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County of San Diego

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

5 Attorneys for Plaintiff County of San Diego

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

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11 COUNTY OF SAN DIEGO,

12 Plaintiff,

13 v.

a California corporation

14 SAN DIEGO NORML, STATE OF
15 CALIFORNIA; SANDRA SHEWRY,
16 Director of the California Department of
Health Services in her official capacity; and
DOES 1 through 50, inclusive,

17 Defendants.

No. **GIC 860665**

**COMPLAINT FOR DECLARATORY
RELIEF**

18
19 Plaintiff County of San Diego ("the County") alleges as follows:

20 **PRELIMINARY STATEMENT**

21 Defendant San Diego NORML has threatened to sue the County for failing to comply
22 with obligations imposed on the County by California's Medical Marijuana Laws (Cál. Health
23 & Safety Code §§ 11362.5; 11362.7-11362.83.) Rather than wait for NORMAL's lawsuit, the
24 County is filing this action seeking a declaration of its obligations to comply with California's
25 Medical Marijuana Laws.

26 The County believes that it has a defense to San Diego NORML's threatened lawsuit -
27 that California's Medical Marijuana Laws are preempted under the Supremacy Clause of the
28

1 United States Constitution. Specifically, as required by treaty obligations, the United States has
2 enacted legislation declaring that there is no accepted medical use for marijuana and has
3 generally outlawed its use, possession, distribution and cultivation. Contrary to federal law and
4 an international treaty, California has enacted laws declaring that certain persons have a right to
5 use marijuana for medical purposes and has authorized those individuals to use, possess,
6 distribute and cultivate marijuana without criminal sanction.

7 The County believes that San Diego NORML's lawsuit would fail because California's
8 Medical Marijuana Laws are preempted under the Supremacy Clause of the United States
9 Constitution (Article VI) because they conflict with a federal statute (the Controlled Substances
10 Act) and an international treaty (the Single Convention on Narcotic Drugs). Thus, the County
11 seeks a declaration that it is not required to implement California's preempted and therefore void
12 Medical Marijuana Laws.

13 THE PARTIES

14 1. The County is a political subdivision of the State of California and is organized
15 and existing under the laws of the State of California.

16 2. Defendant San Diego NORML is a California Corporation with its principal place
17 of business in San Diego, California. San Diego NORMAL is part of a larger national
18 organization that is the oldest and largest marijuana legalization organization in the country.

19 3. Defendant State of California ("State") is, and at all times herein mentioned was, a
20 state government.

21 4. Defendant Sandra Shewry ("Shewry") is Director of the California Department of
22 Health Services. As Director of the Department, she has responsibility for ensuring that the
23 requirements of California Health & Safety Code §§ 11362.7 through 11362.83 are satisfied.

24 5. The true names and capacities of Defendants Does 1 through 50, inclusive, are
25 unknown to the County, and the County therefore sues said defendants by such fictitious names.
26 The County will amend the complaint to allege the true names and capacities of the defendants
27 sued herein as Does 1 through 50, inclusive, when ascertained.

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1 **REASON FOR THIS LAWSUIT**

2 6. On November 7, 2005, attorney James T. Bentson, on behalf of San Diego
3 NORML, sent a letter to the County's Board of Supervisors threatening to sue the County for
4 violating California state law. Specifically, San Diego NORML threatened to sue the County
5 for purportedly failing to comply with the obligations imposed on the County by California's
6 Medical Marijuana Laws (Cal. Health & Safety Code §§ 11362.5; 11362.7-11362.83.) A true
7 and correct copy of attorney Bentson's letter is attached hereto as Exhibit A.

8 7. Other entities have also threatened legal action against the County based on the
9 County's purported failure to comply with the obligations imposed on the County by
10 California's Medical Marijuana Laws. For instance, on January 19, 2006, American Civil
11 Liberties Union Senior Staff Attorney Allen Hopper sent a letter to the County demanding that
12 the County immediately begin complying with California's Medical Marijuana Laws.

13 8. Rather than wait for San Diego NORML or any other person or entity to bring a
14 lawsuit against the County for failure to comply with California state law, the County seeks a
15 declaration regarding whether its defense to San Diego NORML's threatened lawsuit – that
16 California's Medical Marijuana Laws are preempted by the Supremacy Clause – voids the
17 obligations imposed on the County by those laws.

18 9. The County has named Defendants State and Shewry in this lawsuit because they
19 are necessary parties to this litigation. Both of these defendants are responsible for enforcing
20 California's Medical Marijuana Laws.

