Filed 11/9/11 P. v. G3 Holistic CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE OF THE STATE OF CALIFORNIA et al.,

Plaintiffs and Respondents,

v.

G3 HOLISTIC, INC.,

Defendant and Appellant.

E051663

(Super.Ct.No. CIVRS1002649)

OPINION

APPEAL from the Superior Court of San Bernardino County. Barry L. Plotkin, Judge. Affirmed.

Roger Jon Diamond for Defendant and Appellant.

William P. Curley, III, City Attorney; Richards, Watson & Gershon, Mitchell E. Abbott, T. Peter Pierce, and Christopher L. Hendricks for Plaintiffs and Respondents.

I

INTRODUCTION

Defendant G3 Holistic, Inc. (G3 Holistic) appeals from a judgment entered in

favor of plaintiffs, the People of the State of California and the City of Upland (plaintiffs), after the trial court issued a permanent injunction enjoining G3 Holistic from operating a medical marijuana dispensary (MMD)[1] in the City of Upland (Upland). The court further found that G3 Holistic's MMD constituted a public nuisance per se and awarded plaintiffs their costs of suit.

G3 Holistic contends Upland's ordinance banning MMD's in Upland is preempted by state law; specifically, the Compassionate Use Act of 1996 (CUA) (Health & Saf. Code, § 11362.5)[2] and the Medical Marijuana Program (MMP) (§§ 11362.7-11362.83). G3 Holistic further contends that, in the event this court holds that Upland's ordinance and preliminary injunction are invalid, all attorney fees and costs awarded to plaintiffs must be reversed. We conclude Upland's ordinance banning MMD's is not preempted by state law. We therefore affirm the preliminary injunction, judgment, and all related monetary awards.

II

FACTUAL AND PROCEDURAL BACKGROUND

On November 15, 2009, G3 Holistic, a nonprofit mutual benefit corporation, began operating an MMD in Upland. On November 23, 2009, G3 Holistic applied for a

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[1] When referring to MMD's, we use the term MMD broadly to include cooperatives, collectives, and dispensaries, despite any technical differences that may exist between them.

[2] Unless otherwise noted, all statutory references are to the Health and Safety Code.

business license. G3 Holistic's business license application and articles of incorporation disclosed G3 Holistic's intent to operate an MMD in Upland. Upland did not issue G3 Holistic a business license.

On November 24, 2009, Upland Code Enforcement Officer Michael Ollis sent G3 Holistic a notice of violation, demanding that G3 Holistic stop operating its MMD business. Officer Ollis notified G3 Holistic that it was in violation of Upland Municipal Code (UMC) section 5.04.090 because G3 Holistic was operating without a business license. UMC section 5.04.090A provides that: "It is unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the city without first having procured a license from the city . . . or without complying with any and all applicable provisions of this title and the Upland Municipal Code." The notice of violation also stated that, under UMC section 17.12.050E: "No medical marijuana dispensary . . . shall be permitted in any zone within the city." Officer Ollis warned G3 Holistic that the notice of violation order might result in the issuance of a citation or other legal action by the city attorney's office.

Between December 2009 and March 2010, Upland City Attorney William Curley discussed the notice of violation with G3 Holistic's chief executive officer, Aaron Sandusky, and G3 Holistic's attorney, Rajan Maline. Curley told Maline that Upland's zoning provisions did not allow MMD's as a permissible use in Upland and that G3 Holistic must cease its operations immediately. On March 8, 2010, Curley sent Maline a letter asking whether G3 Holistic would voluntarily close down its illegal MMD business

in Upland. In response, Maline told Curley that G3 Holistic believed its business was legal and would not close.

On March 15, 2010, plaintiffs filed a complaint against G3 Holistic and the property owner, Magna & Magna, for declaratory relief and a preliminary and permanent injunction to abate G3 Holistic's MMD as a public nuisance. The complaint alleged G3 Holistic was required to have a business license to transact business in Upland under UMC section 5.04.090A. Selling marijuana is not a permitted use in the highway commercial zone where G3 Holistic was located, under UMC chapter 17.74 and UMC section 17.12.130, and MMD's are not permitted in any zone within Upland under UMC section 17.12.050E. Any use of real property contrary to Upland's zoning code is unlawful and a public nuisance under UMC section 17.12.170. G3 Holistic was conducting a business without a license and selling marijuana to the public. The property owner, Magna & Magna, was aware G3 Holistic was illegally conducting business on Magna & Magna's property. Plaintiffs requested the court to enjoin G3 Holistic from conducting business in Upland without first obtaining a license. Plaintiffs also requested the court to enjoin G3 Holistic from selling marijuana and Magna & Magna from assisting G3 Holistic. In addition, plaintiffs requested the court to declare G3 Holistic's MMD business a public nuisance per se. G3 Holistic answered the complaint.

