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17 COUNTY OF SANTA CRUZ, ET AL.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF FRESNO

20 COUNTY OF SANTA CRUZ, et al.,

21 Plaintiffs,

22 v.

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

27 Defendants.

Case No.: 19CECG01224

**PLAINTIFFS' SUPPLEMENTAL BRIEF  
REGARDING RIPENESS**

COMPLAINT FILED: April 4, 2019  
TRIAL DATE: November 16, 2020  
DEPARTMENT: 502

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**I. INTRODUCTION.**

The Court asked the parties to further brief the issue whether this case is ripe for adjudication. As discussed below, the answer is yes. Dispositively, defendant Bureau of Cannabis Control (“BCC”) already established this fact in January 2020, when it filed its Complaint-in-Intervention in *East of Eden, et al. v. Santa Cruz County, et al.* (“*East of Eden*”), Santa Cruz County Superior Court Case No. 19CV02072 (Filed July 12, 2019), suing the lead plaintiff in this case, the County of Santa Cruz, and asserting that Regulation 5416(d) rendered the County’s duly-enacted cannabis delivery ordinance void. (*See* Plaintiffs’ Reply Trial Brief, at 25-26.)

The Court also asked about the pertinent ordinances of Plaintiffs in this case. Plaintiffs’ ordinances confirm that this case is ripe for adjudication. Each Plaintiff has an ordinance that: (1) prohibits all commercial<sup>1</sup> cannabis delivery within its jurisdiction; (2) prohibits deliveries by out-of-town commercial cannabis delivery businesses; or (3) requires outside delivery companies to comply with strict local application and licensing requirements before delivering cannabis within the jurisdiction. (See Section III and “Chart A” attached hereto as Exhibit A.)

Separately, the Legislature has granted “interested person” standing with respect to challenges to regulations that conflict with statutes. Government Code section 11342.2 provides in pertinent part: “[N]o regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.” A few sections later in the Administrative Procedure Act (“APA”), Government Code section 11350, subdivision (a), provides, as relevant here: “Any interested person may obtain a judicial declaration as to the validity of any regulation or order of repeal by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure.”

Defendant BCC does not dispute this standing, but rather argues that *certain* Plaintiffs cannot show a ripe controversy. This is incorrect. Each of the named Plaintiffs is directly and

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<sup>1</sup> Cal. Bus. & Prof. Code, § 26001, subd. (k), defines “commercial cannabis activity” as including “the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as provided for in this division.”

1 adversely impacted by Regulation 5416(d)<sup>2</sup>. Each has exercised its statutorily protected  
2 lawmaking power in the very area, cannabis deliveries, in which BCC seeks to strip local  
3 governments of their lawmaking power. The regulation purports to preempt ordinances in every  
4 Plaintiff jurisdiction. Each Plaintiff has a controversy with Defendant BCC that is ripe for  
5 adjudication by this Court under the standard set forth by the California Supreme Court in *Pacific*  
6 *Legal Foundation v. Cal. Coastal Com.* (1982) 33 Cal.3d 158, 171 (“*Pacific Legal*”).

7 **II. ALL PLAINTIFFS HAVE STANDING AND HAVE PRESENTED A RIPE**  
8 **CONTROVERSY.**

9 An evaluation of the ripeness of Plaintiffs’ claims intrinsically involves assessment of  
10 whether Plaintiffs possess standing to bring those claims. “Whether a case is founded upon an  
11 ‘actual controversy’ centers on whether the controversy is justiciable,” which determination  
12 necessarily implicates “the intertwined criteria of ripeness and standing.” (*Stonehouse Homes LLC*  
13 *v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540.) For this case, an action for declaratory  
14 relief brought under Government Code section 11350, the justiciability analysis proceeds under  
15 the parallel arms of Section 11350 and Code of Civil Procedure section 1060.

16 **A. Plaintiffs Have Standing Under Both CCP Section 1060 and Government**  
17 **Code Section 11350.**

18 **1. Section 1060 Standing.**

19 Under Code of Civil Procedure section 1060, declaratory relief is available to “any person  
20 interested... who desires a declaration of his or her rights or duties... in cases of actual  
21 controversy relating to the legal rights and duties of the respective parties.” (Code Civ. Proc.,  
22 § 1060). This includes controversies involving the actions or decisions of state agencies, brought  
23 by plaintiffs affected by those actions. (See *In re Claudia E.* (2008) 163 Cal.App.4th 627, 633 [an  
24 actual controversy existed, appropriate for declaratory relief, regarding whether the Department of  
25 Social Services (DSS) had a policy of filing supplemental petitions untimely].) Moreover, “[a]n  
26 action for declaratory relief lies when the parties are in fundamental disagreement over the  
27 construction of particular legislation, or they dispute whether a public entity has engaged in

28 \_\_\_\_\_  
<sup>2</sup> References herein to “Regulation” are to Title 16, California Code of Regulations.

1 conduct or established policies in violation of applicable law.” (*Alameda County Land Use Assn.*  
2 *v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1723; *see also Walker v. Los Angeles County*  
3 (1961) 55 Cal.2d 626, 636 [dispute over interpretation of county charter provision regarding wages  
4 is proper for declaratory relief]; *Zeitlin v. Arneburgh* (1963) 59 Cal.2d 901, 905 [declaratory relief  
5 appropriate to adjudicate controversy between bookseller and city regarding whether obscenity  
6 statute is constitutional].)

7 Declaratory relief applies broadly to challenges to state agency actions. In *Californians for*  
8 *Native Salmon and Steelhead Assn. v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1422,  
9 the Court of Appeal held that declaratory relief may lie against an administrative agency when it is  
10 alleged that the agency has a policy of ignoring or violating applicable laws and regulations, even  
11 where no specific agency decision is attacked. As the *Native Salmon* court observed, if the facts  
12 “show the existence of an actual controversy, between appellants and respondents, appellants have  
13 ‘stated a legally sufficient complaint’ for declaratory relief and it was an abuse of discretion to  
14 dismiss the action.” (*Id.*, at p. 1426, citing *Zeitlin v. Arneburgh, supra*, 59 Cal.2d at p. 908)

15 Plaintiffs’ claims fall squarely within these parameters. As discussed further below, each  
16 Plaintiff has enacted an ordinance creating an actual controversy regarding BCC’s promulgation of  
17 Regulation 5416(d). Plaintiffs may thus obtain an adjudication whether Regulation 5416(d)  
18 conflicts with Business and Professions Code sections 26090, subdivision (e), and 26200,  
19 subdivision (a)(1), whether it is invalid and void under Government Code section 11342.2, and  
20 whether it exceeds the scope of BCC’s authority under the APA. Relevant to the existence of a live  
21 dispute, BCC disputes Plaintiffs’ contentions.

