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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ALAMEDA

10 UNLIMITED JURISDICTION

11 AMERICANS FOR SAFE ACCESS, MARY JANE)
12 WINTERS, TIFFANY SIMPSON, ANTHONY)
13 BOWLES, JAMES HAGGARD, SHANNON)
14 STANSBERRY, KATHLEEN HONZIK, and)
DOES 1-2,)

15 Plaintiffs,)

16 v.)

17 CALIFORNIA HIGHWAY PATROL, an entity of)
18 unknown form; ARNOLD SCHWARZENEGGER,)
19 Governor of California; BILL LOCKYER, Attorney)
20 General of California; MIKE L. BROWN,)
Commissioner of California Highway Patrol,)

21 Defendants.)
22)
23)

Civil Action No.

**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF,
PRELIMINARY INJUNCTION,
AND PERMANENT INJUNCTION**

24 **I. INTRODUCTION**

25 1. This is a civil rights action for declaratory and injunctive relief arising out of an
26 unconstitutional policy implemented by the California Highway Patrol (“CHP”) to seize lawfully
27 possessed medical marijuana from qualified patients and primary caregivers without regard to the
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1 legality of their conduct under California law. Plaintiffs are qualified medical marijuana patients and
2 a primary caregiver who were stopped by the CHP for minor traffic offenses and, despite possessing
3 very small amounts of marijuana and presenting documentation evidencing their right to use
4 marijuana for medical purposes under California law, they were deprived of their medicine. These
5 plaintiffs, on behalf of themselves and on behalf of others who are similarly situated, seek an order
6 declaring the CHP policy unconstitutional and enjoining its continued implementation. The CHP's
7 rigid policy of seizing medical marijuana in all cases, without any showing of probable cause or
8 reasonable individualized suspicion, causes law abiding citizens to suffer pain, humiliation, loss of
9 dignity, extreme anxiety and a fear of the police. The policy violates plaintiffs' rights to be free from
10 unreasonable searches and seizures under Article I, Sections 1 and 13 of the California Constitution,
11 and to due process under Article I, Section 7(a) of the California Constitution, and constitutes an
12 unconstitutional taking in violation of Article I, Section 19 of the California Constitution.
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15 2. In the general election of November 4, 1996, fifty-seven percent of the California
16 electorate approved a ballot measure enacting Proposition 215 ("Proposition 215" or "the
17 Compassionate Use Act" or "the CUA"). In so doing, the California voters established that
18 "seriously ill Californians have the right to obtain and use marijuana for medical purposes where that
19 medical use is deemed appropriate and has been recommended by a physician who has determined
20 that the person's health would benefit from the use of marijuana. . . ." (Cal. Health & Safety Code §
21 11362.5(b)(1)(A).)
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23 3. On September 10, 2003, the California Legislature, which was expressly motivated by
24 "reports from across the state [that] have revealed problems and uncertainties in the [Compassionate
25 Use Act] that have impeded the ability of law enforcement officers to enforce its provisions as the
26 voters intended and, therefore, prevented qualified patients and designated primary caregivers from
27 obtaining the protections afforded by the act," enacted Senate Bill 420, Stats. 2003 c.875 ("SB 420")
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1 to clarify the CUA’s provisions. (See SB 420 § 1(a)(2).) One clarification was necessitated by the
2 fact that local guidelines regarding the number of plants a qualified patient may cultivate and possess
3 without legal reprisal varied dramatically from one county to another. To provide a consistent
4 threshold throughout the State, the Legislature enacted section 11362.77(a) of the Health and Safety
5 Code, which provides that a qualified patient may possess a minimum of 6 mature or 12 immature
6 plants and, in addition, eight ounces of dried marijuana per qualified patient. (See Health & Safety
7 Code § 11362.77(a); Historical and Statutory Notes to Cal. Health & Safety Code § 11362.7 [Letter
8 from John Vasconcellos & Mark Leno to The Hon. John Burton, dated Sept. 10, 2003] [“the
9 guidelines in SB 420 establish permissible amounts that are intended to be the threshold, and not a
10 ceiling”].)) Under these laws, plaintiffs, as qualified patients and a primary caregiver, have an
11 absolute right to possess and transport at least eight ounces of dried marijuana. (See Cal. Health &
12 Safety Code H & S § 11362.765(b)(1) [exempting from Health & Safety Code proscriptions “A
13 qualified patient or a person with an identification card who transports or processes marijuana for his
14 or her own personal medical use”]; *People v. Trippett* (1997) 56 Cal.App.4th 1532, 1550-1551
15 [noting that practical realities dictate that the CUA must include some leeway for transportation of
16 marijuana for personal medical use, although not specifically exempted from punishment by the
17 CUA].)