In June 2010, plaintiffs filed a motion for a preliminary injunction, seeking to shut down G3 Holistic's MMD. On August 13, 2010, the trial court heard the motion and issued a preliminary injunction prohibiting G3 Holistic from operating an MMD in

Upland. G3 Holistic nevertheless continued operating its MMD until September 20, 2010, when G3 Holistic agreed to close.

In the meantime, on August 19, 2010, G3 Holistic filed a motion to vacate the preliminary injunction on the ground *Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734 (*Qualified*), decided on August 18, 2010, undermined case law relied upon by the trial court in granting plaintiffs' preliminary injunction (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418 [Fourth Dist., Div. Two] (*Naulls*); *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 (*Kruse*)). The trial court heard and denied the motion to vacate, concluding *Qualified* was not dispositive and did not undermine case law relied upon by the court in granting the preliminary injunction.

After G3 Holistic finally closed down its MMD, the parties stipulated on September 17, 2010, that the preliminary injunction issued on August 13, 2010, would be deemed the permanent injunction for purposes of appellate review.

In October 2010, plaintiffs filed a motion for attorney fees and costs. On November 30, 2010, the court signed and filed a judgment of permanent injunction and awarded fees and costs to Upland in the amount of $5,000. Also on November 30, 2010, the trial court filed and signed an order awarding fees and costs in the amount of $5,000, incurred in connection with contempt proceedings to enforce the court's September 13, 2010 order.

On March 25, 2011, this court issued an order denying G3 Holistic's request that G3 Holistic's notice of appeal, filed on January 3, 2011, be treated as incorporating G3

Holistic's appeal from the order of contempt on September 13, 2010 and related award of attorney fees and costs. This court ordered the matter challenging fees and costs be treated as a petition for writ of certiorari and argued in G3 Holistic's opening brief in this appeal.

III

STANDARD OF REVIEW

Upland's zoning and business license ordinance prohibits MMD's in Upland. As a zoning and business licensing violation, an MMD in Upland constitutes a nuisance, subject to abatement and a criminal misdemeanor. (UMC §§ 17.12.050, 17.12.170.)

The issue here is whether Upland can use its zoning and business licensing authority to ban G3 Holistic's MMD from the city. Specifically, this court must determine whether Upland's zoning and business licensing ordinance prohibiting MMD's, is preempted by state law (the CUA and MMP). "'Whether state law preempts a local ordinance is a question of law that is subject to de novo review. [Citation.]' [Citation.] 'The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption. [Citation.]' [Citation.]" (*Kruse, supra,* 177 Cal.App.4th at p. 1168.) Since the facts are undisputed, this is a question of law which we review de novo. (*Ibid.*) G3 Holistic bears the burden of demonstrating preemption. G3 Holistic has not met this burden.

IV

PREEMPTION PRINCIPLES

The general principles governing state statutory preemption of local land use regulation are well settled. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1150; *Kruse, supra*, 177 Cal.App.4th at p. 1168.) Under article XI, section 7 of the California Constitution, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." "'If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.'" (*Sherwin–Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 (*Sherwin–Williams*), quoting *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885.) Three types of conflicts give rise to state law preemption: a local law (1) duplicates state law, (2) contradicts state law, or (3) enters an area fully occupied by state law, either expressly or by legislative implication. (*Kruse, supra*, at p. 1168; *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1242.)

Where, as here, there is no clear indication of preemptive intent from the Legislature, we presume that Upland's zoning regulations, in an area over which local government traditionally has exercised control, are not preempted by state law. (*Kruse, supra,* 177 Cal.App.4th at p. 1169.) "'[W]hen local government regulates in an area over which it traditionally exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the

Legislature, that such regulation is *not* preempted by state statute. [Citation.]'" (*Ibid.*, quoting *Big Creek Lumber Co. v. County of Santa Cruz, supra,* 38 Cal.4th at p. 1149.) This court thus must presume, absent a clear indication the Legislature intended to regulate the location of MMD's, that such regulation by local government is *not* preempted by state law.

