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7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF YUBA

9 UNLIMITED JURISDICTION

10
11 WOODROW GEORGE POWERS, PATTY)
12 MOWERY, THERESA MORRIS and)
13 ERIC SALERNO,)

14 Plaintiffs,)

15 v.)

16 COUNTY OF YUBA, a municipal corporation,)

17 Defendant.)
18)

Civil Action No.

**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF,
TEMPORARY RESTRAINING
ORDER, PRELIMINARY
INJUNCTION AND
PERMANENT INJUNCTION**

DEMAND FOR JURY TRIAL

19 **I. INTRODUCTION**

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21 1. Through their enactment of the Compassionate Use Act in 1996 (Cal. Health &
22 Saf. Code, § 11362.5) [hereinafter Compassionate Use Act or CUA] and the Medical Marijuana
23 Program Act in 2003 (Cal. Health & Saf. Code, § 11362.7 et seq.) [hereinafter MMP], the
24 California electorate and Legislature have promised seriously ill Californians that they would be
25 able to obtain and use marijuana where that use has been deemed appropriate by a physician. In
26 particular, the electorate determined through its 1996 initiative that qualified medical marijuana
27 patients may cultivate and possess amounts of marijuana that are reasonably related to their
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1 personal medical needs. (People v. Kelly (2010) 47 Cal.4th 1008, 1013; People v. Trippet (1997)
2 56 Cal.App.4th 1532, 1549.) The CUA “allows patients to cultivate their own marijuana simply
3 because federal laws prevent the sale of marijuana, and a state initiative cannot overrule those
4 laws.” (Ballot Pamp., Gen. Elec. (Nov. 5, 1995), argument in favor of Prop. 215, p. 60.) In
5 short, the electorate, through the CUA, envisioned personal cultivation of marijuana by qualified
6 patients for their own medical needs as the method for them to obtain their medicine.

8 2. Notwithstanding these State laws, the County of Yuba [hereinafter County] has
9 completely banned all outdoor medical marijuana cultivation and all cultivation of medical
10 marijuana in residences within its boundaries. (See County of Yuba Ordinance No. 1538
11 [attached hereto as Exhibit B] [hereinafter Ordinance], Sections 7.40.300(A), (B).) To cultivate
12 medical marijuana plants in conformity with the Ordinance, a qualified patient must construct an
13 accessory structure on her property, with all applicable permits, that is equipped with
14 “permanently installed and permitted” electricity and an odor control filtration and ventilation
15 systems. (Ordinance No. 1538, Section 7.40.320(A).) This requirement is cost-prohibitive for
16 most qualified medical marijuana patients. (See *infra* at ¶¶9, 14, 20.)

19 3. Even with this accessory structure, a qualified patient may not cultivate more than
20 twelve (12) medical marijuana plants on her property, regardless whether she is a primary
21 caregiver for others or she is part of a medical marijuana collective or cooperative. (Ordinance
22 No. 1538, Section 7.40.300(C). Worse still, due to the County’s peculiar definition of
23 “cultivation” as including the storage of “any part” of a marijuana plant, the Ordinance may be
24 construed to prohibit even the simple possession of marijuana by qualified patients. The
25 County’s decision to depart from State law in this manner it has is unconstitutional under the
26 equal protection clause, the due process clause, the right against self-incrimination, and the
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1 search and seizure provision of the California Constitution. It should be declared invalid and its
2 enforcement enjoined.

3 **II. JURISDICTION AND VENUE**

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

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7 5. Venue is proper in the Superior Court in and for the County of Yuba, pursuant to
8 California Government Code section 955.2 and California Code of Civil Procedure section 394,
9 subd. (a).

