CPOA CASE SUMMARIES – OCTOBER 2022

CONSTITUTIONAL LAW/POLICE CONDUCT

A. District Court correctly denied motion to suppress because agents executed a search warrant that was both sought and issued independently of alleged Fourth Amendment violations.

United States v. Saelee, 2022 U.S. App. LEXIS 28234 (9th Cir. Oct. 11, 2022)

Facts: In April 2018, United States Customs and Border Protection ("CBP") officers inspecting incoming international parcels discovered large quantities of illegal drugs in two packages falsely labeled as containing documents from a German law firm. Homeland Security Investigations ("HSI") agents working with the U.S. Postal Inspection Service ("USPIS") had the drugs replaced with decoy materials. A USPIS undercover agent dressed as a postal carrier then delivered the packages to their intended addressee, Tony Saelee, who stated that he was expecting them and signed for their delivery. The USPIS agent then returned to the mail truck and showed the HSI agents inside, including HSI Special Agent William Anderson, that Saelee had signed for the packages. A few minutes later, the HSI agents then went to Saelee's apartment and, with weapons drawn, knocked on the door and announced their presence. When Saelee opened the door at approximately 9:35 AM, the agents arrested him for attempted possession of a controlled substance with intent to distribute.

A few days before this controlled delivery, Agent Anderson had prepared a near-complete search warrant application for Saelee's apartment in consultation with the U.S. Attorney's Office, except for the addition of one paragraph to be inserted after the controlled delivery was completed. After the initial entry into Saelee's apartment, Agent Anderson dictated the final paragraph to the U.S. Attorney's office at approximately 9:43 AM, prior to the agents' search activities. Agent Anderson submitted the warrant application approximately an hour later with the agent telephonically swearing to the contents of the warrant application before the magistrate, and the warrant was granted by the magistrate judge at 10:43 AM.

Asserting multiple violations of the Fourth Amendment in connection with his arrest and the ensuing search of his apartment, Saelee moved to suppress much of the evidence against him. The District Court denied the motion and a jury convicted Saelee of attempted possession of Ecstasy with intent to distribute, and conspiracy to distribute Ecstasy and to possess it with intent to distribute. Saelee appealed, arguing in part that his motion to suppress should have been granted by the District Court.

Held: Saelee contended on appeal that in light of alleged multiple violations of the Fourth Amendment by the agents, the evidence obtained as a result should have been suppressed. The Ninth Circuit Court of Appeals assumed, without deciding, that the agents committed the following asserted Fourth Amendment violations: (1) without a warrant, they "encroach[ed] upon the curtilage of [Saelee's] home with the intent to arrest" him;[1] (2) they arrested Saelee in his home

[1] See *United States v. Lundin*, 817 F.3d 1151, 1160 (9th Cir. 2016).

without a warrant and in the absence of exigent circumstances[2]; and (3) before obtaining a warrant, they entered the apartment and conducted an extensive search, which well exceeded the scope of a protective sweep or a permissible securing of the premises, and seized the delivered packages, Saelee's cell phone and wallet, and ammunition in his bedroom.[3] The Ninth Circuit noted, however, that it was undisputed that, before the issuance of the warrant, nothing was removed from the premises and the contents of Saelee's cell phone were not examined.

The Court explained that under the independent source doctrine, suppression is unwarranted, even where evidence was "initially discovered during, or as a consequence of, an unlawful search," when the evidence is "later obtained independently[,] from activities untainted by the initial illegality." *Murray v. United States*, 487 U.S. 533, 537 (1988). Under *Murray*, objects that have already been seized at a location and are still at that location can be "reseiz[ed]" there when an independently sought-and-issued warrant authorizes their seizure at that location. *Id.* at 541-42. Here, the Ninth Circuit held that because all of the tangible and intangible evidence obtained as a result of the alleged violations was independently rediscovered or reseized when the agents executed the search warrant that was both sought and issued independently of any such violations, the District Court correctly denied the motion to suppress. The Court of Appeals accordingly affirmed.

B. Under the administrative search exception, tire chalking is not a Fourth Amendment violation and consequently, municipalities are not required to obtain warrants prior to chalking tires.

