JOSEPH D. ELFORD (S.B. NO. 189934)
600 Fell Street #101
San Francisco, CA 94102
Telephone: (415) 573-7842
Email: joeelford@yahoo.com

Counsel for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LAKE

UNLIMITED JURISDICTION

ANTHONY SPITTLER, JERI SPITTLER, and ROBIN FARNHAM, Plaintiffs, v. CITY OF CLEARLAKE, a municipal corporation, Defendant.	Civil Action No. **VERIFIED COMPLAINT FOR DECLARATORY RELIEF, TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION** **DEMAND FOR JURY TRIAL**

I. INTRODUCTION

1. Through their enactment of the Compassionate Use Act in 1996 [hereinafter *Compassionate Use A*ct or *CUA*] and the Medical Marijuana Program Act in 2003 [hereinafter *MMP*], the California electorate and Legislature have promised seriously ill Californians that they would be able to obtain and use marijuana where that use has been deemed appropriate by a physician. In particular, the electorate has determined through its 1996 initiative that qualified medical marijuana patients may cultivate and possess amounts of marijuana that are reasonably related to their personal medical needs. (*People v. Kelly* (2010) 47 Cal.4th 1008, 1013; *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.) Notwithstanding these laws, the City of Clearlake

[hereinafter *City*] has completely banned *all* medical marijuana cultivation within its boundaries. (See City of Clearlake Ordinance No. 173-2015 [attached hereto as Exhibit A] [hereinafter *Ordinance*].) Worse still, due to the City's peculiar definition of "cultivation" as including the storage of "any part" of a marijuana plant, the Ordinance may be construed to prohibit even the simple possession of marijuana by qualified patients. The City's decision to depart from State law in this manner is unconstitutional and should be enjoined.

2. Approved by fifty-six percent of the California electorate in the general election of 1996, the CUA was expressly enacted "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana. . . ."

3. After the passage of the CUA, however, the Legislature received "reports from across the state [revealing] problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, have prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act." (Stats. 2003, ch. 875, § 1, p. 6422.) To rectify this, and "promote uniform and consistent application of the act among the counties within the state" (*Ibid.*), the Legislature, through the MMP, expressly assured qualified patients that they "may . . . maintain" six mature plant or twelve immature plants for their medical personal needs. (See Health & Saf. Code, § 11362.77, subd. (a).) In addition, the Legislature only expressly authorized localities to enact "medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth" above. (See Health & Saf. Code, § 11362.77, subd. (c).) Together, these provisions constitute a clear statement by the California Legislature that the State's

municipalities may expand upon the "safe-harbor" provisions afforded to medical marijuana patients regarding cultivation, but they may not subvert or obliterate them, as the City has done here.

4. Notwithstanding plaintiffs' legal ability to cultivate sufficient amounts of medical marijuana for their personal medical use under State law, the City has passed an Ordinance, which completely bans medical marijuana cultivation and, arguably, possession as well. This Ordinance conflicts with State law, unconstitutionally amends a voter-approved initiative and is vague, so it should be invalidated.

II. JURISDICTION AND VENUE

5. Jurisdiction is based on Article VI, section 10 of the California Constitution; Civil Code sections 526 and 526a; and Code of Civil Procedure sections 32.5, 88 and 410.10.

6. Venue is proper in the Superior Court in and for the County of Lake, pursuant to California Government Code section 955.2 and California Code of Civil Procedure section 394, subd. (a).

III. THE PARTIES

A. Plaintiffs

7. Plaintiff ANTHONY SPITTLER is, and has been at all relevant times, a resident of the City of Clearlake. Together with his wife, Jeri Spittler, he owns real property in the City and has been assessed and had paid property taxes on the property within the last year. Anthony Spittler brings this action as an individual personally affected by the Ordinance and as a citizen and taxpayer of the City.

8. Anthony Spittler is a sixty-six year-old qualified medical marijuana patient with a physician's recommendation to use marijuana to treat pain from chemotherapy and radiation

treatment for Stage Four throat and neck cancer, which is now in remission. The chemotherapy and radiation treatment caused Anthony Spittler's neck muscles to atrophy, which causes him significant pain and, combined with his loss of his senses of smell and taste, a loss of appetite. Anthony Spittler's use of marijuana alleviates his pain and stimulates his appetite. Prescription pain medication, by sharp contrast, significantly curb Anthony Spittler's appetite, which is detrimental to his health.

9. In the past, Anthony Spittler has cultivated twelve (12) marijuana plants for himself and his wife at the residence they share without incident. Purchasing marijuana from a dispensary is cost-prohibitive for Anthony Spittler and he does not wish to transport it because this might expose him to criminal penalties.