V

CALIFORNIA MEDICAL MARIJUANA LAWS

In determining whether Upland's ordinances banning MMD's are preempted by state law, we first consider the scope and purpose of California's medical marijuana laws, specifically the CUA and MMP.

In 1996, California voters approved a ballot initiative, Proposition 215, referred to as the "Compassionate Use Act of 1996." (§ 11362.5.) The CUA is intended to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana . . . ." (*Id.*, subd. (b)(1)(A).) The CUA is also intended to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (*Id.*, subd. (b)(1)(B).) In addition, the CUA is intended to "encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (*Id.*, subd. (b)(1)(C).) The CUA

provides a limited defense from prosecution for cultivation and possession of marijuana. The CUA is narrow in scope. (*Kruse, supra,* 177 Cal.App.4th at p. 1170.) It does not create a constitutional right to obtain marijuana or allow the sale or nonprofit distribution of marijuana by medical marijuana cooperatives. (*Id.* at pp. 1170-1171.)

In 2003, the Legislature added the MMP. (§§ 11362.7-11362.83). The purposes of the MMP include "'[promoting] uniform and consistent application of the [CUA] among the counties within the state' and '[enhancing] the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.' [Citation.]" (*County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 864 (*Hill*).) The MMP "includes guidelines for the implementation of the [CUA]. Among other things, it provides that qualified patients and their primary caregivers have limited immunity from prosecution for violation of various sections of the Health and Safety Code regulating marijuana including [section 11570,] the 'drug den' abatement law. (§ 11362.765, 11362.775.)" (*Ibid.*, fn. omitted.)

With regard to "drug den" abatement, the MMP "provides a new affirmative defense to criminal liability for qualified patients, caregivers, and holders of valid identification cards who collectively or cooperatively cultivate marijuana. [Citation.]" (*Kruse, supra,* 177 Cal.App.4th at p. 1171.) For instance, section 11362.775 of the MMP provides: "Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate

marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570."[3] Section 11362.765 provides limited immunity for transporting, processing, administering, and cultivating medical marijuana.

VI

UPLAND ORDINANCES

Before the inception of G3 Holistic, Upland enacted UMC section 17.12.050, which bans all MMD's in Upland. This zoning and business licensing ordinance states, in relevant part: "All departments, officials, or public employees, vested with the duty or authority to issue permits, licenses or certificates of occupancy, where required by law, shall conform to the provisions of this zoning code. Any permit, license or certificate, if issued in conflict with the provisions hereof, shall be null and void. [¶] . . . [¶] E. No medical marijuana dispensary as defined in Section 17.14.020 shall be permitted in any zone within the city. . . ."

UMC section 17.14.020 defines an MMD, consistent with the definition provided in the MMP, as "a facility or location, whether fixed or mobile, which provides, makes available or distributes marijuana to a primary caregiver, a qualified patient or a person

[3] These penal statutes criminalize possession of marijuana (§ 11357); cultivation of marijuana (§ 11358); possession of marijuana for sale (§ 11359); transportation of marijuana (§ 11360); maintaining a place for the sale, giving away, or use of marijuana (§ 11366); making available premises for the manufacture, storage, or distribution of controlled substances (§ 11366.5); and abatement of nuisance created by premises used for manufacture, storage, or distribution of controlled substances (§ 11570).

with an identification card issued in accordance with California Health and Safety Code Section 11362.5 et seq." (UMC § 17.14.020.)

UMC section 17.12.170A, provides, in relevant part: "Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this zoning code, and any use of land, building, or premises established, conducted or operated or maintained contrary to the provisions of this zoning code, shall be and the same is declared to be unlawful and a public nuisance; and the city attorney, upon order of the council, shall immediately commence action or proceedings for the abatement and removal and the enjoining thereof in the manner prescribed by law . . . ." UMC section 17.12.170B further states that such a violation of the zoning code can also result in a misdemeanor conviction, a fine, or imprisonment in jail.

UMC section 5.04.090A provides that "[i]t is unlawful for any person to transact, and carry on any business, trade, profession, calling or occupation in the city without first having procured a license from the city . . . or without complying with any and all applicable provisions of this title and the Upland Municipal Code." G3 Holistic operated its MMD without a business license and in violation of Upland's zoning ordinance banning MMD's.