21 4. Notwithstanding plaintiffs’ right to possess and transport at least eight ounces of dried
22 marijuana, the CHP has promulgated and implemented a policy of seizing all marijuana found in the
23 possession of qualified patients and primary caregivers. The CHP’s General Law Enforcement Policy
24 Manual, Chapter 1, Section 6(c)(4)(e) provides: “Even if a Section 11362.5 H&S claim is alleged, all
25 marijuana shall be confiscated and booked as evidence according to HPM 70.1. Those claiming a
26 need for the marijuana should be advised to file a motion with the appropriate court seeking an ‘Order
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1 of Return.”” As a result of this policy, numerous medical marijuana patients have been the victims of
2 unconstitutional seizures.

3 5. The expansive mandatory seizure policy promulgated by the CHP violates Article I,
4 Sections 1, 7(a), 13, and 19 of the California Constitution. The policy not only permits, but *requires*
5 broad and ongoing violations of the fundamental protections afforded all persons by the federal and
6 state constitutions to be secure in their persons from unreasonable searches and seizures and to due
7 process of law. Ignoring the clear dictates of California Law pertaining to the right of qualified
8 patients and primary caregivers to possess and to transport at least eight ounces of dried marijuana in
9 determining whether there is probable cause or individualized suspicion that a crime has been
10 committed reaches broadly to deprive hundreds of qualified patients who are legally presumed to be
11 (and in nearly all cases actually are) innocent of any crime at all. No justification has been identified
12 for this policy, aside from the CHP’s desire to enforce federal law, which it cannot. (See *People v.*
13 *Kelly* (1869) 38 Cal. 145, 150; *People v. Tilehkooh* (2003) 113 Cal.App.4th 1433, 1445 & fn.13.)
14 The CHP’s rigid seizure policy is, accordingly, unconstitutional.
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17 **II. JURISDICTION AND VENUE**

18 6. Jurisdiction is based on Article VI, Section 10 of the California Constitution; Civil
19 Code sections 51.7 & 52.1; and Code of Civil Procedure sections 32.5 and 86.
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21 7. Venue is proper in the Superior Court in and for the County of Alameda, pursuant to
22 California Government Code section 955.2 and California Code of Civil Procedure section 393(b),
23 since the medical marijuana of plaintiff Tiffany Simpson was confiscated from her in Alameda
24 County.
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III. THE PARTIES

A. Plaintiffs

8. Plaintiff AMERICANS FOR SAFE ACCESS (“ASA”) is a non-profit corporation with its office in Berkeley, California that has as its primary purpose working to protect the rights of patients and doctors to use marijuana for medical purposes, including providing legal advocacy for patients whose marijuana is confiscated by the police. ASA’s members and constituents include individuals within California who are subject to the CHP policy and practice of seizing medical marijuana whenever it is found by an officer, as well as the actual victims of such seizures. Implementation of this policy has had and will continue to have a severe impact on the constitutional rights of the members and constituents of ASA, which causes them immediate and irreparable harm through the sudden deprivation of their medicine.

9. Plaintiff MARY JANE WINTERS (“Winters”) is a fifty-four year old registered nurse who uses marijuana to treat chronic pain arising from three ruptured discs she suffered while she was lifting a four-hundred pound patient approximately eleven years ago. On Thanksgiving Day, 2004, Ms. Winters was stopped by the CHP for speeding while traveling along Highway 101 in Mendocino County on her way to deliver flowers to a homeless shelter. Upon seeing a burlap handbag in Ms. Winters’ vehicle which he believed to contain marijuana, the CHP officer queried Ms. Winters about this, so she attempted to show him her physician’s recommendation to use marijuana medicinally. The CHP officer refused even to look at the physician’s recommendation and responded that the “CHP does not recognize Proposition 215,” or words to that effect, just before he seized two ounces of dried marijuana from Ms. Winters and cited her for speeding and possessing more than one ounce of marijuana. With her Thanksgiving ruined, Ms. Winters continued on her way without the medicine she needs to treat her chronic pain. The charges against Ms. Winters were dismissed at her

1 first court appearance on January 25, 2005, after she produced a copy of her physician's
2 recommendation. Ms. Winters is a resident of Humboldt County and an ASA member.

