No. S272850

In the

Supreme Court of California

EMILY WHEELER

Petitioner and Defendant,

v.

APPELLATE DIVISION OF THE
LOS ANGELES SUPERIOR COURT

Respondent.

PEOPLE OF THE STATE OF CALIFORNIA

Real Party in Interest and Plaintiff.

Court of Appeal, 2d Dist., Div. 3, No. B310024
Superior Court, Los Angeles, Appellate Division, No. BR054851
Superior Court, Los Angeles, Trial Ct. No. 9CJ00315-02
The Honorable H. Elizabeth Harris, Judge Presiding

ANSWER BRIEF ON THE MERITS

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INTRODUCTION

The City of Los Angeles (City), like many other California cities, has enacted a comprehensive framework for regulating the licensed commercial cannabis market in reliance on state law. State law expressly preserves, rather than limits, cities' constitutional police powers to adopt and enforce local ordinances to regulate licensed commercial cannabis businesses, including local zoning, land use, and business license requirements.

In this case, defendant was charged with misdemeanor violations of the City's local ordinance prohibiting a landowner from allowing real property to be used as an unlicensed commercial cannabis business and a zoning ordinance requiring businesses to have obtained all necessary licenses and permits. She argues that misdemeanor punishment for violating these ordinances is preempted by state criminal laws governing the use of property for drug crimes and nuisances.

Defendant's argument is meritless. The City's ordinances are not drug crime ordinances but rather land use and business licensing regulations. The potential misdemeanor punishment defendant faces is a permissible enforcement mechanism for those regulations. Defendant has not satisfied her burden of demonstrating state law preemption of local laws under any of this Court's tests: state law does not occupy the field of commercial cannabis; the local laws do not duplicate state laws; and the local laws do not contradict state laws. Both the Appellate Division of the Superior Court and the Court of Appeal correctly determined that the City's ordinances are not preempted by state law.

While defendant did not raise preemption in the trial court, she did make a pretrial motion to dismiss the charges under Penal Code section 1385. The trial court granted the motion based principally on the assertion of defendant's attorney that defendant lacked knowledge of the unlicensed commercial cannabis business on her property. That was error. Section 1385 permits dismissal only when it is in furtherance of justice, and it mandates consideration of the interests of society represented by the People. Violations of the City's land use ordinances and business licensing requirements are strict liability, public welfare offenses. The purpose of the ordinances is to combat the proliferation of unlicensed cannabis businesses, which pose attendant crime impacts and undercut licensed commercial cannabis businesses. To that end, the City makes it easy for property owners to determine if a storefront cannabis business is licensed. Dismissing the People's charges based on a defendant's asserted lack of knowledge contradicts the interests of society and jeopardizes the public welfare. Both the Appellate Division and the Court of Appeal correctly held that the trial court abused its discretion by dismissing the charges.

This Court should affirm the judgment of the Court of Appeal.

BACKGROUND

A. Procedural History

In June 2019, the People filed a misdemeanor complaint charging defendant with unlawfully participating in unlicensed commercial cannabis activity (Los Angeles Municipal Code

("LAMC"), § 104.15, subd. (a)(1));[1] unlawfully leasing, renting to, or otherwise allowing an unlicensed commercial cannabis establishment to occupy any portion of a parcel of land (LAMC, § 104.15, subd. (b)(4)); and unlawfully maintaining a structure for a use other than what was permitted in the zone without securing all required licenses and permits (LAMC, § 12.21, subd. (A)(1)(a)). (Petition for Writ of Mandate ("PWM"), Exhibit A, pp. 46–50.)[2]

In October 2019, defendant filed a Motion to Dismiss. (PWM, Exhibit A, p. 55-56.) She argued LAMC sections 104.15 and 12.21 were unconstitutionally vague. (PWM, Exhibit A, pp. 57-60.) She also requested the charges be dismissed in the interests of justice based on her age, lack of criminal history, and lack of direct involvement in the unlicensed commercial cannabis business. (*Id.* at pp. 63-66.) The People filed an opposition, arguing the municipal code sections were not unconstitutionally vague and that dismissing the charges under section 1385 because a property owner claimed lack of knowledge "would be contrary to the governing statute, the will of the voters, and the City Council." (PWM, Exhibit A, pp. 73-74, 79-80.) The People also argued that there was "no evidence that [defendant] ha[d] no prior criminal history . . . there [was] no evidence that she had no connection to

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[1] This includes "renting, leasing to or otherwise allowing any unlicensed Commercial Cannabis Activity or a medical marijuana collective or cooperative to occupy or use any building or land." (LAMC, § 104.15, subd. (a)(3).)

[2] Consecutive pagination of the PWM exhibits is cited rather than the internal exhibit pagination. Two other individuals were also charged in the complaint; neither is a party to these appellate proceedings. (PWM, Exhibit A, pp. 46–50.)

the illegal cannabis business; and no evidence that she did not know that the activity was occurring on her property." (PWM, Exhibit A, p. 81.)

In October 2019, the trial court "dismisse[d] the case pursuant to Penal Code section 1385." (PWM, Exhibit A, p. 86.) The court stated:

> You have a woman born in 1934 who has no prior criminal history. There is nothing to suggest that she knows anything about this, other than the fact that she owns the property, and the code says, "in the interests of justice;" and I think justice can only be served if a person who has lived an exemplary life for 80 plus years, and finds herself, because she owns the property, and that property is leased to another individual, and that individual is operating a dispensary, that says to this Court that justice would properly be served by dismissing the case in its entirety against Ms. Emily Wheeler.

(PWM, Exhibit B, p. 108.)

In November 2019, the People appealed. (PWM, Exhibit A, pp. 87-88.) For the first time on appeal, defendant argued the local ordinances were preempted by state law. (PWM, Exhibit G, pp. 237-241.)

In November 2020, the Appellate Division of the Los Angeles Superior Court reversed, finding the trial court improperly dismissed strict liability charges based on defendant's asserted lack of knowledge. (PWM, Exhibit I, pp. 278-287.) The court also rejected defendant's preemption challenge, determining state law explicitly contemplates municipal regulation and the City's ordinances properly regulate commercial cannabis activity. (PWM, Exhibit I, pp. 286-287.)

On writ review, the Court of Appeal agreed with the Appellate Division. The court determined the local ordinances are not preempted by state law because they are "permissible enforcement mechanism[s] for the City's land use ordinances and business licensing requirements for commercial cannabis activity" instead of "'drug crime' ordinance[s]." (*Wheeler v. Appellate Division* (2021) 72 Cal.App.5th 824, 839-842 (*Wheeler*).) The court also held that the Appellate Division did not err in concluding it was improper to dismiss strict liability charges based on defendant's asserted lack of knowledge. (*Id.* at pp. 842-843.)

This Court then granted review.

B. Relevant state and local laws

1. State laws

In 1972, California enacted the Uniform Controlled Substances Act ("UCSA"). (Health & Saf. Code, § 11000 [Stats 1972 ch. 1407 § 3].) Among other things, that act penalized the possession, cultivation, transportation, possession for sale, and sale of cannabis, except as otherwise authorized by law. (Health & Saf. Code, § 11357 et seq.; *City of Riverside v. Inland Empire Patients & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 739 (*Riverside*).) State law further penalized maintaining a place for unlawfully selling or using any controlled substance as well as knowingly renting or leasing a building for unlawfully manufacturing, storing, or distributing any controlled substance. (Health & Saf. Code, §§ 11366, 11366.5.)

Over the last 50 years, there has been a gradual reduction in the penalties for cannabis-related activity as well as an expansion of legal exceptions for such activity. (See, e.g., *Riverside, supra,* 56 Cal.4th at pp. 739–740 [describing the adoption of the Compassionate Use Act ("CUA") and Medical Marijuana Program Act ("MMPA")].)

In 2015, the Legislature passed a trio of bills that collectively created a state regulatory framework for licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery, and testing of medicinal cannabis, the Medical Cannabis Regulation and Safety Act ("MCRSA"). (Stats 2017, ch. 27, § 1(b).) In 2016, the voters approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), which permitted adults, with certain restrictions, to grow, possess, and use cannabis. (Stats 2017, ch. 27, § 1(c); Prop. 64 § 6.1.) AUMA also made it legal to sell and distribute cannabis through a regulated business. (*Ibid.*)

In 2017, the Legislature combined MCRSA and AUMA into the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), a comprehensive licensing scheme for both adult use and medicinal cannabis. (Stats 2017, ch. 27, § 4; Bus. & Prof. Code, §§ 26000, et seq.) The licensing provisions of MAUCRSA are codified in Division 10 of the Business and Professions Code. Division 10 is a "comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale" of medicinal and adult-use cannabis. (Bus. & Prof. Code, § 26000, subd. (b).) It "sets forth the power and duties

of the state agencies responsible for controlling and regulating the commercial medicinal and adult-use cannabis industry." (Bus. & Prof. Code, § 26000, subd. (c).)

A person or entity must have a state license to engage in commercial cannabis activity. (Bus. & Prof. Code, § 26037.5.) Commercial cannabis activity "includes 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 . . ." (Bus. & Prof. Code, § 26001, subd. (j).) MAUCRSA defines a license as a "state license issued under this division" and a licensee as "any person holding a license under this division . . ." (Bus. & Prof. Code, § 26001, subds. (z), (aa).)

