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18 COUNTY OF SANTA CRUZ, et al

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 COUNTY OF FRESNO

21 COUNTY OF SANTA CRUZ; CITY OF  
22 AGOURA HILLS; CITY OF ANGELS CAMP;  
23 CITY OF ARCADIA; CITY OF ATWATER;  
24 CITY OF BEVERLY HILLS; CITY OF CERES;  
25 CITY OF CLOVIS; CITY OF COVINA; CITY  
26 OF DIXON; CITY OF DOWNEY; CITY OF  
27 MCFARLAND; CITY OF NEWMAN; CITY OF  
28 OAKDALE; CITY OF PALMDALE; CITY OF  
PATTERSON; CITY OF RIVERBANK; CITY  
OF RIVERSIDE; CITY OF SAN PABLO; CITY  
OF SONORA; CITY OF TEHACHAPI; CITY  
OF TEMECULA; CITY OF TRACY; CITY OF  
TURLOCK; and CITY OF VACAVILLE,

Plaintiffs,

v.

BUREAU OF CANNABIS CONTROL; LORI  
AJAX, in her official capacity as Chief of the  
Bureau of Cannabis Control; and DOES 1  
through 10, inclusive,

Defendants.

Filing Fee Exempt  
(Gov. Code § 6103)

E-FILED  
5/4/2020 8:00 AM  
Superior Court of California  
County of Fresno  
By: C. York, Deputy

Case No.: 19CECG01224

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
REQUEST FOR JUDICIAL NOTICE**

Complaint filed: April 4, 2019  
Trial Date: July 16, 2020

Assigned for all purposes to Judge Rosemary  
McGuire, Department 403.

1 **I. INTRODUCTION**

2 In support of their trial brief, Plaintiffs County of Santa Cruz, et al. (“Plaintiffs”) submit  
3 the concurrently filed Request for Judicial Notice pursuant to Evidence Code sections 450 *et seq.*  
4 and California Rules of Court, rule 3.1306, subdivision (c) (the “Request”). The Request includes  
5 official acts of legislative bodies, records of a Court of the State of California, and legislative  
6 history and ballot information, all of which are properly the subject of judicial notice. For the  
7 reasons explained further below, this Court can and should grant the Plaintiffs’ Request.

8 **II. EXHIBITS 1-35: OFFICIAL ACTS OF LEGISLATIVE BODIES**

9 Each of the documents included in Exhibits 1-35 is an ordinance passed by a local  
10 government, either a city or county. Each of the Ordinances is an official act of a legislative body,  
11 and “issued under the authority of...any public entity in the United States” and therefore may be  
12 judicially noticed pursuant to Evidence Code section 452, subdivisions (b) and (c). Legislative  
13 enactment of a municipality are the proper subject of a Request for Judicial Notice. (*City of*  
14 *Monterrey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1077, fn. 5.) Likewise, legislative  
15 enactments of counties are also the proper subject of judicial notice. (See, e.g., *Curcini v. County*  
16 *of Alameda* (2008) 164 Cal.App.4th 629, 647, fn 13.) Each of the above Ordinances is relevant  
17 because it establishes that each government entity Plaintiff in this action has adopted ordinances or  
18 resolutions regulating—or in some cases prohibiting—commercial cannabis deliveries within its  
19 jurisdiction, which is a fact of consequence to the determination of this action. (Evid. Code, §  
20 210.) Accordingly, judicial notice of these documents is proper, and the Court should grant the  
21 Request as to Exhibits 1-35.

22 **III. EXHIBITS 36-44: RECORDS OF A COURT OF THE STATE OF CALIFORNIA**

23 Each of the above documents described in Exhibits 36-44 is judicially noticeable under  
24 California Evidence Code section 452, subdivision (e), as these documents are part of the records  
25 of the Santa Cruz County Superior Court and therefore “any court in this state.” (Evid. Code, §  
26 452, subd. (e).)

27 Specifically, each of these documents is part of the Court’s record in the action *East of*  
28 *Eden, et al. v. Santa Cruz County, et al.*, Santa Cruz County Superior Court Case No. 19CV02072

1 (Filed July 12, 2019). Included are the petition for writ of mandate and complaint for declaratory  
2 and injunctive relief (**Exhibit 36**), Defendant’s opposition to the preliminary injunction motion  
3 (**Exhibit 37**), the Order denying the preliminary injunction (**Exhibit 38**), the Bureau of Cannabis  
4 Control’s (“BBC”) motion for leave to intervene in the action and complaint in intervention  
5 (**Exhibits 39, 40**), Plaintiff’s request for dismissal and notice of entry of dismissal (**Exhibits 41,**  
6 **42**), and BCC’s request for dismissal and notice of entry of dismissal (**Exhibits 43, 44**).

