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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF BUTTE
UNLIMITED JURISDICTION

DAVID WILLIAMS and DOES 1-4,

Plaintiffs,

v.

BUTTE COUNTY, a municipal corporation;
BUTTE COUNTY SHERIFF'S OFFICE, an entity
entity of unknown form; and DEPUTY JACOB
HANCOCK, in his official and individual capacities,

Defendants.

)
) Civil Action No. 137329
)
) **FOURTH AMENDED COMPLAINT**
) **FOR DAMAGES, DECLARATORY**
) **RELIEF, PRELIMINARY**
) **INJUNCTION, AND**
) **PERMANENT INJUNCTION**
) **DEMAND FOR JURY TRIAL**
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I. INTRODUCTION

1. This is a civil rights action arising from unconstitutional and unlawful actions taken by the Butte County Sheriff's Office ("Sheriff") towards qualified medical marijuana patients David Williams ("Williams") and the other members of his medical marijuana cooperative. Despite the legality of plaintiffs' collective cultivation of medical marijuana under state law, and Williams' presentation of documents establishing this, Butte County Sheriff's Deputy Jacob Hancock ("Hancock"), threatened Williams with arrest and prosecution if he did not to destroy most of the

1 marijuana plants cultivated on Williams' property. This action and the policy motivating it violate
2 the Compassionate Use Act (Health & Safety Code § 11362.5), due process, and Williams' right to
3 be free from unreasonable searches and seizures. Through this action, plaintiffs seek declaratory and
4 injunctive relief to restrain defendants from conducting similar such unlawful seizures in the future.
5 Plaintiff Williams also seeks reasonable compensation for the medical marijuana that was unlawfully
6 ordered destroyed.
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8 **II. JURISDICTION**

9 2. Jurisdiction is based on Article VI, Section 10 of the California Constitution; Civil
10 Code sections 51.7 & 52.1; Code of Civil Procedure section 88; and Government Code section
11 12960.
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13 3. On October 3, 2005, plaintiff Williams filed an administrative claim with the County
14 of Butte, in compliance with California Government Code §§ 910 *et seq.* That claim was rejected by
15 the County on or about November 18, 2005, through a letter sent on November 21, 2005. The
16 original complaint was filed May 18, 2006, and this First Amended Complaint followed. This action,
17 therefore, is timely.
18

19 **III. VENUE**

20 4. The claims alleged herein arose in Butte County, State of California. Therefore, venue
21 properly lies in the Superior Court of the State of California in and for the County of Butte. (*See*
22 Code of Civil Procedure §§ 392, 394 & 395(a)).
23

24 **IV. THE PARTIES**

25 **A. Plaintiffs**

26 5. Plaintiff DAVID WILLIAMS ("Williams") is, and, at all times relevant herein, was a
27 resident of Butte County, who lawfully resided in the premises located at 11876 Highway 70, Space
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1 #2, Oroville, California. Williams is, and at all times relevant herein, was a qualified medical
2 marijuana patient who used marijuana upon the recommendation of his physician, in accordance with
3 the Compassionate Use Act (Health & Safety Code § 11362.5) (“Compassionate Use Act”). He
4 collectively cultivates marijuana with other qualified patients, pursuant to Health and Safety Code
5 section 11362.775.
6

7 6. Plaintiffs DOES 1 through 4, inclusive, are qualified medical marijuana patients who
8 use marijuana upon the recommendation of their physicians, in accordance with the Compassionate
9 Use Act. Plaintiffs DOES 1 through 4, inclusive, associated with Williams in the Spring through
10 Autumn of 2006 to form a private patient collective to cultivate marijuana collectively on Williams’
11 residence, pursuant to Health and Safety Code section 11362.775, and they intend to do this into the
12 future. These plaintiffs sue with fictitious names at this time, due to privacy concerns and fear of
13 reprisal from the police.
14

15 **B. Defendants**
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17 7. Defendant BUTTE COUNTY (“County”) is, and at all times mentioned herein was, a
18 municipal corporation duly organized and existing under the laws of the State of California.
19

20 8. Defendant BUTTE COUNTY SHERIFF’S OFFICE (“Sheriff”) is, and at all times
21 mentioned herein was, a department within Butte County, which is owned and operated by the
22 County.
23