Verdun v. City of San Diego, 2022 U.S. App. LEXIS 29803 (9th Cir. Oct. 26, 2022)

Facts: Since at least the 1970s, the City of San Diego has used tire chalking as one method of enforcing time limits for City parking spaces. Chalking consists of a City parking officer placing an impermanent chalk mark of no more than a few inches on the tread of one tire on a parked vehicle. The parking officer must place the chalk mark on every vehicle parked in a given area of the City; officers do not single out particular vehicles for chalking. If a vehicle's chalk mark is undisturbed after the parking limit has expired, this shows the vehicle has exceeded the time limit for the space. According to the District Court's findings, the chalk mark on the tire rubs off within a few tire rotations after driving. The purpose of tire chalking is to enhance public safety, improve traffic control, and promote commerce.

Plaintiffs Andre Verdun and Ian Anoush Golkar each received at least one parking citation from the City after their vehicles were chalked. In May 2019, they filed a putative class action under 42 U.S.C. section 1983, alleging that tire chalking violated the Fourth Amendment. Plaintiffs asked for an injunction against chalking and monetary damages. The District Court granted summary judgment to the City, concluding that tire chalking constitutes a Fourth Amendment search but that it is justified under the administrative search exception to the warrant requirement. Plaintiffs appealed.

[2] See *Payton v. New York*, 445 U.S. 573, 589-90 (1980).
[3] See *Maryland v. Buie*, 494 U.S. 325, 327 (1990); *Segura v. United States*, 468 U.S. 796, 810 (1984) (plurality); *Payton*, 445 U.S. at 587-88.

Held: The Ninth Circuit Court of Appeals considered whether the practice of chalking tires for parking enforcement purposes violates the Fourth Amendment. As an initial matter, the Court assumed without deciding that tire chalking is a Fourth Amendment "search." The Ninth Circuit observed that warrantless searches are presumptively unreasonable under the Fourth Amendment, subject to certain exceptions such as the "administrative search" exception.[4] "Search regimes where no warrant is ever required may be reasonable where 'special needs . . . make the warrant and probable-cause requirement impracticable,' and where the 'primary purpose' of the searches is '[d]istinguishable from the general interest in crime control.'" *City of Los Angeles v. Patel*, 576 U.S. 409, 420 (2015) (first quoting *Skinner v. Ry. Lab. Execs. Ass'n*, 489 U.S. 602, 619 (1989), and then quoting *Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000)).

The Ninth Circuit used the approach it had set forth in the vehicle dragnet cases for its analysis of whether the administrative search exception applied to tire chalking. First, the Court would consider whether the search was "'per se invalid' because its 'primary purpose' was 'to advance the general interest in crime control' with respect to" the drivers of the vehicles that are chalked. *Demarest v. City of Vallejo*, 44 F.4th 1209, 1220 (9th Cir. 2022) (quoting *United States v. Fraire*, 575 F.3d 929, 932 (9th Cir. 2009)). If the search was not per se invalid, the Circuit Court would proceed to the second step of the analysis and determine whether the search was "reasonable[]," "on the basis of the individual circumstances." *Id.* (quoting *Fraire*, 575 F.3d at 933); see also *Edmond*, 531 U.S. at 47.

Here, the Court explained here that the "primary purpose" of tire chalking was not a general interest in crime control, but to assist the City in its overall management of vehicular traffic and the use of city parking spots. See *Demarest*, 44 F.4th at 1220. The Court next concluded that, within the meaning of the Fourth Amendment, San Diego's practice of tire chalking was reasonable. Courts had recognized the strong governmental interest in managing traffic and parking,[5] and chalking was part of a broader program of parking and traffic management that reflected a substantial and "compelling administrative objective."[6] Next, the Ninth Circuit found that chalking was "appropriately tailored" to the public interest in managing traffic and parking.[7] The Court explained that chalking bears a tight nexus to parking management. Moreover, the Court found that the interference with liberty that chalking caused was "infinitesimal."

The Court concluded that the administrative search exception to the warrant requirement applied and that chalking tires did not violate the Fourth Amendment. The Court thus held that municipalities are not required to obtain warrants before chalking tires as part of enforcing time limits on city parking spots, and accordingly affirmed the District Court's grant of summary judgment to the City.

