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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. COUNTY OF BUTTE; BUTTE COUNTY SHERRIFF'S OFFICE and DEPUTY JACOB HANCOCK, Defendants.	Case No. 137329 **PLAINTIFFS' OPPOSITION TO DEMURRER TO FOURTH AMENDED COMPLAINT** Date: June 8, 2007 Time: 9:00 a.m. Place: Department C09

I. INTRODUCTION

Despite the California Legislature's recent attempt to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects" (Stats, 2003, C. 875 (S.B. 420), Section 1, subd. (b)(3)), defendants Butte County, Butte County Sheriff's Office and Deputy Jacob Hancock [collectively "defendants" or "the County"] have implemented a policy forbidding patients from cultivating marijuana collectively, unless all members actively participate in the marijuana cultivation. This underground policy, which was enforced harshly by Deputy Hancock against the seven-person collective on plaintiff David Williams' property in 2005, conflicts with the

intent of the California Legislature who established patient collectives as the means to supply medical marijuana to patients. The law has long recognized that persons can participate in cooperatives through "patronage," or membership and monetary contributions, without providing physical services. Because the Butte County policy towards medical marijuana collectives contains restrictions that have no basis in law, and defendants do not even attempt to justify it as consistent with S.B. 420, the demurrer should be denied.

STATEMENT OF FACTS

On November 4, 1996, the California electorate enacted the Compassionate Use Act (Cal. Health & Safety Code § 11362.5) [hereinafter "the CUA"] "[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 in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief." (Cal. Health & Safety Code § 11362.5, subd. (b)(1)(A).) Although the Act did not expressly provide for a distribution system for marijuana to the seriously ill, it sought "[t]o encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (Cal. Health & Safety Code § 11362.5, subd. (b)(1)(C).) To meet the voters' challenge, on September 10, 2003, the California Legislature passed S.B. 420, also known as the "Medical Marijuana Program Act" or "the MMPA." (Cal. Health & Saf. Code § 11362.7 *et seq.*; *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 785.) This legislation provides that "Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall

not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570." (Cal. Health & Safety Code § 11362.775). In passing the MMPA, the Legislature declared at the outset its purpose to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." (Stats, 2003, C. 875 (S.B. 420), Section 1, subd. (b)(3).)

Notwithstanding these state laws, the County has implemented an underground policy, which forbids private patient collectives, unless all members actively participate in the cultivation of marijuana by, for example, planting, watering, pruning or harvesting the marijuana. (See Fourth Amended Complaint [hereinafter "Complaint"] ¶19.) One of the first victims of this underground policy was the seven-person patient collective on plaintiff Williams' property -- on September 8, 2005, Deputy Jacob Hancock came to Williams' home without a warrant and, despite being presented with copies of medical marijuana recommendations for Williams and six other qualified medical marijuana patients who were part of the collective, Hancock stayed on the property and ordered Williams to destroy all but twelve of the forty-one marijuana plants growing there, under the threat of arrest and prosecution. To obtain compensation for this violation of the collective's legal rights, and to prevent a similar violation from repeating, Williams and the other plaintiffs instituted the instant action.

LEGAL STANDARDS

A demurrer tests the legal sufficiency of the complaint, not the evidence or the facts alleged, and will be sustained only where the pleading is defective on its face. (*City of Atascadero v. Merill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459). To the extent that there are factual issues in dispute, the court must assume the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the complaint. (*White*

v. Davis (1975) 13 Cal.3d 757, 765; *Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403; *Rose v. Royal Ins. Co.* (1991) 2 Cal.App.4th 709, 716). If upon a consideration of these facts it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated, or the plaintiff may demand relief to which she is not entitled. (*Matteson v. Wagenor* (1905) 147 Cal. 739, 742). "While orderly procedure demands a reasonable enforcement of the rules of pleading, the basic principle of the code system in this state is that the administration of justice shall not be embarrassed by technicalities, strict rules of construction, or useless forms." (*Buxbom v. Smith,* 23 Cal.2d 535, 542). Where a defect in a pleading a reasonably curable, leave to amend the complaint is freely granted to cure the defect in question. (*CLD Construction Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146-1147 [quotation omitted].)