24 9. Defendant BUTTE COUNTY SHERIFF’S DEPUTY JACOB HANCOCK
25 (“Hancock”) is, and at all times mentioned herein was, an employee of the Sheriff, acting under the
26 color of law within the scope of his employment, who participated in the execution of the police
27 misconduct complained of herein.
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1 10. Each of the defendants caused and is responsible for the below-described unlawful
2 conduct and resulting injuries by, among other things, personally participating in the unlawful
3 conduct or acting jointly or conspiring with others who did so; by authorizing, acquiescing in or
4 setting in motion policies, plans or actions that led to the unlawful conduct; by failing to take action
5 to prevent the unlawful conduct; by failing and refusing with deliberate indifference to plaintiff's
6 rights to initiate and maintain adequate training and supervision; and by ratifying the unlawful
7 conduct that occurred by agents and officers under their direction and control, including failing to
8 take remedial or disciplinary action.
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11 11. In doing the acts alleged herein, defendants and each of them were on duty as police
12 officers, in uniform, armed, with badges, and, thus, were acting within the scope and course of their
13 employment with the County of Butte and the Butte County Sheriff's Office. (*See Mary M. v. City of*
14 *Los Angeles* (1991) 54 Cal.3d 202, 213-21, 285 Cal.Rptr. 99; *White v. County of Orange* (1985) 166
15 Cal.App.3d 566, 571-72, 212 Cal.Rptr. 493).
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17 12. In doing the acts alleged herein, defendants and each of them had a duty to protect the
18 health and safety of the plaintiffs, and they failed to exercise due care in the enforcement of that duty.
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20 13. In doing the acts alleged herein, defendants and each of them acted as the agent,
21 servant, employee, partner, joint-venturer, co-conspirator and/or in concert with each of said other
22 defendants; and in engaging in the conduct hereinafter alleged, were acting with the permission,
23 knowledge, consent and ratification of their co-defendants, and each of them.
24

25 **IV. FACTS APPLICABLE TO ALL CAUSES OF ACTION**

26 14. On November 4, 1996, the California electorate approved Proposition 215, which is
27 codified as "the Compassionate Use Act" at California Health & Safety Code § 11362.5, to "ensure
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1 that seriously ill Californians have the right to obtain and use marijuana for medical purposes. . . .”
2 (See Cal. Health & Safety Code § 11362.5(b)(1)).

3
4 15. Seven years later, on September 10, 2003, the California Legislature enacted Senate
5 Bill 420, Stats. 2003 c.875 (“SB 420”), to provide that “Qualified patients, persons with valid
6 identification cards, and the designated primary caregivers of qualified patients and persons with
7 identification cards, who associate within the State of California in order collectively or cooperatively
8 to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to
9 state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.”
10 (Cal. Health & Safety Code § 11362.775) Under these laws, plaintiffs had a right to associate with
11 each other to furnish themselves the medicine they need. (See *People v. Urziceanu* (2005) 132
12 Cal.App.4th 747, 33 Cal.Rptr.2d 859, 881).

13
14 16. Precisely as the voters of California and their Legislature intended, plaintiff Williams
15 and six other patients formed a private patient collective in the Spring of 2005 to cultivate marijuana
16 for their personal medical use on Williams’ property in Oroville, California. In particular, each of the
17 seven members agreed that they would contribute comparable amounts of money, property, and/or
18 labor (or combination thereof) to the collective cultivation of medical marijuana and that each would
19 receive an approximately equal share of the marijuana produced.
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22 17. On September 8, 2005, Deputy Jacob Hancock came to Williams’ home without a
23 warrant. Despite being presented with copies of medical marijuana recommendations for Williams
24 and the six other qualified medical marijuana patients and being told that all were members of a
25 private patient collective, Hancock ordered Williams to destroy all but twelve of the forty-one
26 medical marijuana plants growing on his property, under the threat of arrest and prosecution. Fearful
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1 of the consequences, Williams did as he was told. Deputy Hancock remained on Williams' property
2 the entire time that it took Williams to chop down the 22 medical marijuana plants.

3 18. Several weeks later, Williams harvested what remained of the medical marijuana
4 garden maintained by the seven-person patient collective. After the marijuana dried, Williams
5 divided all of it into seven approximately equal portions and, based on the understanding of the
6 members of the collective, each member of the patient collective received one of the seven equal
7 portions. Williams would have had more dried, usable medical marijuana from the garden on his
8 property, if the collective had been permitted to maintain and harvest all 41 plants.