22 Further, another recognized purpose of declaratory relief is to “liquidate doubts with  
23 respect to uncertainties or controversies which might otherwise result in subsequent litigation.” (*In*  
24 *re Claudia E., supra*, 163 Cal.App.4th at p. 633, citing *Bess v. Park* (1955) 132 Cal.App.2d 49, 52;  
25 *see also* Reply Brief, at 27, fn.12.) Relatedly, “judicial economy strongly supports the use of  
26 declaratory relief to avoid duplicative actions to challenge an agency’s statutory interpretation or  
27 alleged policies.” (*Ibid.*) As the *East of Eden* case shows, Regulation 5416(d) has already created  
28 confusion and litigation. Absent a ruling by this Court, further litigation across multiple



1 jurisdictions will follow.

2 **2. Government Code Section 11350 Standing.**

3 Government Code section 11350 authorizes “[a]ny interested person” to “obtain a judicial  
4 declaration as to the validity of any regulation or order of repeal by bringing an action for  
5 declaratory relief in the superior court in accordance with the Code of Civil Procedure.” Courts  
6 have interpreted the “interested” requirement in Section 11350 to mean that the plaintiff must have  
7 “some special interest to be served or some particular right to be preserved or protected over and  
8 above the interest held in common with the public at large.” (*Save the Plastic Bag Coalition v.*  
9 *City of Manhattan Beach* (2011) 52 Cal.4th 155, 165, 170 [finding that plaintiff “plainly possesses  
10 the direct, substantial sort of beneficial interest required” where its members included  
11 “manufacturers and suppliers of plastic bags used by businesses in the city, and the challenged  
12 ordinance's ban on those plastic bags “would have a severe and immediate effect on their business  
13 in the city.”].) “[A] party may be an ‘interested’ person for purposes of Government Code section  
14 11350 if either it or its members is or may well be impacted by a challenged regulation.”  
15 (*Environmental Protection Information Center v. Department of Forestry and Fire Protection*  
16 (1996) 43 Cal.App.4th 1011, 1017-1018 (“*EPIC*”); see also *Woods v. Superior Court* (1981) 28  
17 Cal.3d 668, 682 [recognizing the right of “interested persons” to challenge invalid regulations  
18 under Gov. Code, § 11350])<sup>3</sup>

19 Each Plaintiff in this case has a “special” interest – and indeed expressly protected  
20 lawmaking authority – in regulating cannabis delivery within their local borders. In enacting  
21 Business and Professions Code section 26200, subdivision (a), as a part of Proposition 64, the  
22 voters *unambiguously and expressly* protected local governments from encroachment by the State  
23 with respect to commercial cannabis regulation. As described in Section III, *infra*, each Plaintiff  
24 has passed an ordinance consistent with Business and Professions Code section 26200, subdivision  
25 (a), and its own police power.

26 <sup>3</sup> Plaintiffs note that this Court in its ruling stated from the bench that it intended to treat this  
27 action as a Petition for a Writ of Mandate. While it may be a matter of form over substance, the  
28 Court’s ruling in Plaintiff’s view should include a declaration that Regulation 5416(d) is in  
conflict with Business and Professions Code sections 26090, subdivision (e), and 26200,  
subdivision (a)(1).

1 Yet BCC, through Regulation 5416(d)'s preemptive effect, unlawfully purports to strip  
2 Plaintiffs of this protected local authority. See *Carmel Valley Fire Protection District v. State of*  
3 *California* (2001) 25 Cal.4th 278, 299 ["Regulations that alter or amend the statute, or enlarge or  
4 impair its scope, are void" (citation omitted)].) Regulation 5416(d) preempts, nullifies, or  
5 undercuts Plaintiffs' ordinances, harming these Plaintiffs and encroaching on their expressly  
6 protected regulatory authority under Section 26200, subdivision (a). Each Plaintiff is thus  
7 "impacted by [the] challenged regulation" (see *EPIC, supra*, 43 Cal.App.4th at pp. 1017-1018),  
8 and each is thus an "interested" party under Section 11350.

9 Each Plaintiff also thus has a "special interest to be served or some particular right to be  
10 preserved or protected over and above" the common interest of the public at large, in that every  
11 Plaintiff in this case has the authority to regulate land use, business licensing, and other aspect of  
12 cannabis businesses within its boundaries, as granted under the California Constitution,  
13 Proposition 64 and the Medicinal and Adult Use Cannabis Regulation and Safety Act  
14 ("MAUCRSA"). (See *Save the Plastic Bag Coalition v. City of Manhattan Beach, supra*, 52  
15 Cal.4th at p. 165.) Each Plaintiff has an interest in ensuring that Regulation 5416(d) is consistent  
16 with these statutes. These specific statutory and constitutional grants of authority confer rights on  
17 the Plaintiffs "over and above" any other person or entity that may seek standing to challenge  
18 Regulation 5416(d).

19 **B. Each Plaintiff Has Standing to Challenge Regulation 5416(d), Since It**  
20 **Conflicts with Proposition 64's Guarantees of Local Autonomy With Regard**  
21 **to Commercial Cannabis Delivery**

22 Case law confirms the Plaintiffs' standing. One example of agency overreach very similar  
23 to BCC's actions is addressed in *EPIC, supra*, 43 Cal.App.4th at 1011. There, the environmental  
24 group challenged a Board of Forestry regulation under Government Code section 11350 that  
25 purported to exempt timber operations on any parcel of land of less than three acres in size from  
26 the requirement to prepare a timber harvesting plan. (*Id.* at p. 1014.) The Court of Appeal found  
27 that the regulation was unauthorized and thus invalid because although the operative Public  
28 Resources Code statutes gave the agency authority to adopt "forest practice rules and regulations,"  
including "the preparation of timber harvesting plans," nothing in this general grant of authority

1 addressed exemptions to the THP requirement, while other statutory provisions spoke precisely of  
2 exemptions and does not include one for small acreage. As such, this regulation was beyond the  
3 agency’s authority to adopt.