7 Each of the above court records is relevant because it demonstrates the facts of a Santa  
8 Cruz County ordinance limiting cannabis deliveries (see paragraph 1 of this Request for Judicial  
9 Notice, *supra*), that the ordinance was challenged and an injunction was sought against  
10 enforcement, and that a court of this state issued a decision and order relative to that ordinance. All  
11 of these are facts of consequence to the determination of this action. (Evid. Code, § 210.)  
12 Accordingly, judicial notice of these documents is proper, and the Court should grant the Request  
13 as to Exhibits 36-44.

14 **IV. EXHIBITS 45-55: LEGISLATIVE HISTORY AND BALLOT INFORMATION**

15 **Exhibit 45** is a copy of Proposition 64, as approved by voters, General Election  
16 (November 8, 2016). It is judicially noticeable under California Evidence Code section 452,  
17 subdivision (c), as these documents reflect “[o]fficial acts of the legislative, executive, and judicial  
18 departments of...any state of the United States.” (Evid. Code, § 452, subd. (c).) The ballot  
19 initiative and associated legislative components, as approved by voters, is the proper subject of  
20 judicial notice. (See *St. John’s Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th  
21 960, 966-67, fn. 5.) Proposition 64, in its entirety, is relevant because it establishes the facts that  
22 local control over cannabis deliveries was intended to be included and was included within its  
23 provisions, among other things, which is a fact of consequence to the determination of this action.  
24 (Evid. Code, § 210.) It is therefore the proper subject of a Request for Judicial Notice.

25 **Exhibit 46** is a pertinent excerpt from the Official Voter Information Guide for the  
26 California General Election on November 8, 2016 (“Official Voter Information Guide”), showing  
27 the text of Proposition 64 starting at page 178 and the title summary and analysis starting at page  
28 90. Exhibit 46 is judicially noticeable under California Evidence Code section 452, subdivision (c),

1 as these documents reflect “[o]fficial acts of the legislative, executive, and judicial departments  
2 of...any state of the United States.” (Evid. Code, § 452, subd. (c).) Ballot pamphlets, including  
3 summaries and arguments and statements of vote, are cognizable legislative history, and properly  
4 the subject of judicial notice. (*Kaufman & Broad Communities, Inc. v. Performance Plastering,  
5 Inc.* (2005) 133 Cal.App.4th 26, 31, citing *Robert L. v. Superior Court* (2003) 30 Cal.4th 894,  
6 903.) The Official Voter Information Guide is relevant, as it is a part of the ballot information  
7 provided, and it establishes that the guide contains statements regarding local control, which is a  
8 fact of consequence to the determination of this action. (Evid. Code, § 210.) It is therefore the  
9 proper subject of a Request for Judicial Notice.

10 **Exhibit 47** contains the California Regulatory Notice Register 2017, No. 51-Z. It is  
11 judicially noticeable under California Evidence Code section 452, subdivision (c), as this  
12 document reflects “[o]fficial acts of the legislative, executive, and judicial departments of...any  
13 state of the United States.” (Evid. Code, § 452, subd. (c).) The California Regulatory Notice  
14 Register is a proper subject of judicial notice. (*California Assn. for Health Services at Home v.  
15 State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 702, fn. 2.) This document is relevant  
16 as it tends to establish that in 2017, the BCC adopted emergency regulations to implement and  
17 interpret the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which  
18 is a fact of consequence to the determination of this action. (Evid. Code, § 210.)

19 **Exhibit 48** is the Legislative History of Senate Bill 1302 (2017-2018 Reg. Sess.), obtained  
20 from the Official California Legislative Information, showing that the bill was ordered to inactive  
21 file on request of Senator Lara on May 31, 2018, and died on the inactive file on November 30,  
22 2018. Exhibit 48 is judicially noticeable under California Evidence Code section 452, subdivision  
23 (c) as this document reflects “[o]fficial acts of the legislative, executive, and judicial departments  
24 of...any state of the United States.” (Evid. Code, § 452, subd. (c).) The Legislative History of  
25 Senate Bill 1302, from the Official California Legislative Information, is a proper subject of  
26 judicial notice where, as here, the language of the statutes at issue conflict. (*Kaufman & Broad  
27 Communities, Inc. v. Performance Plastering, Inc., supra*, 133 Cal.App.4th at 29-30.) This  
28 document is relevant as it tends to establish that the California legislature considered a bill

1 regarding cannabis delivery, which is a fact of consequence to the determination of this action.  
2 (Evid. Code, § 210.)