"'Generally a municipal zoning ordinance is presumed [to] be valid . . . .'" (*Stubblefield Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 713 [Fourth Dist., Div. Two].) G3 Holistic concedes in its opening brief that cities and counties may zone where MMD's may be located, but argues cities and counties may not

completely ban MMD's. This court must presume Upland's zoning ordinance banning MMD's in Upland is valid unless G3 Holistic demonstrates it is unlawful because it is preempted by the CUA and MMP.

VII

PREEMPTION ANALYSIS

The issue of whether Upland's zoning ordinance banning MMD's in Upland is invalid because it is preempted by state legislation regulating medical marijuana is an issue of first impression. We reject the proposition that local governments, such as Upland, are preempted from enacting local regulations banning MMD's. Upland's zoning and business license ordinances (referred to collectively as Upland's zoning ordinance) do not duplicate, contradict, or expressly occupy the field of state law.

A. Duplicative and Contradictory Rules

A duplicative rule is one that mimics a state law or is "'coextensive' with state law." (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067; *Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1327 [Fourth Dist., Div. Two].) A contradictory rule is one that is inimical to or cannot be reconciled with a state law. (*Habitat Trust for Wildlife, Inc.*, at p. 1327; *O'Connell,* at p. 1068.)

Upland's zoning ordinance regulating MMD's does not "mimic" or duplicate state law and can be reconciled with the CUA and MMP. Upland's zoning ordinance banning MMD's is different in scope and substance from the CUA and MMP. (*Sherwin–Williams, supra,* 4 Cal.4th at p. 902.) The CUA is narrow in scope. (*Kruse, supra,* 177

Cal.App.4th at p. 1170.) It provides medical marijuana users and care providers with limited criminal immunity for use, cultivation, and possession of medical marijuana. The CUA does not create a constitutional right to obtain marijuana or allow the sale or nonprofit distribution of marijuana by medical marijuana cooperatives. (*Id.* at pp. 1170-1171.)

The MMP merely implements the CUA and also provides limited immunity for those involved in lawful MMD's. The CUA and MMP do not provide individuals with inalienable rights to establish, operate and use MMD's. The state statutes do not preclude local governments from regulating MMD's, including prohibiting them. The CUA and MMP do not address zoning or business licensing decisions. (*Kruse, supra,* 177 Cal.App.4th at pp. 1172-1173, 1175.) The establishment and operation of MMD's is thus subject to local zoning and business licensing laws. There is nothing stated to the contrary in the CUA or MMP. The CUA and MMP do not expressly mandate that MMD's shall be permitted within every city and county, nor do the CUA and MMP prohibit cities and counties from banning MMD's.

Upland's zoning ordinance, which prohibits MMD's in the city by restrictive zoning and business regulations, does not duplicate or contradict the CUA and MMP statutes.

B. Expressly Occupying the Field of State Law

Local legislation enters an area that is fully occupied by general law when the Legislature has expressly manifested its intent to fully occupy the area. (*Kruse, supra,*

177 Cal.App.4th at p. 1169.) Here, the CUA and MMP do not expressly state that the Legislature intended to fully occupy the area or preempt local laws regulating, licensing, and zoning MMD's. The Legislature has not stated that the CUA and MMP shall exclusively regulate MMD's.

In *Kruse,* the court concluded that the CUA did not expressly preempt the city's zoning ordinance which temporarily prohibited MMD's: "The CUA does not expressly preempt the City's actions in this case. The operative provisions of the CUA do not address zoning or business licensing decisions. The statute's operative provisions protect physicians from being 'punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes' (§ 11362.5, subd. (c)), and shield patients and their qualified caregivers from criminal liability for possession and cultivation of marijuana for the patient's personal medical purposes if approved by a physician (§ 11362.5, subd. (d)). The plain language of the statute does not prohibit the City from enforcing zoning and business licensing requirements applicable to defendants' proposed use." (*Kruse, supra,* 177 Cal.App.4th at pp. 1172-1173.)