4 That is the precisely the circumstance here. Business and Professions Code section 26013  
5 grants BCC the authority to “make and prescribe reasonable rules and regulations as may be  
6 necessary to implement, administer, and enforce [its] duties under this division...,” but also that  
7 “[t]hose rules and regulations shall be consistent with the purposes and intent” of Proposition 64.  
8 (Bus. & Prof. Code, § 26013, subd. (a).) The intent of Proposition 64 is, among other things, to  
9 preserve the ability of local jurisdictions to regulate or ban cannabis delivery within their  
10 boundaries if they see fit. Business and Professions Code sections 26090, subdivision (e), and  
11 26200 expressly state these parameters. While the Public Resources Code provisions at issue in  
12 *EPIC* were silent as to the challenged exemptions (which the Court found to be invalid), the  
13 agency overreach in this case is more flagrant: Business and Professions Code section 26200,  
14 subdivision (a)(1), expressly states that these statutes “shall not be interpreted to supersede or limit  
15 the authority of a local jurisdiction to adopt and enforce local ordinances to...completely prohibit  
16 the establishment or operation” of cannabis delivery businesses within its boundaries. (Bus. &  
17 Prof. Code, § 26200, subd. (a)(1).)

18 **C. Regulation 5416(d) Creates Regulatory Uncertainty, Sufficient to Create a**  
19 **Ripe Controversy as to All Plaintiffs**

20 The conflict between Section 5416(d) and the Plaintiffs’ ordinances is sufficient to create a  
21 ripe controversy. “[T]he ripeness ... requirement ‘should not prevent courts from resolving  
22 concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law,  
23 especially when there is widespread public interest in the answer to a particular legal question.’”  
24 (*Communities for a Better Environment v. State Energy Resources Conservation and Development*  
25 *Commission* (2017) 19 Cal.App.5th 725, 734 (“*Communities for a Better Environment*”), citing  
26 *Pacific Legal, supra*, 33 Cal.3d at p. 170.)

27 *Communities for a Better Environment* distinguished *Pacific Legal* in a challenge to a  
28 statute that restricted judicial review of an agency’s decisions, as “no factual context from an

1 individual Energy Commission certification proceeding is necessary, or even useful, to resolution  
2 of the constitutional question raised” and “the constitutional question will necessarily be  
3 implicated in every future judicial proceeding seeking review of an Energy Commission decision.”  
4 (*Communities for a Better Environment, supra*, 33 Cal.3d at p. 735; see also, *id.* at pp. 734-39  
5 (reviewing cases finding the ripeness element satisfied where direct challenges are raised to the  
6 legality of an enactment, including where, as here, delay in decision will result in “lingering  
7 uncertainty in the law.”)

8         The prior *East of Eden* litigation in Santa Cruz County well demonstrates the “lingering  
9 uncertainty” Regulation 5416(d) has created. As Plaintiffs discussed previously in their trial brief,  
10 in *East of Eden*, a BCC-licensed commercial cannabis retailer filed a writ petition against the  
11 County of Santa Cruz (a plaintiff in this action) and moved for a preliminary injunction, arguing  
12 that Santa Cruz County Code sections 7.130.050, subdivision (c) and 7.130.110, subdivision  
13 (F)(1), which do not completely ban cannabis delivery but require that any business delivering  
14 cannabis in unincorporated Santa Cruz County have a local license<sup>4</sup>, were preempted by  
15 Regulation 5416(d).

16         Denying the injunction, the Superior Court found that *East of Eden* failed to show a  
17 probability of success on the merits because Business and Professions Code sections 26200 and  
18 26090 “make clear that local control has been preserved by the State statutory scheme and that  
19 Santa Cruz County’s ordinances do not conflict with State law, are not preempted, nor are they  
20 unconstitutional.” (Plaintiffs’ RJN (“RJN”), Ex. 37 [Santa Cruz Opp., filed September 5, 2019];  
21 Ex. 38 [Order, filed September 18, 2019]). The BCC then moved for, and was granted, Intervenor  
22 status in the *East of Eden* litigation. (RJN, Ex. 39 [BCC Motion to Intervene, filed November 18,  
23 2019]). The BCC also asserted that it had authority to preempt local regulation concerning  
24 deliveries, and that Regulation 5416(d) was intended to do so and did so.<sup>5</sup>

25 \_\_\_\_\_  
26 <sup>4</sup> See Section III.C.4., below, for a discussion of the applicable County of Santa Cruz ordinances.

27 <sup>5</sup> RJN, Ex. 39 (BCC Motion to Intervene, filed November 18, 2019) at p. 4:14-15 (“[Regulation  
28 5416(d)], . . . authorizes a licensed commercial cannabis retail business to deliver cannabis and  
cannabis products throughout the state, . . . .”); see also BCC Complaint-in-Intervention, ¶ 2, RJN,  
Ex. 40 (“The Bureau seeks a judicial declaration validating the Cannabis Delivery Regulation.  
The Court should permanently enjoin Santa Cruz County, Santa Cruz Administrative Office,

1 Business and Professions Code sections 26200, subdivision (a), and 26090, subdivision (e),  
2 as adopted and enacted pursuant to Proposition 64 and MAUCRSA, were intended to *protect* local  
3 governments from this uncertainty and intrusion on their autonomy. Yet, because of BCC’s  
4 unlawful regulation, this regulatory uncertainty will continue, with the multiple points of conflict  
5 between Regulation 5416(d) and the extensive local regulation simply serving to emphasize the  
6 point. See Section III, *infra*. For this reason as well, a ripe controversy exists as to all Plaintiffs.  
7 (*See Communities for a Better Environment, supra*, 19 Cal.App.5th 725.)