3 10. Plaintiff TIFFANY SIMPSON is a qualified medical marijuana patient with a
4 physician's recommendation to use marijuana to treat chronic pain in her back and joints. Ms.
5 Simpson is a resident of Contra Costa County and an ASA member. On Christmas Day, 2004, Ms.
6 Simpson was pulled over by the CHP for having expired registration stickers while driving home
7 along Highway 580 in Alameda County from a medical marijuana dispensary. Upon demand of the
8 CHP officer conducting the detention, Ms. Simpson was required to exit her vehicle and, later, to turn
9 over the approximately eleven grams of dried marijuana she had just purchased. Ms. Simpson
10 handed the CHP officer a copy of her physician's recommendation and requested a property receipt
11 for her marijuana. The officer, however, did not return the marijuana to Ms. Simpson or issue her a
12 receipt, stating that the CHP does not "recognize" the Compassionate Use Act. The CHP officer
13 cited Ms. Simpson for failing to have proof of insurance and possession of less than an ounce of
14 marijuana. Ms. Simpson returned home to her family distraught by the encounter with her lower back
15 and joints throbbing in pain. She was not able to obtain the medicine she needs to ease this pain for
16 two days because her dispensary was closed until Monday. That Christmas was a very memorable
17 one for Ms. Simpson, although it is one that she would rather forget.

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21 11. Plaintiff ANTHONY BOWLES is a resident of the City and County of San Francisco
22 and an ASA member. He serves as the primary caregiver for his mother who is a qualified medical
23 marijuana patient with a physician's recommendation to use marijuana for medical purposes. On
24 May 5, 2004, while driving home in San Francisco, Mr. Bowles was pulled over by the CHP for not
25 having a front license plate on his vehicle. Mr. Bowles complied with the officer's request to search
26 him and, when the officer found approximately 3 grams of marijuana, Mr. Bowles stated that he was
27 a primary caregiver for his mother and he showed the officer the primary caregiver card issued to him
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1 by the San Francisco Department of Health (“SFDH”). Despite being presented with this facially
2 valid documentation, the CHP officer seized Mr. Bowles’ medicine and cited him for transporting
3 less than an ounce of marijuana, in violation of Vehicle Code section 23222(b). In doing so, the
4 officer dismissed the SFDH card by stating “anybody can make one of these.” The marijuana charge
5 was withdrawn by the prosecutor prior to arraignment at Mr. Bowles’ first court appearance on June
6 18, 2005. Plaintiff Bowles’ administrative claim with the State Board of Control (G550481) was
7 filed on October 22, 2004, and was rejected by the Board on or about December 17, 2004.
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9 12. Plaintiff JAMES HAGGARD is a resident of Santa Clara County and a qualified
10 medical marijuana patient with a physician’s recommendation to use marijuana to treat chronic pain.
11 On December 10, 2004, the CHP pulled over Mr. Haggard for speeding. Upon threat of arrest, Mr.
12 Haggard handed the CHP officer just over one ounce of marijuana along with his a copy of his
13 physician’s recommendation and a photographic medical marijuana identification card. The CHP
14 officer stated that the CHP follows federal law rather than state law and he seized Mr. Haggard’s
15 medicine and cited him for possession of marijuana. That charge was dismissed upon a motion by
16 the prosecutor on January 6, 2005, after Mr. Haggard presented him with his medical marijuana
17 documentation.
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20 13. Plaintiff SHANNON STANSBERRY is a resident of Nevada County California and a
21 qualified medical marijuana patient. She is also an ASA member. On May 21, 2004, Ms. Stansberry
22 was pulled over by two officers of the CHP for speeding and having a broken tail light. Ms.
23 Stansberry handed the officers approximately 21 grams of dried marijuana after they threatened to
24 search the vehicle. She attempted to show them her doctor’s recommendation to use marijuana for
25 medical purposes, but one of the officers refused to look at it, stating “there’s no point in having a
26 recommendation.” The CHP seized Ms. Stansberry’s medicine, cited her for speeding and, later, for
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1 possessing less than one ounce of marijuana. On November 1, 2004, Ms. Stansberry pleaded guilty to
2 speeding and the marijuana charge against her was dismissed.