10 **III. THE PARTIES**

11 **A. Plaintiffs**

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13 6. Plaintiff WOODROW GEORGE POWERS [hereinafter Powers] is, and has been
14 at all relevant times, a resident of the County of Yuba with a leasehold interest in his residence.
15 Powers is a sixty-year-old qualified medical marijuana patient with a physician's
16 recommendation to use marijuana to treat chronic pain cause by reconstructive knee surgery and
17 the degeneration of his back. His use of marijuana for medical purposes has enabled Powers to
18 avoid prescription painkillers, which cause him to feel dazed.
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20 7. In the past, Powers, together with his live-in girlfriend, Patty Mowery, each
21 cultivated six (6) marijuana plants for their personal medical use at their residence without
22 incident. The total number of plants was twelve (12).
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24 8. Building the accessory structure required by Ordinance No. 1538 is cost-
25 prohibitive for Powers because his only income is the Social Security disability benefits he
26 receives and his girlfriend is not currently employed. On information and belief, the accessory
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1 structure required by the Ordinance would require approximately \$18,000.00 in start up costs
2 alone.

3 9. It is also cost-prohibitive and legally risky for Powers to obtain medical marijuana
4 from the nearest dispensary, which is more than twenty (20) miles away.

5 10. The County's ban on all marijuana cultivation within County limits, except in a
6 financially unobtainable accessory structure, prohibits Powers from obtaining the medicine he
7 needs for his personal medical use, as promised by the CUA and MMP. He does not know how
8 he will access his medicine now that the Ordinance has passed.

9 11. Plaintiff PATTY MOWERY [hereinafter Mowery] is, and has been at all relevant
10 times, a resident of the County who owns property in the County and has paid property taxes to
11 the County within the past year. Mowery is a fifty-seven-year-old qualified medical marijuana
12 patient with a physician's recommendation to use marijuana to treat symptoms associated with a
13 stroke she suffered, which cause her difficulty with her mobility. Her use of marijuana for
14 medical purposes has enabled Mowery to become more mobile.

15 12. In the past, Mowery, together with her boyfriend Powers, each cultivated six (6)
16 marijuana plants for their personal medical use at their residence without incident. The total
17 number of plants was twelve (12).

18 13. Building the accessory structure required by Ordinance No. 1538 is cost-
19 prohibitive for Mowery because she is not currently employed.

20 14. It is also cost-prohibitive and legally risky for Mowery to obtain medical
21 marijuana from the nearest dispensary, which is more than twenty (20) miles away.

22 15. The County's ban on all marijuana cultivation within County limits, except in a
23 financially unobtainable accessory structure, prohibits Mowery from obtaining the medicine she
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1 needs for her personal medical use, as promised by the CUA and MMP. She does not know how
2 she will access her medicine not that the Ordinance has passed.

3 16. Mowery brings this action as an individual personally affected by the Ordinance
4 and as a citizen and taxpayer of the County.

5 17. Plaintiff THERESA MORRIS [hereinafter Morris] is, and has been at all relevant
6 times, a resident of Yuba County for forty-three years who owns property in the County and has
7 paid property taxes to the County within the past year. Mowery is a seventy-five-year-old
8 qualified medical marijuana patient with a physician's recommendation to use marijuana to treat
9 symptoms associated with acute asthma. Her use of marijuana for medical purposes has enabled
10 Morris to breathe more freely after prescriptions medications, including inhalers and Advair, did
11 not help her condition.
12

13 18. For the past three years, Morris cultivated six (6) marijuana plants for her
14 personal medical use at her residence without incident. She intended to do this again this year,
15 but is prohibited by Ordinance No. 1538 from doing so.
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17 19. Building the accessory structure required by Ordinance No. 1538 is cost-
18 prohibitive for Morris because she is on a fixed income. It is also impossible because Morris'
19 residence is three miles from the nearest outlet to an electricity network. In other words Morris
20 is "off the grid."
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22 21. The County's ban on all marijuana cultivation within County limits, except in a
23 financially unobtainable accessory structure, prohibits Morris from obtaining the medicine she
24 needs for her personal medical use, as promised by the CUA and MMP.
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26 22. Morris brings this action as an individual personally affected by the Ordinance
27 and as a citizen and taxpayer of Yuba County.
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1 23. Plaintiff ERIC SALERNO [hereinafter Salerno] is, and has been at all relevant
2 times, a resident of the County of Yuba. He is a thirty-six-year-old qualified medical marijuana
3 patient who uses marijuana, according to his physician’s recommendation, to treat his insomnia.
4 Salerno’s use of marijuana for this medical purpose has enabled him to discontinue his use of the
5 prescription medication Ambien.
6