10. The City's ban on all marijuana cultivation within City limits prohibits Anthony Spittler from obtaining the medicine he needs for his personal medical use, as promised by the CUA and MMP. He does not know how he will access this medicine when the Ordinance becomes effective.

11. Plaintiff JERI SPITTLER is, and has been at all relevant times, a resident of the City of Clearlake. Together with her husband, Anthony Spittler, she owns real property in the City and has been assessed and had paid property taxes on the property within the last year. Jeri Spittler brings this action as an individual personally affected by the Ordinance and as a citizen and taxpayer of the City.

12. Jeri Spittler is a sixty year-old qualified medical marijuana patient with a physician's recommendation to use marijuana to treat pain and neuropathy associated with fibromyalgia. She cannot take the prescription pain medication Lyrica because it is a nerve blocker, so it detrimentally affects her vision.

13. In the past, Jeri Spittler has obtained her medicine through her husband's cultivation of twelve (12) marijuana plants for the two of them at the residence they share, without incident. Purchasing marijuana from a dispensary is cost-prohibitive for Jeri Spittler and she does not wish to transport it because this might expose her to criminal penalties.

14. The City's ban on all marijuana cultivation within City limits prohibits Jeri Spittler from obtaining the medicine she needs for her personal medical use, as promised by the CUA and MMP. She does not know how she will access this medicine when the Ordinance becomes effective.

15. Plaintiff ROBIN FARNHAM [hereinafter *Farnham*] is, and has been at all relevant times, a resident of the City of Clearlake with a leasehold interest in her residence. She is also a thirty-four year-old qualified medical marijuana patient with a physician's recommendation to use marijuana to treat symptoms associated with a brain aneurism she suffered when she was twenty-nine years-old.

16. In particular, Farnham uses marijuana to treat ongoing headaches and pain associated with her brain aneurism, which has led to scar tissue in the brain and has required the placement of a stent in her brain to keep the swelling under control.

17. Farnham is unable to take prescription pain medication to treat her symptoms because they thin out her blood, which could cause more brain aneurisms, and she frequently suffers memory loss, so she forgets how many pills she has taken.

18. In the past, Farnham's partner, in-home health care provider and primary caregiver, Michael Smith, has cultivated six (6) marijuana plants for Farnham at their residence without incident. Purchasing marijuana from a dispensary is cost-prohibitive for Farnham and she does not wish to transport it because this might expose her to criminal penalties.

19. The City's ban on all marijuana cultivation within City limits prohibits Farnham from obtaining the medicine she needs for her personal medical use, as promised by the CUA and MMP. She does not know how she will access this medicine when the Ordinance becomes effective.

B. Defendant

20. Defendant CITY OF CLEARLAKE is, and at all times mentioned herein was, a municipal corporation within the State of California, which passed the Ordinance that is the subject of this lawsuit.

IV. FACTS APPLICABLE TO ALL CAUSES OF ACTION

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

22. Seven years later, on September 10, 2003, the California Legislature enacted Senate Bill 420, Stats. 2003 c.875, also known as the "Medical Marijuana Program Act," which, provides, in pertinent part, as follows:

> (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, *a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.*
>
> * * *
>
> (c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).
>
> * * *

> (f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

(Health & Saf. Code, § 11362.77, subd. (a), (c), (f) [Italics added].) This legislation "sets forth a 'safe harbor' by authorizing possession of specific amounts of medical marijuana within those specific limits." (*Kelly*, *supra*, 47 Cal.4th at p. 1015.) It also instructs localities that they may only exceed those quantities (Health & Saf. Code, § 11362.77, subd. (c)), which means that they may not further restrict them.

23. Despite these laws, on or about February 26, 2015, the City of Clearlake enacted Ordinance No. 173-2015, which completely prohibits qualified medical marijuana patients from cultivating and, arguably, possessing the medicine they need for their personal medical use in accordance with State law. It further provides for penalties in the form of criminal punishment and liens to be placed on the homes of qualified patients whose marijuana is abated by City authorities. In pertinent part, the Ordinance provides as follows:

> **10-7.030 - Definitions.**
>
> *** * ***
>
> D. "Cultivate" or "cultivation" is the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.
>
> *** * ***
>
> **10-7.040 - Prohibition of Marijuana Cultivation.**
>
> Marijuana cultivation by any person, including primary caregivers and qualified patients, cooperatives or dispensaries, is prohibited in all zone districts within the City.
>
> *** * ***

10 - 7.060 - Penalties for violation.

A. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to the penalties as set forth in section 10-9. Violators shall be subject to any other enforcement remedies available to the City under any applicable state or federal statute or pursuant to any other lawful power the City may possess.