ARGUMENT

I. THE COUNTY'S PROHIBITION OF MEDICAL MARIJUANA COLLECTIVES THAT DO NOT REQUIRE ALL MEMBERS TO ACTIVELY CULTIVATE CONFLICTS WITH, AND IS PREEMPTED BY CALIFORNIA LAW

The California Constitution provides that a municipal ordinance is preempted and, therefore, void if it conflicts with state law. (See *Americans Financial Services Association v. City of Oakland* (2005) 34 Cal.4th 1239, 1251; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747; *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290.) Such conflict between state law and a local ordinance exists where, as here, "the ordinance duplicates or is coextensive therewith, *is contradictory or inimical thereto*, or enters an area either expressly or impliedly fully occupied by general law." (*American Financial Services Association v. City of Oakland*, *supra*, 34 Cal.4th at p. 1251 [emphasis added]; see *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-898.) Stated differently, a local ordinance conflicts with, and is preempted by state law if it is

repugnant to a matter of pressing statewide concern. (See *Johnson v. Bradley* (1992) 4 Cal.4th 389, 404.)

In enacting the MMPA, the Legislature declared at the outset its purpose to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." (States, 2003, C. 875 (S.B. 420), Section 1, subd. (b)(3).) To this end, the Legislature enacted Health and Safety Code section 11362.775, which provides that "Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570." (Cal. Health & Safety Code § 11362.775). The court recognized in *People v. Urziceanu* (2005) 132 Cal.App.4th 747, that this section of the MMPA "exempted those qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes from criminal sanctions for possession for sale, transportation or furnishing marijuana. . . [and] distribution of any controlled substance for sale. . . . Its specific itemization of the marijuana sales law indicates it contemplates the formation and operation of medical marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." (*Id.* at p. 785.) Williams and the other members of his patient collective acted in precisely the manner prescribed by this law, albeit in an even less commercial manner -- they pooled their labor, land and other resources for an approximately equal share of the medicine produced. (See Complaint ¶¶ 16 & 18.)

Indeed, in its Demurrer to the Fourth Amended Complaint ("Demurrer"), the County does not contend that the MMPA does not authorize plaintiffs' activity. And for good reason. Whereas the

County contends that each member of the patient collective must actively participate in the cultivation (see Demurrer at 10), there nothing in the MMPA to suggest that the Legislature intended such restriction on medical marijuana collectives. The reason the Legislature provided for "collectives" in addition to cooperatives is that an entity cannot call itself a "cooperative," unless it incorporated as such under the Corporations Code. (See Corp. Code § 12311, subd. (b).) Notwithstanding this technical difference, the law relating to cooperatives provides guidance in ascertaining the Legislature's intent in authorizing patient collectives. This law authorizes cooperatives that do not require every member to participate in the actual manufacture of the objects that are distributed to the members, or "patrons." Consumer cooperatives, for instance, which are described by Corporations Code Sections 12200-12203, are defined by the Legislature as follows:

> Subject to any other provision of law of this state applying to the particular class of corporation or line of activity, a corporation may be formed under this part for any lawful purpose provided that it shall be organized and shall conduct its business primarily for the mutual benefit of its members as patrons of the corporation. The earnings, savings, or benefits of the corporation shall be used for the general welfare of the members or shall be proportionately and equitably distributed to some or all of its members or its patrons, *based upon their patronage (Section 12243) of the corporation, in the form of cash, property, evidences of indebtedness, capital credits, memberships, or services*.