MAUCRSA provides immunity from state law prosecutions to licensees, their employees, and agents if the conduct was (1) permitted by a state license; (2) *permitted by local authorization*, license, or permit; and, (3) conducted according to all state requirements. (Bus. & Prof. Code, §§ 26032, subd. (a), 26037, subd. (a), emphasis added.) Similarly, landlords are immunized from *state law prosecutions* if and only if they, in good faith, allow their property to be used by a licensee, its employees, and agents if that licensee *also has any required local authorization*. (Bus. & Prof. Code, §§ 26032, subd. (b), 26037, subd. (b).)

State law criminal penalties continue to apply to unlicensed individuals, and MAUCRSA does not "limit, preempt, or otherwise affect any other state or local law, rule, regulation, or ordinance applicable to the conduct described in subdivision (a), or otherwise

relating to commercial cannabis activities." (Bus. & Prof. Code, § 26038, subds. (g) & (h)(1).)

The Legislature provided that MAUCRSA "shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, *local zoning and land use requirements*, *business license requirements*, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction." (Bus. & Prof. Code, § 26200, subd. (a)(1), emphasis added.) Importantly, MAUCRSA also "shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements." (Bus. & Prof. Code, § 26200, subd. (a)(2).)

Lastly, MAUCRSA "shall not be deemed to limit the *authority* or *remedies of a city*, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution." (Bus. & Prof. Code, § 26200, subd. (f), emphasis added.)

State law has also long criminalized the failure, after reasonable notice, to abate a nuisance on one's property. (Pen. Code, § 373a.)

2. Local laws

In accordance with MAUCRSA, the City instituted a series of land use ordinances and business licensing requirements for commercial cannabis activities. (LAMC, §§ 104.00 through 106.06.) The local licensing scheme was enacted "to create a licensing system for certain cannabis-related businesses" and "to stem the negative impacts and secondary effects associated with Cannabis related activities in the City . . . including but not limited to: neighborhood disruption and intimidation caused in part by increased transient visitors; exposure of school-age children and other residents sensitive to cannabis; cannabis sales to minors; and violent crimes." (LAMC, §§ 104.00, 105.00.)

Among other things, the City's licensing scheme requires inspections, community input, and licensing fees. (LAMC, §§ 104.03, et seq.) The comprehensive licensing procedure evaluates, among other factors, the background of a prospective licensee, the proposed business location, and any proposed move of business location. (LAMC, §§ 104.03, 104.06.) A variety of license fees, administrative fines, and application fees raise revenue and reimburse the City for the costs of maintaining the licensing program. (LAMC, § 104.19.)

Under local law, a license means a license issued by the City of Los Angeles (LAMC, § 104.01, subd. (a)(29)) and a licensee means a person holding a local license (LAMC, § 104.01, subd. (a)(31)).

As relevant to this case, the City prohibits establishing, operating, or participating in any unlicensed commercial cannabis activity. (LAMC, § 104.15, subd. (a)(1).) That prohibition includes renting, leasing, or otherwise allowing any unlicensed commercial cannabis activity. (LAMC, § 104.15, subd. (a)(3).) Leasing, renting, or otherwise allowing an "Unlawful Establishment" to occupy any portion of parcel of land is also prohibited. (LAMC, § 104.15, subd. (b)(4).) An "Unlawful Establishment" is any individual or organization "engaged in Commercial Cannabis Activity" without "a City issued Temporary Approval or License." (LAMC, § 104.01, subd. (a)(50).)

Like many other localities, the City also has a general land use and zoning provision that states, in relevant part, "nor shall any building, structure, or land be used . . . for any use other than is permitted in the zone in which such building, structure, or land is located and then *only after* applying for and *securing all permits and licenses required by all laws and ordinances*." (LAMC, § 12.21, subd. (A)(1)(a), emphasis added.)

Any violation of the Los Angeles Municipal Code is punishable as a misdemeanor with a fine of up to $1,000.00, six months in jail, or both. (LAMC, § 11.00, subd. (m).) Violations are also specifically declared a public nuisance. (LAMC, §§ 11.00, subd. (*l*); 104.15, subd. (c).)

ARGUMENT

I. The Court of Appeal correctly rejected defendant's preemption arguments.

Defendant argues that LAMC sections 104.15 and 12.21, which prohibit her from renting property to an unlicensed commercial cannabis business, are preempted by state drug crime statutes. (PBM, pp. 31-41.) As the Court of Appeal explained, however, these ordinances are not "drug crime" laws but are instead local land use and business licensing regulations. (*Wheeler, supra,* 72 Cal.App.5th at pp. 839-842.) Violation of these ordinances is punishable by criminal penalties, but that does not transform these regulations into drug crime statutes—or support a determination that they are preempted by state law.

The California Constitution states that "[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." (Cal. Const., art. XI, § 7.) This local police power includes "broad authority to determine, for purposes of the public health, safety and welfare, the appropriate uses of land within a local jurisdiction's borders." (*Riverside, supra,* 56 Cal.4th at p. 738.) "'[W]hen local government regulates in an area over which it traditionally has 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.'" (*Riverside, supra,* 56 Cal.4th at p. 743, citing *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 (*Big Creek Lumber*).)

Under the California Constitution, a local ordinance "in conflict with" a state statute is void. (*Riverside, supra,* 56 Cal.4th at p. 742.) For purposes of California's preemption doctrine, a "conflict" exists if the local ordinance (1) duplicates the state statute, (2) contradicts the statute, or (3) enters an area fully occupied by general law. (*Id.* at p. 743.)

"The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (*Big Creek Lumber, supra,* 38 Cal.4th at p. 1149.) Defendant fails to meet this burden on any of the tests for preemption.

A. State law does not fully occupy the field of commercial cannabis regulations such as LAMC section 104.15.

Defendant argues that "the area covered by the [local] ordinances is fully occupied by state law" (PBM, p. 36) and that UCSA, including Health and Safety Code section 11366.5, "is so thorough and detailed as to manifest the Legislature's intent to preclude local regulation" (PBM, p. 38). But defendant's claim relies on an antiquated view of cannabis law, disregarding the current state statutory regime that permits the decriminalization and local regulation of cannabis. Rather than manifest an intent to preempt local regulation, current state law does the opposite—it expressly authorizes local control of commercial cannabis.

Field preemption occurs when local law enters an area that the state "Legislature has expressly manifested its intent to 'fully

occupy.'" (*Riverside, supra,* 56 Cal.4th at p. 743.)[3] Field preemption can also occur if state law has impliedly occupied the field by indicating the subject is "exclusively a matter of state concern," if state interests "will not tolerate further local regulation," or if "the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality." (*Ibid.*, internal quotation marks omitted.) Field preemption, however, "may not be found when the Legislature has expressed its intent to permit local regulations" or "when the statutory scheme recognizes local regulations." (*Big Creek Lumber, supra,* 38 Cal.4th at p. 1157, internal citation omitted.)

In the case at bar, the Court of Appeal correctly recognized "that field preemption does not apply" because "MAUCRSA explicitly disavows any legislative intention to occupy the field of commercial cannabis regulation, and explicitly contemplates that cities and counties will also impose their own licensing requirements and other restrictions on commercial cannabis activities." (*Wheeler, supra,* 72 Cal.App.5th at p. 840.) Under MAUCRSA, local authorities may "adopt and enforce local ordinances to regulate businesses licensed under this division," which includes "local zoning and land use requirements" and "business license requirements." (Bus. & Prof. Code, § 26200, subd. (a)(1).) The statute expressly does not "supersede or limit" local "authority for law enforcement activity, enforcement of local

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[3] Defendant does not, and cannot, argue that there is express field preemption given MAUCRSA's grant of authority to localities. (See PBM, pp. 36-41.)

zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements." (Bus. & Prof. Code, § 26200, subd. (a)(2).)

Disregarding MAUCRSA, defendant premises her field preemption argument on UCSA and Health and Safety Code section 11366.5. (PBM, p. 38 ["UCSA—of which Health and Safety Code section 11366.5 is a part . . ."].) But this argument relies on an outdated understanding of cannabis law and fails to apply the current statutory scheme governing commercial cannabis. As the Court of Appeal here explained: "[a]lthough cannabis is still listed in the UCSA as a controlled substance," it is now "regulated by MAUCRSA rather than prohibited by UCSA." (*Wheeler, supra,* 72 Cal.App.5th at p. 840.)[4]

As part of MAUCRSA, regulation of the commercial cannabis industry resides in Division 10 of the Business and Professions Code (Bus. & Prof., § 26000 et seq.) instead of the Health and Safety Code. "The purpose and intent of [Division 10] is to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both . . . medical cannabis and . . .

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[4] Notably, UCSA has also trended towards decriminalizing cannabis and recognizing local control. In 2003, Health and Safety Code section 11362.83 allowed for the adoption and enforcement of local ordinances that regulate the location, operation, or establishment of medicinal cannabis cooperatives or collectives. Following the approval of AUMA in 2016, UCSA was amended to provide that "it shall be lawful under state and local law" for a person 21 years old to possess cannabis for personal use. (Health & Saf. Code, § 11362.1.)

[a]dult-use cannabis." (Bus. & Prof. Code, § 26000, subd. (b).) Thus, while defendant urges this Court to consider preemption of LAMC section 104.15 in light of UCSA—preexisting laws criminalizing drug crime—that argument requires ignoring MAUCRSA and the entire statutory scheme that permits the decriminalization and local regulation of cannabis as a commercial commodity rather than an illegal drug.