3 14. Plaintiff KATHLEEN HONZIK is a resident of Mendocino County and a qualified
4 medical marijuana patient with a doctor's recommendation to use marijuana to treat chronic pain
5 associated with Grade II spondylolisthesis. In the late afternoon of May 3, 2003, Ms. Honzik was
6 driving southbound on Highway 101 with her daughter in her car when she was pulled over by an
7 officer of the CHP. The officer found Ms. Honzik's doctor's recommendation and a small tin
8 containing approximately 6 grams of dried marijuana and 6 grams of marijuana concentrate. After
9 the CHP officer citing her for possession of less than an ounce of marijuana and having an open
10 container, he seized Ms. Honzik's medicine and arrested her in front of her daughter. Ms. Honzik
11 pled guilty to speeding on July 7, 2003, and the marijuana charges against her were dismissed.
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14 15. Plaintiff JOHN DOE 1 is a qualified medical marijuana patient who uses marijuana on
15 the recommendation of his physician to treat chronic pain associated with a crushed vertebrae. He is
16 a resident of Humboldt County who wishes not to disclose his true identity for fear of reprisal from
17 the police. On October 11, 2004, DOE 1 was pulled over by the CHP for speeding while traveling
18 home from a funeral. The officer performed a field sobriety test on DOE 1 and determined that he
19 was not under the influence. Nevertheless, the officer searched DOE 1's vehicle without his consent
20 and found approximately 7 grams of dried marijuana, 3 grams of marijuana concentrate, and a glass
21 pipe. DOE 1 told the officer that he was legally entitled to possess the marijuana and presented the
22 officer with both a physician's recommendation to use marijuana and a photographic medical
23 marijuana identification card, but the officer cited him anyway for possession of less than an ounce of
24 marijuana, in violation of Health and Safety Code section 11357(a); transportation of less than an
25 ounce of marijuana, in violation of Vehicle Code section 23222(b); and speeding. The district
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1 attorney did not file charges against DOE 1 for either of the marijuana citations and, on October 11,
2 2004, DOE 1 pled guilty for speeding. DOE 1 has not received the return of his medicine.

3 16. Plaintiff JOHN DOE 2 is a twenty-year-old resident of Alameda County who suffers
4 from severe joint pain and insomnia from medication he is taking to alleviate muscular-skeletal
5 problems resulting from lesions on his spinal cord. He is a qualified medical marijuana patient. In
6 the early-afternoon of September 2, 2004, the CHP pulled DOE 2 over for having expired registration
7 stickers while he was traveling across the SR-92 Bridge to have his car inspected for purposes of
8 renewing his registration. When the CHP officer inquired about marijuana, DOE 2 produced the 1.5
9 grams he was carrying and he handed the officer a photographic medical marijuana identification card
10 issued by the Oakland Cannabis Buyer's Cooperative. He also offered to show the officer a copy of
11 his doctor's recommendation. The CHP officer laughed at the documentation and commented that no
12 one DOE 2's age could need marijuana for medical purposes. He cited DOE 2 for possession of less
13 than an ounce of marijuana, but the charge was dismissed at the first appearance by the San Mateo
14 County prosecutor upon reviewing DOE 2's medical marijuana documentation.
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17 **B. Defendants**

18 17. Defendant CALIFORNIA HIGHWAY PATROL ("CHP") is, and at all times
19 mentioned herein was, a department within the State of California, which is owned and operated by it.
20 The CHP, at all times mentioned herein, promulgated and implemented a policy requiring the seizure
21 of medical marijuana from qualified patients in all cases.
22

23 18. Defendant ARNOLD SCHWARZENEGGER ("Schwarzenegger") is, at all times
24 mentioned herein was, the Government of the State of California. Under Section 2107 of the Vehicle
25 Code, defendant Schwarzenegger appoints the Commissioner of the California Highway Patrol to
26 serve at his pleasure with the advice and consent of the Senate. Together with the Commissioner,
27 defendant Schwarzenegger is responsible for organizing and operating the California Highway Patrol,
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1 which includes supervisory authority over the CHP officers who executed the unconstitutional
2 seizures described herein. He is sued in his official capacity.