(Corp. Code § 12201 [Italics added]; see also Corp. Code (sec) 12243 ["If the corporation is organized to provide goods or services to its members, the corporation's 'patrons' are those who purchase those types of goods from, or use those types of service of, the corporation."].) The law regarding cooperatives, therefore, envisions members making contributions other than services, such as money or property, in exchange for the goods distributed. (See also, e.g., http://www.daviscoop.com/members.htm [describing membership of Davis Food Co-Op based on

economic contribution].)[1] The Butte County policy, which contains restrictions on patient collectives without any basis in law, is inimical to the MMPA and, accordingly, it is preempted. (Cf. 88 Ops. Cal. Atty. Gen. 113, pp. 4-5 ["a city would be preempted from allowing possession of marijuana at levels less than what the state law permits . . . because such provision[] would directly contradict state law. . . . Similarly, a city program that defined 'attending physician' and 'primary caregiver' more narrowly than state law would be preempted"]; *City of Fresno v. Pinedale County Water Dist.* (1986) 184 Cal.App.3d 840, 845; see also Cal. Health & Safety Code § 11362.83 ["Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws *consistent with* this article."] [Italics added].)

II. THE MMPA'S AUTHORIZATION OF PATIENT COLLECTIVES DOES NOT UNCONSTIUTIONALLY AMEND THE COMPASSIONATE USE ACT

Rather than attempt to harmonize its policy towards patient collectives with the MMPA, the County contends that the Act represents an unconstitutional amendment of a voter-approved initiative. While the County is correct that the MMPA expands upon the Compassionate Use Act, it ignores the fact that the electorate authorized the Legislature to do this when it enacted Proposition 215. As the court recognized in *Urziceanu, supra*:

> [T]he Compassionate Use Act stated that one of its purposes was to encourage the state and federal government to implement a plan to provide for the safe and affordable distribution of medical marijuana to those patients who need it. (§ 11362.5 subd.(b)(1)(C).) The Medical Marijuana Program Act is the Legislature's initial response to that directive.

(*Id.* at pp. 782-83.) The Legislature may expand upon a voter-approved initiative to facilitate its purposes where the electorate has requested it to do so. (See *Proposition 103 Enforcement Project v.*

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[1] Further indication that the Legislature anticipated patient collectives where not every member actively cultivates the marijuana is found in its exemption on criminal penalties for marijuana sales. (Cal. Health & Safety Code § 11362.775; *Urziceanu, supra*, 132 Cal.App.4th at p. 785; cf. *People v.*

Quackenbush (1998) 64 Cal.App.4th 1473, 1483-84.) This is precisely what the Legislature has done here and the County must abide by its wishes.

III. THIS CASE IS RIPE FOR ADJUDICATION

To avoid a judicial determination of the important legal questions presented, the County interposes several procedural obstacles. *First*, the County contends that the state's medical marijuana laws provide only a defense to criminal charges, which have no bearing in the civil context. The County's contention in this regard overlooks that plaintiffs' claims are not based directly on the Compassionate Use Act or the MMPA, but on other constitutional provisions or statutes. In *People v. Mower* (2002) 28 Cal.4th 457, for instance, this Court stated that, when interpreting the probable cause requirement of article I, section 13 of the California Constitution, "[p]robable cause depends on all of the surrounding facts [citation], including those that reveal a person's status as a qualified patient or primary caregiver under [the Compassionate Use Act]." (*Id.* at p. 469.) Thus, Deputy Hancock violated Williams' right to be free from an unreasonable search and seizure when he was presented verifiable documentation indicating plaintiffs' compliance with California law. It is not uncommon for initiatives to have collateral effects on other statutes and courts are frequently called upon to define these collateral effects as the situation presents itself. (Cf. *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 577 ["it is well established that an initiative may have 'collateral effects' without violating the single-subject rule."] [quotation omitted]; *American Bank & Trust Co., supra,* 36 Cal.3d at pp. 377-378 ["As with other innovative procedures and doctrines . . . in the first instance trial courts will deal with novel problems that arise in time-honored case-by-case fashion, and appellate courts will remain available to aid in the familiar common law task of filling in the gaps in the statutory scheme."] [quotation and citation omitted]; see also *Amador Valley Joint Union High*

Craft (1986) 41 Cal.3d 554, 560 [courts do not presume that the Legislature performs idle acts, nor

School Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 219 & 245 [noting that voter-approved initiates are to be construed liberally to effectuate their purposes].) This is precisely what plaintiffs are asking here by seeking civil relief through the interaction of civil statutes and the state's medical marijuana laws.