3 **Exhibit 49** is an Analysis of Senate Bill 1302 by the Senate Committee on Governance  
4 and Finance (2017-2018 Reg. Sess.), as amended April 26, 2018, obtained from the Official  
5 California Legislative Information. The Legislative History of Senate Bill 1302, including an  
6 analysis from a legislative committee, as part of the Official California Legislative Information, is  
7 a proper subject of judicial notice where, as here, the meaning of the statutes conflict with  
8 California Code of Regulations, title 16, section 5416, subdivision (d) (“Regulation 5416(d”).  
9 (*Hutnick v. U.S. Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7 [“reports of legislative  
10 committees and commissions are part of a statute's legislative history and may be considered when  
11 the meaning of a statute is uncertain”].) Exhibit 49 is relevant because it tends to establish facts  
12 showing that local governments have banned or limited cannabis deliveries within their  
13 jurisdictions. These are facts of consequence to the determination of this action. (Evid. Code, §  
14 210.)

15 **Exhibit 50** is the Legislative Counsel Digest’s of Assembly Bill No. 2020 (2017-2018  
16 Reg. Sess.), obtained from the Official California Legislative Information. Exhibit 50 is judicially  
17 noticeable under California Evidence Code section 452, subdivision (c), as these documents reflect  
18 “[o]fficial acts of the legislative, executive, and judicial departments of...any state of the United  
19 States.” (Evid. Code, § 452, subd. (c).) Legislative Counsel’s Digests are properly the subject of  
20 judicial notice. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., supra*, 133  
21 Cal.App.4th at 35, citing (*Pacific Gas & Electric Co. v. Department of Water Resources* (2003)  
22 112 Cal.App.4th 477, 482–483.) This document is relevant as it pertains to the Official California  
23 Legislative Information regarding Assembly Bill 2020 regarding Legislative Counsel’s statements  
24 regarding the AUMA, licensing for cannabis delivery, and local control, which is a fact of  
25 consequence to the determination of this action. (Evid. Code, § 210.)

26 **Exhibit 51** is the California Regulatory Notice Register 2018, No. 28-Z. It is judicially  
27 noticeable under California Evidence Code section 452, subdivision (c), as this document reflects  
28 “[o]fficial acts of the legislative, executive, and judicial departments of...any state of the United

1 States.” (Evid. Code, § 452, subd. (c).) The California Regulatory Notice Register is a proper  
2 subject of judicial notice. (*California Assn. for Health Services at Home v. State Dept. of Health*  
3 *Services, supra*, 148 Cal.App.4th at 702, fn. 2.) This document is relevant as it tends to show the  
4 fact of BCC’s proposed rule that delivery must be “made to a physical address in any California  
5 jurisdiction,” which is a fact of consequence to the determination of this action. (Evid. Code, §  
6 210.)

7 **Exhibit 52** is the relevant portion of the Bureau of Cannabis Control California Code of  
8 Regulations Title 16, Division 42 Medicinal and Adult-Use Cannabis Regulation Initial Statement  
9 of Reasons. It is judicially noticeable under California Evidence Code section 452, subdivision  
10 (c), as this document reflects “[o]fficial acts of the legislative, executive, and judicial departments  
11 of...any state of the United States.” (Evid. Code, § 452, subd. (c).) Further, the Initial Statement of  
12 Reasons is an official report of a government agency adopted as part of the rulemaking process,  
13 and will assist with the interpretation of the meaning of the statute or regulation; thus, it is the  
14 proper subject of judicial notice. (*McGlothlen v. Dept. of Motor Vehicles* (1977) 71 Cal.App.3d  
15 1005, 1015.) This document is relevant as it tends to show the facts that (1) in its Initial Statement  
16 of Reasons, BCC’s proposed rule made no reference to Business and Professions Code section  
17 26200 and its provisions regarding local authority, and included no provision for local regulation  
18 of deliveries; and (2) BCC’s Initial Statement of Reasons claimed that Business and Professions  
19 Code section 26090, subdivision (e), “prohibits a local jurisdiction from preventing delivery of  
20 cannabis goods on public roads by a licensee acting in compliance with law.” (Exhibit 52 at 110.)  
21 These are disputed facts that are of consequence to the determination of this action. (Evid. Code, §  
22 210.)