7 24. Salerno intends to cultivate marijuana for his personal medical use in 2015 and
8 beyond, as recommended by his physician. He has the financial resources to comply with the
9 accessory structure requirements of Section 7.40.320 of Ordinance No. 1538, but he does not
10 want to be compelled to incriminate himself through the registration requirements of Section
11 7.40.340 of the Ordinance or be subjected to the compulsory search and seizure provisions of
12 Sections 7.40.340, subd. (B.2) and 7.40.510.
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14 **B. Defendant**

15 25. Defendant COUNTY OF YUBA is, and at all times mentioned herein was, a
16 municipal corporation within the State of California, which passed the Ordinance that is the
17 subject of this lawsuit.
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19 **IV. FACTS APPLICABLE TO ALL CAUSES OF ACTION**

20 **A. The State Statutory Scheme**

21 26. Approved by fifty-six percent of the California electorate in the general election
22 of 1996, the CUA was expressly enacted “[t]o ensure that seriously ill Californians have the right
23 to obtain and use marijuana for medical purposes where that medical use is deemed appropriate
24 and has been recommended by a physician who has determined that the person’s health would
25 benefit from the use of marijuana. . . .” The Act was limited to cultivation and possession did
26 not include sales.
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1 patients regarding cultivation, but they may not further restrict them, as the County has done
2 here.

3 **B. The Passage of Yuba County Ordinance No. 1538 as an Urgency Ordinance**

4 28. Despite these laws, the County enacted Ordinance No. 1538, which completely
5 prohibits qualified medical marijuana patients from cultivating marijuana outdoors and in their
6 residence and, arguably, from possessing the medicine they need for their personal medical use,
7 in accordance with State law.
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9 29. Since 2012, Yuba County had an ordinance that provided for the cultivation of
10 medical marijuana, both indoors and outdoors, with allowable plant counts depending on the
11 parcel size. (Yuba County Ordinance No. 1518, as amended by Ordinance No. 1522 [codified at
12 Yuba County Ordinance Code, Chapter 7.40].)
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14 30. In or around November 2014, the Yuba County Board of Supervisors directed its
15 County Counsel to submit proposals for new regulations regarding medical marijuana cultivation
16 in the County.
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18 31. One such proposal was Ordinance No. 1538, described below, which had its first
19 reading as a regular ordinance at the Yuba County Board of Supervisors meeting on February 24,
20 2015.
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22 32. In anticipation of the Ordinance passing on its second reading, which was
23 scheduled for March 10, 2015, opponents of the Ordinance prepared a referendum petition
24 protesting the adoption of Ordinance No. 1538, which was reported in the press.
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26 33. Suddenly, and without any advance notice, the Board of Supervisors changed the
27 regular ordinance to an urgency ordinance at the second reading of Ordinance No. 1538 at its
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1 March 10, 2015, meeting and adopted Ordinance No. 1538 as an urgency ordinance at that
2 meeting.

