 12210(d)(1) "use of a drug taken under supervision by a licensed health care professional" exception to the *ADA's* illegal drug use prohibition allows them to remain qualified under Title II of the *ADA*.

[26] 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).

participate in or benefit from its programs or services when that individual poses a direct threat to the health or safety of others.[27]

In *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, (9th Cir. 1999) 179 F.3d 725, the operator and patients of a methadone clinic sued the City of Antioch after it adopted an ordinance prohibiting methadone clinics from locating within 500 feet of any residential property.[28] The Ninth Circuit concluded that the ordinance was facially discriminatory and a per se violation of title II of the *ADA*, 42 USC § 12132, because it subjected methadone clinics, but not other medical clinics, to a spacing limitation.[29] Having reached this conclusion, the Ninth Circuit said that the only remaining inquiry in determining the City's liability under the *ADA* was whether the individuals treated at the methadone clinic pose a significant risk to the health or safety of others.[30] The Ninth Circuit remanded with instructions that the district court reconsider the motion in light of the significant risk test.[31] Upon remand, the district court found that the clinic did not pose a significant threat to the surrounding community and enjoined the defendant from implementing the ordinance.[32]

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27 28 C.F.R. pt. 35 app. A, Section 35.104 (2009); 28 C.F.R. § 35.139 (eff. Mar. 15, 2011); *Bay Area*, 179 F.3d at 735.

28 179 F.3d at 727-28.

29 *Id.* at 734-35.

30 *Id.* at 735, 737.

31 *Id.* at 737.

32 *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, (N.D. Cal. March 16, 2000). No. C 98-2651 SI, 2000 WL 33716782, at *11-12

Ca. Civil Code § 54(c), part of the California *Disabled Persons Act*, incorporates Title II of the *ADA*. Given the holding in *Qualified Patients*, *supra*, and the Legislature's command that California more broadly construe definitions and qualification requirements in Ca. Government Code § 12926.1, it makes sense that Title II, when considered through Civil Code § 54(c), applies to medical marijuana patient collectives that can only be groups of seriously ill or disabled patients with recommendations for medical marijuana. Accordingly, the "total ban" imposed in LBMC Chapter 5.89 is per se discriminatory and invalid under California law.

V. DENIAL OF MEDICATION ACCESS IS NOT ONLY IRREPARABLE HARM, BUT IT IS "ULTIMATE" HARM.

The inability to obtain necessary medical care clearly causes the type of irreparable harm that preliminary injunctions are designed to prevent. *Caldwell v. Blum* (2nd Cir. 1981) 621 F. 2d 491, 498-499 (finding irreparable injury where plaintiffs were "exposed to the hardship of being denied essential medical benefits"), *cert. denied*, (1981) 452 U.S. 909; *Massachusetts Ass'n of Older Americans v. Sharp* (1st Cir. 1983) 700 F.2d 749, 753 ("[t]ermination of benefits that causes individuals to forgo . . . medical care is clearly irreparable injury"); *Becker v. Toia* (S.D.N.Y. 1977) 439 F. Supp. 324, 336 (holding that imposing co-payments on Medicaid recipients may cause them to forgo medical treatment and that is irreparable harm); *Bass v. Richardson* (S.D.N.Y. 1971) 338 F. Supp. 478, 488 (finding the injury to Medicaid recipients of losing coverage for prescription drugs "is not merely irreparable; it is ultimate").

Should Chapter 5.89 operate to close the collectives that *Pack* and *Gayle* are members of and from which they obtain medication, they will be denied access to their medication. In the case of Appellee *Gayle*, this has already happened multiple times over the nearly year period during which the appellate court considered the Petition for Writ of Mandamus. During that period, the actions of Long Beach raided collectives and shut-down the patient group *Gayle* belonged to. Appellee *Gayle*, now 25-years-old, will likely die as a result of his serious illness. He does not get back the days he was unable to access medication and instead suffered in bed or from constant nausea and vomiting because he did not have medical cannabis to effectively relieve those symptoms and conditions[33]. As noted in *Bass*, *supra*, such denial is not only irreparable harm, it is *ultimate* harm.