Under the statutory scheme governing commercial cannabis, local regulation of unlicensed activity is specifically permitted. MAUCRSA "does not limit, preempt, or otherwise affect" any "local law, rule regulation, or ordinance applicable to the conduct described in subdivision (a), or otherwise relating to commercial cannabis activities." (Bus. & Prof. Code, § 26038, subd. (h)(1).) The conduct described in subdivision (a) is unlicensed activity. (Bus. & Prof. Code, § 26038, subd. (a).) And the statute does not seek to interfere with local ability to make ordinances and regulations or enforce police powers. (Bus. & Prof. Code, § 26200, subd. (f) [MAUCRSA "shall not be deemed to limit the authority or remedies of a city . . . under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution"].) State law even goes so far as to provide that if localities choose not to permit and regulate commercial cannabis, they may ban it. (Bus. & Prof. Code, § 26200, subd. (a)(1).)

Field preemption manifestly does not apply because "the Legislature has expressed its intent to permit local regulations" and "the statutory scheme recognizes local regulations." (*Big Creek Lumber, supra,* 38 Cal.4th at p. 1157.)

Defendant's contrary arguments are unavailing. She relies primarily on *O'Connell v. City of Stockton* (2007), 41 Cal.4th 1061 (*O'Connell*), but that decision does not aid her. In *O'Connell*, this Court determined that a city ordinance permitting the forfeiture of a vehicle used to "acquire or attempt to acquire any controlled substance" was preempted by UCSA's "comprehensive scheme defining and setting the penalties for crimes involving controlled substances." (*Id.* at p. 1069.) This Court explained that UCSA regulates the lawful use and distribution of controlled substances and "defines as criminal offenses the unlawful possession and distribution of specified controlled substances." (*Ibid.)* UCSA also contains a provision for vehicle forfeiture if the government shows "proof beyond a reasonable doubt of the vehicle's use to facilitate certain *serious drug crimes*." (*Id.* at p. 1071, emphasis altered.) The city's ordinance permitted forfeiture upon proof by a preponderance of the evidence of a vehicle attempting to acquire any amount of any controlled substance. (*Ibid.*) This Court ultimately found that the "comprehensive nature of the UCSA in defining drug crimes and specifying penalties" was "so thorough and detailed as to manifest the Legislature's intent to preclude local regulation." (*Ibid.*)[5]

O'Connell is not analogous. As the Court of Appeal explained, *O'Connell* was premised on case law finding preemption where

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[5] *O'Connell* also found that the local regulation permitting seizure of a vehicle used to solicit prostitution was preempted by a Vehicle Code provision expressly precluding local regulation of matters covered by the Vehicle Code. (*O'Connell, supra,* 41 Cal.4th at p. 1073.)

"local ordinances impos[ed] harsher penalties for the same conduct covered by state laws." (*Wheeler, supra,* 72 Cal.App.5th at p. 838.) But as defendant concedes, LAMC section 104.15 provides a significantly lighter penalty than Health and Safety Code section 11366.5. (PBM, p. 29, fn. 5.) And while both the local ordinance and state law in *O'Connell* punished drug crime, here Health and Safety Code section 11366.5 and LAMC section 104.15 regulate different subjects. The former penalizes drug crime, the latter unlicensed commercial activity. The former addresses cannabis as a controlled substance, the latter as a local business.

Even more importantly, *O'Connell* considered UCSA but had no occasion to consider it in light of MAUCRSA. (See *O'Connell, supra,* 41 Cal.4th at p. 1069.) This Court in *Riverside, supra,* 56 Cal.4th 729, explained why *O'Connell* was readily distinguishable in the context of local regulation of medical marijuana. The Court noted that there was no evidence "of the Legislature's intent to preclude local regulation of facilities that dispense medical marijuana." (*Id.* at p. 757.) The "CUA and the MMP create no all-encompassing scheme for the control and regulation of marijuana for medicinal use." (*Ibid.*) MAUCRSA goes even farther—it makes no attempt to limit local regulation of commercial cannabis; it expressly contemplates local regulation. (Bus. & Prof. Code §§ 26200, 26038.)

Citing *In re Application of Mingo* (1923) 190 Cal. 769 (*Mingo*), defendant nevertheless argues that section 104.15 is preempted because MAUCRSA does not explicitly permit localities to "enforce conduct covered by state laws in a way that removes the *mens rea*

element contained in the state laws." (PBM, pp. 39-40.) But as this Court has explained, the test for field preemption is not whether a "provision of state law explicitly permits" local legislation: "[t]he test is whether state law is so formulated as to indicate an intent to preclude local regulation." (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 295 (*Cohen*).) Here there is no such legislative intent to preclude local regulation of commercial cannabis activities.

In any event, defendant misreads *Mingo*, which is readily distinguishable. In *Mingo*, California's prohibition law made possession of alcohol punishable by a fine. (*Mingo, supra,* 190 Cal. at p. 771.) A local ordinance punished the same offense by up to 90 days in jail. (*Ibid.*) The court in *Mingo* found that the state prohibition law did not grant localities "any power which they did not already possess, and we are, therefore, not confronted with the questions which would arise if there was such a specific grant." (*Id.* at p. 772.) *Mingo* then determined that the local ordinance was preempted based on duplication, not field preemption: municipalities cannot "pass ordinances punishing the same acts which are punishable under general laws [unless] expressly authorized to do so." (*Id.* at p. 773.) The court in *Mingo* did not find that field preemption can occur merely because the state legislature has not expressly authorized all contours of specific local government regulation. And, unlike in *Mingo*, where local jurisdictions were not granted any authority to allow the sale of alcohol, MAUCRSA does grant local jurisdictions authority to regulate or prohibit commercial cannabis. (See Bus. & Prof. Code,

§ 26200, subd. (a)(1), ["local jurisdiction[s]" may "regulate" or "completely prohibit" commercial cannabis businesses].)

As this Court explained when discussing medical marijuana in *Riverside*, localities have varying interests when it comes to cannabis: "California's 482 cities and 58 counties are diverse in size, population and use," not every California city will choose to "allow medical marijuana facilities," and "facilities that dispense medical marijuana may pose a danger of increased crime, congestion, blight, and drug abuse, and the extent of this danger may vary widely from community to community." (*Riverside, supra,* 56 Cal.4th at pp. 755-756.)[6] The presumption that local land use regulations are not preempted by state law applies with even greater force when, as here, "there is a significant local interest to be served that may differ from one locality to another." (*Riverside, supra,* 56 Cal.4th at p. 744.)

Defendant cites *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 957 (*Kirby*), for the proposition that the general presumption against preemption for local land use and licensing regulation "does not apply in the area of criminal law." (PBM, p. 31.) But *Kirby* does not help defendant.

In *Kirby*, the court considered a local ordinance that banned the cultivation of medical marijuana and set misdemeanor

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[6] Local governments have adopted a variety of different ordinances to regulate or ban commercial cannabis. (See, e.g., Maywood Municipal Code, § 5-46.13 et seq.; Los Angeles County Code, § 22.140.134, subd. (a); Compton Municipal Code, § 30-52.4; West Covina Municipal Code, § 26-685.9300; Long Beach Municipal Code, § 5.92.1430; Rosemead Municipal Code, §17.40.030, subd. (B).)

penalties for any violation. (*Kirby, supra,* 242 Cal.App.4th at pp. 950-951.) The plaintiff argued that the ordinance was preempted by state law that provided immunity from prosecution for marijuana cultivation to persons with a medical marijuana card. (*Id.* at p. 961.) The court determined that "the CUCSA and MMP's prohibition of arrests manifest[s] the Legislature's intent to fully occupy the area of criminalization and decriminalization of activity *directly related* to marijuana." (*Ibid,* emphasis added.) But *Kirby* also found, as the Court of Appeal here explained, that "the 'indirect criminal sanction' of a potential misdemeanor prosecution for failing to abate a public nuisance involving the cultivation of medical marijuana was not preempted by state law." (*Wheeler, supra,* 72 Cal.App.5th at p. 839, citing *Kirby, supra,* 242 Cal.App.4th at p. 961.)

The Court of Appeal here also explained that "[t]here is not . . . a bright line between the local land use, zoning, and nuisance ordinances restricting commercial cannabis activity . . . and local criminal penalties for cannabis-related activity." (*Wheeler, supra,* 72 Cal.App.5th at p. 839.) The MMP analyzed in *Kirby* was "narrowly drawn and operate[d] primarily in the field of criminal law." (*Kirby, supra,* 242 Cal.App.4th at p. 969.) The MMP and UCSA are contained in the Health and Safety Code sections with provisions of that code defining crimes. (*Kirby, supra, supra,* 242 Cal.App.4th at p. 957, fn. 9.) But commercial cannabis is now a commodity regulated by the Business and Professions Code rather than prohibited by the Health and Safety Code. (*Wheeler, supra,* 72 Cal.App.5th at p. 840.) LAMC section 104.15, accordingly, does not criminalize cannabis possession, use, sale, or cultivation.

Defendant was not charged with a drug crime related to cannabis; she was only charged with a licensing violation. Even under *Kirby*, criminal enforcement of licensing violations is not preempted.

The Court of Appeal thus correctly concluded that "field preemption does not apply" and that UCSA does not "occupy the field to the exclusion of local ordinances criminalizing cannabis-related activities." (*Wheeler, supra,* 72 Cal.App.5th at p. 840.)