3 34. Board Chairwoman Griego [hereinafter Griego] noted the difference between
4 regular ordinances and urgency ordinances in that urgency ordinances take effect immediately,
5 so there is no opportunity for a referendum. She later commented that the people should have a
6 role in the process; that “I don’t believe we should subvert that [referendum] process. This is
7 America and people have the right to challenge.” Griego later declared, “Let the community
8 decide whether to sign the referendum petition” and stated that she does not “want to be in the
9 way of the people’s process.” Griego was the lone member of the Board to vote against the
10 Ordinance being passed as an urgency ordinance, stating: “I supported the ordinance. I do not
11 support the urgency in regards to stopping the process of the people having the right to petition,
12 so I will vote no.” The Board refused to answer a question posed by an audience member
13 whether the sudden last minute conversion of the regular ordinance to an urgency ordinance was
14 to evade the referendum process.
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17 35. To do support the passage of Ordinance No. 1538 as an urgency ordinance, the
18 Board of Supervisors made findings that: cultivation of marijuana outdoors increases the risk of
19 trespassing and burglary (Urgency Ordinance No. 1538, Section 1(B)); cultivation of marijuana
20 inside a residence presents potential health and safety risks to those occupying the residence
21 (Urgency Ordinance No. 1538, Section 1(C)); there is an influx of marijuana cultivators in Yuba
22 County because neighboring counties in Northern California have adopted more restrictive
23 marijuana cultivation ordinances than Yuba County (Urgency Ordinance No. 1538, Section
24 1(E)); the cultivation of medical marijuana in Yuba County exacerbates existing drought
25 conditions (Urgency Ordinance No. 1538, Sections (G), (H), (I), (J)); and the cultivation will
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1 start early this year, due to climate and environmental conditions, so the ordinance must take
2 effect immediately (Urgency Ordinance No. 1538, Section 1(F)).

3 36. It concluded that “[a]doption of this Ordinance under urgency is necessary for the
4 immediate preservation of the public peace, health, and safety, as set forth in Government Code
5 section 25123, subdivision (d), in order to prevent further cultivation of marijuana outdoors or
6 within residences or other structures used or intended for human occupancy in Yuba County,
7 which would threaten significant impacts on the public peace, health, and safety if permitted to
8 occur.” (Urgency Ordinance No. 1538, Section 1(K).)

10 37. The Board had previously identified the same or similar risks of outdoor
11 cultivation of marijuana and cultivation of marijuana inside residences in the originally
12 introduced regular ordinance as were expressed in the urgency findings. (Compare Ordinance
13 No. 1538, Sections 7.40.120(J), (K) with Urgency Ordinance No. 1538, Sections 1(B), (C).) It
14 also had previously identified the consumption of water by marijuana cultivators as putting a
15 strain on water resources. (Compare Ordinance No. 1538, Section 7.40.120(M) with Urgency
16 Ordinance No. 1538, Sections 1(G), (H), (I), (J).)

19 38. Chairwoman Griego added near the conclusion of the March 10, 2015, Board
20 meeting that she heard a lot of testimony by medical marijuana patients that convinced her that
21 “some of these requirements we put in place are pretty unachievable for them financially.”

22 **C. The Yuba County Marijuana Cultivation Ordinance (Ordinance No. 1538)**

24 39. In pertinent part, the Ordinance provides as follows:

25 **7.40.200 Definitions**

26 * * *

1 F. "Cultivation" means the planting, growing, harvesting, drying,
2 processing, or storage of one or more marijuana plants or any part
3 thereof in any location, indoor or outdoor, including from within a
4 fully enclosed and secure building.

* * *

5 **7.40.300 Cultivation Restrictions**

- 6 A. Outdoor cultivation on any Parcel is prohibited.
- 7 B. Cultivation within a Dwelling or any other structure used or intended for
8 human habitation is prohibited.
- 9 C. Cultivation of more than twelve (12) marijuana plants on any Parcel is
10 prohibited. The foregoing limitation shall be imposed regardless of the
11 number of qualified patients or primary caregivers residing on the Parcel
12 or participating directly or indirectly in the cultivation. Further, this
13 limitation shall be imposed notwithstanding any assertion that the
14 person(s) cultivating marijuana are the primary caregiver(s) for qualified
15 patients or that such person(s) are collectively or cooperatively cultivating
16 marijuana.

