



1           WHEREAS on May 1, 1997, plaintiff City of Burbank (City’) filed a complaint in  
2 this action seeking declaratory and injunctive relief to prevent defendant Burbank-  
3 Glendale-Pasadena Airport Authority (“Authority”) from acquiring an approximately 130-  
4 acre parcel of property, partially located in the City, known as the B-6 Property, in  
5 violation of California Public Utilities Code § 21661.6 (“Section 21661.6”); and

6           WHEREAS on June 6, 1997, the State of California intervened in this action as a  
7 plaintiff; and

8           WHEREAS on July 23, 1997, the Authority filed a Cross-Complaint against the  
9 City and the State seeking declaratory and injunctive relief to prevent Section 21661.6  
10 from applying to the Authority’s acquisition of the B-6 Property; and

11           WHEREAS on October 31, 1997, the trial court, the Honorable Carl J. West  
12 presiding, ruled that Section 21661.6 (1) does not discriminate against out-of-state  
13 commerce; (2) does not place burdens on interstate commerce greater than the benefits  
14 conferred upon the state and local governments; and (3) does not subject interstate  
15 commerce to inconsistent regulations, but denied Burbank’s Motion for Summary  
16 Adjudication on the Authority’s claim and defense that Section 21661.6 violates the  
17 Commerce Clause of the United States Constitution because Burbank had not met its  
18 initial burden of showing that the Authority could not establish at least one element of its  
19 Commerce Clause claim; and

20           WHEREAS on November 18, 1997, the trial court, the Honorable Carl J. West  
21 presiding, entered summary adjudication in favor of the City and the State dismissing the  
22 Authority’s claims that Section 21661.6 was preempted by federal law and that Section  
23 21661.6 violated the Due Process Clause; and

24           WHEREAS on February 16, 1998, the Authority having withdrawn its other claims  
25 under state law, the trial court, the Honorable Carl J. West presiding, entered summary  
26 judgment in favor of the Authority on the ground the City had delegated its powers under  
27 Section 21661.6 to the Authority; and

1           WHEREAS on March 10, 1998, the trial court, the Honorable Carl J. West  
2 presiding, entered Final Judgment in favor of the Authority; and

3           WHEREAS on April 20, 1998, the City and the State timely filed Notices of  
4 Appeal; and

5           WHEREAS on May 5, 1999, the Court of Appeal reversed the trial court's decision  
6 on delegation and affirmed the trial court's decisions on federal preemption and due  
7 process (*City of Burbank et al. v. Burbank-Glendale-Pasadena Airport Authority*, 72 Cal.  
8 App. 4th 366 (1999)); and

9           WHEREAS on August 11, 1999, the California Supreme Court denied the  
10 Authority's Petition for Review of the Court of Appeal's decision; and

11           WHEREAS on August 19, 1999, the Court of Appeal issued the remittitur; and

12           WHEREAS the Authority has concurrently filed a Request for Dismissal, without  
13 prejudice, of the unresolved Commerce Clause Claim; and

14           WHEREAS all claims and defenses raised and asserted in this case have been  
15 finally disposed of; and

16           GOOD CAUSE APPEARING THEREFOR,

17           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

18           1.       As determined by the Court Of Appeal, California Public Utilities Code  
19 § 21661.6:

- 20                   a.   is valid and applicable to the Burbank-Glendale-Pasadena Airport  
21                   Authority;
- 22                   b.   is not preempted by federal law;
- 23                   c.   does not violate the Due Process Clause of the Fourteenth  
24                   Amendment to the United States Constitution; and
- 25                   d.   grants the authority and duty to approve or disapprove the acquisition  
26                   of land in Burbank for the purpose of expanding or enlarging the  
27                   Burbank-Glendale-Pasadena Airport to the Burbank City Council and  
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such authority and duty has not been delegated to the Burbank-  
Glendale-Pasadena Airport Authority.

2. That judgment shall be and hereby is entered in favor of the City of  
Burbank, the State of California and the California Department of Transportation and  
against the Burbank-Glendale-Pasadena Airport Authority.

3. That, except for any claim or defense the Burbank-Glendale-Pasadena  
Airport Authority may have under the Commerce Clause of the United States  
Constitution, the Burbank-Glendale-Pasadena Airport Authority's Cross-Complaint  
against the City of Burbank, the State of California and the California Department of  
Transportation and the Burbank-Glendale-Pasadena Airport Authority's Affirmative  
Defenses to the claims asserted by the City of Burbank, the State of California and the  
California Department of Transportation are hereby dismissed on the merits with  
prejudice.

4. That the Burbank-Glendale-Pasadena Airport Authority shall take nothing  
against the City of Burbank, the State of California or the California Department of  
Transportation by reason of its Cross-Complaint on file in this action.

5. That the Parties shall bear their own costs and attorneys fees.

6. That the Clerk shall enter this Judgment forthwith.

IT IS SO ORDERED

Dated:

\_\_\_\_\_  
Carl J. West  
Superior Court Judge

1 Presented By:

2 DENNIS A. BARLOW, City Attorney  
3 Terry B. Stevenson, Sr. Assistant  
4 CITY OF BURBANK  
5 CUTLER & STANFIELD, LLP  
6 Perry M. Rosen  
7 Peter J. Kirsch

8 By: \_\_\_\_\_  
9 Perry M. Rosen  
10 Attorneys for Plaintiff and Cross-Defendant  
11 CITY OF BURBANK

12 The State of California and  
13 The California Department of Transportation

14 By: \_\_\_\_\_  
15 Susan L. Durbin

16 **CONSENT OF THE BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY**

17 On August \_\_, 1999, the City and the Authority executed an Escrow Agreement  
18 and related agreements and other documents, including a [Proposed] Final Order of  
19 Condemnation (“Final Order”) in the action entitled *Burbank-Glendale-Pasadena Airport*  
20 *Authority v. Lockheed Corporation, et al.*, Los Angeles County Superior Court Case No.  
21 BC 155222 (the “Condemnation Action”). The Authority’s dismissal of its Commerce  
22 Clause claim and its consent to the filing and entry of this Final Judgment are conditioned  
23 upon and subject to the entry and recordation of the Final Order, or an alternative form of  
24 final order approved by the Authority, in the Condemnation Action.

25 **McDERMOTT, WILL & EMERY**

26 By: \_\_\_\_\_  
27 Thomas A. Ryan  
28 Attorneys for Defendant and Cross-Complainant  
Burbank-Glendale-Pasadena Airport Authority