B. Defendant's claim that LAMC section 104.15 "duplicates and contradicts" Health and Safety Code section 11366.5 fails.

Defendant argues that LAMC section 104.15 "duplicates and contradicts Health and Safety Code section 11366.5" because both the ordinance and statute criminalize leasing a building "for the illegal sale or distribution of cannabis" while only the state law "has a *mens rea* requirement." (PBM, p. 31.) Defendant's attempt to conjoin two different tests—duplication and contradiction—fails to demonstrate state law preemption under either standard. There is no duplication as the local ordinance imposes different requirements and seeks to prevent different conduct from the state statute: unlicensed commercial cannabis activity within Los Angeles instead of drug crime anywhere in the state. Nor does the local ordinance contradict state law. It does not require what the state law forbids, it does not prohibit what the state law demands, and it is reasonably possible to comply with both provisions.

1. LAMC section 104.15 does not duplicate Health and Safety Code section 11366.5.

"Local legislation is 'duplicative' of general law when it is coextensive therewith." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897–898; see also *Mingo, supra,* 190 Cal. at p. 770 [a "county ordinance punishing exactly the same act denounced by a state law is in conflict therewith and therefore, to that extent, void"].) Although this Court has not further defined "coextensive" in the criminal context, courts have generally considered whether local and state legislation impose the same requirement or prohibit the same thing. In *Great Western Shows v. County of Los Angeles* (2002) 27 Cal.4th 853, 865 (*Great Western Shows*), this Court examined a local ordinance that prohibited "the sale of firearms and/or ammunition on County property." State statutes "prohibit[ed] the sale of certain dangerous firearms." (*Ibid.*) The Court then explained that "the Ordinance does not criminalize 'precisely the same acts which are . . . prohibited' by statute." (*Ibid.*) Because the prohibited conduct was not identical, the ordinance and statute were not coextensive: "[p]ut another way, possessing a gun on county property is not identical to the crime of selling an illegal assault weapon or handgun, nor is it a lesser included offense, and therefore someone may be lawfully convicted of both offenses." (*Id.* at p. 866.)

LAMC section 104.15 and Health and Safety Code section 11366.5 prohibit different conduct. The local ordinance penalizes the sale of commercial cannabis in Los Angeles without a license. As the Court of Appeal correctly stated, it "applies only to

landlords who allow commercial cannabis activity to occur on their property within the City, without a City-issued license." (*Wheeler, supra,* 72 Cal.App.5th at p. 840.) And it is the "location of the business within the City and the absence of a license" that triggers the ordinance. (*Id.* at p. 841.)

Section 11366.5, in contrast, prohibits a landlord from knowingly permitting "a wide range of drug-related activities to occur on property located anywhere in the state." (*Wheeler, supra,* 72 Cal.App.5th at p. 840.) Section 11366.5 does not consider or prohibit unlicensed commercial cannabis activity. Instead, as the Court of Appeal put it, the statute criminalizes drug crime such as "landlords who knowingly allow a methamphetamine manufacturing lab, a cocaine-distributing cartel, or a street-level heroin dealer to operate on their property." (*Wheeler, supra,* 72 Cal.App.5th at p. 840.)

Health and Safety Code section 11366.5 and LAMC section 104.15 also impose different requirements, as the state statute requires prohibited conduct be done "knowingly" whereas the local ordinance imposes strict liability. This difference in mental states accords with the different nature of the conduct sought to be prevented. The act prohibited by section 104.15 is unlicensed commercial cannabis activity; the act prohibited by section 11366.5 is the illegal sale of controlled substances. Given "[t]here is no such thing as a licensed methamphetamine lab or heroin dealership" illegal drug activity "is necessarily clandestine." (*Wheeler, supra,* 72 Cal.App.5th at p. 841.) It would thus not be reasonable "to impose strict liability on a landlord from whom such

activity has been successfully concealed." (*Ibid.*) Commercial cannabis businesses, in contrast, "operat[e] openly in public," "businesses are required to display their licenses prominently, and the City maintains a publicly accessible website listing all cannabis businesses." (*Ibid.*) Landlords profiting off these commercial businesses thus incur little burden by ensuring their lessees are properly licensed.

Cohen, supra, 40 Cal.3d 277, illustrates the differences between the statutes at issue. In *Cohen*, the defendant argued that a San Francisco ordinance requiring operators of escort services to acquire a permit was preempted by state law because "it impermissibly [sought] to regulate the criminal aspects of sexual conduct." (*Id.* at p. 290.) This Court explained, however, that the local ordinance did "not prohibit sexual or criminal activity or impose a sanction for engaging in it." (*Id.* at p. 295.) Instead, the statute prohibited "escort services and escorts from operating without permits, whether or not the escorts provide sexual favors in return for money." (*Ibid.*) "The law regulates the business of escort services, not their nature." (*Ibid.*) Similarly here, section 104.15 merely prohibits unlicensed commercial cannabis activity. It does not, as Health and Safety Code section 11366.5 does, prohibit drug crime. The ordinance thus "does not criminalize precisely the same acts" that are "prohibited by statute." (*Great Western Shows, supra,* 27 Cal.4th at p. 865, internal quotation marks omitted.)

Defendant claims that—irrespective of the differing requirements, triggering provisions, and nature of the conduct

sought to be prevented—the local ordinance "duplicates and contradicts" Health and Safety Code section 11366.5 under the holding of *In re Portnoy* (1942) 21 Cal.2d 237 (*Portnoy*). (PBM, pp. 32-34.) She claims that *Portnoy* found that a "difference in the *mens rea* requirements between the state and local provisions resulted in a finding that the local laws both conflict and duplicate the state laws." (PBM, p. 34.) But *Portnoy* did not discuss—let alone base its holding on—differing mental states. (*Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 332 ["It is axiomatic, of course, that a decision does not stand for a proposition not considered by the court"].)

In *Portnoy*, state law prohibited possessing a slot machine on which money is "hazarded." (*In re Portnoy, supra,* 21 Cal.2d at p. 240.) A local ordinance prohibited possession of a slot machine on which money is or "may be" hazarded. (*Id.* at p. 241.) The court first questioned whether there was any difference "between prohibiting the possession of slot machines upon which money is hazarded and the possession of machines upon which money may be hazarded." (*Ibid.*, emphasis omitted.) But even assuming there was a distinction, the words "may be" were "used only in connection . . . with the operation of the machines." (*Ibid.*) Thus the statute and ordinance prohibited precisely the same act: "the requirement is identical under both the statute and the ordinance with respect to an essential element of the crime, the hazarding of money." (*Ibid.*) *Portnoy* did not hold that a local ordinance duplicated a state statute because it imposed a different mental state. And, unlike *Portnoy*, here the ordinance and statute

prohibit different acts: unlicensed business activity and drug crime.

In any event, defendant's interpretation of *Portnoy* does not reflect the state of the law regarding local ordinances imposing a different mental state than state statutes. (Binder & Fissell, *Judicial Application of Strict Liability Local Ordinances* (2021) 53 Ariz. St. L.J. 425, 445 ["Reducing the culpable mental state required for liability, or eliminating it altogether, saves the local offense from being invalidated by conflict preemption"].)

2. LAMC section 104.15 does not contradict Health and Safety Code section 11366.5.

A local ordinance is preempted by contradiction when it is "inimical" to state law. (*Riverside, supra,* 56 Cal.4th at p. 743.) This "form of preemption does not apply unless the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands." (*Ibid.*) "[N]o inimical conflict will be found where it is reasonably possible to comply with both the state and local laws." (*Ibid.*) It is reasonably possible for a landlord to comply with both LAMC section 104.15 and Health and Safety Code section 11366.5 regardless of the differences in mental states.

Health and Safety Code section 11366.5 prohibits landlords from knowingly renting a building for the sale or distribution of hundreds of illegal controlled substances. LAMC section 104.15 prohibits renting a building to an unlicensed commercial cannabis business irrespective of knowledge. Section 104.15 does not

require what section 11366.5 forbids. It does not, for example, purport to legalize renting property to sell or distribute controlled substances. The local ordinance also does not prohibit what the state law demands. Nothing in section 11366.5 requires landlords to permit unlicensed commercial cannabis activity on their property. Nor does the absence of a knowledge requirement from section 104.15 somehow preclude a landlord from possessing knowledge.

Rather, it is reasonably possible to comply with both statutes. To do so, a landlord must simply rent to a commercial cannabis business that holds both a state and local license. In terms of section 104.15 and local licensure, it is not difficult for landlords to verify the license status of their renters. Commercial cannabis businesses in Los Angeles must prominently display their license. (LAMC, § 104.11, subd. (b).) As the People pointed out in the Appellate Division, "the City's Department of Cannabis Regulation has a publicly accessible website (http://cannabis.lacity.org) where defendants can check to determine if the retail storefront location has a license or authorization from the City." (PWM, Exhibit D, p. 148; see also *Wheeler, supra,* 72 Cal.App.5th at p. 841 ["and the City maintains a publicly accessible website listing all licensed cannabis businesses"]; *In re Marley* (1946) 29 Cal.2d 525, 529 (*Marley*) [in a strict liability case it is the "duty of the defendant to know what the facts are that are involved or result from his acts or conduct"].)