9 19. On information and belief, this action was undertaken pursuant to the policy of Butte
10 County to "allow qualified patients to qualified patients to grow marijuana collectively . . . [only] so
11 long as each member actively participates in the actual cultivation of the marijuana by, for example,
12 planting, watering, pruning or harvesting the marijuana." Health and Safety Code Section
13 11362.775, which authorizes patient collectives, contains no such limitation.

14 20. In the Spring of 2006, Williams and four other qualified patients, DOES 1-4,
15 associated together to cultivate marijuana collectively, pursuant to Health and Safety Code section
16 11362.775. In particular, each of the five members agreed that they would contribute comparable
17 amounts of money, property, and/or labor (or combination thereof) to the collective cultivation of
18 medical marijuana and that each would receive an approximately equal share of the marijuana
19 produced. The agreement was carried out from the Spring to Autumn, 2006.

20 21. At no time during the events described above did plaintiffs commit any criminal
21 offense under the laws of the State of California.
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1 22. The defendant police officer was aware of the legality of plaintiffs’ conduct under
2 California law and he did not have any probable cause or legal justification to seize or order the
3 destruction of the marijuana plants at Williams’ residence.
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5 23. As a direct and proximate result of the conduct of defendants described herein,
6 Williams has been denied his constitutional, statutory and legal rights as stated below, and has
7 suffered, continues to suffer, and will in the future suffer general and special damages, including but
8 not limited to, mental and emotional distress, physical injuries and bodily harm, pain, fear,
9 humiliation, embarrassment, discomfort, and anxiety, and medical and related expenses.
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11 24. Defendants’ acts were willful wanton, malicious and oppressive and done with
12 conscious disregard and deliberate indifference to plaintiff’s rights.

13 25. Defendants’ policies, practices, conduct, and acts alleged herein have resulted and will
14 continue to result in irreparable injury to plaintiffs, including but not limited to violations of their
15 constitutional, statutory and common law rights. Plaintiffs have no plain, adequate or complete
16 remedy at law to address the wrongs described herein. Plaintiffs intend in the future to exercise their
17 rights under the Compassionate Use Act to cultivate and possess marijuana for medical use on the
18 recommendation of a physician, in accordance with California law. Defendants’ conduct described
19 herein has created fear, anxiety and uncertainty among plaintiff with respect to their exercise now and
20 in the future of these statutory and other constitutional rights, and with respect to their physical
21 security and safety. Plaintiffs, therefore, seeks injunctive relief from this Court, to ensure that
22 plaintiffs and persons similarly situated will not suffer violations of their rights from defendants’
23 illegal and unconstitutional policies, customs and practices, as described herein.
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26 26. An actual controversy exists between plaintiffs and defendants in that plaintiffs
27 contend that the policies, practices and conduct of defendants alleged herein are unlawful and
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1 unconstitutional, whereas plaintiffs is informed and believe that defendants contend that said policies,
2 practices and conduct are lawful and constitutional. Plaintiffs seek a declaration of rights with
3 respect to this controversy.
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5 27. Plaintiff Williams has exhausted all available administrative remedies.

6 **V. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Violation of California Constitution, Article 11, § 7**

9 (DECLARATORY AND INJUNCTIVE RELIEF ONLY)
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11 28. Plaintiffs reallege and incorporate by reference paragraphs 1 through 27 of this
12 complaint as though fully set forth herein.

13 29. Article 11, Section 7 of the California Constitution and Government Code section
14 37100 prohibit the enactment of municipal laws that conflict with the general laws of the State.

15 30. Through the passage of the Compassionate Use Act, the California voters declared as
16 their purpose “[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for
17 medical purposes where that medical use is deemed appropriate and has been recommended by a
18 physician who has determined that the person’s health would benefit from the use of marijuana. . . .”
19 (Cal. Health & Safety Code § 11362.5(b)(1)(A)) Furthermore, they sought out to ensure a safe and
20 effective distribution system, as enacted by the State. (See Cal. Health & Safety Code §
21 11362.5(b)(1)(C)).
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23 31. To advance the will of the California voters, the Legislature enacted SB 420, which
24 established cooperatives and collectives as the recognized forms of medical marijuana cultivation.
25 (See Cal. Health & Safety Code § 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 33
26 Cal.Rptr.2d 859, 881). In particular, Health and Safety Code Section 11362.775 provides that
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1 “Qualified patients, persons with valid identification cards, and the designated primary caregivers of
2 qualified patients and persons with identification cards, who associate within the State of California
3 in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on
4 the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360,
5 11366, 11366.5, or 11570.”
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7 32. In passing these laws, the voters of California and their Legislature have defined
8 medical marijuana collectives and cooperatives as legal under state law and this is a matter of
9 pressing statewide concern. In conflict with these laws, defendants have a policy of “allow[ing]
10 qualified patients to qualified patients to grow marijuana collectively . . . [only] so long as each
11 member actively participates in the actual cultivation of the marijuana by, for example, planting,
12 watering, pruning or harvesting the marijuana.” Because this policy conflicts with Health and Safety
13 Code Section 11362.775, which authorizes patient collectives and does not contain any such
14 limitation, the general law of California must prevail over the Butte County policy. (See *City of*
15 *Fresno v. Pinedale County Water Dist.* (1986) 184 Cal.App.3d 840, 845; *City of Los Angeles v. State*
16 *of California* (1982) 138 Cal.App.3d 526, 532.)
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19 **SECOND CAUSE OF ACTION--UNREASONABLE SEARCH AND SEIZURE**