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[4] The Ninth Circuit noted that this is sometimes called the "special needs" exception, and that the Supreme Court has often discussed "administrative" and "special needs" searches together.

[5] See, e.g., *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 768 (1994) ("The State also has a strong interest in . . . promoting the free flow of traffic on public streets and sidewalks . . . ."); and *Pimentel v. City of Los Angeles*, 974 F.3d 917, 924 (9th Cir. 2020) (recognizing that "overstay[ed] parking meters lead[] to increased congestion and impede[] traffic flow").

[6] *United States v. Bulacan*, 156 F.3d 963, 968 (9th Cir. 1998) (quoting *United States v. $ 124,570 U.S. Currency*, 873 F.2d 1240, 1244 (9th Cir. 1989)).

[7] *Lidster*, 540 U.S. at 427.

For a more detailed discussion of this case, please see Client Alert Vol. 37, No. 18, available at www.jones-mayer.com.

QUALIFIED IMMUNITY

Deputies that did not shoot and kill decedent were entitled to qualified immunity on plaintiff's excessive-force claim because they were not integral participants in the constitutional violation.

Peck v. Montoya, 2022 U.S. App. LEXIS 28822 (9th Cir. Oct. 18, 2022)

Facts: 65-year-old Paul Mono and his wife, Susan Peck, bought a house in Laguna Woods. Mono became dissatisfied with renovation work a general contractor, Dennis Metzler, had performed on the house. In February 2018, Orange County Sheriff's Deputies Anthony Montoya, Michael Johnson, John Frey, Brent Lind, and Brad Carrington responded to a 911 call by Metzler. Metzler reported that Mono was threatening to shoot somebody in his and Peck's house and that a person who was inside the house right then had seen a firearm when she had visited the previous day. Once the deputies arrived on the scene, they established a perimeter around the house. Mono was screaming threats and visibly agitated. Montoya took up position on one side of the house, where he could see inside through a window in the door. He observed a holstered revolver lying on the couch. Montoya alerted the other deputies, and, in response, Mono began yelling, "I'll show you my gun! You wanna see my gun?" Johnson commanded Mono not to go near the gun.

The parties to this case disputed what happened next. According to the deputies, Mono began moving toward the gun, bent over, and "reached for and grabbed onto" the gun. As soon as Mono grabbed the gun, Johnson began firing at him through the window. Montoya also began firing but stated that he waited to do so until Mono raised the gun toward the other deputies. However, Peck claimed that eyewitness testimony and ballistics analysis prove that Mono was not moving toward the gun, never touched the gun, and did not pose an immediate threat to himself or others. Mono was pronounced dead at the scene.

Peck brought an action against the deputies under 42 U.S.C. section 1983, asserting claims of excessive force in violation of the Fourth Amendment, among other things. The deputies moved for summary judgment on the basis of qualified immunity. The District Court denied summary judgment on both claims for all defendants. The deputies appealed.

Held: The Ninth Circuit Court of Appeals first considered whether Deputies Montoya and Johnson were entitled to qualified immunity on Peck's excessive-force claim. Drawing all reasonable inferences in Peck's favor, the Ninth Circuit found that a jury could conclude that Montoya and Johnson fired at an unarmed man who, although in the presence of a gun, never picked it up and in fact was moving away from it when he was shot. The Court explained that officers may not kill suspects simply because they are behaving erratically, nor may they "kill suspects who do not pose an immediate threat to their safety or to the safety of others simply because they are armed." *Harris v. Roderick*, 126 F.3d 1189, 1204 (9th Cir. 1997). The Court of Appeals concluded that a jury

could conclude that because Mono was *not* armed—and was not about to become armed—he did not "pose[] an immediate threat to the police or the public, so deadly force [was] not justified." *Cruz v. City of Anaheim*, 765 F.3d 1076, 1078-79 (9th Cir. 2014). The Court stated that a jury would have to decide what actually happened in the case here. On the excessive-force claim, the Court concluded that Deputies Montoya and Johnson who had shot Mono were not entitled to qualified immunity.