Defendant suggests, however, that LAMC section 104.15 contradicts state law because it imposes criminal penalties for

commercial cannabis activity. (PBM, pp. 31-32.) But MAUCRSA stands as a bar to that claim. MAUCRSA provides that it "shall not be interpreted to supersede or limit existing local authority for law enforcement activity" including "enforcement of local license, permit, or other authorization requirements." (Bus. & Prof. Code, § 26200, subd. (a)(2).) MAUCRSA also "shall not be deemed to limit the authorities or remedies of" a local government under "Section 7 of Article XI of the California Constitution." (Bus. & Prof. Code, § 26200, subd. (f); see also Cal. Const., Art. XI, § 7 [a "county or city may make *and enforce*" laws "not in conflict with general laws"], emphasis added.) That provision of the Constitution provides localities with inherent police power. (*Riverside, supra,* 56 Cal.4th at p. 738.) "The requirement that a license first be obtained before conducting a business or activity has long been recognized as a valid exercise of [local] police power." (*Cohen, supra,* 40 Cal.3d at p. 296.) This includes the imposition of penalties that include the possibility of jail. (*Id.* at pp. 285, 299 [affirming licensing ordinance that "may result in criminal penalties of up to six months in jail"].) LAMC section 104.15 is thus a proper licensing regulation, which imposes criminal penalties for violating its terms. It is the type of licensing regulation specifically contemplated by MAUCRSA.

Defendant's sole other contradiction argument relies exclusively on Justice Liu's concurrence in *Riverside, supra,* 56 Cal.4th at pp. 763–765. (PBM, p. 35.) In that concurrence, Justice Liu applied principles of federal obstacle preemption to opine that conflict preemption can also occur when local regulation stands as

an obstacle to what the state has affirmatively "authorize[d] or intend[ed] to promote." (*Riverside, supra,* 56 Cal.4th at p. 765 (conc. opn. of Liu, J.); see also *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1123 (*T-Mobile*) [explaining that "[t]his court has never said explicitly whether state preemption principles are coextensive with the developed federal conception of obstacle preemption"].) Even under that test and Justice Liu's concurring opinion, however, the state statute and local ordinance here are not in conflict. Justice Liu agreed with the majority in *Riverside* that the MMPA, at issue in that case, was a "limited exemption from state criminal liability" and that "state law does not 'authorize' activities, to the exclusion of local bans, simply by exempting those activities from otherwise applicable state prohibitions." (*Riverside, supra,* 56 Cal.4th at p. 764, internal quotations omitted, conc. opn. of Liu, J.) Current law under MAUCRSA maintains this status quo: state licensing remains an exception to state criminal liability. (Bus. & Prof. Code, §§ 26032, subds. (a) ["The actions of a licensee . . . are not unlawful under *state law* and shall not be an offense subject to arrest, prosecution, or other sanction under *state law*. . ." emphasis added], (b) [exception to state law violations for property owners].)

Citing the *Riverside* concurrence, defendant characterizes Health and Safety Code section 11366.5 as "authoriz[ing] a property owner to unknowingly permit its lessee to operate a business illegally selling a controlled substance, marijuana." (PBM, p. 35.) This argument conflates not specifically punishing conduct with authorizing that same conduct. (*Bronco Wine Co. v.*

Jolly (2004) 33 Cal.4th 943, 992 ["[t]here is a difference between (1) not making an activity unlawful, and (2) making that activity lawful"].) Section 11366.5 does not make any conduct lawful. It simply does not criminalize or punish landlords who do not know their property is being used for drug crime.

In any event, defendant's argument misapplies the *Riverside* concurrence. The concurring opinion explained that it was concerned with local regulation that imposed an obstacle to state law. Contradiction preemption can occur where local law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of" state law. (*Riverside, supra*, 56 Cal.4th at p. 764, conc. opn. of Liu, J.) It is not the purpose or objective of Health and Safety Code section 11366.5 to have property owners—knowingly or unknowingly—rent property to unlicensed or illegal cannabis businesses. Nor does section 11366.5—or UCSA generally—seek to encourage the unlicensed sale of commercial cannabis. (See *County of San Bernardino v. Mancini* (Sept. 13, 2022, E075246) ____ Cal.App.5th ____ [2022 Cal.App.LEXIS 839, *13] (*Mancini*), emphasis in original, quoting *City of Vallejo v. NCORP4, Inc.* (2017) 15 Cal.App.5th 1078, 1081 ["While permitting the use of marijuana, California law 'does not thereby *mandate*, that local governments authorize, allow, or accommodate the existence of' marijuana dispensaries"].)

The local ordinance neither duplicates nor contradicts state law.

C. LAMC section 12.21 "as applied" to defendant is not preempted by state laws.

LAMC section 12.21, subdivision (A)(1)(a), is a land use ordinance providing that structures in Los Angeles may only be used in permitted zones after all necessary licenses and permits have been obtained. That section provides: "No building or structure shall be erected, reconstructed, structurally altered, enlarged, moved, or maintained, nor shall any building, structure or land be used or designed to be used for any use other than is permitted in the zone in which such building, structure or land is located and then only after applying for and securing all permits and licenses required by all laws and ordinances." (LAMC, § 12.21, subd. (A)(1)(a)).)

Defendant does not appear to argue that section 12.21 duplicates the state statutes or that field preemption applies. (See PBM, pp. 41-45.) Defendant also does not, and cannot, argue that the state statutes facially preempt this general zoning ordinance. She concedes, "the wording of LAMC section 12.21, subdivision (a)(1)(A) does not match Health and Safety Code section 11366.5 or Penal Code section[] 373a." (PBM, p. 44.) There is thus no basis for a facial preemption challenge. (*T-Mobile, supra,* 6 Cal.5th at p. 1117 [in "a facial [preemption] challenge to a local ordinance, the court considers the text of the measure itself, not its application to any particular circumstances or individual"].)

Defendant instead argues—while citing no authority—that section 12.21 as applied to her conduct is preempted by the state statutes. (PBM, p. 44 [defendant "is unaware of a case that has

decided whether preemption applies to a broadly worded local law being used to regulate conduct that a specific state statute covers"].)[7] But as applied challenges are based on specific facts presented to the trial court. In the context of constitutional challenges, for example, courts have repeatedly held that while facial challenges may be raised on appeal for the first time, as applied challenges may not. (*People v. Gonzalez* (2020) 57 Cal.App.5th 960, 975 [an "as-applied constitutional challenge is forfeited unless previously raised"]; *Cahill Construction Co., Inc. v. Superior Court* (2021) 66 Cal.App.5th 777, 789-790 [an as applied challenge "'contemplates analysis of the facts of a particular case . . . to determine the circumstances in which the statute . . . has been applied"], citation omitted.)

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[7] "As applied" preemption is typically employed to consider whether federal law preempts state law. (See e.g., *People ex rel. Harris v. Pac Anchor Transportation, Inc.*, (2014) 59 Cal.4th 772, 784-787 [the Federal Aviation Administration Authorization Act of 1994 did not preempt California labor and insurance laws as applied]; *Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 717-720 [considering as applied preemption under the Interstate Commerce Commission Termination Act of 1995].) Federal preemption law is established by the supremacy clause of the United States Constitution. (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935.) The People have identified one Court of Appeal opinion considering whether a local ordinance, "as applied," was preempted by a state statute. (*L.A. Lincoln Place Investors v. City of L.A.* (1997) 54 Cal.App.4th 53.) There the plaintiff presented a factual basis to support the as applied challenge. (*Id.* at pp. 57-61.) No such relevant facts were presented in the trial court here.

Defendant did not raise a preemption challenge in the trial court—let alone an as applied preemption challenge. (See Return to Petition for Writ of Mandate, p. 57 [defendant "certainly waived this particular argument because it is based on facts not raised in the trial court"]; PWM, Exhibit A, pp. 55-66 [defendant's motion to dismiss raised constitutional vagueness and Penal Code section 1385 claims].) The record here is particularly sparse to support an as applied challenge, as defendant's motion to dismiss was filed at the pretrial hearing immediately following her arraignment. (See PWM, Exhibit A, pp. 53-55.) More importantly, defendant's argument fails on the merits.

1. LAMC section 12.21 does not contradict Health and Safety Code section 11366.5.

Defendant claims that section 12.21 as applied "contradicts and is in conflict with the USCA [and] Health and Safety Code section 11366.5" because the state statute requires proof of knowledge "before criminal liability can be imposed." (PBM, pp. 41-42.) Defendant does not, however, even attempt to apply the test for contradiction preemption. She does not argue that the ordinance requires what the state statute forbids, that the ordinance prohibits what the statute demands, that it is not reasonably possible to comply with both laws, or that Justice Liu's authorization or promotion test compels preemption. (See PBM, pp. 41-43.) Regardless, any such argument would have failed for the same reasons defendant's preemption argument regarding LAMC section 104.15 failed. A property owner can comply with

both sections by renting a properly zoned building to a commercial cannabis business that holds both a state and local license. And under Justice Liu's concurrence, as demonstrated above, section 11366.5 does not authorize or promote unlicensed commercial cannabis activity.

Defendant nonetheless argues that LAMC section 12.21 contradicts state law because it "extend[s] misdemeanor criminal liability" without a knowledge requirement. (PBM, p. 41.) But, as the Court of Appeal correctly discerned, it is common for public welfare offenses to not require knowledge. (*Wheeler, supra,* 72 Cal.App.5th at p. 841.) Unlicensed activity "undercuts the City's licensing scheme, and circumvents public health, safety, and environmental regulations." (*Ibid.*) "The City may reasonably believe that imposing strict liability on landlords who rent to cannabis shops without confirming that they are licensed is essential to the City's ongoing efforts to combat the negative impact of the unlicensed commercial cannabis activity on the health, safety, and welfare of the City's residents." (*Ibid.*)[8]

Defendant similarly claims that section 12.21 is not "regulating land use" because it "is being used to criminally prosecute [her]." (PBM, p. 42.) The imposition of misdemeanor criminal sanctions, however, is simply "a permissible enforcement mechanism" to ensure compliance with this land use regulation.