The *Kruse* court further explained that the city's temporary moratorium on MMD's was permissible because: "The CUA does not authorize the operation of a medical marijuana dispensary [citations], nor does it prohibit local governments from regulating such dispensaries. Rather, the CUA expressly states that it does not supersede laws that protect individual and public safety: 'Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers

others . . . .' (§ 1362.5, subd. (b)(2).) The CUA, by its terms, accordingly did not supersede the City's moratorium on medical marijuana dispensaries, enacted as an urgency measure 'for the immediate preservation of the public health, safety, and welfare.'" (*Kruse, supra,* 177 Cal.App.4th at p. 1173.)

The *Kruse* court also concluded the city's zoning ordinance temporarily banning MMD's was not expressly preempted by the MMP: "The MMP does not expressly preempt the City's actions at issue here. The operative provisions of the MMP, like those in the CUA, provide limited criminal immunities under a narrow set of circumstances." (*Kruse, supra,* 177 Cal.App.4th at p. 1175.) The *Kruse* court added: "Medical marijuana dispensaries are not mentioned in the text or history of the MMP. The MMP does not address the licensing or location of medical marijuana dispensaries, nor does it prohibit local governments from regulating such dispensaries. Rather, like the CUA, the MMP expressly allows local regulation. . . . Nothing in the text or history of the MMP precludes the City's adoption of a temporary moratorium on issuing permits and licenses to medical marijuana dispensaries, or the City's enforcement of licensing and zoning requirements applicable to such dispensaries." (*Ibid.*) As in *Kruse*, the CUA and MMP do not expressly preempt Upland's zoning and business licensing ordinances regulating MMD's, including banning them.

C. Impliedly Occupying the Field of State Law

Upland's zoning ordinance banning MMD's is not impliedly preempted by state law since Upland's ordinance does not enter an area of law fully occupied by the CUA

and MMP by legislative implication. (*Kruse, supra*, 177 Cal.App.4th p. 1168.) ""[L]ocal legislation enters an area that is 'fully occupied' by general law when the Legislature . . . has impliedly done so in light of one of the following indicia of intent: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality [citations]." [Citation.]' [Citation.]" (*Id.* at p. 1169.)

1. The Subject Matter is Neither Completely Covered by General Law Nor Exclusively a State Concern

The subject matter of the Upland zoning ordinance banning MMD's has not been "so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern[.]" (*Kruse, supra,* 177 Cal.App.4th at p. 1169.) As stated in *Kruse*, neither the CUA nor MMP "addresses, much less completely covers, the areas of land use, zoning and business licensing. Neither statute imposes comprehensive regulation demonstrating that the availability of medical marijuana is a matter of 'statewide concern,' thereby preempting local zoning and business licensing laws." (*Id.* at p. 1175.) The *Kruse* court further noted that the CUA "does not create 'a broad right to

use marijuana without hindrance or inconvenience' [citation], or to dispense marijuana without regard to local zoning and business licensing laws." (*Ibid.*)

G3 Holistic argues that the CUA and MMP impliedly and expressly preempt local regulations criminalizing operating MMD's, by fully occupying the area of law through statutes, such as sections 11362.765 and 11362.775 of the MMP, which provide immunity for possessing medical marijuana and lawfully operating MMD's. We disagree. Upland's zoning ordinance imposes criminal penalties for violating its zoning and business licensing ordinances. Nothing precludes Upland from prohibiting MMD's by means of enacting zoning and business license ordinances prohibiting MMD's in the city. In addition, the MMP provides immunity only as to lawful MMD's. An MMD operating without a business license and in violation of a zoning ordinance prohibiting MMD's is not lawful.

Furthermore, the instant case does not involve the imposition of criminal penalties and therefore we need not even address the issue of whether the CUA and MMP provisions providing criminal immunity for operating a lawful MMD preempt Upland's zoning ordinance imposing criminal penalties for violating Upland's zoning ordinance. The instant case is a civil abatement action in which the trial court found that G3 Holistic's MMD constitutes a nuisance and thus enjoined G3 Holistic from operating its MMD in violation of Upland's zoning ordinance.