20 **Violation of California Constitution, Article I, § 13**

21 (AGAINST ALL DEFENDANTS)
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23 33. Plaintiffs reallege and incorporate by reference paragraphs 1 through 32 of this
24 complaint as though fully set forth herein.

25 34. Plaintiff Williams legally resided at 11876 Highway 70, Space #2, Oroville,
26 California, at all relevant times.
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1 35. On or about September 8, 2005, Defendant Deputy Hancock entered Williams’
2 property without a warrant residence and ordered the destruction of lawfully possessed medical
3 marijuana plants.

4 36. Prior to this, Williams explained to Deputy Hancock that the marijuana was being
5 cultivated by a private patient collective and he showed Hancock copies of seven written physician’s
6 recommendations, to no avail.

7 37. Deputy Hancock was aware of, but disregarded, the status of plaintiffs as a qualified
8 medical marijuana patient cultivating marijuana collectively, pursuant to Health and Safety Code
9 section 11362.775. Despite this awareness, Deputy Hancock (1) compelled Williams to destroy
10 approximately 29 medical marijuana plants maintained by the collective and (b) Hancock remained
11 on Williams’ property after there was no longer any probable cause to believe that he had committed
12 any state law crime.

13 38. In doing the aforementioned acts, defendants, and each of them, violated Williams’
14 right to be free from unreasonable searches and seizures under article I, section 13 of the California
15 Constitution.

16 39. As a direct and proximate result of this unreasonable search and seizure, plaintiff
17 Williams suffered extreme emotional distress, mental anguish, physical pain and suffering, and loss
18 of property.

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THIRD CAUSE OF ACTION--DUE PROCESS

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

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(AGAINST ALL DEFENDANTS; DECLARATORY AND INJUNCTIVE RELIEF ONLY)

27 40. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of this
28 complaint as though fully set forth herein.

1 41. 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

5 **FOURTH CAUSE OF ACTION--BANE CIVIL RIGHTS ACT**

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

7 (AGAINST ALL DEFENDANTS)

8 42. Plaintiffs reallege and incorporate by reference paragraphs 1 through 42 of this
9 complaint as though fully set forth herein.
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11 43. Under article I, section 19 of the California Constitution, plaintiff Williams has the
12 right to just compensation for property taken or damaged for public use without a legitimate public
13 health or safety interest.

14 44. Under article I, section 7(a) of the California Constitution, plaintiffs have the right not
15 to be deprived of property or liberty without due process of law.
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17 45. Under article I, section 13 of the California Constitution, plaintiff Williams has the
18 right to be free from unreasonable searches and seizures.

19 46. Under Health & Safety Code § 11362.5(b)(1), “seriously ill Californians have the right
20 to obtain and use marijuana for medical purposes. . . .”
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22 47. Defendants’ above-described conduct constituted interference with, and attempted
23 interference, by threats, intimidation and coercion, with plaintiff Williams’ peaceable exercise and
24 enjoyment of these rights secured by the Constitution and laws of the State of California, in violation
25 of California Civil Code § 52.1.
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27 48. As a direct and proximate result of Defendants’ interference with plaintiffs’
28 constitutional and statutory rights, plaintiff Williams suffered extreme emotional distress, mental

1 anguish, physical pain and suffering, loss of property and labor, and incurred attorney fees, as is more
2 fully set forth below.

3 **FIFTH CAUSE OF ACTION--CONVERSION**

4 (AGAINST ALL DEFENDANTS)

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6 49. Plaintiffs reallege and incorporate by reference paragraphs 1 through 48 of this
7 complaint as though fully set forth herein.

