PRESS RELEASE

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Governor Signs Landmark Medical Marijuana Legislation; Nestdrop Delivery App Challenges the Validity of LA's Prop. D in the California Court of Appeal

SACRAMENTO & LOS ANGELES, October 9, 2015: California Governor Jerry Brown officially signed into law AB 243, AB 266, and SB 643, thus officially enacting the landmark Medical Marijuana Regulation and Safety Act (hereinafter, "MMRSA"). Overlooked in the flurry of activity during the closing weeks of this year's legislative session, Nestdrop LLC, makers of the highly-successfully Nestdrop[SM] medical marijuana delivery app, (hereinafter, "Nestdrop") filed a brief in the Second District California Court of Appeal challenging the validity of Los Angeles's notorious medical marijuana ordinance—Prop. D.

Although the full opening brief is attached, below is a summary of the ongoing case and Nestdrop's argument in the Court of Appeal:

> On December 2, 2014, the Los Angeles City Attorney (hereinafter, the "City Attorney") filed charges against Nestdrop for aiding and abetting violations of Prop. D's prohibition on medical marijuana businesses. However, Nestdrop does not actually operate a dispensary; rather the Nestdrop[SM] app merely provides a medium for medical marijuana patients and dispensaries to conduct transactions—no different from a phone or computer, other than being specifically tailored for medical marijuana delivery. As a result, the City Attorney has not alleged a specific unlawful delivery that Nestdrop aided and abetted, but rather has asserted that Prop. D bans all delivery of medical marijuana. To reach this result, the City Attorney relies on a hyper-technical, non-obvious reading of Prop. D in which the four words—"at the one location"—contained in the section of Prop. D that provides immunity to medical marijuana businesses registered with Los Angeles under its Interim Control Ordinance (hereinafter, "pre-ICO medical marijuana businesses"). According to the City Attorney, the "at the one location" language means that Prop. D's immunity for pre-ICO medical marijuana businesses is confined to a particular parcel of land rather than the vehicles associated with the medical marijuana business.
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> To begin, Nestdrop has argued that the City Attorney's reading of Prop. D is incorrect and does not represent what the voters of Los Angeles actually intended. To do so, Nestdrop demonstrates that, as a matter of plain-language, the "at the one location" language is meant to confine medical marijuana businesses to a single physical location but places no similar restrictions on the use of vehicles for medical marijuana delivery by pre-ICO medical marijuana businesses. In so doing, Nestdrop highlights that, if the voters wanted ban all medical marijuana delivery, they could have done so specifically in the section of Prop. D providing operational restrictions for pre-ICO medical marijuana businesses (e.g., operating hours, permissible locations, etc.). Nestdrop then points out that Prop. D's ballot pamphlet states in no uncertain terms on multiple occasions—"The

measure would also exempt . . . both locations and vehicles during the time they are used to deliver medical marijuana to a qualified patient." Last, Nestdrop argues that even if the City Attorney's reading is correct as a matter of plain-language, confining Prop. D's immunity for pre-ICO medical marijuana businesses to a parcel of land is an absurd result the voters did not intend because doing so would effectively ban all medical marijuana businesses. In other words, the City Attorney's reading denies immunity for any and all pre-ICO medical marijuana business activities outside the four corners of a parcel of land and no business can effectively operate in such an isolated manner.

Perhaps more interestingly, Nestdrop is willing to assume, for the sake of argument, that the City Attorney's reading of Prop. D is actually correct because, if so, the City Attorney wins the battle but loses the war. If Prop. D's immunity is actually limited to activities on a parcel of land, Prop. D flatly prohibits "[a]ny vehicle . . . , which is used to transport, distribute, deliver, or give away marijuana to a qualified patient, a person with an identification card, or a primary caregiver" within Los Angeles. If Prop. D flatly prohibits any vehicle used to transport medical marijuana within Los Angeles, then Prop. D is preempted by the California Vehicle Code and is invalid in its entirety.

The Vehicle Code prohibits cities from enacting ordinances related to vehicle travel and activities in vehicles unless expressly authorized by the State Legislature (or statewide initiative). The Vehicle Code does not contain a provision permitting cities to ban or restrict otherwise lawful travel involving medical marijuana. Quite the opposite, the Vehicle Code contains a provision that the California Court of Appeal has interpreted as explicitly prohibiting cities from banning vending from vehicles—which includes medical marijuana delivery. This makes sense as a matter of logic and policy. Under the City Attorney's reading, Prop. D prohibits a medical marijuana business based outside of Los Angeles in full compliance with state marijuana laws and local regulations from transporting medical marijuana through Los Angeles. After all, the vehicle transporting medical marijuana through Los Angeles on behalf of a medical marijuana business based outside of Los Angeles would be a "vehicle . . . , which is used to transport, distribute, deliver, or give away marijuana to a qualified patient, a person with an identification card, or a primary caregiver" within Los Angeles.

That means medical marijuana businesses based in, for example, Orange County or San Diego County must transport medical marijuana by going around Los Angeles. However, this is not even an option for other cities in Los Angeles County which are completely surrounded by Los Angeles. For example, West Hollywood's medical marijuana ordinance explicitly permits authorized medical marijuana businesses to cultivate medical marijuana in an off-site location (i.e., outside of West Hollywood) and then have that medical marijuana dispensed from the permitted location within West Hollywood. However, under the City Attorney's reading of Prop. D, the voters of Los Angeles have prohibited conduct that the voters of West Hollywood decided to permit—an absolute affront to the core principles of representative democracy.