VI. THE BALANCE OF HARDSHIPS WEIGHTS IN FAVOR OF THE APPELLEES.

In its November 2, 2010 order, the trial court found:

> "**The Ordinance itself makes no mention of any ill effects from the operation of medical marijuana collectives... [and] does not suggest that collectives are being used for any non-medical purpose. Nor has the City presented any evidence of such things.** Indeed, the Ordinance, taken as a whole, conveys an impression of simply being motivated by sentiments contrary to the stated purposes of the CUA and MMPA." (*See* Petition for Writ of Mandamus, *Trial Court Order Denying Prelim. Inj., Pack v. City of Long Beach,* NC055010 (Nov. 2, 2010), at p. 13, lines 26-28, p. 14, lns 1-4.)

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[33] *See* Ex. 3, Declaration of Anthony Gayle (12-11-2011) (original filed with Appellees' Dec. 13, 2011 application filed in this Court.)

On the other hand, the Appellees have provided ample evidence supporting severe, irreparable, and, indeed, "ultimate" harm resulting from the City's decision to enact laws like Chapter 5.89 notwithstanding its *own* argument that cities are "without clear-cut legal direction" regarding "local regulations that ... **ban** cultivation and distribution of medical marijuana." As the trial court found, the City presented **no evidence** of ill effects from medical marijuana collectives. Nor did it present evidence collectives were operating outside of state law protections. Accordingly, the balance of hardships weigh strongly in favor of the Appellees. Moreover, it appears almost certain that "total bans" of patient collectives will ultimately be deemed invalid. Given the Appellees' likelihood of success on the merits and considering the issue of whether cities can totally ban collectives is already properly before this Court, injunctive relief prohibiting enforcement of LBMC Chapter 5.89 is appropriate.

VII. CODE OF CIVIL PROCEDURE § 526(b)(4) DOES *NOT* APPLY IN THIS CASE AND THE COURT MAY GRANT INJUNCTIVE RELIEF PROHIBITING ENFORCEMENT OF LONG BEACH MUNICIPAL CODE CHAPTER 5.89.

Code of Civil Procedure § 526(b)(4) prohibits a court from granting injunctive relief "[T]o prevent the execution of a public statute by officers of the law for the public benefit." Ca. Civil Code § 3423(d) includes the same prohibition.

Notwithstanding these provisions, well established exceptions have been carved by this Court allowing injunctive relief in cases where a city ordinance is

unconstitutional. The *Brock* court held, "[T]he petitioners place their principal reliance upon section 3423 of the Civil Code which provides that "an injunction cannot be granted ... to prevent the execution of a public statute, by officers of the law, for the public benefit." This section has been construed as a limitation upon the power of a court to restrain public officers from enforcing a valid law ([citations]), but it has uniformly been held that one specially interested may enjoin the attempted execution of an unconstitutional statute. ([citations])." *Brock v. Superior Court*, (1939) 12 Cal.2d 605 at 609-610 (emphasis added). In denying a writ of prohibition seeking to undo an order restraining enforcement, the Court stated "the Superior Court had jurisdiction to issue an injunction pending a hearing and decision upon the issues presented" in the case of an unconstitutional statute." (*emphasis added.*)

In *Associated California Loggers v. Kinder,* (1978) 79 Cal.App.3d 34, 144 Cal. Rptr. 786, the court stated, "[T]he remaining question is whether injunction is a proper remedy in view of the fact that Code of Civil Procedure section 526 and Civil Code section 3423 prohibit the issuance of an injunction "to prevent the execution of public statute by officers of the law for the public benefit." Case law has recognized a number of exceptions to the proscription of these two statutes. Injunctions against official action have been approved where the statute being enforced was alleged to be unconstitutional." (*emphasis added.*)

In *Financial Indemnity Co. v. Superior Court*, (1955) 45 Cal.2d 395, 289 P.2d 233, the court explained its reasons for exceptions to the 526(b) and 3423 statutory provisions:

> "The second point, that the order of the respondent court violated certain code provisions, is not well taken, for if the officers were in fact acting illegally, it is, as held in the foregoing case, within the power of the court to restrain their acts... To hold otherwise would be to tie the hands of the court in cases in which great and irreparable injury might be done private citizens by officers acting under a mistaken belief of their authority." (quoting *Brock*).

