

1 BINGHAM McCUTCHEM LLP
FRANK KENNAMER (SBN 157844)
2 AMY KEATING (SBN 244924)
Three Embarcadero Center
3 San Francisco, California 94111-4067
Telephone: 415.393.2000
4 Facsimile: 415.393.2286

5 Attorneys for WAMM Plaintiffs

6 GERALD UELMEN (SBN 39909)
7 Santa Clara University School of Law
500 El Camino Real
8 Santa Clara, California 95053
Telephone: 408.554.5729
9 Facsimile: 408.554.4426

10 Attorney for County of Santa Cruz
and WAMM Plaintiffs

11 Additional Counsel Listed on Signature Page

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

16 COUNTY OF SANTA CRUZ, CALIFORNIA;
17 CITY OF SANTA CRUZ, CALIFORNIA;
VALERIE CORRAL; ELADIO V. ACOSTA;
18 JENNIFER LEE HENTZ; HAROLD F.
MARGOLIN; LEVI CASTRO; DOROTHY
19 GIBBS; JAMES DANIEL BAEHR; MICHAEL
CHESLOSKY and WO/MEN’S ALLIANCE
20 FOR MEDICAL MARIJUANA,

21 Plaintiffs,

v.

22 MICHAEL B. MUKASEY, Attorney General of
23 the United States; KAREN P. TANDY,
Administrator of the Drug Enforcement
24 Administration; and JOHN P. WALTERS,
Director of the Office of National Drug Control
25 Policy,

26 Defendants.

Case No. CV-03-01802-JF

**SECOND AMENDED COMPLAINT
FOR PERMANENT INJUNCTIVE
RELIEF AND DECLARATORY
RELIEF**

JURY TRIAL DEMANDED

27
28

INTRODUCTION

1
2 1. Federal officials have a plan to force states to repeal their medical-
3 marijuana laws. As detailed below, the actions of federal officials, in carrying out this plan,
4 contravene well-established principles of state sovereignty and violate the Tenth Amendment.

5 2. The federal government has long maintained a broad criminal prohibition
6 against marijuana, both for medical and non-medical use. Federal authorities traditionally have
7 devoted relatively scant resources to marijuana arrests, relying on states to enact parallel
8 marijuana laws and to enforce those state marijuana laws broadly.

9 3. In California and other states that exempt patients from their marijuana
10 laws, the federal government stands alone in criminalizing medical marijuana use. This
11 circumstance has posed a difficulty for federal officials: patients act in violation of federal law,
12 yet federal enforcement resources have never been available to reach the conduct of ordinary,
13 low-level marijuana offenders. Desiring that no group of individuals have impunity to use
14 marijuana, federal officials identified two possible enforcement routes: (a) they could
15 dramatically increase federal enforcement resources to take on the day-to-day, ordinary
16 enforcement of marijuana laws against patients; or (b) they could cause states to reverse course
17 by enacting legislation to recriminalize medical use of marijuana. Federal officials purposefully
18 chose the latter route, embarking on a sustained effort to persuade, and where persuasion failed,
19 to coerce states into enacting legislation to criminalize all marijuana use.

20 4. Federal officials have convened unpublicized meetings and otherwise
21 strategized to devise a plan to coerce states into recriminalizing medical uses of marijuana: they
22 would purposefully interfere with and sabotage the functioning of state medical marijuana
23 legislation. From the enactment of California's Proposition 215 in 1996 through the present day,
24 the federal government has pursued a policy of selectively threatening and utilizing arrests,
25 forfeitures, criminal prosecutions and other punitive means, all with the purpose of rendering
26 California's medical marijuana laws impossible to implement and thereby forcing California and
27 its political subdivisions to recriminalize medical marijuana. The federal government's policy
28 bears little resemblance to its traditional enforcement practices. The targeted enforcement

1 practices and other measures elaborated herein have a far different purpose and effect: they
2 deliberately target the state’s chosen mechanisms for separating what is legal (medical use of
3 marijuana) from what is illegal (non-medical use of marijuana) under state law. The federal
4 policy makes it impossible for California to exempt the use of medical marijuana from the
5 operation of California’s drug laws.

6 5. This federal practice and policy exceeds legitimate forms of federal
7 persuasion and effectively commandeers California’s law-making function in violation of the
8 Tenth Amendment. As a part of its deliberate plan to force California to recriminalize medical
9 marijuana, the federal government uses the targeted enforcement of the federal Controlled
10 Substances Act (codified at 21 U.S.C. § 801, et seq.) against the state, its municipalities, other
11 entities, and individuals as a mechanism to coerce the state into regulating (through
12 criminalization) the behavior of private parties, namely seriously ill patients in need of medical
13 marijuana.