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[8] Los Angeles is not unique in this regard. (See Long Beach Municipal Code, § 5.92.1410 ["this Chapter shall be considered strict liability; accordingly, the City shall not be required to prove knowledge, criminal intent, or any other mental state to establish a violation"].)

(*Wheeler, supra,* 72 Cal.App.5th at p. 839.) Under "many statutes enacted for the protection of the public health and safety . . . criminal sanctions are relied upon even if there is no wrongful intent," where the "primary purpose" is "regulation rather than punishment." (*In re Jorge M.* (2000) 23 Cal.4th 866, 872 (*Jorge M.*).) LAMC section 12.21 is expressly a public welfare ordinance. Its purpose is to "regulate and restrict the location and use of buildings" and "to promote health, safety, and the general welfare" through the city's zoning regulations. (LAMC, § 12.02.)

Defendant also argues that section 12.21 is not being truly employed as a land use ordinance because there "is no 'zone' for the unlicensed sale of cannabis anywhere in the city of Los Angeles." (PBM, p. 42.) But there are zones for the licensed sale of commercial cannabis. (LAMC, § 105.02, subd. (a)(1) [retail commercial cannabis activity is limited to C1, C1.5, C2, C4, C5, CM, M1, M2 and M3 zones]; LAMC, § 105.02, subd. (a)(2) [microbusiness commercial cannabis activity is limited to M1, M2, M3, MR1 and MR2 zones].) A license is required to engage in commercial cannabis activity in these zones. (LAMC, § 105.02 [commercial cannabis activity "shall be limited to such activity conducted by a person licensed by the state of California and the City to engage in such Commercial Cannabis Activity"].) The City must be able to regulate and punish businesses that fail to comply with these land use ordinances. Neither the imposition of criminal penalties nor the lack of a knowledge requirement somehow takes defendant's commercial zoning and license violation outside the

realm of land use—or compels the conclusion that the local ordinance is preempted.

2. LAMC section 12.21 does not contradict Penal Code section 373a.

Defendant's argument that LAMC section 12.21 as applied "contradicts and is in conflict with" Penal Code section 373a also fails. (PBM, p. 41.) She claims the local ordinance contradicts section 373a because the state nuisance statute "requires notice to a property owner before prosecution" and LAMC section 12.21 has no notice or knowledge requirement. (PBM, p. 42.) Preliminarily, defendant appears to be arguing "as applied" preemption to something that did not occur in the trial court. She claims section 12.21 conflicts with state nuisance law, but the complaint did not prosecute defendant under a nuisance theory or seek nuisance abatement remedies. (See PWM, Exhibit A, pp. 46-51; compare with *People ex rel. Feuer v. Progressive Horizon, Inc.* (2016) 248 Cal.App.4th 533, 536-537 ["the People filed this lawsuit alleging that defendants' medical marijuana business was a nuisance" and "[c]ontemporaneous with the filing of the complaint, the People sought an order to show cause regarding preliminary injunction"].)

More importantly, defendant cannot show conflict preemption as it is reasonably possible to comply with both laws. California has also historically deferred to local governments to define and prosecute nuisances and nothing in the general land use and licensing provisions of section 12.21 supports a departure from that deference.

Penal Code section 373a does not preempt LAMC section 12.21 by contradiction. LAMC section 12.21 does not, for example, require that property owners engage in nuisance activities. Nor does the section forbid giving property owners notice of a possible nuisance action. A property owner instead may comply with both provisions by renting to a licensed commercial cannabis business in the proper zone while preventing that business from becoming a public nuisance.

Indeed, California has delegated the ability to declare nuisances to cities: "[b]y ordinance the city legislative body may declare what constitutes a nuisance." (Gov. Code, § 38771; see also Gov. Code, §§ 38772-38773.7; *Wheeler, supra,* 72 Cal.App.5th at p. 841 ["the state has explicitly disavowed any intention to occupy the field of nuisance abatement"].) This Court explained in *Riverside* that "a city's or county's inherent, constitutionally recognized power to determine the appropriate use of land within its borders (Cal. Const., art. XI, § 7) allows it to define nuisances for local purposes and to seek abatement of such nuisances." (*Riverside, supra,* 56 Cal.4th at p. 761.) California defers to local governments to define and prosecute nuisances absent a "clear conflict" with state law. (*Riverside, supra,* 56 Cal.4th at p. 761.) Merely having different notice requirements does not create a clear conflict. And it is not noteworthy for a land use and licensing ordinance like LAMC section 12.21 to impose strict liability: "[u]nder many statutes enacted for the protection of the public health and safety . . . criminal sanctions are relied upon even if there is no wrongful intent." (*Jorge M., supra,* 23 Cal.4th at p. 872.)

Defendant's contrary claims are unavailing. She cites *Jones v. City of Los Angeles* (1930) 211 Cal.304, 309, for the proposition that there is a distinction between zoning and nuisance ordinances. (PBM, p. 42.) But the court in *Jones* drew no such distinction. In *Jones*, a zoning ordinance attempted to retroactively restrict mental health institutions from operating in a newly annexed territory, even though four mental health hospitals already existed in that territory. (*Jones, supra,* 211 Cal. at p. 305.) Except for the ordinance's applicability to the four already built hospitals, "there [could] be no doubt of its validity." (*Id.* at p. 307.) The court then concluded that the city could not use its police power to "justify the destruction of [the four] existing businesses." (*Id.* at p. 309-310.) Nowhere did the court suggest that an ordinance must be either a nuisance or a zoning ordinance.

Defendant hypothesizes that if she can be prosecuted for a tenant's unlicensed cannabis activity, a property owner could also be prosecuted if a tenant "receives stolen property in violation of Penal Code section 496, subdivision (a)" or if a tenant "engage[s] in an act of prostitution in violation of Penal Code section 647, subdivision (b)." (PBM, p. 43.) But general criminal behavior is not analogous to zoning and licensing requirements to engage in regulated commercial activity. The land use violation occurred here because LAMC section 12.21 requires that property be used "after applying for and securing all permits and licenses required by all laws and ordinances." (LAMC, § 12.21, subd. (A)(1)(a).) There is a license needed to operate a commercial cannabis business. The City does not offer licenses or permits to steal property or engage in acts of prostitution.

The Court of Appeal thus correctly concluded that LAMC section 12.21 is not preempted by state law because it "falls well within the City's land use powers to enforce its zoning ordinances through criminal as well as civil nuisance penalties." (*Wheeler, supra,* 72 Cal.App.5th at p. 842.) And it "is common for such 'public welfare offenses' not to require proof of knowledge or intent." (*Ibid.*)

D. Defendant's citations to a severability clause and a "no conflict" provision do not aid her claims.

Defendant cites LAMC section 104.17, a severability clause, and states that "the particular sections that this [C]ourt deems to be in conflict with state law, if any, can be severable from the entire regulatory framework enacted by the city." (PBM, p. 46.) This section does not apply as defendant has not demonstrated preemption of any part of any ordinance at issue. Nor has defendant presented any actual severability analysis. (See *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 271 [enactments may be found severable if they are "grammatically, functionally, and volitionally separable"].) In fact, defendant did not raise any severability issue until her reply brief in the Court of Appeal, which understandably did not address the issue. In the event a severability analysis becomes necessary, this Court should order further briefing or remand it to the lower courts for further consideration.

Defendant also cites LAMC section 105.07 for the proposition that "the provisions that [she] is charged with are regulating

conduct that state law already regulates and are thus in conflict." (PBM, p. 47.) The cited provision, however, merely provides that "[t]his article is not intended to conflict with State law" and that "[t]his article shall be interpreted to be compatible with State enactments . . ." (LAMC, § 105.07.) No language in the cited provision supports an interpretation that local commercial cannabis ordinances are preempted by state law. In any event, section 105.07 expressly applies to only Article 5 of Chapter X of the Los Angeles Municipal Code. (See *ibid.*) LAMC section 104.15 resides in Article 4 of Chapter X. LAMC section 105.07 does not apply to Article 4.

II. The Court of Appeal correctly determined the trial court abused its discretion by dismissing this case under Penal Code section 1385.

A trial court may, "in furtherance of justice," order an action dismissed. (Pen Code, § 1385, subd. (a).) Such power is by no means absolute. (*People v. Orin* (1975) 13 Cal.3d 937, 945 (*Orin*).) "A trial court's power to dismiss under section 1385 may be exercised *only* 'in furtherance of justice,' which mandates consideration of 'the constitutional rights of the defendant, and *the interests of society represented by the People*.'" (*People v. Clancey* (2013) 56 Cal.4th 562, 580 (*Clancey*), emphasis in original, internal quotation marks omitted.) "[S]ociety, represented by the People, has a legitimate interest in the fair prosecution of crimes properly alleged." (*Orin, supra,* 13 Cal.3d. at p. 947, internal quotation marks and citations omitted.)

From these general principles, it follows that a court abuses its discretion in dismissing a case if "guided solely by a personal antipathy for the effect that the . . . law would have on [a] defendant, while ignoring [the] defendant's background, *the nature of his present offenses*, and other individualized considerations . . . ." (*People v. Williams* (1998) 17 Cal.4th 148, 159, internal citations and quotations omitted, emphasis added.)