Long Beach has engaged in the type of conduct the courts identified when defining exceptions to Code of Civil Procedure § 526(b)(4) in *Brock, Associated California Loggers*, and *Financial Indemnity, supra*. As noted, *supra*, LBMC Chapter 5.89 impermissibly amends the *CUA*. The law imposes criminal sanctions and bans all patient collectives. Since the Court has granted review of *Inland Empire*, total bans may also contravene art. 11, sec. 7 of the state Constitution. Accordingly, the Court may enjoin its enforcement under well-settled case authority.

CONCLUSION

Based on the foregoing, the Plaintiffs-Appellees respectfully ask the Court to order the City of Long Beach to show cause as to why a preliminary injunction barring enforcement of LBMC Chapter 5.89 should not issue. The Appellees further ask the Court for a temporary restraining order prohibiting the City of Long Beach from enforcing LBMC Chapter 5.89 until and through the Court grants or denies the aforementioned preliminary injunction.

Respectfully submitted this _____ day of February, 2012.

_____

Matthew Pappas
Attorney for Plaintiffs-Appellees

CERTIFICATE OF COUNSEL

Counsel of record hereby certifies that, pursuant to Rule 14(c)(1) of the California Rules of Court, the enclosed "APPELLEES' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION" was produced using 13-point Times New Roman proportional font and contains approximately **7,873** words excluding the table of contents, table of authorities, cover page, this certificate, and exhibits. In arriving at this estimate, counsel selected the parts of the document excluding the aforementioned tables and cover page and retrieved the count of words provided by the Microsoft Word 2010 word processing software used to produce the document.

I certify the aforementioned certification is true and correct under penalty of perjury under the laws of the state of California.

DATED this 15th day of February, 2012

Matthew Pappas
Attorney for Plaintiffs-Appellees

DECLARATION OF SERGIO SANDOVAL

I, Sergio Sandoval, declare as follows:

1. I am over the age of 18 and am a resident of the City of Long Beach, California.

2. On February 14, 2012, I attended the public meeting of the Long Beach City Council in the council chambers located at 333 W. Ocean Blvd., Long Beach, CA 90802.

3. I was present the entire time that the City Council considered proposed Long Beach Municipal Code 5.89.

4. I observed the City Council vote on and pass the ordinance. The vote was 8 in favor of passing the ordinance they announced would ban all medical marijuana collectives in Long Beach and 1 against.

5. Although I did leave after the 5.89 vote, I did not observe each council member confirming his or her vote after the general vote was taken and before I left the auditorium.

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

EXECUTED this 15th day of February, 2012:

_____

SERGIO SANDOVAL

EXHIBIT 1

DECLARATION OF JAMES THEISEN

I, James Theisen, declare as follows:

1. I am over the age of 18 and work in the City of Long Beach, California.

2. I am a medical cannabis patient with a valid recommendation from a licensed California doctor. When I was younger, I was severely burned and often suffer lingering pain and effects. I have permanent severe scars on my face and over most of my body from when I was burned in the fire. Although I use medication infrequently and only when necessary, when I am in pain or having nerve related issues, medical cannabis effectively treats my symptoms/condition. When the collective I am a member of was raided by police officers last year for not having a Long Beach marijuana permit, I was concerned about my safety and the safety of other patients. I was also fearful about going to the collective for several months after the raid happened.

3. In early-November, 2011, I received a phone call from a person identifying himself as "Harvey." Harvey told me he was a patient and that we had met at a patient meeting in Long Beach. I remembered that Harvey was the manager of one of the 18 collectives that had "won" the permit lottery. During the call, he told me that the Council was going to approve a ban of all patient collectives and that Eric Sund had assembled a team of police officers equipped with battering rams who would raid collectives that had not paid the permit fee

under 5.87 on "the day after the ban was passed." I asked Harvey how he knew this information and he told me the permitted collectives that had paid thousands of dollars for a permit were going to be exempt from the ban and that the City had told people in that group of its plans and how it was going to proceed.

4. On February 14, 2012, I watched the Long Beach City Council meeting together with another person on television. I watched while they passed an ordinance prohibiting all medical marijuana dispensaries in Long Beach. When I heard the Long Beach police chief say that police enforcement would begin the next day, I thought to myself, "Harvey was right."

5. I have previously observed Long Beach police officers harass medical marijuana patients. I have been harassed by Erik Sund, the Long Beach employee I mentioned above. Mr. Sund told me that "I was on his radar" because I am a member of a Long Beach medical marijuana collective that did not pay the nearly $20,000.00 for a city marijuana collective permit.