3 19. Defendant BILL LOCKYER (“Lockyer”) is the Attorney General of the State of
4 California. Under Article 5, Section 13 of the California Constitution, he is the “chief law officer of
5 the State” and has the duty “to see that the laws of the state are uniformly and adequately enforced.”
6 The California Constitution further grants him “direct supervision over every district attorney and
7 sheriff and over such other law enforcement officers as may be designated by law...” As Attorney
8 General, defendant Lockyer is directly responsible for the operations of the California Department of
9 Justice, which supervises the CHP. He is sued in his official capacity.
10

11 20. Defendant MIKE L. BROWN (“Brown”) is the Commissioner of the California
12 Highway Patrol. Under Section 2108 of the Vehicle Code, the Commissioner, defendant Brown,
13 must carry out all of the duties and powers vested by law in the department of the California Highway
14 Patrol. As Commissioner, defendant Brown has supervisory authority over the CHP officers who
15 executed the unconstitutional seizures described herein. He is sued in his official capacity.
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17 **IV. FACTS APPLICABLE TO ALL CAUSES OF ACTION**

18 21. On November 4, 1996, California voters passed Proposition 215, which is codified as
19 “the Compassionate Use Act” at California Health & Safety Code § 11362.5, to “ensure that seriously
20 ill Californians have the right to obtain and use marijuana for medical purposes” without criminal
21 penalty. (*See* Cal. Health & Safety Code § 11362.5(b)(1)).
22

23 22. Seven years later, on September 10, 2003, the California Legislature enacted Senate
24 Bill 420, Stats. 2003 c.875 (“SB 420”), due to “reports from across the state [that] have revealed
25 problems and uncertainties in the [Compassionate Use Act] that have impeded the ability of law
26 enforcement officers to enforce its provisions as the voters intended and, therefore, prevented
27 qualified patients and designated primary caregivers from obtaining the protections afforded by the
28

1 act.” (See SB 420 § 1(a)(2).) In particular, to provide a consistent threshold throughout the State, the
2 Legislature enacted section 11362.77(a) of the Health and Safety Code, which provides that a
3 qualified patient may possess a minimum of 6 mature or 12 immature plants and, in addition, eight
4 ounces of dried marijuana per qualified patient. (See Health & Safety Code § 11362.77(a); Historical
5 and Statutory Notes to Cal. Health & Safety Code § 11362.7 [Letter from John Vasconcellos & Mark
6 Leno to The Hon. John Burton, dated Sept. 10, 2003] [“the guidelines in SB 420 establish permissible
7 amounts that are intended to be the threshold, and not a ceiling”].)) Under these laws, plaintiffs, as
8 qualified patients, have an absolute right to possess and transport less than eight ounces of dried
9 marijuana. (See Cal. Health & Safety Code H & S § 11362.765(b)(1) [exempting from Health &
10 Safety Code proscriptions “A qualified patient or a person with an identification card who transports
11 or processes marijuana for his or her own personal medical use;” *People v. Trippett* (1997) 56
12 Cal.App.4th 1532, 1550-1551 [noting that practical realities dictate that the CUA must include some
13 leeway for transportation of marijuana for personal medical use, although not specifically exempted
14 from punishment by the CUA].)

17 23. Notwithstanding these statutory provisions, which entitle qualified patients to possess
18 up to eight ounces of dried marijuana and six mature or twelve immature marijuana plants for
19 personal medical use, the CHP has a compulsory policy and practice of seizing the medicine of
20 qualified patients and primary caregivers found to possess marijuana. Section 6(c)(4)(e) of Chapter 1
21 of the CHP’s General Law Enforcement Policy Manual provides that “[e]ven if a Section 11362.5
22 H&S [CUA] claim is alleged, all marijuana shall be confiscated and booked as evidence according to
23 HPM 70.1. Those claiming a need for the marijuana should be advised to file a motion with the
24 appropriate court seeking an ‘Order of Return.’”
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1 24. As a direct and proximate result of the CHP policy and defendants' actions, plaintiffs
2 have suffered, and will continue to suffer, the sudden loss of their medicine at the hands of the police,
3 which causes them pain, suffering, humiliation, embarrassment, and extreme anxiety.

4 25. An actual and substantial controversy exists between plaintiffs and defendants as to
5 their respective legal rights and duties. Plaintiffs contend that, as applied to them and to others
6 similarly situated, the CHP's medical marijuana seizure policy is unlawful and unconstitutional.
7
8 Defendants contend the opposite.