### 8 **III. A RIPE CONTROVERSY EXISTS FOR ALL PLAINTIFFS**

#### 9 **A. An “Actual Controversy” Is Present, Sufficient to Grant Declaratory Relief** 10 **Under Code of Civil Procedure Section 1060.**

11 As discussed above, under Code of Civil Procedure section 1060, declaratory relief is  
12 available to an interested person who desires a declaration in cases “of actual controversy relating  
13 to the legal rights and duties of the respective parties.” (Code Civ. Proc., § 1060). The “actual  
14 controversy” language of Code of Civil Procedure section 1060 “is broad enough to encompass a  
15 probable future controversy, if the controversy is ripe.” (*California Department of Consumer*  
16 *Affairs* (2016) 245 Cal.App.4th 256, 262, citing *Environmental Defense Project of Sierra County*  
17 *v. County of Sierra* (2008) 158 Cal.App.4th 877, 885 (“*County of Sierra*”).

18 In *County of Sierra*, the court found that an “actual controversy” existed where: (1) the  
19 parties disputed whether streamlined zoning violated the County’s Planning and Zoning Law,  
20 based on their different interpretations of the Government Code, and (2) the County made it clear  
21 that it will continue with streamlined zoning in the future. (*County of Sierra, supra*, 158  
22 Cal.App.4th at p. 886.) The Court found that the plaintiff “did not have to prove prejudice,

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23 Santa Cruz County Cannabis Licensing Office, and Samuel LoForti, Cannabis Licensing  
24 Manager, in his official capacity (Respondents) from enforcing local laws that violate the  
25 Cannabis Delivery Regulation.”); ¶ 22 (“The Cannabis Delivery Regulation permits delivery by a  
26 state licensed commercial cannabis retailer to a physical address to any jurisdiction within the  
27 State of California as long as the licensee complies with MAUCRSA [the Medicinal and Adult-  
28 Use Cannabis Regulation and Safety Act] and its implementing regulations. Inconsistent with  
MAUCRSA and the Cannabis Delivery Regulation, the County Cannabis Codes prohibit  
commercial cannabis retailers licensed by the Bureau and other local jurisdictions from delivering  
in unincorporated Santa Cruz County, but allow delivery by commercial cannabis retailers  
licensed by the Bureau and Santa Cruz County.”)

1 substantial injury, and probability of a different result before the court could grant its request for  
2 declaratory relief.” (*Id.* at pp. 887-888.)

3 In so holding, *County of Sierra* distinguished *Pacific Legal*, *supra*, 33 Cal.3d 158, which  
4 this Court cites in its August 6, 2020 tentative ruling. In particular, in *Pacific Legal*, a group of  
5 coastal property owners brought a facial challenge under a provision parallel to Government Code  
6 section 11350, to CEQA guidelines adopted by the California Coastal Commission regarding  
7 public access to the beach. (*County of Sierra*, *supra*, at p. 886, citing *Pacific Legal*, *supra*, at pp.  
8 163, 169–170.) The Supreme Court held that whether the guidelines were valid was not a ripe  
9 controversy, as the parties were inviting the court “to speculate as to the type of developments for  
10 which access conditions might be imposed, and then to express an opinion on the validity and  
11 proper scope of such hypothetical exactions” and that it was “sheer guesswork to conclude that the  
12 Commission will abuse its authority by imposing impermissible conditions on any permits  
13 required.” (*Id.* at p. 887, citing *Pacific Legal*, *supra*, at pp. 172, 174.) No such “guesswork” was at  
14 play in *County of Sierra*, that court reasoned, as the County made its intentions clear that it would  
15 carry out its proposed actions based on its belief that those actions comport with state law, which  
16 interpretation Plaintiff had challenged in its action. (*Id.* at p. 887.)

17 The same is true in this case because the conflict with local law and intrusion on local  
18 authority is existing and tangible. In promulgating Regulation 5416(d), and as it confirmed in *East*  
19 *of Eden*, BCC has made its intentions clear to allow statewide cannabis delivery regardless of local  
20 ordinances and regardless of the limitations on BCC’s authority implemented through Business  
21 and Professions Code sections 26090 and 26200, which expressly authorize Plaintiffs to enact  
22 local ordinances that limit or prohibit commercial cannabis deliveries within their jurisdictional  
23 boundaries. As such, there is no speculative injury, “hypothetical exactions,” or “sheer guesswork”  
24 involved. This is a direct usurpation of Plaintiffs’ local control. BCC’s invasion of local  
25 governments’ lawmaking authority is the cognizable injury and suffices to establish standing and a  
26 ripe controversy. *See* Plaintiffs’ Reply Brief, at 24; cf. *Southcentral Foundation v. Alaska Native*  
27 *Tribal Health Consortium* (Sept. 14, 2020, No.18-35868) \_\_\_ F.3d \_\_\_, 2020 WL5509742 at \*4-7  
28 (unlawful infringement of protected tribal governance and participation rights constitutes injury-

1 in-fact sufficient to provide Article III standing). Plaintiffs’ injuries are not hypothetical, and this  
2 Court’s adjudication will not be advisory in nature.

3 **B. The Plaintiff Jurisdictions That Ban All Commercial Deliveries Have a Ripe**  
4 **Controversy.**

5 Regulation 5416(d) states that “[a] delivery employee may deliver to any jurisdiction  
6 within the State of California provided that such delivery is conducted in compliance with all  
7 delivery provisions of this division.” As explained below, this broad grant of authority directly  
8 conflicts with ordinances of the following Plaintiff cities, which ban cannabis deliveries entirely,  
9 as consistent with the Business and Professions Code, Proposition 64, and MAUCRSA.  
10 Accordingly, Regulation 5416(d) directly conflicts with these ordinances, sufficient to state a  
11 controversy ripe for adjudication by this court. (*Pacific Legal Foundation, supra*, 33 Cal.3d at p.  
12 171.)