* * *

17 **7.40.310 Cultivation Requirements**

- 18 A. Cultivation may only occur on a Parcel improved with an occupied,
19 legally established, Dwelling in conformance with this Chapter. The
20 cultivation shall be contained within the Defined Area of Cultivation in
21 one, single, residential accessory structure affixed to the real property that:
- 22 1. Meets the definition of "Indoor²,"
 - 23 2. That is located on the same Parcel as the Dwelling of a
24 qualified patient(s) or a primary caregiver(s); and
 - 25 3. That complies with all of the provisions of the Yuba
26 County Code relating to accessory structures including, but
27 not limited to, the County's Development Code in Title XI,
28 and construction codes in Title X of the Yuba County
Ordinance Code. Where the provisions of this Chapter are
more restrictive than other portions of the Yuba County
Code the provisions of this Chapter shall govern.

² The Ordinance defines "indoors" as "mean[ing] within a fully enclosed structure, with a solid roof, floor, and walls. The structure must be securable against unauthorized entry and constructed of solid materials such as 3/8 or thicker plywood, glass, or equivalent materials. Shade-cloth covered and plastic sheeting covered, regardless of gauge, or similar products do not satisfy this requirement." (Ordinance No. 1538, Section 7.40.200(K).)

1 **7.40.320 Accessory Structures**

2 A. Accessory structures used for the cultivation of marijuana shall meet all of
3 the following criteria:

- 4 1. The accessory structure, regardless of size, shall be legally
5 constructed with all applicable development permits
6 including, but not limited to, grading, structural, electrical,
7 mechanical and plumbing approved by the applicable
8 authorities prior to any cultivation activity. The
9 conversion of any existing accessory structure, or portion
10 thereof, for cultivation shall be subject to these same permit
11 requirements and must be inspected for compliance by the
12 applicable authorities prior to any cultivation.
- 13 2. The accessory structure shall not be built or placed within
14 any mandatory setback required by the Yuba County
15 Ordinance Code.
- 16 3. The accessory structure shall be equipped with permanently
17 installed and permitted electricity, and shall not be served
18 by temporary extension cords. Electrical wiring conductors
19 shall be sized based on the currently adopted California
20 Electrical Code with anticipated loads identified.
- 21 4. The accessory structure shall be equipped with permanently
22 installed and permitted odor control and ventilation system
23 adequate to prevent an odor, humidity, or mold problem
24 within the structure, on the Parcel, or on adjacent parcels.
- 25 5. If the accessory structure is a greenhouse, the panels shall
26 be of glass or polycarbonate and should be opaque for
27 security a visual screening purposes. Where the
28 greenhouse panels are not obscure, the greenhouse shall be
screened from view by a solid fence as described in Section
7.40.330 below.

29 B. Structures that are exempt from Building Permits by Yuba County
30 Ordinance Code, Chapter 10.05, shall not be used for the cultivation of
31 marijuana.

32 40. The Ordinance also requires that these accessory structures be surrounded by a
33 solid fence between six (6) and eight (8) feet in height, unless the topography of the property
34 adequately screens the accessory structure from public view. (Ordinance No. 1538, Section
35 7.40.330.)
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1 41. In addition, any qualified patient who wishes to cultivate their own medical
2 marijuana must register with the County. Section 7.40.340 of the Ordinance provides, in
3 pertinent part, as follows:

4 **7.40.340 Registration Requirements**

5 A. The cultivation of marijuana in any quantity upon any premises without
6 first registering the cultivation and paying the required fee as listed within
7 Title XIII of this Code is hereby declared to be unlawful and a public
8 nuisance and may be abated in accordance with this Chapter.