9 26. If not enjoined by the Court, defendants will continue to implement the CHP policy in
10 derogation of the rights of plaintiffs and others similarly situated. Such implementation will impose
11 irreparable injury on the plaintiffs and other similarly situated persons. In each of these cases, a
12 physician has deemed it appropriate for the plaintiff or other qualified patient to use marijuana to treat
13 a medical condition. The sudden deprivation of this medicine by law enforcement leads to extreme
14 suffering, anxiety, and fear of the police. Law abiding citizens are made to suffer the indignity and
15 humiliation of being treated as criminals simply for exercising a right promised to them by the votes
16 of this State.
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18 27. Plaintiffs have no plain, speedy, and adequate remedy at law.
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V. CAUSES OF ACTION

FIRST CAUSE OF ACTION--UNREASONABLE SEARCH AND SEIZURE

Violation of California Constitution, Article I, § 13

(AGAINST ALL DEFENDANTS)

28. Plaintiffs reallege and incorporate by reference paragraphs 1 through 27 of this complaint as though fully set forth herein.

29. Article I, Section 13 of the California Constitution protects the right of people to be free from unreasonable searches and seizures and prohibits searches and seizures for law enforcement purposes absent reasonable individualized suspicion.

30. The CHP policy mandates the compulsory seizure of medical marijuana from plaintiffs and other similarly situated persons without requiring any showing of probable cause or individualized suspicion linking the person at issue to any specific crime for which his medical marijuana is relevant.

31. The compulsory and warrantless seizure of medical marijuana from plaintiffs and other similarly situated persons is inherently “unreasonable” within the meaning of the California Constitution and is not supported by any recognized exception to the warrant and probable cause requirements.

SECOND CAUSE OF ACTION--DUE PROCESS

Violation of California Constitution, Article I, § 7(a)

(AGAINST ALL DEFENDANTS)

32. Plaintiffs reallege and incorporate by reference paragraphs 1 through 31 of this complaint as though fully set forth herein.

1 33. Defendants' above-described conduct violated Plaintiffs' right not to be deprived of
2 property or liberty without due process of law under article I, section 7(a) of the California
3 Constitution.

4 **THIRD CAUSE OF ACTION--TAKINGS/INVERSE CONDEMNATION**

5 **Violation of California Constitution, Article I, Section 19**

6 (AGAINST ALL DEFENDANTS)

7
8 34. Plaintiffs reallege and incorporate by reference paragraphs 1 through 33 of this
9 complaint as though fully set forth herein.

10 35. At all times mentioned herein, plaintiffs were the legal owners of the medical
11 marijuana at issue when it was confiscated by the CHP.

12 36. Defendants took plaintiffs' medical marijuana for public use without a legitimate
13 public health or safety interest.

14 37. Plaintiffs received no monetary compensation for the damage to their property.

15 38. In doing the aforesaid acts, defendants violated plaintiffs' right to just compensation
16 for property taken or damaged for public use without a legitimate public health or safety interest
17 under article I, section 19 of the California Constitution.
18

19 **FOURTH CAUSE OF ACTION--CONVERSION**

20 (AGAINST ALL DEFENDANTS)

21
22 39. Plaintiffs reallege and incorporate by reference paragraphs 1 through 38 of this
23 complaint as though fully set forth herein.

24 40. Plaintiffs owned and legally possessed the medical marijuana confiscated by the CHP.

25 41. Plaintiffs did not consent to the removal of their property.

26 42. Defendants' actions were without right or justification and constituted the conversion
27 of property under the common law of California.
28

1 43. Defendants acted maliciously and in bad faith in that they knew or should have known
2 that their actions were wrongful.

3 44. As a direct and proximate result of defendants’ conversion, plaintiffs have sustained a
4 loss of the use of their personal property, extreme emotional distress, mental anguish, physical pain
5 and suffering.

6 **FIFTH CAUSE OF ACTION--BANE CIVIL RIGHTS ACT**

7 **Violation of California Civil Code § 52.1**

8 **(AGAINST ALL DEFENDANTS)**

9
10 45. Plaintiffs reallege and incorporate by reference paragraphs 1 through 44 of this
11 complaint as though fully set forth herein.

12
13 46. Under Health & Safety Code § 11362.5(b)(1), “seriously ill Californians have the right
14 to obtain and use marijuana for medical purposes. . . .”

15
16 47. Under article I, section 13 of the California Constitution, plaintiffs have the right to be
17 free from unreasonable searches and seizures.