21 **CALIFORNIA'S MEDICAL MARIJUANA LAWS ARE PREEMPTED**

22 10. The United States, along with more than 150 other countries, is a party to the
23 Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol ("Single
24 Convention"). This treaty was entered into because "effective measures against abuse of
25 narcotic drugs require co-ordinated and universal action." (Single Convention, pmbl.)

26 11. Marijuana (cannabis) is specifically addressed in the Single Convention.
27 Marijuana is listed under Schedule IV of the treaty. For Schedule IV drugs such as marijuana, a
28 party to the treaty "shall, if in its opinion prevailing conditions in its country render it the most

1 appropriate means of protecting the public health and welfare, prohibit the production,
2 manufacture, export and import of, trade in, possession or use of any such drug *except for*
3 *amounts which may be necessary for medical and scientific research only*, including clinical
4 trials therewith to be conducted under or subject to the direct supervision and control of the
5 Party.” (art. 2, § 5.b.)

6 12. If a party to the Single Convention decides to permit the cultivation of marijuana,
7 it “shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in,
8 the leaves of the [marijuana] plant.” (art. 28, § 3.)

9 13. If a party to the Single Convention decides to permit the cultivation of marijuana,
10 “a single government agency” of the party must: (1) “designate the areas in which, and the plots
11 of land on which, cultivation of [marijuana] for the purpose of producing [marijuana] shall be
12 permitted”; (2) restrict cultivation of marijuana to only those cultivators licensed by the
13 government agency; (3) specify the amount of land on which cultivation of marijuana is
14 permitted; (4) provide that cultivators deliver their entire crop of marijuana to the government
15 agency; and (5) have the exclusive right of importing, exporting, wholesale trading and
16 maintaining stocks of marijuana.

17 14. The Single Convention is not self-executing. It requires parties to take legislative
18 or administrative action to carry out its provisions.

19 15. In 1970, Congress passed the Controlled Substances Act (21 U.S.C. §§ 801-904)
20 in order to comply with its obligations under the Single Convention. 21 U.S.C. § 801(7). In the
21 Controlled Substances Act, Congress determined that marijuana has “no currently accepted
22 medical use in treatment in the United States.” 21 U.S.C. § 812(b)(1)(B),
23 812(c)(sched. I)(c)(10). Therefore, Congress criminalized the manufacture, possession and
24 distribution of marijuana for any purpose. 21 U.S.C. §§ 841(a), 844(a).

25 16. In addition, as authorized by the Single Convention, the United States has decided
26 to allow cultivation of limited amounts of marijuana for research purposes. The United States
27 has designated the National Institute on Drug Abuse (“NIDA”) as the agency responsible for
28 administering the cultivation of marijuana according to the terms of the Single Convention.

1 NIDA has entered into a contract with the University of Mississippi whereby the Institute has
2 the option in any given year of growing 1.5 or 6.5 acres of marijuana, or no marijuana at all,
3 depending on the research demand. NIDA is the only legal source for marijuana in the United
4 States.

5 17. In 1996, California voters sought to override Congress' determinations and the
6 provisions of the Single Convention. California voters passed Proposition 215, which added
7 Section 11362.5 to California's Health & Safety Code. Proposition 215 declares that
8 "Californians have the right to obtain and use marijuana for medical purposes where that
9 medical use is deemed appropriate and has been recommended by a physician who has
10 determined that the person's health would benefit from the use of marijuana" Cal. Health
11 & Safety Code § 11362.5(b)(1)(A).

12 18. Contrary to the federal Controlled Substances Act, Proposition 215 declares that
13 "patients and their primary caregivers who obtain and use marijuana for medical purposes upon
14 the recommendation of a physician are not subject to criminal prosecution or sanction." *Id.* at
15 subd. (b)(1)(B). Also contrary to the Controlled Substances Act, Proposition 215 declares that
16 "no physician in this state shall be punished, or denied any right or privilege, for having
17 recommended marijuana to a patient for medical purposes." *Id.* at subd. (c).

18 19. In 2003, the California Legislature enacted a statutory scheme implementing
19 Proposition 215 (Cal. Health & Safety Code §§ 11362.7-11362.83). This statutory scheme
20 requires the County to issue identification cards to "a person authorized to engage in the medical
21 use of marijuana and the person's designated caregiver" Cal. Health & Safety Code §§
22 11362.7(g), 11362.71(b)(5).

23 20. Despite the provisions of the federal Controlled Substances Act, California's
24 statutory scheme declares that "[n]o person or designated primary caregiver in possession of a
25 valid identification card shall be subject to arrest for possession, transportation, delivery, or
26 cultivation of medical marijuana in an amount established pursuant to this article" Cal.
27 Health & Safety Code § 11362.71(e).