2. General Law Does Not Indicate That a Paramount State Concern Will Not Tolerate Additional Local Action

The CUA and MMP do not provide "general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action[.]" (*Kruse, supra,* 177 Cal.App.4th at pp. 1169, 1176; *Sherwin-Williams, supra,* 4 Cal.4th at p. 898.) Because the state statutory scheme (the CUA and MMP) express an intent to permit local regulation of MMD's, preemption by implication of legislative intent may not be found here. (*Kruse, supra,* at p. 1176.) In *Kruse*, the court explained that the CUA and MMP did not preclude local action regarding medical marijuana, "except in the areas of punishing physicians for recommending marijuana to their patients, and according qualified persons affirmative defenses to enumerated penal sanctions. (§ 11362.5, subds. (c), (d), 11362.765, 11362.775.) The CUA expressly provides that it does not 'supersede legislation prohibiting persons from engaging in conduct that endangers others' (§ 11362.5, subd. (b)(2)), and the MMP expressly states that it does not 'prevent a city or other local governing body from adopting and enforcing laws consistent with this article' (§ 11362.83)." (*Ibid.*)

In addition, after *Kruse* was decided, the Legislature added section 11362.768 in 2010. With regard to this new provision, the court in *Hill, supra,* 192 Cal.App.4th 861 noted that "the Legislature showed it expected and intended that local governments adopt additional ordinances" regulating medical marijuana. (*Id.* at p. 868.) The Legislature's intention in this regard was clarified in the newly enacted provision, section 11362.768,

added in 2010, which states that: "(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider. [¶] (g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider."

The *Hill* court stated: "If there was ever any doubt about the Legislature's intention to allow local governments to regulate marijuana dispensaries, and we do not believe there was, the newly enacted section 11362.768, has made clear that local government may regulate dispensaries." (*Hill, supra,* 192 Cal.App.4th at p. 868.) The *Hill* court also notably stated that a local government could zone where MMD's were permissible (*id.* at p. 870) and apply its nuisance laws to MMD's that do not comply with valid ordinances (*id.* at pp. 868, 870).

Preemption by implication of legislative intent may not be found where the Legislature has expressed its intent to permit local regulation of MMD's and where the statutory scheme recognizes local regulations. (*Kruse, supra,* 177 Cal.App.4th at p. 1176.)

3. The Adverse Effect of Upland's Local Ordinance Does Not Outweigh the Possible Benefit to the Locality

G3 Holistic has also not established the third indicium of implied legislative intent to "fully occupy" the area of regulating MMD's. G3 Holistic has not shown that the adverse effect on the public of Upland's ordinance banning MMD's outweighs the possible benefit to the city**.** (*Kruse, supra,* 177 Cal.App.4th at p. 1169.) Those who wish to use medical marijuana are not precluded from obtaining it by means other than at an MMD in Upland.

As concluded in *Kruse, supra,* 177 Cal.App.4th at page 1176 and *Sherwin–Williams, supra,* 4 Cal.4th at page 898, "neither the CUA nor the MMP provides partial coverage of a subject that '"is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit"' to the City. [Citations.] '[A] local ordinance is not impliedly preempted by conflict with state law unless it "mandate[s] what state law expressly forbids, [or] forbid[s] what state law expressly mandates." [Citation.] That is because, when a local ordinance "does not prohibit what the statute commands or command what it prohibits," the ordinance is not "inimical to" the statute. [Citation.]' [Citation.] Neither the CUA nor the MMP compels the establishment of local regulations to accommodate medical marijuana dispensaries. The City's enforcement of its licensing and zoning laws and its temporary moratorium on medical marijuana dispensaries do not conflict with the CUA or the MMP." (*Kruse, supra,* at p. 1176.)

G3 Holistic urges this court to disregard *Kruse, supra,* 177 Cal.App.4th 1153 and *Naulls, supra,* 166 Cal.App.4th 418, because these cases are not dispositive for reasons noted in *Qualified, supra,* 187 Cal.App.4th 734. We agree *Kruse* and *Naulls* are factually distinguishable from the instant case because *Kruse* and *Naulls* involve temporary MMD moratoriums, whereas the instant case involves a permanent ban. This is not a significant difference in terms of applying fundamental preemption principles. The analysis in *Kruse,* addressing the issue of preemption, is applicable in the instant case.

G3 Holistic's reliance on a footnote in *Qualified, supra,* 187 Cal.App.4th 734, distinguishing *Kruse, supra,* 177 Cal.App.4th 1153, is misplaced. The footnote is dicta and merely notes that the ordinance in *Kruse* differed from the ordinance in *Qualified,* which potentially contradicted the MMP by criminalizing the use of property solely based on otherwise lawful medical marijuana activity. (*Qualified, supra,* at p. 754, fn. 4.) Since preemption was not addressed in *Qualified* and the footnote is dicta, *Qualified* does not provide persuasive authority in the instant case. *Naulls, supra,* 166 Cal.App.4th 418 also is not helpful since it also does not address preemption. (*Id.* at pp. 420, 425; *Qualified, supra,* at pp. 753-754.)