Thus, in *People v. Tilehkooh* (2003) 113 Cal.App.4th 1433, the court explained:

> It might be argued that the only operative language of section 11362.5 is subdivision (d), which decriminalizes the possession and cultivation of marijuana, leaving the lawful use and possession of marijuana subject to regulation by a probation condition. But section 11362.5 is not so limited. Subdivision (b)(1)(A) says the purpose of section 11362.5 is to " *ensure··· the right to obtain and use marijuana* for medical purposes" and subdivision (b)(1)(B) says the purpose is "[t]o ensure that patients ··· who *obtain and use* marijuana for medical purposes upon the recommendation of a physician are not subject to *criminal prosecution or sanction.*" (Italics added) We are directed to give sense to all of the terms of an enactment. To do so requires that we give effect to the purposes of section 11362.5 to ensure the right to obtain and use marijuana. In particular, we must give effect to subdivision (b)(1)(A), which establishes a "right to obtain and use marijuana for medical purposes" and which links the right to use marijuana with the prohibition on the imposition of a "criminal prosecution or sanction." It is readily apparent that the right to obtain or use marijuana is not "ensure[d]" if its use is not given protection from the adverse consequences of probation.

(*Id.* at pp. 1442-1443 [Italics in original].) If medical marijuana patients could only challenge Butte County's policy regarding medical marijuana collectives, which conflicts with state law, by defending against criminal charges, the County could continue to harass and take the property of patients without judicial review simply by conducting illegal seizures of property and declining to file charges. Williams and the other members of his private patient collective have been harmed through the compelled destruction of their property and this Court has the authority to declare this a state law violation.

Next, the County contends that this Court should refrain from adjudicating plaintiffs' claims because a criminal defendant acting *in propria persona* has filed a writ claiming that he is entitled to

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do they construe statutory provisions so as to render them superfluous].)

limited immunity because he is a member of a patient collective. (See Defendants' Request for Judicial Notice in Support of Demurrer to Fourth Amended Complaint ("Request for Judicial Notice"), Exhibit B.)[2] There are multiple problems with this contention. *First*, unlike the cases cited by the County, this case does not involve the same party in both actions, so there is no risk of inconsistent rulings in the same case. Indeed, even if Williams *were* involved in a parallel criminal proceeding, he could still proceed with this civil action. The Court explained in *Heck v. Humphrey* (1994) 512 U.S. 477, 487: "[i]f the district court determines that the plaintiff's [civil] action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." (Italics in original) (footnotes omitted) Here, plaintiffs' civil action will not present a bar to any criminal conviction and presents issues that are different from those seemingly raised in the criminal case cited by the County; namely, whether the County's *policy* towards collectives conflicts with state law and is, therefore, preempted. This case has been pending for more than a year and the complaint has been amended four separate times to crystallize the issues for resolution. The issues should now be decided.

III. WILLIAMS HAS PROPOERLY ASSERTED A DUE PROCESS VIOLATION

Illustrating the harshness of the County's position is its contention that Williams cannot assert a claim for a due process violation for the compelled destruction of his property because "his only option was to prove the validity of the patient collective in response to any resulting criminal chares." (Demurrer at 13.) In *Modern Loan Co. v. Police Court* (1910) 12 Cal.App. 582, 585, the court

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[2] Defendants also request judicial notice for a newspaper article in which the defendant's attorney claims that he will raise an argument that the defendant enjoyed a limited immunity to prosecution because he was part of a patient collective. (See Request for Judicial Notice, Exhibit C.) This exhibit is not a proper subject for judicial notice and plaintiffs' object to its introduction. In any event, it adds nothing to defendants' claims.