28 21. The California Legislature also authorized patients and caregivers to cultivate "no

1 more than six mature or 12 immature marijuana plants per qualified patient” even though under
2 the Single Convention only the NIDA may license individuals to cultivate marijuana. Cal.
3 Health & Safety Code § 11362.77(a).

4 22. Proposition 215 (except subdivision (d)) and its implementing legislation,
5 California Health & Safety Code §§ 11362.7 through 11362.83, are preempted under the
6 Supremacy Clause (Article VI, cl. 2) of the United States Constitution. The Supremacy Clause
7 provides that the “Constitution, and the Laws of the United States which shall be made in
8 Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the
9 United States, shall be the supreme Law of the Land” California’s Medical Marijuana
10 Laws --which declare that marijuana is an acceptable treatment for medical conditions, authorize
11 its use, cultivation and possession for this purpose, and purport to immunize patients and
12 caregivers from criminal prosecution --conflict with the federal Controlled Substances Act and
13 the Single Convention on Narcotic Drugs and are therefore preempted.

14 FIRST CAUSE OF ACTION

15 (Declaratory Relief)

16 23. The County refers to and incorporates herein by reference Paragraphs 1
17 through 22.

18 24. The County seeks a declaration whether it is obligated to comply with the
19 requirements of California Health & Safety Code §§ 11362.7 through 11362.83.

20 25. The County also seeks a declaration whether Proposition 215 (Cal. Health &
21 Safety Code § 11362.5 (excluding subsection (d)) and its implementing legislation (Cal. Health
22 & Safety Code §§ 11362.7-11362.83) are preempted under the Supremacy Clause of the United
23 States Constitution.

24 26. An actual controversy has arisen in that the County contends that it is not required
25 to comply with California Health & Safety Code §§ 11362.5 (excluding subsection (d)) and
26 11362.7 through 11362.83 because those provisions are preempted under the Supremacy Clause
27 of the United States Constitution, and Defendants contend that the County is required to comply
28 with those provisions because they are not preempted under the Supremacy Clause.

1 27. Based upon the foregoing, a clear, actual and present controversy has arisen
2 between the County and Defendants, which controversy cannot be resolved without a judicial
3 determination.

4 28. Accordingly, County seeks a judicial determination whether (1) it is obligated to
5 comply with the requirements of California Health & Safety Code §§ 11362.7 through 11362.83
6 and (2) Proposition 215 (Cal. Health & Safety Code § 11362.5 (excluding subsection (d)) and its
7 implementing legislation (Cal. Health & Safety Code §§ 11362.7-11362.83) are preempted
8 under the Supremacy Clause of the United States Constitution.

9 WHEREFORE, plaintiff, the County of San Diego, prays for judgment, against
10 Defendants, and each of them, as follows:

11 1. Declaring that Proposition 215 (Cal. Health & Safety Code § 11362.5 (excluding
12 subsection (d)) and its implementing legislation (Cal. Health & Safety Code §§ 11362.7-
13 11362.83) are preempted under the Supremacy Clause of the United States Constitution;

14 2. Declaring that the County has no obligation to comply with the requirements of
15 California Health & Safety Code §§ 11362.7 through 11362.83;

16 3. For costs of suit incurred herein;

17 4. For attorneys' fees; and

18 5. For such other and further relief as the Court deems just and proper.

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20 DATED: February 1, 2006

JOHN J. SANSONE, County Counsel

21
22 By

Thomas P. Buntan
THOMAS D. BUNTON, Senior Deputy
Attorneys for Plaintiff County of San Diego

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2005 NOV -7 P 1:33

BOARD OF
SUPERVISORS
COUNTY OF SAN DIEGO

November 7, 2005

San Diego County Board of Supervisors
Board of Supervisors North Chambers
1600 Pacific Highway, Room 310
San Diego, CA 92101

Re: Mandatory implementation medical marijuana ID cards
San Diego NORML v. San Diego County Board of Supervisors

Dear Board of Supervisors:

My clients, *San Diego NORML* have hired me to represent its interests in the above matter. San Diego NORML is concerned with the recent actions taken by the San Diego Board of Supervisors. Particularly with the vote to refuse issuance of the medical marijuana identification card and registry program pursuant to H.S. 11362.71- 11362.79. In voting to defy the state mandated issuance of the medical identification card for the medical consumption of marijuana, the county has rejected the will of the California people.

The continued rejection of California State Law regarding the legal issuance of the medical marijuana identification card, regrettably would force us to bring a class action lawsuit to compel compliance.

If you have any questions or comments, please feel free to contact me.

Very truly yours,



James T. Bentson
JTB:jba