D. Complete Ban

G3 Holistic argues that, although under the CUA and MMP, local governments can regulate MMD's and restrict the location of MMD's through zoning and business licensing ordinances, banning MMD's is impermissible. The parties acknowledge that no case law to date has ruled on whether a city ordinance can completely ban MMD's. G3

Holistic asserts that section 11362.768, which authorizes local governments to further restrict the location and establishment of MMD's, does not authorize such a ban because section 11362.768 only concerns restricting MMD's located near schools. Although section 11362.768 pertains to restricting the location of MMD's near schools, it is clear from subdivisions (f) and (g), in conjunction with the MMP as a whole, that the Legislature intended to allow local governments to regulate MMD's beyond the limited provisions included in the CUA and MMP, as long as the local provisions are consistent with the CUA and MMP. Zoning and business licensing ordinances banning MMD's are not inconsistent with the CUA and MMP, as discussed above.

G3 Holistic also argues that subdivisions (f) and (g) of section 11362.768 do not authorize local governments to enact ordinances totally banning MMD's. Local government can only "restrict" or "regulate" the location or establishment of MMD's. (§ 11362.768, subds. (f), (g).) G3 Holistic claims that restricting and regulating MMD's is more limited than completely banning MMD's and therefore Upland did not have authority under section 11362.768 to ban all MMD's. We disagree.

We construe the words in section 11362.768 in "their context and harmonize them according to their ordinary, common meaning. [Citation.] . . . We consider the consequences which would flow from each interpretation and avoid constructions which defy common sense or which might lead to mischief or absurdity. [Citations.] By doing so, we give effect to the legislative intent even though it may be inconsistent with a strict,

literal reading of the statute." (*Friedman v. City of Beverly Hills* (1996) 47 Cal.App.4th 436, 441-442.)

In determining whether section 11362.768 authorizes local government to ban MMD's, we look to the ordinary, common meaning of the terms "ban," "restrict," "restriction," "regulate," and "regulation." The term "regulate" is defined in the dictionary as: "[T]o govern or direct according to rule . . . [or] laws . . . ." (Webster's 3d New Internat. Dict. (1993) p. 1913.) The term "regulation" is defined in Black's Law Dictionary as: "1. The act or process of controlling by rule or restriction . . . . 3. A rule or order, having legal force, usu. issued by an administrative agency . . . ." (Black's Law Dict. (8th ed. 2004) p. 1311.) "Restriction" is defined as: "1. A limitation or qualification. 2. A limitation (esp. in a deed) placed on the use or enjoyment of property." (Black's Law Dict., *supra*, p. 1341.)

Applying these definitions, we conclude Upland's prohibition of MMD's in Upland through enacting zoning and business licensing ordinances banning MMD's, is a lawful method of limiting the use of property by regulating and restricting the location and establishment of MMD's in the city. (*Leyva v. Superior Court* (1985) 164 Cal.App.3d 462, 473 [Fourth Dist., Div. Two].) A ban or prohibition, is simply a type or means of restriction or regulation. Upland's ban of MMD's, through zoning and business licensing regulations and restrictions, is not preempted by the CUA or MMP.

VIII

ATTORNEY FEES AND COSTS AWARD

G3 Holistic contends that, because Upland's ordinance banning MMD's is invalid, the permanent injunction enforcing the ordinance and consequential fees, fines and costs imposed against G3 Holistic are likewise invalid. G3 Holistic is not otherwise challenging the monetary awards. G3 Holistic concedes that, if Upland prevails on appeal and this court affirms the lower court's ruling granting injunctive relief, the monetary awards are valid. On the other hand, if this court concludes Upland's ordinance banning MMD's is invalid, then this court must vacate the monetary awards.

Since we conclude Upland's zoning ordinance banning MMD's is valid, as is the permanent injunction enforcing compliance with the ordinance, we reject G3 Holistic's challenge to monetary awards imposed against G3 Holistic.

IX

DISPOSITION

The judgment is affirmed. Plaintiffs are awarded their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Codrington
J.

We concur:

s/Hollenhorst
Acting P.J.

s/Miller
J.