23 **Exhibit 53** is the Cannabis Advisory Committee Meeting Minutes (August 20, 2018), as  
24 obtained from <[https://bcc.ca.gov/about\\_us/meetings/materials/20181108\\_cac\\_2.pdf](https://bcc.ca.gov/about_us/meetings/materials/20181108_cac_2.pdf)> (as of April  
25 13, 2020). It is judicially noticeable under California Evidence Code section 452, subdivision (c)  
26 as this document reflects “[o]fficial acts of the legislative, executive, and judicial departments  
27 of...any state of the United States.” (Evid. Code, § 452, subd. (c).) Further, the advisory committee  
28 notes reflect the actions and report of an official body that can assist with the interpretation of the

1 meaning and validity of a statute, and is the proper subject of judicial notice. (*McGlothlen v. Dept.*  
2 *of Motor Vehicles, supra*, 71 Cal.App.3d at 1015.) This document is relevant as it tends to show  
3 the fact that the minutes of the August 20, 2018 meeting of BCC’s Cannabis Advisory Committee,  
4 which advised the BCC in developing regulations to implement Proposition 64, reflect that  
5 concerns were raised regarding Regulation 5416(d)’s effect on the local control granted to cities  
6 and counties in Prop. 64, which is a fact of consequence to the determination of this action. (Evid.  
7 Code, § 210.)

8 **Exhibit 54** is the Legislative Counsel Digest’s of Assembly Bill No. 97 (2019-2020 Reg.  
9 Sess.), obtained from the Official California Legislative Information. Exhibit 54 is judicially  
10 noticeable under California Evidence Code section 452, subdivision (c), as this document reflects  
11 “[o]fficial acts of the legislative, executive, and judicial departments of...any state of the United  
12 States.” (Evid. Code, § 452, subd. (c).) Legislative Counsel’s Digests are properly the subject of  
13 judicial notice. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., supra*, 133  
14 Cal.App.4th 26, 31, citing (*Pacific Gas & Electric Co. v. Department of Water Resources, supra*,  
15 112 Cal.App.4th 477, 482–483.) The Legislative Counsel’s Digest of AB 97 is relevant as it tends  
16 to confirm the facts of dual levels of regulation, and that both a state license and compliance with  
17 “applicable local ordinances” are required to engage in any commercial adult-use cannabis  
18 activity. These are facts of consequence to the determination of this action. (Evid. Code, § 210.)

19 **Exhibit 55** is the Cal. Reg. Notice Register 2018, No. 24-Z. It is judicially noticeable  
20 under California Evidence Code section 452, subdivision (c), as this document reflects “[o]fficial  
21 acts of the legislative, executive, and judicial departments of...any state of the United States.”  
22 (Evid. Code, § 452, subd. (c).) The California Regulatory Notice Register is a proper subject of  
23 judicial notice. (*California Assn. for Health Services at Home v. State Dept. of Health Services,*  
24 *supra*, 148 Cal.App.4th at 702, fn. 2.) This document is relevant as tends to show the facts that  
25 after BCC filed its emergency MAUCRSA regulations in 2017, it refiled them in 2018 with  
26 amendments, and Regulation 5416(d) was not included in either the 2017 emergency regulations  
27 or the emergency regulations readopted on June 6, 2018. These are facts of consequence to the  
28 determination of this action. (Evid. Code, § 210.)

1 Each of the above documents described in paragraphs 45-55 is judicially noticeable under  
2 California Evidence Code section 452, subdivision (c) as these documents reflect “[o]fficial acts of  
3 the legislative, executive, and judicial departments of...any state of the United States.” (Evid.  
4 Code, § 452, subd. (c).) Each of the above documents is relevant for the reasons stated above with  
5 respect to each Exhibit, and all support facts of consequent to the determination of this action.  
6 Accordingly, they are the proper subject of a request for judicial notice and this Court can and  
7 should grant the Plaintiffs’ request.

8 **V. CONCLUSION**

9 For the foregoing reasons, Plaintiffs request that this Court take judicial notice of the  
10 official acts of legislative bodies, records of a Court of the State of California, and legislative  
11 history and ballot information attached to the concurrently-filed Request for Judicial Notice, all of  
12 which are properly the subject of judicial notice. This Court can and should grant the Plaintiffs’  
13 Request.

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15  
16 DATED: April 24, 2020

CHURCHWELL WHITE LLP

17  
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