Defendant argues it was proper for the trial court to consider her asserted lack of knowledge as a basis to dismiss her strict liability offenses. (PBM, p. 15.) On the contrary, determining defendant's lack of knowledge justified dismissal of her offenses, when no evidence of knowledge was required for a conviction, undermined society's interest in the fair prosecution of the offense, and the purpose of strict liability, public welfare offenses. There was, moreover, no substantial evidence to support a dismissal based on finding of lack of knowledge.

A. Dismissing strict liability, public welfare charges based on a defendant's asserted lack of knowledge is not in furtherance of justice.

Strict liability creates a "'duty of the defendant to know what the facts are that are involved or result from his acts or conduct.'" (*Marley, supra,* 29 Cal.2d at p. 529.) In such cases, "[t]he accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities." (*Morrissette v. United States* (1952) 342 U.S. 246, 255 [72 S.Ct. 240, 96 L.Ed. 288].) Strict liability is

often applied to public welfare and regulatory offenses because "[a]lthough criminal sanctions are relied upon, the primary purpose of the statutes is regulation rather than punishment or correction." (*Jorge M., supra,* 23 Cal.4th at p. 872.)

Indeed, both the state and local cannabis regulatory schemes seek public protection as a primary focus. (See Business & Prof. Code, § 26011.5 [the "protection of the public shall be the highest priority for the [Department of Cannabis Control] in exercising licensing, regulatory and disciplinary functions"]; LAMC, § 105.00 [the "purpose of this article is to strike a balance to protect local communities and neighborhoods from the known negative effects of cannabis activities while also to provide for Commercial Cannabis Activity recognized by State law"].) The Court of Appeal explained that the City's licensing scheme regulates public welfare: "[i]n this case, the 'interests of society' as expressed in the ordinances at issue are to aid the City in enforcing its commercial cannabis licensing scheme, and to minimize incentives to undercut this scheme by operating unlicensed cannabis businesses, by imposing criminal liability on landlords who rent to cannabis businesses without ascertaining that such businesses are licensed." (*Wheeler, supra,* 72 Cal.App.5th at p. 843.)

As the Appellate Division of the Los Angeles Superior Court has explained, the City's commercial cannabis ordinances "vividly spell[ed] out the dangers involved" in unregulated cannabis business. (*People v. Gonzalez* (2020) 53 Cal.App.5th Supp. 1, 15.) The urgency clause enacting the City's initial commercial cannabis licensing scheme identified that "'the attendant crime and negative

secondary impacts'" of unlicensed cannabis businesses "'poses a current and immediate threat to the public welfare'" and that "'proliferation of these unauthorized [cannabis] businesses has led to increased crime and negative secondary impacts in neighborhoods, including but not limited to violent crimes, robberies, [and] the distribution of tainted marijuana . . . .'" (*Ibid.*, quoting L.A. Ord. No. 185,343, § 3.)

The predecessor version of LAMC section 104.00 identified that "'without comprehensive regulations, consumers in the City were vulnerable to the dangers inherent in ingesting and using a substance that was not subject to basic rules of safety for ingestible substances.'" (*Gonzalez, supra,* 53 Cal.App.5th Supp. at p. 12.) "Nor were the businesses penalized for unscrupulous practices utilized against defenseless consumers." (*Ibid.*) As the court also noted, "unregulated cannabis businesses remain a source of danger for unsuspecting neighbors when fires or other catastrophes take place at those locations." (*Ibid.*)

While the negative effects of unlicensed and unregulated cannabis businesses are significant, it is not difficult for property owners to determine if their tenants are licensed. "A person can readily ascertain if a cannabis operation is licensed or has a temporary approval license to operate." (*Gonzalez, supra,* 53 Cal.App.5th Supp. at p. 15.) The Court of Appeal in this case noted that local licenses must be "prominently displayed at the Business Premises." (*Wheeler, supra,* 72 Cal.App.5th. at p. 831, citing LAMC, § 104.11(b), internal quotation marks omitted.) "A person can check the storefront window and determine if the business is

lawfully operating." (*Gonzalez, supra,* 53 Cal.App.5th Supp. at p. 15.) The City has also facilitated property owners' ability to ascertain their tenants' license status by maintaining "a website listing all businesses that have a license to sell cannabis[,]" including a "feature allowing the public to search by address to determine whether a business at a particular location has a license." (*Wheeler, supra,* 72 Cal.App.5th at p. 831.)

Dismissing defendant's strict liability offenses based on her asserted lack of knowledge thus undercuts the purpose of the public welfare offenses with which defendant was charged. (See *Wheeler, supra,* 72 Cal.App.5th at p. 841 [it is reasonable to conclude "that imposing strict liability on landlords who rent to cannabis shops without confirming that they are licensed is essential to the City's ongoing efforts to combat the negative impact of unlicensed commercial cannabis activity on the health, safety, and welfare of the City's residents"].) The dismissal also failed to weigh society's interests in prosecuting this case and prevented the People from prosecuting defendant when there was probable cause she was guilty.

As the Court of Appeal correctly concluded, given these "interests, the appellate division did not err in concluding that '[f]inding that a person's lack of knowledge called for the dismissal of offenses, when the offenses required no knowledge for conviction, in effect, was an improper dismissal based on the court's disagreement with the law, or disapproval of the impact the provisions would have on defendant.'" (*Wheeler, supra,* 72 Cal.App.5th at p. 843.)

B. Defendant's arguments to the contrary are unpersuasive.

Defendant argues that because defendants must show a detriment before trial courts can dismiss properly alleged crimes under section 1385, the trial court could somehow consider her asserted lack of knowledge as a basis to dismiss her strict liability offenses. (PBM, p. 20.) Defendant's conclusion does not follow from her premise. Whether or not defendant had knowledge of the underlying unlicensed activity does not show she would suffer a detriment if convicted of the strict liability charges.

In *Orin, supra,* 13 Cal.3d at pp. 946-947, this Court explained that "appellate courts have shown considerable opposition to the granting of dismissals under section 1385 in instances where the People are thereby prevented from prosecuting defendants for offenses of which there is probable cause to believe they are guilty as charged." Courts have, accordingly, placed an affirmative duty on defendants to demonstrate they would suffer a detriment if properly alleged charges are not dismissed. (*Id.* at p. 947.) A dismissal under section 1385 where the defendant has failed to make the requisite showing is an abuse of discretion. (*Ibid.; People v. Superior Court (Montano)* (1972) 26 Cal.App.3d 668, 671, [explaining it was improper to dismiss a charge when there was "no doubt of [the defendant's] guilt" and "[f]or reasons purely subjective, the judge disposed of this case by dismissing it"].)

Orin's requirement for a defendant to show a detriment is meant to limit a trial court's improperly broad application of section 1385. "Permitting trial judges to make liberal use of

section 1385 to avoid criminal prosecutions where probable cause exists to believe conviction is warranted would be contrary to the adversary nature of our criminal procedure as prescribed by the Legislature." (*Orin, supra,* 13 Cal.3d at p. 947.) Defendant's argument erroneously attempts to use *Orin*'s narrowing language to broaden her avenues of relief. Nothing in the detriment requirement supports a conclusion that the trial court could consider defendant's asserted lack of knowledge to dismiss her offense. Defendant's knowledge, or lack thereof, is simply not relevant to the determination of whether she would suffer a cognizable detriment if convicted of the charges.

In any event, defendant made no showing she would suffer a detriment from a conviction. *Orin's* statement regarding detriment traces back to *People v. Fretwell* (1970) 8 Cal.App.3d Supp. 37, 40-41, which identifies possible detriments to include "the fact that the defendant has or has not been incarcerated in prison awaiting trial and the length of such incarceration, the possible harassment and burden imposed upon the defendant by a retrial, and the likelihood, if any, that additional evidence will be presented upon a retrial." None of defendant's arguments apply to these factors, nor is her asserted lack of knowledge relevant to a showing of detriment under such factors.

Defendant similarly suggests that her asserted lack of knowledge shows she is not morally blameworthy for her offense, and that moral blameworthiness is "part of the nature and circumstances of the crime" courts may consider under section 1385. (PBM, p. 21.) But that argument lacks any force when

applied to the strict liability offenses here. "The offenses are not crimes in the orthodox sense, and wrongful intent is not required in the interest of enforcement." (*Jorge M., supra,* 23 Cal.4th at p. 872, citing *People v. Coria* (1999) 21 Cal.4th 868, 876–877, quoting *People v. Vogel* (1956) 46 Cal.2d 798, 801 fn. 2, internal quotations omitted.) "These offenses usually involve . . . no moral obloquy or damage to reputation." (*Jorge M., supra*, 23 Cal.4th at p. 872.)