6. Last year, I received a criminal citation charging me with a misdemeanor for not having a marijuana permit under LBMC 5.87 while present at a medical cannabis collective I am a patient member of in Long Beach. The collective I am a member of has told members that compliance with state law and helping seriously ill and disabled patients are its top priorities. I have not been charged with violating any state medical marijuana

laws. I believe this is because my patient group works constantly to abide by and follow the state compassionate use law and marijuana program law.

7. Last year, I also received at least twenty (20) administrative citations ordering me to pay between $500-1000 each for not having a permit under LBMC 5.87. I have paid thousands of dollars to an attorney to fight the criminal charges and administrative citations. Even though a court struck down the Long Beach marijuana law, I am still facing criminal prosecution by the City for not having a permit to operate in the City. I face these charges even though, to my knowledge, Long Beach has not issued any permits. Also, I am still facing misdemeanor charges even though the court invalidated Long Beach's marijuana permit law.

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

EXECUTED this 15th day of February, 2012:

JAMES THEISEN

EXHIBIT 2

DECLARATION OF ANTHONY GAYLE

I, Anthony Gayle, declare as follows:

1. I am one of the Plaintiffs-Appellees in this case. I am 25 years old. I live in Long Beach, California. I suffer from renal failure and must have kidney dialysis at least three times per week. I had to have heart surgery because of my condition.

2. I have suffered from my serious illness for several years. I was recommended medical cannabis by my doctor. After dialysis I am often unable to keep food down or eat. Medical cannabis allows me to eat and to function. It significantly relieves my symptoms and alleviates pain. It also helps me sleep.

3. In November, I learned that the City of Long Beach was planning to ban all patient collectives. I became worried that I would not have access to medication. Without medication, I simply cannot eat and have serious problems after dialysis. I have to go to dialysis three times a week. I have remained under stress and pressure because the City has said it plans to ban all medical marijuana collectives in Long Beach. Given my condition, I am unable to cultivate medical marijuana on my own. Without my patient collectives that I participate in, I am left without medication and I am very stressed-out that Long Beach is going to close the collectives. I receive social benefits and I do not have a car. I can't drive to get medication. Sometimes my mother takes me but I don't know what I'll do now that the City is going to ban collectives.

4. I used medical cannabis for my illness. I am very sick. I don't know why I can go to a pharmacy and easily get opiate pain relievers that cause me to suffer severe side effects but my access to medical marijuana is constantly changing or is unavailable or is under attack. It makes no sense. Medical marijuana doesn't cause the severe side effects and it helps my appetite. It relieves pain. It helps me sometimes when I can't sleep.

5. I participate in the collective process. I have volunteered at the collectives. As a member, my volunteering and participation allows me to access and receive medication. Sometimes I make contributions to the costs of the collectives. I use medical marijuana for my illness and as a patient. I am a member of the collectives because I am a patient.

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

EXECUTED this 12th day of December, 2011 at Long Beach, California.

_____

Anthony Gayle

EXHIBIT 3

PROOF OF SERVICE BY MAIL

I, Victoria Pappas, am a citizen of the United States and resident of Mission Viejo, California. My address is 24611 Spadra Lane, Mission Viejo, California. On February 15, 2012, I served the **Plaintiffs-Appellees' Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction (in S197169)** on the interested parties in this case shown below by depositing separate envelopes addressed to each of them in which the aforementioned documents were enclosed and postage paid and affixed into the U.S. Mail at Lake Forest, California:

Clerk of the L.A. Superior Court
For: Hon. Judge Patrick Madden
415 W. Ocean Blvd.
Long Beach, CA 90802

California Supreme Court
Attn: Clerk of the Court
350 McAllister St.
San Francisco, CA 94102-4797

Mr. Robert E. Shannon
Long Beach City Attorney
333 W. Ocean Blvd, 11th Floor
Long Beach, CA 90802-4664

Ms. Cristyl Meyer
Asst. Long Beach City Attorney
333 W. Ocean Blvd, 11th Floor
Long Beach, CA 90802-4664

I declare under penalty of perjury under the laws of the United States and the laws of the state of California that the aforementioned is true and correct:

EXECUTED this 15th day of February, 2012 at Lake Forest, CA, United States of America.

Victoria S. Pappas