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Having demonstrated that, under the City Attorney's reading, the "at the one location" language in Prop. D is preempted by the Vehicle Code and thus invalid, Nestdrop has to argue what happens to the ordinance as whole as a result. Under normal circumstances, a court would just strike the invalid language and let the remainder of the ordinance continue to operate. However, Prop. D contains a provision that requires the entire ordinance to be held invalid if any portion of the section of Prop. D that provides immunity to pre-ICO medical marijuana businesses is held invalid. The "at the one location" language is within the section of Prop. D that provides immunity to pre-ICO medical marijuana businesses. Therefore, Prop. D is invalid in its entirety.

As a final note, Nestdrop anticipates the City Attorney will attempt to argue that the California Supreme Court's seminal decision in *City of Riverside v. Inland Empire Patients Health & Wellness Center* allows Los Angeles to strictly prohibit vehicles used to transport and deliver medical marijuana within Los Angeles. However, *Riverside* did not address the issue of whether the Vehicle Code can preempt a city's regulation of medical marijuana businesses. Rather, *Riverside*, addressed the question of whether California's medical marijuana laws preempt a city's "total ban on ***facilities*** that cultivate and distribute medical marijuana" and had nothing to say regarding a ban on ***vehicles***. On that note, the ordinance in dispute in *Riverside* did not even attempt to prohibit vehicles used to transport and deliver medical marijuana.

Although MMRSA does not take effect until January 1, 2016, and its licensing program will not be fully in place until January 1, 2018, the landmark legislation unequivocally affirms Nestdrop's understanding of Prop. D.

To begin, MMRSA's provision that will become Business & Professions Code section 19340(a) only bans medical marijuana delivery where a city has "explicitly prohibit[ed]" medical marijuana delivery by ordinance. As indicated above, the Vehicle Code prevented cities from banning medical marijuana delivery until permitted by the state legislature. Once effective, MMRSA will provide cities that permission, but they must do so "explicitly". Given the City Attorney's reliance on a hyper-technical, non-obvious reading using four words ("at the one location") seemingly innocuous to the issue of delivery and the absence of a specific condition preventing pre-ICO medical marijuana businesses from delivering medical marijuana, Prop. D does not "explicitly prohibit" medical marijuana delivery as required under MMRSA. Moreover, MMRSA was merely a "twinkle in the Legislature's eye" when the Los Angeles voters enacted Prop. D. In other words, at the time Prop. D passed, the voters did not have the legal authority to ban medical marijuana delivery under the Vehicle Code, and, to quote from the California Supreme Court, courts "assume that the voters intended the measure to be valid and construe it to avoid serious doubts as to its constitutionality if that can be done without doing violence to the reasonable meaning of the language." Thus, the Los Angeles voters could not have intended to ban delivery services when enacting Prop. D because doing so at that time would have been unconstitutional.

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Despite giving cities the permission to "explicitly prohibit" medical marijuana delivery, MMRSA provides cities no further authority to regulate California's public roads for otherwise lawful travel involving medical marijuana. To demonstrate, MMRSA's provision that will become Business & Professions Code section 19340(f), states in no uncertain terms that:

> A local jurisdiction shall not prevent carriage of medical cannabis or medical cannabis products on public roads by a licensee acting in compliance with this chapter.

Business & Professions Code section 19340(f) then confirms what was already true under the Vehicle Code—a city may not ban or restrict otherwise lawful travel involving medical marijuana. Thus, by prohibiting "[a]ny vehicle or other mode of transportation . . . which is used to ***transport*** . . . marijuana to a qualified patient, a person with an identification card, or a primary caregiver" within Los Angeles, Prop. D is still preempted by the Vehicle Code once MMRSA takes effect.

The provisions of MMRSA designed to preserve local dispensary/cultivation bans and giving Los Angeles continued authority to enforce Prop. D cannot save Prop. D from Vehicle Code preemption. MMRSA's provision preserving local dispensary/cultivation bans states that: "Nothing in [MMRSA] shall be interpreted to supersede . . . enforcement of local zoning requirements or local ordinances . . . ." However, Nestdrop is not suggesting that MMRSA supersedes Prop. D. Rather, Nestdrop is arguing that the Vehicle Code supersedes Prop. D. Similarly, another MMRSA provision preserving local dispensary/cultivation bans states that: "Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person . . . ." Again, however, Nestdrop is not suggesting that "[e]xemption from the requirements of this section" prevents a city from banning transportation of medical marijuana. Rather, again, Nestdrop is asserting that the Vehicle Code prevents a city from banning transportation of medical marijuana.

MMRSA's provision giving Los Angeles continued authority to enforce Prop. D states that: "Issuance of a state [commercial cannabis] license . . . shall in no way limit the ability of the City of Los Angeles to prosecute any person or entity for a violation of, or otherwise enforce, Proposition D . . . ." However, yet again, Nestdrop is not suggesting that a state commercial cannabis license limits Los Angeles's ability to enforce Prop. D. Rather, to repeat itself, Nestdrop is asserting that the Vehicle Code limits Los Angeles's ability to enforce Prop. D. In other words, Nestdrop's response to any argument the City Attorney could make using MMRSA is essentially—"It's the Vehicle Code, stupid."

Thanks in advance for your interest in Nestdrop's case. Nestdrop hopes that you agree that this work represents a matter of great public interest and that Nestdrop has presented some very strong and interesting arguments.

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Please let our firm know if you have any further interest or questions. If you are interested, we can make arrangements for a call, meeting, or interview for further discussion on the case.

Sincerely,

/s/

Michael D. Grahn, Esq. State Bar No. 228316
Attorney for Nestdrop, LLC, a California Limited Liability Company; Michael Joseph Pycher, individually and as a member of Nestdrop, LLC; and Roddy Radnia, individually and as a member of Nestdrop, LLC.

Attachment: Appellant's Opening Brief in People and the City of Los Angeles v. Nestdrop

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