Next, the Ninth Circuit Court of Appeals addressed the question of whether the deputies who did not shoot Mono - i.e., Deputies Frey, Lind, and Carrington – could be held liable for using excessive force. The District Court had held that these deputies were potentially liable and not entitled to qualified immunity because they were "integral participants" in Montoya and Johnson's use of excessive force.

The Court of Appeals here explained that under Ninth Circuit precedent, an official whose "individual actions" do "not themselves rise to the level of a constitutional violation" may be held liable under [S]ection 1983 only if the official is an "integral participant" in the unlawful act. *Reynaga Hernandez v. Skinner*, 969 F.3d 930, 941 (9th Cir. 2020) (brackets omitted) (quoting *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1090 (9th Cir. 2011)). (citation and internal quotation marks omitted). Ninth Circuit precedent had permitted liability under the integral-participant doctrine in two circumstances: those in which (1) the defendant knows about and acquiesces in the constitutionally defective conduct as part of a common plan with those whose conduct constitutes the violation or (2) the defendant "set[s] in motion a series of acts by others which [the defendant] knows or reasonably should know would cause others to inflict the constitutional injury." *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978).

Applying that standard, the Ninth Circuit readily concluded that Deputies Frey, Lind, and Carrington were not integral participants in Mono's shooting. The Court explained that the shooting was completely unplanned, and Deputies Frey, Lind, and Carrington had no reason to know that an unconstitutional shooting would take place. The Court concluded that because these three Deputies did not form a plan to shoot Mono, nor did they set in motion acts by Montoya and Johnson that they knew or should have known would cause a constitutional violation, Frey, Lind, and Carrington were not integral participants in the constitutional violation. The District Court therefore erred in denying their motion for summary judgment on the excessive-force claim. The Court of Appeals accordingly reversed the District Court ruling as to these three deputies.

For a more detailed discussion of this case, please see Client Alert Vol. 37, No. 17, available at www.jones-mayer.com.

EMPLOYMENT

A. Under Section 1102.5(b) of the Whistleblower Act, a protected disclosure includes employees' disclosure of potential violations to those with authority over the employee.

Killgore v. SpecPro Pro. Servs., LLC, 2022 U.S. App. LEXIS 29227 (9th Cir. Oct. 20, 2022)

Facts: SpecPro is an environmental services firm that assists government agencies with the preparation of environmental assessments and other reports required under the National Environmental Policy Act ("NEPA"), 42 U.S.C. section 4321 *et seq.* and federal regulations. SpecPro contracted with the United States Army Reserve Command ("Army Reserve") to provide environmental and training support services, including for a contract project that involved preparing an environmental assessment for the modification of helicopter landing sites on land near Conroe, Texas ("Conroe EA"). The Army Reserve's project leader was Chief Laura Caballero, the Environmental Division Chief of the 63rd Command.

Aaron Killgore worked as a program manager for SpecPro and was assigned to support the Conroe EA. While he was consulting on the project, Killgore believed he was being required to prepare the environmental assessment in a manner that violated federal law. He reported the suspected illegality to Caballero and separately to his supervisor at SpecPro, William Emerson. Killgore was terminated shortly thereafter in June 2017. He brought state law claims of, among other things, unlawful retaliation in violation of the California Whistleblower Protection Act, Cal. Labor Code section 1102.5(b), (c) and wrongful termination in violation of public policy. The action was removed to federal court. The District Court granted SpecPro's partial motion for summary judgment as to retaliation and wrongful termination. Killgore appealed.

Held: The Ninth Circuit Court of Appeals noted that the California Supreme Court had recently explained that "Section 1102.5 provides whistleblower protections to employees who disclose wrongdoing to authorities. As relevant here, section 1102.5 prohibits an employer from retaliating against an employee for sharing information the employee "has reasonable cause to believe . . . discloses a violation of state or federal statute" or of "a local, state, or federal rule or regulation" with a government agency, with a person with authority over the employee, or with another employee who has authority to investigate or correct the violation." *Lawson v. PPG Architectural Finishes, Inc.*, 12 Cal. 5th 703, 709 (2022).