9 B. The Registration Application shall be prescribed by Yuba County
10 Community Development and Services Agency (CDSA) and shall at a
11 minimum contain the following:

- 12 1. The person(s) owning, leasing, occupying, or having charge or
13 possession of the premises have submitted the required annual
14 registration for the premises to CDSA, and provided all of the
15 following current information and documentation to CDSA:
 - 16 a. The name of each person, owning, leasing, occupying, or
17 having charge or possession of the premises;
 - 18 b. The name of each qualified patient or primary caregiver
19 who participates in the cultivation, either directly or by
20 providing reimbursement for marijuana or the services
21 provided in conjunction with the provision of that
22 marijuana;
 - 23 c. A copy of the current valid medical recommendation or
24 State-issued medical marijuana card for each qualified
25 patient identified as required above, and for each qualified
26 patient for whom any person identified as required above is
27 the primary caregiver;
 - 28 d. The number of marijuana plants cultivated on the premises;
 and
 - e. Such other information and documentation as the
 Department determines is necessary to ensure compliance
 with State law and this Chapter.
2. The registration shall contain a statement in substantially the
 following form: By submitting this registration, the property
 owner and the cultivator, if different, will allow an enforcing
 officer(s) to enter the property, at a reasonable time, to inspect for
 compliance with this Chapter.
3. The registration shall contain a statement, under penalty of perjury,
 that the information is true and accurate.

* * *

1 42. The Ordinance explicitly states that this information and documentation “shall be
2 used or disclosed . . . for purposes of administration or enforcement of . . . State law, or as
3 otherwise required by law.” (Ordinance No. 1538, at § 7.40.340, subd. (D).)

4 43. The Ordinance also provides for the search and seizure of homes without probable
5 cause as follows:

6 **7.40.510 Right of Entry/Inspection**

7 To enforce the provision[s] of this Code, an Enforcement Officer may at a
8 reasonable time request inspection of any parcel suspected of cultivating
9 marijuana. If the person owning or occupying the parcel refuses the request for
10 an inspection, the Enforcement Officer shall have recourse to every remedy
provided by law to secure entry, including obtaining an inspection warrant.

11 44. Violations of the Ordinance are subject to administrative penalties of one-hundred
12 dollars (\$100) per day for the first offense (Ordinance No. 1538, Section 7.40.550(A)(1) and
13 enforcement costs (Ordinance No. 1538, Section 7.40.560).

14 45. If the qualified patient does not pay the administrative penalties and enforcement
15 costs within thirty (30) days, the Enforcement official “shall take action to confirm the costs,
16 record a lien and place a special tax assessment pursuant to the procedures as asset forth in
17 Chapter 7.36 of the Yuba County Ordinance Code.” (Ordinance No. 1538, Section 7.40.560(B).)

18 46. An actual and substantial controversy exists between plaintiffs and defendant as
19 to their respective legal rights and duties. Plaintiffs contend that, on its face and as applied, or
20 threatened to be applied to them and to others similarly situated, County of Yuba Ordinance No.
21 1538 is unlawful and unconstitutional. Defendants contend the opposite.

22 47. If not enjoined by the Court, defendants will implement the Ordinance in
23 derogation of the rights of plaintiffs, others similarly situated, and qualified medical marijuana
24 patients generally. Such implementation will impose irreparable injury on the plaintiffs and
25 these other persons.
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SECOND CAUSE OF ACTION

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

56. Plaintiffs reallege and incorporate by reference paragraphs 1 through 55 of this complaint as though fully set forth herein.

57. Ordinance No. 1538, Section 7.40.200, subd. (F) ambiguously defines “cultivation” as the “storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.” 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.

58. Ordinance No. 1538 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 Government Code, § 25131

59. Plaintiffs reallege and incorporate by reference paragraphs 1 through 58 of this complaint as though fully set forth herein.

60. The provision in Government Code section 25131 regarding notice and hearing is to ensure that regular ordinances are not enacted simply as urgency ordinances to bypass the statute’s more formal notice and hearing requirements.

61. By enacting Ordinance No. 1538 as an urgency ordinance without making necessary findings of urgency and doing so in a bad-faith attempt to evade the referendum

1 process, the Yuba County Board of Supervisors violated California Government Code section
2 25131.