13 **1. City of Agoura Hills.**

14 Plaintiff City of Agoura Hills, at its Municipal Code, section 9660.2, subdivision (C),  
15 states that “all Deliveries of marijuana or marijuana products are expressly prohibited. No person  
16 shall conduct or perform any delivery of any marijuana or marijuana products, which delivery  
17 either originates or terminates within the city.” (RJN, Vol. 1, Exh. 2 [City of Agoura Hills,  
18 Ordinance No. 17-429, August 23, 2017], p. 19.) Consistent with Business and Professions Code  
19 section 26090, subdivision (e), the ordinance further states that “[t]his subsection shall not prohibit  
20 any person from transporting marijuana through the jurisdictional limits of the city for delivery or  
21 distribution to a person located outside the city, where such transport does not involve delivery or  
22 distribution within the jurisdictional limits of the city.” (*Ibid.*)

23 **2. City of Arcadia.**

24 The City of Arcadia Municipal Code, section 9213, subdivision (D)(1) states that:

25 “The establishment or operation of any business of commercial marijuana activity  
26 is prohibited. No use permit, variance, building permit, or any other entitlement or  
27 permit... shall be approved or issued for the establishment or operation of any such  
28 business or operation. Such prohibited businesses may include: [a.] [t]he  
transportation, delivery, storage, distribution, or sale of marijuana ... .”

(RJN, Vol. 1, Exh. 4 [City of Arcadia, Ordinance Number 2340, October 4, 2016], p. 43)

1           Moreover, Arcadia Municipal Code section 9220.45.1.3, subdivision (A), expressly defines  
2 “commercial marijuana activity” as “the cultivation, possession, manufacture, distribution,  
3 processing, storing, laboratory testing, labeling, transportation, distribution, *delivery* or sale of  
4 marijuana or marijuana products.” (RJN, Vol. 1, Exh. 4, p. 39, italics added.)

5           “Delivery” is defined under subdivision C. as “the commercial transfer of marijuana or  
6 marijuana products to a customer,” including “the use by a retailer of any technology platform  
7 owned and controlled by the retailer, or independently licensed under California law, that enables  
8 customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or  
9 marijuana products.” (RJN, Vol. 1, Exh. 4, p. 39.)

### 10                           **3.       City of Clovis.**

11           The City of Clovis Municipal Code, section 5.22.05, subdivision (c), states that “[t]he  
12 delivery of cannabis as defined in Section 5.22.02(k) is prohibited in the City ... regardless of  
13 whether the delivery is initiated within or outside of the City, and regardless of whether a  
14 technology platform is used for delivery by the dispensary.” (RJN, Vol. 2, Exh. 12 [City of  
15 Clovis, Ordinance No. 17-25, November 13, 2017], p. 13.) Section 5.22.02, subdivision (k),  
16 provides that “[d]elivery’ shall have the meaning set forth in California Business and Professions  
17 Code section 26001, subdivision (p) and shall also include any technological platform that enables  
18 persons to arrange or facilitate the transfer of cannabis.”

### 19                           **4.       City of Covina.**

20           The City of Covina Municipal Code, section 17.84.030, subdivision (A), states that “[t]he  
21 delivery of cannabis within city limits by any means is prohibited.” (RJN, Vol. 2, Exh. 14 [City of  
22 Covina, Ordinance No. 17-09, September 5, 2017], p. 30.)

### 23                           **5.       City of Downey.**

24           The City of Downey Municipal Code, section 9428.08 states that “[d]elivery of any  
25 medical marijuana, medical marijuana products, non-medical marijuana, and non-medical  
26 marijuana products, including, but not limited to, any marijuana-infused product ... from and/or to  
27 any location within the City is prohibited.” (RJN, Vol. 2, Exh. 16 [City of Downey Ordinance No.  
28 17-1384, October 24, 2017], p. 60.)



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**6. City of McFarland.**

The City of McFarland Municipal Code section 5.04.045, subdivision (C), states that “all deliveries of cannabis or cannabis products to or from any location are expressly prohibited. No person shall conduct or perform any delivery of any cannabis or cannabis products, which delivery either originates or terminates within the city.” (RJN, Vol. 2, Exh. 17 [City of McFarland Ordinance No. 075-2017, November 9, 2017], p. 66.) Consistent with Business and Professions Code section 26090, subdivision (e), the ordinance further states that “[n]othing in this Section shall prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.” (*Ibid.*)

**7. City of Newman**

The City of Newman Municipal Code, section 8.07.020, subdivision (B), states that “...all deliveries of medical cannabis (marijuana) are expressly prohibited within the City of Newman. No person shall conduct any deliveries that either originate or terminate within the City.” (RJN, Vol. 2, Exh. 19 [City of Newman, Ordinance Number 2016-01, January 26, 2016], p. 80.)

**8. City of Palmdale.**

The City of Palmdale Municipal Code, section 5.05.030 states that “[i]t shall be unlawful for any person or entity to own, manage, conduct, or operate any Commercial Cannabis Activity or to participate as an employee, contractor, agent, or volunteer, or in any other manner or capacity, in any Commercial Cannabis Activity in the city of Palmdale.” Further, section 5.05.040, states that “[i]t shall be unlawful for any person or entity to Deliver Cannabis or Cannabis Products in the city of Palmdale.” (RJN, Vol. 4, Exh. 23 [City of Palmdale, Ordinance Number 1504, November 3, 2017], p. 6.)

“Commercial Cannabis Activity” is defined under section 5.05.020 as “the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of Cannabis or Cannabis Products.” (RJN, Vol. 4, Exh. 23 [City of Palmdale, Ordinance Number 1504, November 3, 2017], p. 6.)

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1                                   **9.      City of Riverside.**

2                   The City of Riverside Municipal Code section 19.342.020, subdivision (A), states that  
3 “[a]ll marijuana cultivation, processing, delivery, sales and dispensaries, or any similar use, shall  
4 be prohibited activities in all zones and all specific plan areas of the City. No use permit, variance,  
5 building permit, or any other entitlement, license, or permit, whether administrative or  
6 discretionary, shall be approved or issued for the activities of marijuana cultivation, processing,  
7 delivery, sales, the establishment or operation of a marijuana dispensary or retail store, or any  
8 similar use, in the City, and no person shall otherwise establish or conduct such activities in the  
9 City.” (RJN, Vol. 5, Exh. 26 [City of Riverside, Ordinance Number 7431, July 24, 2018], p. 6.)