The Ninth Circuit found that the District Court misinterpreted Section 1102.5(b) to mean that a protected disclosure must be made to "a person with authority over the employee" *who also* has the authority to "investigate, discover, or correct" the violation. The Court noted that supervisor Emerson exercised his authority over Killgore by terminating Killgore's employment, and Killgore testified that he discussed specific concerns regarding the legality of the Conroe EA with Emerson, after which Killgore was fired. The Court of Appeals declared that Killgore's disclosures to his Emerson—as a "person with authority over the employee"—provided an independent ground for asserting a whistleblower retaliation claim under Section 1102.5(b). Moreover, the Court determined that such a construction was consistent with the broad remedial purpose of the California Whistleblower Protection Act. The Ninth Circuit concluded that the evidence of the concerns Killgore disclosed to Emerson – which was not considered by the District Court due to its misinterpretation of Section 1102.5(b) - created a genuine dispute of material fact as to whether SpecPro retaliated against Killgore for engaging in protected whistleblower activity.

The Court of Appeals also concluded that the lower court misapplied California law when it rejected evidence of Killgore's disclosures to Chief Caballero on the basis that reporting was part of his normal job duties or because she was assertedly involved in the wrongful conduct. The Ninth Circuit determined that Killgore's disclosures to her were properly understood as a

disclosure to a "government agency" under the plain language of Section 1102.5(b). Viewing the evidence in the light most favorable to his claims, the Court concluded that Killgore had raised genuine issues of material fact as to whether he disclosed potential violations of law to Chief Caballero and whether such disclosures were a contributing factor in his termination in violation of state law.

The Ninth Circuit thus concluded that the evidence raised genuine disputes of material fact as to the nature of Killgore's disclosures, whether he had reasonable cause to believe that federal law was being violated, and whether his whistleblowing activity was a contributing factor in his termination of employment. The Court accordingly reversed the District Court's entry of summary judgment as to Killgore's claim of retaliation under Section 1102.5(b) and his derivative wrongful termination claim that were based on his protected disclosures. However, the Court affirmed as to his claim of retaliation based on the refusal to participate in illegal activity under Section 1102.5(c), as Killgore presented no evidence in support of that claim.

MISCELLANEOUS

A. Penal Code section 25250, requiring theft or loss of gun to be reported within 5 days, did not preempt local ordinance that required reporting within 48 hours.

Kirk v. City of Morgan Hill, 83 Cal. App. 5th 976 (6th Dist. 2022)

Facts: California law requires notification to "a local law enforcement agency in the jurisdiction in which the theft or loss occurred" when a gun is lost or stolen. (Penal Code section 25250(a).) The person who owns or possessed the gun must make the report "within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost." (*Ibid.*) In 2018, the Morgan Hill City Council adopted an ordinance requiring notification to the Morgan Hill Police Department within 48 hours of discovering a gun is missing. (Morgan Hill Mun. Code, ch. 9.04.030.) The requirement applies when either the gun owner lives in Morgan Hill, or the loss occurs there.

Morgan Hill resident G. Mitchell Kirk and the California Rifle & Pistol Association sued to invalidate Morgan Hill's ordinance, asserting it was preempted by the state law five-day reporting requirement for missing firearms. The trial court found no preemption and granted summary judgment for the city. Kirk and the Association appealed.

Held: The Sixth District Court of Appeal explained that although the California Constitution gives cities broad authority to make and enforce their own laws, municipal laws must not conflict with state law.[8] Local ordinances that conflict with state law are preempted and invalid. (*Harrahill v. City of Monrovia* (2nd Dist. 2002) 104 Cal.App.4th 761, 764.) Local legislation is in conflict if it duplicates or contradicts state law, or if it intrudes on an area the Legislature has intended to occupy completely. (*T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1116.)

[8] Cal. Const., art. XI, section 7.

The Court noted that a local ordinance duplicates state law if it is coextensive with the statute, such that both laws impose the same requirement or prohibit the same thing. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 898.) Because the city's ordinance imposed a stricter requirement—the obligation to report a missing firearm within 48 hours—than Penal Code section 25250's five-day obligation, the Court decided the ordinance was not duplicative. Nor did the Court find the ordinance contradicted Section 25250. The Court explained that the state law set a minimum standard merely establishing the outer limit for when a report must be made, and so the city ordinance's earlier requirement did not command anything prohibited by Section 25250. Nor did the ordinance's 48-hour requirement otherwise obstruct the purpose of the state law, which is to ensure prompt reporting of missing firearms. As to the "occupy completely" aspect, the Court noted that Penal Code section 25250 did not contain language precluding municipalities from issuing their own requirements for reporting missing guns. The Court found no express or implied intent by the Legislature for Section 25250 to fully occupy the area of firearm regulation and to disallow local regulation. The Court considered the state statute to be "entirely tolerant of local regulation furthering its purpose by requiring even earlier notification."