* * *

10-8.140 - Collection of unrecovered costs.

A. In the event that the cost of abating the nuisance exceeds the proceeds received from the sale of materials, such unrecovered costs, if not paid within ten days after the Council's decision, shall constitute a special assessment on the real property from which the nuisance was abated.

* * *

(Ordinance No. 173-2015, Sections 10-7.030(D), 10-7.040, 10-7.060(A), 10-8.140(A) [Italics added].)

24. An actual and substantial controversy exists between plaintiffs and defendant as to their respective legal rights and duties. Plaintiffs contend that, on its face and as applied to them and to others similarly situated, City of Clearlake Ordinance No. 173-2015 is unlawful and unconstitutional. Defendants contend the opposite.

25. If not enjoined by the Court, defendants will implement the Ordinance in derogation of the rights of plaintiffs, others similarly situated, and qualified medical marijuana patients. Such implementation will impose irreparable injury on the plaintiffs and these other persons.

26. Plaintiffs have no plain, speedy, and adequate remedy at law.

/ / /

/ / /

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of California Constitution, Article XI, § 7; CUA, MMP, and Civil Code § 52.1

27. Plaintiffs reallege and incorporate by reference paragraphs 1 through 26 of this Complaint as though fully alleged herein.

28. Article XI, section 7 of the California Constitution provides that a "county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Local ordinances and regulations that are in conflict with state law are preempted.

29. By setting restrictions on medical marijuana cultivation and possession that are in conflict with the CUA and MMP, City of Clearlake Ordinance No. 173-2015 is preempted by these State laws.

SECOND CAUSE OF ACTION

Violation of California Constitution, Article I, § 7, subdivision (a) and Civil Code § 52.1

30. Plaintiffs reallege and incorporate by reference paragraphs 1 through 29 of this complaint as though fully set forth herein.

31. Ordinance No. 173-2015, Section 10-7.030(D) ambiguously defines "cultivation," in part, as the ". . . storage of one or more marijuana plants or any part thereof in any location." This may be construed as a ban on all medical marijuana possession, or, alternatively, only the possession of marijuana that was cultivated on the property at issue. Under either interpretation, the Ordinance is unconstitutionally vague because it sets forth a definition of "cultivation" that is not in accord with its common meaning.

32. Ordinance No. 173-2015 is unconstitutionally vague on its face, and as applied or threatened to be applied to plaintiffs, in violation of article I, section 7, subdivision (a) of the California Constitution and Civil Code Section 52.1.

THIRD CAUSE OF ACTION

Violation of California Constitution, Article I, § 7, subdivision (a) and Civil Code § 52.1

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

34. Ordinance No. 173-2015, Section 10-7.040 prohibits medical marijuana cultivation for anyone within the City's boundaries, with the City Council stating that its purpose in doing so is to allow "compassionate access to medical marijuana to its seriously ill residents via dispensaries. . . ."

35. Because obtaining marijuana from dispensaries is cost-prohibitive for plaintiffs, Ordinance No. 173-2015 discriminates against plaintiffs on the basis of wealth, so it is unconstitutional on its face, and as applied or threatened to be applied to plaintiffs, in violation of the equal protection provision of article I, section 7, subdivision (a) of the California Constitution and Civil Code Section 52.1.

FOURTH CAUSE OF ACTION

Taxpayer Action under Code of Civil Procedure § 526a

36. Plaintiffs reallege and incorporate by reference paragraphs 1 through 35 of this Complaint as though fully alleged herein.

37. Defendants are, or threatening to illegally expend public funds by maintaining and enforcing their laws prohibiting medical marijuana cultivation because those laws are preempted by State law, are unconstitutionally vague, and violate equal protection.

V. RELIEF SOUGHT

WHEREFORE, plaintiffs, on behalf of themselves and others similarly situated, seek the following relief:

1. A declaration that Ordinance No. 173-2015 is unlawful and unconstitutional;

2. A preliminary and permanent injunction enjoining defendant and its agents and employees from enforcing, or threatening to enforce, City of Clearlake Ordinance No. 173-2015;

3. Costs and attorneys fees incurred in this action pursuant to California Code of Civil Procedure § 1021.5, or other applicable authority; and

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

DATED: March 19, 2015

_____
JOSEPH D. ELFORD
Counsel for Plaintiffs

VERIFICATION

I declare that my offices are located in the County of San Francisco, which is not the same county as the named plaintiffs, so I verify this Complaint on their behalf.

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

Executed this __ day of March, in San Francisco, California.

_____

JOSEPH D. ELFORD

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of this action.

DATED: March 19, 2015

_____

JOSEPH D. ELFORD
Counsel for Plaintiffs