3 **FOURTH CAUSE OF ACTION**

4 **Violation of California Constitution, Article I, § 15, cl. 6**

5 62. Plaintiffs reallege and incorporate by reference paragraphs 1 through 61 of this
6 Complaint as though fully alleged herein.

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8 63. Article I, Section 15, clause 6 of the California Constitution provides that
9 “[p]ersons may not . . . be compelled in a criminal cause to be a witness against themselves. . . .”

10 64. Yuba County Ordinance No. 1538 requires registration for all persons who wish
11 to engage in the “cultivation of marijuana,” which includes the “planting, growing, harvesting,
12 drying, processing, or storage of one or more marijuana plants or any part thereof in any
13 location, indoor or outdoor, including from within a fully enclosed and secure building.”
14 (Ordinance No. 1538, §§ 7.40.200, subd.(F), 7.40.340, subd. (A).)

15
16 65. The registration must include detailed information about the persons who will be
17 engaged in the marijuana cultivation, which remains a crime under federal law, signed under the
18 penalty of perjury. (See Ordinance No. 1538, § 7.40.340, subd. (B); 21 U.S.C. § 801 et seq..)

19
20 66. The Ordinance explicitly states that this information and documentation “shall be
21 used or disclosed . . . for purposes of administration or enforcement of . . . State law, or as
22 otherwise required by law.” (Ordinance No. 1538, at § 7.40.340, subd. (D).) In other words, it
23 may well be used for a federal or state criminal prosecution.

24
25 67. Because the Ordinance’s registration requirements apply only to marijuana
26 cultivators and compel them to provide information under penalty of perjury that will implicate
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1 them in criminal activity under federal law, they violate the constitutional privilege against self-
2 incrimination (Cal. Const., Art. I, § 15, cl. 6) and are, therefore, void.

3 **FIFTH CAUSE OF ACTION**

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

5 68. Plaintiffs reallege and incorporate by reference paragraphs 1 through 67 of this
6 Complaint as though fully alleged herein.

7
8 69. Article I, Section 13 of the California Constitution provides that “[t]he right of the
9 people to be secure in their persons, houses, papers, and effects against unreasonable seizures
10 and searches may not be violated; and a warrant may not issue except on probable cause,
11 supported by oath or affirmation, particularly describing the place to be searched and the persons
12 and things to be seized.”

13
14 70. The Yuba County Ordinance requires those wishing to cultivate marijuana for
15 medical purposes to sign a statement waiving their right to be free from unconstitutional search
16 and seizures (Ordinance No. 1538, § 7.40.340, subd. (B.2) and authorizes entries upon residences
17 based on administrative inspection warrants, which do not have to be supported by probable cause,
18 if the resident of the property does not consent to the entry (see Ordinance No. 1538, § 7.40.510).

19
20 71. Because Yuba County Ordinance No. 1538 allows for warrantless entries of
21 homes and their curtilage to search for marijuana without individualized probable cause that a
22 crime has been committed under California law, absent exigent circumstances or consent, the
23 Ordinance violates Article I, Section 13 of the California Constitution.

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SIXTH CAUSE OF ACTION

Taxpayer Action under Code of Civil Procedure § 526a

72. Plaintiffs reallege and incorporate by reference paragraphs 1 through 68 of this Complaint as though fully alleged herein.

73. 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 and are unconstitutionally vague.

V. RELIEF SOUGHT

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

1. A declaration that Ordinance No. 1538 is unlawful and unconstitutional;
2. A preliminary and permanent injunction enjoining defendant and its agents and employees from enforcing, or threatening to enforce, County of Yuba Ordinance No. 1538;
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 19th day of March, in San Francisco, California.

DATED: March 19, 2015

JOSEPH D. ELFORD
Counsel for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of this action.

DATED: March 19, 2015

JOSEPH D. ELFORD
Counsel for Plaintiffs

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