8 50. Plaintiff Williams, as well as six other qualified patients, owned and legally possessed
9 the medical marijuana plants growing on Williams' property on September 8, 2005.

10
11 51. On or about September 8, 2005, Defendant Deputy Hancock entered Plaintiff's
12 property without a warrant, ordered the uprooting of approximately twenty-nine marijuana plants,
13 and converted the same to his own use and/or the use of the Butte County Sheriff's Office.

14 52. Defendant Hancock did this pursuant to an underground policy.

15 53. Plaintiff Williams did not consent to the removal of this property.

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17 54. Defendants' actions were without right or justification and constituted the conversion
18 of plaintiff's property under the common law of California.

19 55. Defendants acted maliciously and in bad faith in that they knew or should have known
20 that their actions were wrongful.

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22 56. As a direct and proximate result of defendants' conversion, plaintiff Williams has
23 sustained a loss of the use of their personal property, extreme emotional distress, mental anguish,
24 physical pain and suffering, and lost labor.

25 57. Under Government Code § 820(a), the individual officer defendant is liable for
26 damages for his own misconduct.
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1 58. Under Government Code § 815.2(a), the public entity employers are vicariously liable
2 for conduct performed by the individual officer within the scope and course of his employment.

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4 **VI. STATEMENT OF DAMAGES**

5 59. As a direct and proximate result of the wrongful acts and/or omissions of the
6 Defendants, as set forth above, plaintiff Williams has sustained the following injuries and damages:

- 7 a. Physical pain and mental anguish, past and present;
8 b. Severe emotional distress, humiliation, fear, and embarrassment;
9 c. Loss of property and labor, and costs of replacing property and labor;
10 d. Time and effort to secure the return of property unlawfully taken;
11 e. Past and future medical expenses; and
12 f. Attorney's fees.

13 60. The actions of Defendant Deputy Sheriff Hancock was malicious or oppressive, and
14 amounted to gross negligence and a reckless disregard for the Plaintiff Williams, and justify the
15 imposition of exemplary damages upon this Defendant in order to encourage and ensure that this
16 Defendant, as well as other police officers, will not repeat the same, or substantially similar conduct.

17 WHEREFORE, plaintiffs pray for relief as follows:

- 18 a. That this Court declare the rights of all parties;
19 b. Compensatory damages, including, but not limited to general and special damages,
20 according to proof at trial (Plaintiff Williams only);
21 c. Exemplary and punitive damages (Plaintiff Williams against Defendant Hancock in
22 his individual capacity only);
23 d. Treble damages for each violation of the Bane Civil Rights Act, as provided by Civil
24 Code §§ 52(a) & 52.1 (Plaintiff Williams only);
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1 e. Reasonable attorney's fees;

2 f. Costs of suit incurred herein;

3 g. That this Court issue an order requiring Defendants to show cause why they should
4 not be enjoined, as hereinafter set forth;

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6 h. That this Court issue a preliminary injunction, and a permanent injunction, enjoining
7 Defendants and their agents, servants, and employees, and all persons acting under and in concert
8 with, or for them, from continuing to violate the constitutional rights of qualified medical marijuana
9 patients to be free from unreasonable searches and seizures; and
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11 i. All other compensatory, equitable and declaratory relief as this Court
12 deems just.

13 Respectfully submitted, this ___ day of April, 2007.

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16 _____
17 JOSEPH D. ELFORD
18 Attorney for Plaintiffs
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a jury trial of this action.

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4 DATED: April 5, 2007

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7 JOSEPH D. ELFORD
8 Attorney for Plaintiffs
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1 **CERTIFICATE OF SERVICE**

2 I am a resident of the State of California, not a party to this action, and over the age of eighteen years.
3 My business address is 1322 Webster St., Suite 402, Oakland, CA 94612. On April 5, 2007, I served
4 the within document(s):

5 **FOURTH AMENDED COMPLAINT FOR DAMAGES, DECLARATORY RELIEF,**
6 **PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION**

7 Via first-class mail to:

8 Brad J. Stephens
9 Deputy County Counsel
10 25 County Center Drive
11 Oroville, CA 95965
12 Fax: (530) 538-6891

13 I declare under penalty of perjury under the laws of the State of California that the above is true and
14 correct.

15 Executed on this 5th day of April, 2007, in Oakland, California.

16 _____
17 Joseph D. Elford
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