10                                   **10.     City of San Pablo.**

11                   The City of San Pablo Municipal Code (“SPMC”) section 17.62.130, subdivision (D) states  
12 that “[d]elivery ... of marijuana to or from any location within the jurisdictional limits of the city  
13 of San Pablo regardless of zoning district is prohibited ... . The city shall not issue, approve or  
14 grant any permit, license or other entitlement for Delivery of marijuana.” (RJN, Vol.5, Exh. 27  
15 [City of San Pablo, Ordinance No. 2017-005, September 18, 2017], p. 36.) The only change  
16 between the ordinance included in the Plaintiffs’ RJN and the ordinance included BCC's Request  
17 for Judicial Notice is that the new ordinance changed the word “marijuana” to use “cannabis” in  
18 the ordinance text. There was no change to delivery prohibition. (BCC’s RJN, Vol. 2, Exh. I, p.  
19 32.)

20                                   **11.     City of Tehachapi.**

21                   The City of Tehachapi Municipal Code (“TMC”) section 6.20.170, subdivision (B)(1),  
22 states “[c]ommercial cannabis activity and commercial cannabis uses are expressly prohibited in  
23 the city. No person shall engage in commercial cannabis activity in the city. This prohibition shall  
24 apply to all activities and uses for which a state permit is required pursuant to the MAUCRSA.”  
25 (RJN, Vol. 5, Exh. 30 [City of Tehachapi, Ordinance Number 17-08-746, December 18, 2017], p.  
26 60.) Further, “Commercial Cannabis Activity” is expressly defined in 6.20.170, subdivision (C) as  
27 “the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing,  
28 packaging, labeling, transportation, delivery or sale of cannabis or cannabis product ... .” (*Id.* at p.

1 62.)

2 **C. The Plaintiff Jurisdictions That Ban Cannabis Deliveries by Non-Local**  
3 **Businesses Have a Ripe Controversy.**

4 Regulation 5416(d)'s scope is sweeping. By mandating that any state-registered  
5 commercial cannabis delivery business may deliver to any location in the state, Regulation  
6 5416(d) attempts to supersede local ordinances in those cities and counties seeking to ban  
7 deliveries from non-local delivery businesses. Such ordinances are essential for these local  
8 jurisdictions to regulate and oversee their local economies, an essential goal of local government  
9 and one that is expressly authorized by California Constitution, article XI, section 7. Regulation  
10 5416(d) directly cuts against these interests. Each of the following jurisdictions ban all commercial  
11 cannabis deliveries by non-local businesses. Therefore, Regulation 5416(d) directly conflicts with  
12 these ordinances, sufficient to state a controversy ripe for adjudication by this court. (*Pacific*  
13 *Legal, supra*, 33 Cal.3d at p. 171.)

14 **1. City of Beverly Hills.**

15 The City of Beverly Hills Municipal Code, section 10-3-4702, subdivision (D), states that  
16 “all deliveries of cannabis or cannabis products for non-medical purposes, to or from any location  
17 are expressly prohibited. No person or shall conduct or perform any delivery of any cannabis or  
18 cannabis products for a non-medical purpose, which delivery either originates or terminates within  
19 the city.” (RJN, Vol. 1, Exh. 6 [City of Beverly Hills, Ordinance Number 17-O-2734, September  
20 8, 2017], p. 72.)

21 **2. City of Dixon.**

22 The City of Dixon Municipal Code section 6.12.080, subdivision (C), states that that “[a]ny  
23 commercial cannabis activity related to delivery is prohibited unless that activity is performed by a  
24 cannabis dispensary authorized by this Code. The city reserves the right to prohibit a cannabis  
25 dispensary from performing delivery services.” (RJN, Vol. 2, Exh. 15 [City of Dixon, Ordinance  
26 No. 17-008, November 28, 2017], p. 42.) The “cannabis dispensary authorized by this Code”  
27 means a cannabis dispensary located within the city limits, of which there will be a maximum of  
28 two allowed within the city, subject to a development agreement and conditional use permit

1 authorized by the City. (DMC, § 6.12.080, subd. (A).) Accordingly, all deliveries by any non-  
2 local cannabis business are prohibited within the City of Dixon.

### 3 **3. City of Oakdale.**

4 The City of Oakdale Municipal Code (“OMC”) section 37-12, subdivision (c), states that  
5 “[a] cannabis delivery business is prohibited within the city. Any commercial cannabis activity  
6 related to delivery is prohibited unless that activity is performed by a cannabis dispensary  
7 permitted by this chapter. The city reserves the right to prohibit a cannabis dispensary from  
8 performing delivery services.” (RJN, Vol. 3, Exh. 22 [City of Oakdale, Ordinance No. 1255,  
9 March 23, 2018], p. 29; Exh. 21, [City of Oakdale, Ordinance No. 1251, November 20, 2017].)

10 The “cannabis dispensary permitted by this chapter” means a cannabis dispensary located  
11 within the city limits, of which there will be a maximum of two allowed within the city, subject to  
12 a development agreement and conditional use permit. (OMC, § 37-12, subd. (a)) Accordingly, all  
13 deliveries by any other non-local cannabis business are prohibited within the City of Oakdale.

### 14 **4. City of Patterson.**

15 The City of Patterson Municipal Code (“PMC”) section 6.56.060, subdivision (C), states  
16 that “[a] cannabis delivery business is prohibited within the city. Any commercial cannabis  
17 activity related to delivery is prohibited unless that activity is performed by a cannabis dispensary  
18 permitted by this chapter. The city reserves the right to prohibit a cannabis dispensary from  
19 performing delivery services.” (RJN, Vol. 4, Exh. 24 [Patterson City Ordinance No. 806, -  
20 November 7, 2017], p. 18-19.) The “cannabis dispensary permitted by this chapter” means a  
21 cannabis dispensary located within the city limits, of which there will be a maximum of three  
22 allowed within the city, subject to a development agreement and conditional use permit. (PMC, §  
23 6.56.060, subd. (A).) Accordingly, all deliveries by any other non-local cannabis business are  
24 prohibited within the City of Patterson.