The Sixth District Court of Appeal thus found the city ordinance did not conflict with state law and, accordingly, affirmed the trial court's order granting summary judgment for the City of Morgan Hill.

B. County ordinance preventing cannabis sales did not create a substantial burden on religious group that consumes cannabis as sacraments because selling cannabis was not a religious activity of the group.

Cnty. of San Bernardino v. Mancini, 83 Cal. App. 5th 1095 (4th Dist. 2022)

Facts: April Elizabeth Mancini owns the Jah Healing Kemetic Temple of the Divine, Inc. church (the "Church"), whose adherents consume cannabis blessed by Church pastors as "sacrament." The County of San Bernardino (the "County") determined that the Church routinely sold cannabis products in violation of San Bernardino County Code section 84.34.030,[9] which prohibits commercial cannabis activity on unincorporated County land. In September 2018, the County filed suit against Mancini and the Church, alleging that they were operating a dispensary in violation of the County ordinance. The trial court found that the Church was operating an illegal cannabis dispensary and issued a permanent injunction against Mancini and the Church, among other relief. Mancini and the Church appealed.

Held: The Fourth District Court of Appeal first considered the appellants' contention that Section 84.34.030 was preempted by state law legalizing the sale of cannabis. The Court disagreed, explaining that "[w]hile permitting the use of marijuana, California law 'does not thereby *mandate*

[9] Section 84.34.030, titled "Prohibition of Commercial Cannabis Activity," provides in full: "Except as expressly provided by [Sections] 84.34.040 and 83.34.050, commercial cannabis activity shall not be considered a permitted or conditionally permitted use in any land use zoning district. Commercial cannabis activity, including delivery, is prohibited in all land use zoning districts, as those may be amended from time to time, and no permit of any type shall be issued therefor. It shall be unlawful for any person to conduct, cause to be conducted, or permit to be conducted, a commercial cannabis activity within the unincorporated area of the County. … This Section shall not affect the right to possess or use cannabis as authorized by Federal or State law."

that local governments authorize, allow, or accommodate the existence of' marijuana dispensaries."[10] California law "do[es] not 'limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate' marijuana dispensaries 'or to completely prohibit' their 'establishment or operation.' (Bus. & Prof. Code, [section] 26200, subd. (a)(1).)"[11]

The Court next considered appellants' primary argument, that the County's ordinance and the trial court's injunction enforcing it violated the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") (42 U.S.C. section 2000cc et seq.). The Court explained that "RLUIPA provides that a government land-use regulation 'that imposes a substantial burden on the religious exercise of a … religious assembly or institution' is unlawful 'unless the government demonstrates that imposition of the burden … is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.'" (*Internat. Church of the Foursquare Gospel v. City of San Leandro* (9th Circ. 2011) 673 F.3d 1059, 1066.) "A substantial burden exists where the governmental authority puts '"substantial pressure on an adherent to modify his behavior and to violate his beliefs."' [Citation.]" (*Id.*, at p. 1067.)

The Court noted that the Church's only relevant religious practice was the use of blessed cannabis products, which its adherents considered to be their sacrament. The County ordinance, however, did not prohibit appellants from possessing, blessing, or consuming cannabis products. The ordinance banned only commercial cannabis activity. Because Church members could still use and possess blessed cannabis under the County ordinance, the ordinance did not pressure or coerce them to modify their religious behavior in any way, much less impose a substantial burden on their religious exercise. The Fourth District Court of Appeal thus concluded that the county ordinance did not violate RLUIPA. Rejecting the appellants other arguments also, the Court accordingly affirmed.

[10] *City of Vallejo v. NCORP4, Inc.*, 15 Cal.App.5th 1078, 1081 (1st Dist. 2017).
[11] *Id.* at p. 1082.