Defendant also claims that her asserted lack of knowledge should be considered because the "principle that a court may consider a defendant's lack of moral culpability for a crime is a well settled principle in the law." (PBM, p. 21.) But defendant's argument relies on section 1385 jurisprudence related to dismissing sentencing allegations or certain charges in the context of sentencing. (See PBM, pp. 20-22, citing, e.g., *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 524, fn. 11; *People v. Williams* (1989) 30 Cal.3d 470, 482; *People v. Orabuena* (2004) 116 Cal.App.4th 84, 99; *People v. Cluff* (2001) 87 Cal.App.4th 991, 1001-1002.) Courts have the power to dismiss sentencing enhancements under section 1385 when the dismissal of such enhancements is in the furtherance of justice. (*Romero, supra*, 13 Cal.4th at pp. 529–530 [trial courts may dismiss allegations under the Three Strikes Law]; see also *People v. Tenorio* (1970) 3 Cal.3d 89, 93–95 [sentencing allegations generally].) While dismissals of sentencing allegations and entire actions both must be "in furtherance of justice" under section 1385, they differ in a critical respect: dismissals of sentencing allegations merely reduce the possible punishment upon conviction, while dismissals of entire

actions prevent the People "from prosecuting defendants for offenses of which there is probable cause to believe they are guilty as charged." (*Orin, supra,* 13 Cal.3d at p. 947, internal quotation marks and citations omitted.) Dismissals of entire charges thus curtail the People's "legitimate interest in the fair prosecution of crimes properly alleged" (*ibid.*, internal quotations and citations omitted) and prevent the People from obtaining convictions.

Criminal convictions for the public welfare offenses at issue here are particularly important for the local regulation of the cannabis industry, giving regulators notice of bad actors. The regulatory process in Los Angeles provides for a 5-year exclusion from licensure for locations that were the site of certain offenses, including illegal commercial cannabis activity. (See LAMC, § 104.03, subd. (a)(3) ["In the following circumstances a Business Premises location is ineligible for Licensure: . . .(iv) The Business Premises was the site of any illegal Commercial Cannabis Activity after April 1, 2018, as evidenced by a conviction, for a period of five years from the date of conviction"].) Indeed, the LAMC code sections here were made misdemeanors for a reason. Civil or administrative provisions alone are often an inadequate deterrent to violators, who may continue to operate with minimal consequences. (See *Mancini, supra*, ____ Cal.App.5th ____ [2022 Cal.App.LEXIS 839, *2-9] [illegal cannabis dispensary repeatedly ignored violation notices and civil penalties].) Criminal penalties are part of a balanced and effective code enforcement regime, providing the "teeth" necessary to ensure that the regulations enacted by the local elected officials are actually obeyed. Yet the

trial court terminated the People's opportunity to pursue convictions by "prevent[ing the People] from prosecuting [defendant] for offenses of which there [was] probable cause to believe [she was] guilty as charged." (*Orin, supra,* 13 Cal.3d at p. 947.)[9]

Defendant nevertheless relies on *Williams, supra*, 17 Cal.4th at pp. 162-163—another case about sentencing enhancements—for the proposition that it is appropriate for courts to consider the nature and circumstances of the current crimes, criminal history, and particulars of the defendant's background. (PBM, p. 17.) Again, however, it does not follow that courts can consider lack of knowledge in order to dismiss strict liability offenses.

Defendant also cites *People v. S.M.* (2017) 9 Cal.App.5th 210 (*S.M.*) (PBM, pp. 17–20), but to no avail. Unlike defendant, S.M. demonstrated a significant detriment to himself that would result solely from the conviction of fraud charges that had been pending for four years—the devastating impact that a fraud-based conviction would have on his ability to carry on in his chosen profession as an executive in a security company—in addition to other mitigating factors that are absent here. (*S.M., supra,* 9 Cal.App.5th at pp. 213-217.) Nothing in *S.M.* supports an

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[9] Convictions resulting from purported "innocent" or "technical" violations of strict liability, public welfare statutes can be addressed through imposition of reduced punishment. (See *United States v. FMC Corp.* (2d Cir. 1978) 572 F.2d 902, 905.) Indeed, defendant's brief acknowledges that courts can take culpability into account during sentencing. (PBM, p. 21 fn. 4.)

argument that a court may properly consider lack of knowledge to dismiss the strict liability offenses at issue here.

Rather, as the Court of Appeal ruled, "[u]pon remand, the trial court may, upon its own motion, reconsider whether to dismiss the charges in the interests of justice, on the basis of factors other than Wheeler's lack of knowledge." (*Wheeler, supra*, 72 Cal.App.5th at p. 843.) At such a hearing, the trial court would also have the opportunity to apply the judicial diversion statute that became effective after the trial court's decision in this case. (*See, e.g., Islas v. Appellate Division* (2022) 78 Cal.App.5th 1104, 1110 fn. 1.)

C. There was no substantial evidence to support a finding of lack of knowledge.

While defendant claims that "the trial court based its ruling on uncontested evidence that was presented to it in the form of an affidavit from counsel" (PBM, p. 18), the assertion defendant lacked knowledge of her tenant's activities was based solely on an unsupported statement by defense counsel in the motion to dismiss (PWM, Exhibit A, p. 65) and was contested in the People's opposition (PWM, Exhibit A, p. 81). There was no substantial evidence to support the assertion defendant lacked knowledge of the unlicensed commercial cannabis activity on her property, and the trial court's subsequent dismissal on that basis was an abuse of discretion.[10]

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[10] In addition to being responsive to points raised by defendant, whether defendant presented substantial evidence she lacked knowledge is "fairly included" in the issue of whether the trial

Findings of fact are reviewed under the "substantial evidence" standard. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.) Substantial evidence is evidence that is "reasonable, credible evidence of solid value upon which a reasonable trier of fact could have relied in reaching the conclusion in question." (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052, emphasis omitted (*Barnwell*).) A trial court's ruling based on factual findings not supported by substantial evidence is an abuse of discretion. (*Jones, supra,* 18 Cal.4th at pp. 681-682.)

The motion to dismiss asserted defendant had no knowledge of how her property was being used. (PWM, Exhibit A, p. 65.) At the end of the motion, counsel then "declare[d] under penalty of perjury that the foregoing [was] true and correct." (PWM, Exhibit A, p. 66.) But no evidence, such as a declaration from defendant, was submitted in support of counsel's statements in the motion to dismiss. (PWM, Exhibit A, p. 81.) Defense counsel was not testifying as a witness. (See Rules Prof. Conduct, rule 3.4, subd. (g) [lawyers shall not "assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the guilt or innocence of an accused"].) Nor did counsel provide any basis on which the trial court could find he had personal knowledge that defendant was unaware of her tenant's activities such that counsel could have testified. (Evid. Code, § 702 ["the

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court could consider defendant's asserted lack of knowledge to dismiss strict liability charges under Penal Code section 1385. (Cal. Rules of Court, rule 8.516(b)(1).)

testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the mater"].)

Counsel's unsupported statements in the motion to dismiss were not evidence, as the People argued in the trial court (PWM, Exhibit A, p. 81 ["the Defendant has presented . . . . no evidence that she did not know that the activity was occurring on her property"]), let alone evidence that was "reasonable, credible evidence of solid value" to support any finding defendant lacked knowledge (*Barnwell, supra,* 41 Cal.4th at p. 1052). The trial court nonetheless relied solely on the statement in defendant's motion to determine: defendant had no prior criminal history; nothing suggested defendant knew about the illegal cannabis business; and, defendant had lived an exemplary life for 80 plus years. (PWM, Exhibit B, pp. 108, 110.) The court then dismissed the charges against defendant based on these findings. (*Ibid.*) That ruling was not supported by substantial evidence and was an abuse of discretion. (*Jones, supra,* 18 Cal.4th at pp. 681-682.)

Indeed, the trial court's reliance on disputed facts to dismiss the charges altogether at the outset of the proceedings was even more improper than the premature use of an indicated sentence discussed in *Clancey, supra,* 56 Cal.4th 562. In *Clancey*, this Court explained that trial courts "should consider whether the existing record concerning the defendant and the defendant's offense or offenses is adequate to make a reasoned and informed judgment as to the appropriate penalty." (*Id.* at p. 575.) "When a court has reason to believe the assumed facts are suspect or incomplete in a material way, or when substantial doubt exists as to the fairness of

the disposition to the People or to the defendant, an indicated sentence will not promote the goals of fairness and efficiency." (*Id.* at p. 581; see also *People v. Beasley* (1970) 5 Cal.App.3d 617, 636 [trial court erred by dismissing the case under section 1385 without "the legally required probation officer's report containing a full exposition of the case and the background of defendants"].)

Similarly here, defendant's asserted lack of knowledge was contested and was not supported by substantial evidence. It was premature for the court to conclude, based on the asserted lack of knowledge, that a dismissal would be "in furtherance of justice" under section 1385, even if somehow lack of knowledge were a proper consideration in a case charging strict liability, public welfare offenses.

CONCLUSION

The application of preemption law in this case is straightforward and the conclusion inexorable: state law does not preempt criminal enforcement of local cannabis licensing ordinances or other land use ordinances. Defendant has failed to satisfy her burden of demonstrating otherwise. Likewise, dismissing strict liability public welfare regulatory offenses on the basis of an unsupported assertion that defendant lacked knowledge of her tenant's unlicensed activity was not "in furtherance of justice." The judgment of the Court of Appeal should be affirmed.

DATED: October 12, 2022

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Counsel of record hereby certifies, pursuant to California Rules of Court, rule 8.520(c)(1), that this Answer Brief on the Merits, including footnotes, contains 13,332 words. I have relied on the word count of the Microsoft Word program used to prepare the brief.

/s
Zachary T. Fanselow

PROOF OF SERVICE

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the above-referenced action. My business address is 200 North Main Street, Fifth Floor, James K. Hahn City Hall East, Los Angeles, California 900l2.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on **October 12, 2022**, at Los Angeles, California.

/s/
ZACHARY T. FANSELOW

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S272850**
Lower Court Case Number: **B310024**

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