### 25 **5. County of Santa Cruz.**

26 The Santa Cruz County Code section 7.130.050, subdivision (C), states that “[i]t is  
27 unlawful and shall constitute a public nuisance for anyone other than a locally licensed dispensary  
28 to engage in retail sales of cannabis, including mobile delivery of cannabis purchased by

1 consumers online or over the telephone.” (RJN, Vol. 1, Exh. 1 [Santa Cruz County Code, chapters  
2 7.130 and 7.134] p. 4.) Further, section 7.130.110, subdivision (F)(1), states that “[h]olders of a  
3 level one dispensary license may deliver cannabis to cannabis consumers off-premises via mobile  
4 delivery services, subject to the provisions of this section. Only locally licensed dispensaries may  
5 engage in mobile delivery of cannabis.” (RJN, Vol. 1, Exh. 1, p. 8.) Accordingly, all deliveries by  
6 any other non-local cannabis business are prohibited within the County of Santa Cruz. As noted,  
7 BCC has already previously sued the County of Santa Cruz contending that Regulation 5416(d)  
8 preempted Santa Cruz’s ordinances, rendering them void.

9 **6. City of Sonora.**

10 The City of Sonora Municipal Code (“SMC”) section 8.36.040, subdivision (C), states that  
11 “[a]ny commercial cannabis activity related to delivery is prohibited, unless that activity is  
12 performed by a cannabis dispensary authorized by this chapter. The City reserves the right to  
13 prohibit a cannabis dispensary from performing delivery services.” (RJN, Vol. 5, Exh. 28 [City of  
14 Sonora Ordinance No. 2017-848, January 16, 2018], p. 46.) “Cannabis dispensary” means  
15 medicinal cannabis only. (SMC, § 8.36.000, subd. (F).)

16 Accordingly, all deliveries by any non-medicinal cannabis delivery business are prohibited  
17 within the City of Sonora.

18 **7. City of Temecula.**

19 The City of Temecula Municipal Code section 8.52.040, subdivision (D), states that  
20 “[e]xcept for deliveries to primary caregivers or qualified patients, as defined in this chapter, all  
21 deliveries of marijuana or marijuana products to or from any location in the city are expressly  
22 prohibited ... [and] no person shall conduct or perform any delivery of any marijuana or marijuana  
23 products, which delivery either originates or terminates within the city. This subsection shall not  
24 prohibit any person from transporting marijuana or marijuana products on public roads by a person  
25 licensed under either Chapter 3.5 of Division 8 or Division 10 of the California Business and  
26 Professions Code.” (RJN, Vol. 6, Exh. 31 [City of Temecula, Ordinance Number 17-02, June 13,  
27 2017], p. 9.)

28 **8. City of Turlock.**

1 The City of Turlock Municipal Code (“TMC”) section 5-21-104, subdivision (C), states  
2 that “[a]ny commercial cannabis activity related to delivery is prohibited unless that activity is  
3 performed by a cannabis dispensary authorized by this code. The city reserves the right to prohibit  
4 a cannabis dispensary from performing delivery services.” (RJN, Vol. 6, Exh. 34 [City of Turlock,  
5 Ordinance No. 1255-CS, June 11, 2019], p. 70.) A “cannabis dispensary authorized by this code”  
6 means a cannabis dispensary located within the city limits, of which there will be a maximum of  
7 four allowed within the city limits, subject to a development agreement and conditional use permit.  
8 (TMC, § 5-21-104, subd. (A).) Accordingly, all deliveries by any other non-local cannabis  
9 business are prohibited within the City of Turlock.

10 **D. Plaintiff Jurisdictions That Require Local Licenses Have a Ripe Controversy.**

11 A number of plaintiff jurisdiction permit delivery within city limits by out-of-town  
12 delivery businesses, but also require those business to obtain a local business license or permit in  
13 order to deliver within the city limits. These licenses or permits are subject to other regulations  
14 and requirements, all set by each city pursuant to its general police powers. (Cal. Const., Art. XI, §  
15 7 [“A county or city may make and enforce within its limits all local, police, sanitary, and other  
16 ordinances and regulations not in conflict with general laws”]; Gov. Code, § 37101.) Every  
17 Plaintiff discussed in this section below places restrictions on the activities of cannabis delivery  
18 businesses, which are part of the business licensing requirements of each jurisdiction. Regulation  
19 5416(d), by allowing delivery to any physical address in the state, overrides the ability of the  
20 Plaintiff local governments to enforce their local licensing ordinances, thereby giving rise to a  
21 controversy ripe for adjudication. (*Pacific Legal, supra*, 33 Cal.3d at p. 171.)

22 **1. City of Atwater.**

23 The City of Atwater Municipal Code section 5.60.050 states the following with respect to  
24 commercial cannabis delivery:

25 **Section 5.60.060 – Cannabis Deliveries from Outside City Limits.**

26 Any commercial cannabis activity related to cannabis deliveries is  
27 prohibited unless the business first obtains a City license. The City reserves  
28 the right to deny any business license application for a business that  
performs cannabis deliveries within the City. The possession of a state  
license from another city, county or other government entity does not allow

1 a cannabis business to provide cannabis delivery services in the City.

2 (RJN, Vol. 1, Exh. 5 [City of Atwater Ordinance No. CS 996, May 14, 2018], p. 55.)

3 This ordinance specifically preserves the City’s right to deny a business license application and to  
4 refuse to honor another city’s license for a commercial cannabis delivery business. It therefore  
5 presents a conflict with BCC’s asserted scope of Regulation 5416(d), which is to allow deliveries  
6 to any jurisdiction in the state.

7 **2. City of Ceres.**

8 The City of Ceres Municipal Code section 9.120.030, subdivision (A), states that cannabis  
9 businesses shall only be permitted “to operate in the City following application, investigation,  
10 verification, approval, and issuance of a development agreement approved by the City Council,  
11 and a cannabis business permit issued by the City” pursuant to the Ceres Municipal Code  
12 requirements. (RJN, Vol. 2, Exh. 13 [City of Ceres Ordinance No. 2018-1045, May 29, 2018], p.  
13 20.) This effectively places the control in the hands of the City to issue a business license.  
14 Regulation 5416(d) usurps that control by mandating that all delivery businesses may deliver  
15 within the City of Ceres, irrespective of Ceres’ regulatory acts or license determinations.