18
19 48. Under article I, section 7(a) of the California Constitution, plaintiffs have the right not
20 to be deprived of property or liberty without due process of law.

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22 49. Under article I, section 19 of the California Constitution, plaintiffs have the right to
23 just compensation for property taken or damaged for public use without a legitimate public health or
24 safety interest.

25
26 50. Defendants’ above-described conduct constituted interference with, and attempted
27 interference, by threats, intimidation and coercion, with plaintiffs’ peaceable exercise and enjoyment
28 of these rights secured by the Constitution and laws of the State of California, in violation of
California Civil Code § 52.1.

1 51. As a direct and proximate result of Defendants’ interference with plaintiffs’
2 constitutional and statutory rights, plaintiffs suffered extreme emotional distress, mental anguish,
3 physical pain and suffering, loss of property and labor.

4 **V. RELIEF SOUGHT**

5 WHEREFORE, plaintiffs, on behalves of themselves and others similarly situated, seek the
6 following relief:
7

8 1. A declaration that the CHP policy of seizing marijuana in all cases in which marijuana
9 is found is unconstitutional as applied to qualified medical marijuana patients who display, or attempt
10 to display, facially valid documentation indicating their status as qualified patients, absent
11 circumstances establishing probable cause to believe that the marijuana is illegally possessed under
12 California law;
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14 2. A declaration that the CHP policy of seizing marijuana in all cases in which marijuana
15 is found is unconstitutional as applied to qualified primary caregivers who display, or attempt to
16 display, facially valid documentation indicating their status as a primary caregiver, absent
17 circumstances establishing probable cause to believe that the marijuana is illegally possessed under
18 California law;
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20 3. A preliminary and permanent injunction:

- 21 a. enjoining defendants from seizing marijuana from any person who presents
22 facially valid documentation indicating his status as a qualified patient or
23 primary caregiver and who possesses less than eight ounces of dried marijuana
24 and no more than six mature plants or twelve immature plants, unless such
25 seizure is supported by circumstances, aside from the mere possession or
26 transportation of marijuana, establishing probable cause to believe that the
27 marijuana is possessed or transported in violation of California law;
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- 1 b. enjoining defendants from assisting any other state or local law enforcement
2 official or third party from enjoining defendants from seizing marijuana from
3 any person who presents facially valid documentation indicating his status as a
4 qualified patient or primary caregiver and who possesses less than eight ounces
5 of dried marijuana and no more than six mature plants or twelve immature
6 plants, unless such seizure is supported by circumstances, aside from the mere
7 possession or transportation of marijuana, establishing probable cause to
8 believe that the marijuana is possessed or transported in violation of California
9 law;
10
11 c. ordering defendant Lockyer to inform, instruct, and train all law enforcement
12 officials in the State of California that seizing marijuana from persons who
13 present a facially valid documentation indicating the person's status as a
14 qualified patient or primary caregiver, absent circumstances establishing
15 probable cause to believe that the documentation is not valid or the marijuana
16 is possessed or transported in violation of California law, is unconstitutional
17 and unlawful and may not proceed; and
18
19 d. instructing defendants to promptly return any medical marijuana in their
20 possession, or that in the future comes into their possession, seized from
21 persons who have presented facially valid documentation indicating their status
22 as a qualified patient or primary caregiver, absent circumstances establishing
23 probable cause to believe that the documentation is not valid or the marijuana
24 is possessed or transported in violation of California law.
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27 4.. Costs and attorneys fees incurred in this action pursuant to California Code of Civil
28 Procedure § 1021.5, California Civil Code §§ 52(a) & 52.1, or other applicable authority; and

5. Such other and further relief as may be just and proper.

DATED: February 14, 2005

JOSEPH D. ELFORD
Attorney for Plaintiffs

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1 **VERIFICATION**

2 I am the attorney for plaintiffs in this action. I declare under penalty of perjury under the laws
3 of the State of California that the foregoing is true and correct based upon my investigation and
4 interviews with plaintiffs. The individual named plaintiffs are unable to verify the Complaint because
5 they are absent from Alameda County, which is where I maintain my office for Americans for Safe
6 Access, except for DOE 2 who wishes to maintain the confidentiality of his identity.
7

8 Executed this __ day of February in Berkeley, California.
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DEMAND FOR JURY TRIAL

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Plaintiffs hereby demand a jury trial of this action.

DATED: February 14, 2005

JOSEPH D. ELFORD
Attorney for Plaintiffs