declared that "One who is in possession of property under a claim of right cannot be deprived of its possession without due process of law." And this applies to criminals and the innocent alike. (Cf. *Gershenhorn v. Superior Court* (1964) 227 Cal.App.2d 361, 365 [authorizing nonstatutory motions for return of property even where no criminal charges are filed, since contrary result would "reverse the constitutional order of importance and would induce law enforcement officers to dispense with, rather than to use, the orderly procedure which the Constitution clearly prescribes"].) While the County understandably may wish to seek to insulate its policy from judicial review by declining to file charges, it cannot insulate its policy from judicial review w in this manner.[3]

IV. PLAINTIFFS HAVE PROPERLY PLED A CAUSE OF ACTION FOR CONVERSION

Conversion is defined as the "intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." (*Anada Church of Self-Realization v. Massachusetts Bay Ins. Co.* (2002) 95 Cal.App.4th 1273, 1281 [citation omitted]). Numerous courts have, thus, approved causes of action for conversion where the police seize and/or destroy legally owned property. (*See, e.g., Hibbard v. City of Anaheim* (1984) 162 Cal.App.3d 270, 274, 278-79 [recognizing cause of action for conversion where city police destroyed guns taken on a search warrant]; *Tallmadge v. County of Los Angeles* (1987) 191 Cal.App.3d 251, 254 [complaint properly stated cause of action for conversion based on seizure and destruction of firearms by police]; *Kane v. County of San Diego* (1969) 2 Cal.App.3d 550 [county held liable for conversion when it destroyed plaintiff's dogs without giving prior notice]; *People v. Gershenhorn* (1964) 225 Cal.App.2d 122, 126 [property owner seeking return of property used as exhibit in criminal prosecution may institute civil

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[3] For the reason discussed, *supra*, plaintiffs' Bane Civil Rights Act claim should survive the demurrer.

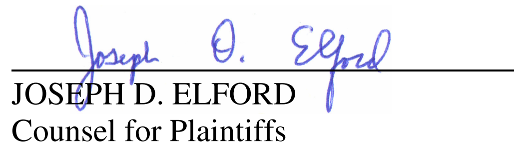
action for conversion]; *Franklin v. Municipal Court*, 26 Cal.App.3d 884, 897 [same] [citing *Gershenhorn*, *supra*]; *see also Enyart v. City of Los Angeles* (1999) 76 Cal.App.4th 499, 503-04 [trial held on plaintiff's cause of action for conversion based on seizure of photographs held as part of investigation of Senator Robert F. Kennedy]; *Handschuh v. Superior Court* (1985) 166 Cal.App.3d 41, 43, 45 [recognizing availability of cause of action for conversion based on seizure of property pursuant to warrant].) The individual officer defendant is liable for damages for his own misconduct under Government Code Section 820(a). The public entity employers are vicariously liable for this misconduct under Government Code Section 815.2(a).

CONCLUSION

For the foregoing reasons, Plaintiffs request that the demurrer be denied in its entirely.

Respectfully Submitted,

DATED: May 24, 2007



JOSEPH D. ELFORD
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I am a resident of the State of California, not a party to this action, and over the age of eighteen years. My business address is 1322 Webster St., Suite 402, Oakland, CA 94612. On May 24, 2007, I served the within document(s):

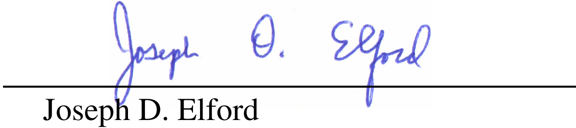
PLAINTIFFS' OPPOSITION TO DEMURRER TO FOURTH AMENDED COMPLAINT

Via email transmission and first-class mail to:

Bradley J. Stephens
Deputy County Counsel
25 County Center Drive
Oroville, CA 95965
Fax: (530) 538-6891

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

Executed on this 24th day of May, in Oakland, California.



Joseph D. Elford