16 **3. City of Riverbank.**

17 The City of Riverbank Municipal Code (“RMC”) section 120.50 states that “[a]ll cannabis  
18 delivery is prohibited in the city unless the cannabis business obtains a city business license and  
19 maintains compliance with [RMC § 120.40, regarding cannabis dispensaries] and RMC § 110.19”  
20 [tax on deliveries by non-resident businesses]. (RJN, Vol. 4, Exh. 25 [City of Riverbank,  
21 Ordinance No. 2017-007, August 22, 2017] p. 47.) Further, section 120.03, subdivision (B) states  
22 “[a]ny cannabis business allowed in the city shall be permitted pursuant to a development  
23 agreement, a city business license, a conditional use permit, or a combination of the three...” (*Id.*  
24 at p. 39.) Regulation 5416(d), by conferring an automatic right to delivery businesses to bypass  
25 these local requirements, eviscerates the local control this ordinance confers.

26 **4. City of Tracy.**

27 The City of Tracy Municipal Code (“TMC”) section 6.36.030 states that “[n]o person may  
28 engage in any commercial cannabis activity within the City of Tracy unless the person... has a

1 valid Cannabis Business Permit from the City...” (RJN, Vol. 6, Exh. 32 [City of Tracy, Ordinance  
2 No. 1277, December 3, 2019], p. 27.) Further, section 6.36.370, subdivision (c)(i)-(iii), prohibits  
3 all commercial cannabis deliveries except only to residential addresses, including assisted living  
4 facilities. (*Ibid.*) The business license requirements are subject to the discretion of the City, and  
5 may be denied for any reason the City sees fit, provided it is not arbitrary or capricious. In other  
6 words, the cannabis delivery business does not possess an unrestricted right to conduct business  
7 within the City of Tracy.

8 **5. City of Angels Camp.**

9 The City of Angels Camp Municipal Code, section 5.10.040, allows delivery of  
10 commercial cannabis by businesses based outside the City but only subject to certain restrictions.  
11 Namely, such delivery businesses (1) must not possess cannabis goods valued in excess of  
12 \$10,000 at any time while making deliveries in the City; (2) may only conduct deliveries within  
13 the City between 8:00 a.m. and 8:00 p.m.; (3) register with the City of Angels Police Department  
14 and submit employees to background checks; (4) submit proof of business registration and report  
15 all thefts to the Police Department annually; (5) cannot accept cash for any transaction; and (6)  
16 must pay City’s business license tax and obtain a business license certificate before conducting  
17 any business within the City. (RJN, Exh. 3 [Ordinance of the City of Angels Camp, Ordinance  
18 Number 483, June 19, 2018], p. 28-29.) The business license requirements stand separate and  
19 above BCC’s requirements, but are be necessarily rendered superfluous and unenforceable by  
20 Regulation 5416(d).

21 **6. City of Vacaville.**

22 The City of Vacaville passed a complete prohibition on all commercial cannabis activity  
23 within its city limits under Vacaville Municipal Code sections 9.13.030 and 9.13.040, including all  
24 deliveries of any kind, but subject to an exemption that permits all MAUCRSA-related deliveries  
25 until such time as MAUCRSA is “either repealed or no longer restricts local control over the  
26 delivery of medicinal or recreational cannabis, cannabis concentrate, or cannabis product.” (RJN,  
27 Vol. 6, Exh. 35 [City of Vacaville, Ordinance No. 1944, June 27, 2019], p. 102.) The Ordinance,  
28 by is express terms, states that provisions of law that permit state licenses of cannabis activities by



1 right, as Regulation 5416(d)) purports to do, currently present an issue by depriving the City of  
2 Vacaville of its ability to ban cannabis deliveries within its boundaries.

3 **IV. CONCLUSION**

4 For all of the reasons set forth above and in Plaintiffs' previously filed Trial Brief and  
5 Reply, Plaintiffs have standing and this matter is ripe for adjudication. Regulation 5416(d)  
6 violates the law, and in so violating the law, specifically and concretely impacts each of the  
7 Plaintiffs, who have exercised their expressly statutorily protected authority with respect to  
8 regulating cannabis deliveries within their local boundaries. (*See* Business and Professions Code,  
9 § 26200, subd. (a). Moreover, this dispute presents an interest of compelling statewide interest,  
10 with the regulatory uncertainty raised by BCC's overreach affecting not only local governments  
11 but also cannabis businesses and California citizens. If they show nothing else, the amicus  
12 submissions and media inquiries demonstrate that fact. These facts as well support a finding of  
13 ripeness and standing. (*See generally* Reply Brief, at 23-27 & fn.12.)

14 Regulation 5416(d) is before this Court because it directly conflicts with Business and  
15 Professions Code sections 26090, subdivision (e), and 26200, subdivision (a)(1), and therefore  
16 must be declared void.

17  
18 Respectfully submitted,

19 DATED: Sept. 21, 2020

CHURCHWELL WHITE LLP

20  
21 By:           /s/ Steven G. Churchwell            
22 STEVEN G. CHURCHWELL  
23 *Attorneys for Plaintiffs County of Santa*  
24 *Cruz, et al.*

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**EXHIBIT A**

## **Exhibit A**

| <u><b>Category 1</b></u><br><b>Ordinances Banning All Cannabis Delivery</b> | <u><b>Category 2</b></u><br><b>Ordinances Banning Delivery by Out-of-Town Cannabis Businesses</b> | <u><b>Category 3</b></u><br><b>Ordinances Restricting Cannabis Delivery via Licensing Requirements or Regulations</b> |
|---|---|---|
| City of Agoura Hills  | City of Beverly Hills <sup>1</sup>  | City of Atwater   |
| City of Arcadia   | City of Dixon   | City of Ceres   |
| City of Clovis  | City of Oakdale   | City of Riverbank   |
| City of Covina  | City of Patterson   | City of Tracy   |
| City of Downey  | County of Santa Cruz  | City of Angels Camp   |
| City of McFarland   | City of Sonora  | City of Vacaville   |
| City of Newman  | City of Temecula <sup>2</sup>   |   |
| City of Palmdale  | City of Turlock   |   |
| City of Riverside   |   |   |
| City of San Pablo   |   |   |
| City of Tehachapi   |   |   |

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<sup>1</sup> The City of Beverly Hills and the City of Temecula only ban delivery of *non-medical* cannabis by out-of-town businesses.

<sup>2</sup> *Ibid.*