14 6. For some of the individual named Plaintiffs and other members of Plaintiff
15 the Wo/Men’s Alliance for Medical Marijuana (“WAMM”), marijuana is the only medication
16 that will allow them to endure the treatments necessary to keep them alive, and in some cases, is
17 the only medication that keeps them alive. For some individual Plaintiffs and WAMM members,
18 marijuana is the only medication that provides actual and effective relief from intolerable pain
19 and other incapacitating and sometimes fatal symptoms of serious or terminal illness, and
20 alleviates the debilitating side effects of necessary medications and treatments. Moreover, for
21 some individual Plaintiffs and WAMM members who have been diagnosed with a terminal
22 medical condition, use of marijuana is an irreplaceable means of controlling the circumstances of
23 their approaching death. It is a medication these individuals plan to use in their final days and
24 hours, often as an alternative to stupor-inducing narcotics, as a way of easing and directing the
25 passage from life to death.

26 7. As part of their broad power to legislate and regulate for the welfare of
27 their citizens, the County and City of Santa Cruz authorize and oversee the activities of Plaintiff
28 WAMM. WAMM is a collective of seriously ill patients, some of them named Plaintiffs, who

1 cultivate their own medical marijuana and use that marijuana in accordance with the advice and
2 recommendation of their physicians, and in complete compliance with California law. WAMM is
3 also a community of seriously and, in many instances, terminally ill, individuals that gathers
4 weekly to provide its members with care, support and education, and to assist its dying members
5 live out their final days with dignity and without unnecessary pain and suffering.

6 8. As part of an intentional effort to force California to recriminalize medical
7 marijuana and thereby commandeer California's legislative function, the federal government has
8 targeted entities, including WAMM, which have been licensed by California municipalities, thus
9 interfering with those municipalities' mechanism for distinguishing legal (medical) from illegal
10 (non-medical) marijuana.

11 9. Federal actions against WAMM have also deprived patients of their
12 medicine, violating the patients' rights secured by the Due Process Clause, including bodily
13 integrity, freedom from unnecessary suffering, preservation of life, the ability to consult with
14 their physicians and to act on their physicians' recommendations, control over intimate personal
15 choices in their lives, and the ability to control the circumstances of their own deaths.

16 10. This disruption of WAMM's activities culminated on September 5, 2002,
17 when a task force including between 20 and 30 armed DEA agents raided WAMM headquarters.
18 The DEA agents forcibly entered without knocking or announcing their authority and purpose
19 for entry, seized WAMM patients' medical marijuana, and cut down and removed marijuana
20 plants that WAMM members were collectively cultivating for their own medical use in complete
21 compliance with California law and City and County ordinances. The DEA agents conducted an
22 unconstitutional exploratory general search that was not authorized by the search warrant.

23 11. The federal government's campaign against California's medical
24 marijuana laws and against similar laws in other states has continued unabated since the DEA
25 raid of WAMM premises. The federal government continues to purposefully interfere with
26 California's and other states' medical marijuana laws, intending to coerce the states to
27 recriminalize medical marijuana and thereby to commandeer states' legislative functions.
28 Otherwise law-abiding seriously ill patients and caregivers are forced to live under the constant

1 fear of federal arrest, seizure of medicine essential to their continued well-being and survival,
2 seizure of other property, and further punishment.

3 12. Plaintiffs the County and City of Santa Cruz, WAMM, and individual
4 WAMM members, bring suit to halt and redress these life-threatening constitutional violations.

5 **JURISDICTION AND VENUE**

6 13. The claims for declaratory relief in this action arise under the Fourth,
7 Fifth, Ninth, and Tenth Amendments to the United States Constitution; Article I, § 8 of the
8 Constitution; 21 U.S.C. § 885(d); the doctrine of medical necessity; and 28 U.S.C. § 2201.

9 14. The claims for injunctive relief arise under the Fourth, Fifth, Ninth, and
10 Tenth Amendments of the United States Constitution; Article I, § 8 of the Constitution; 21
11 U.S.C. § 885(d); the doctrine of medical necessity; and 5 U.S.C. § 702.

12 15. This court has subject matter jurisdiction over this action under 28 U.S.C.
13 § 1346(a)(2) because the United States is a defendant, and under 28 U.S.C. § 1331 because the
14 case involves a federal question.

15 16. Venue in this court is proper under 28 U.S.C. § 1391(e)(2) because a
16 substantial part of the events giving rise to this claim occurred in this district, and under 28
17 U.S.C. § 1391(e)(3) because Plaintiffs reside in this judicial district.

18 **PARTIES**

19 **Plaintiffs**

20 17. Plaintiff COUNTY OF SANTA CRUZ, CALIFORNIA (“County of Santa
21 Cruz” or “County”) is a political subdivision of the State of California. The County is
22 empowered under Article XI, § 7 of the California Constitution to make and enforce ordinances
23 and regulations dealing with local affairs that do not conflict with general laws.

24 18. Plaintiff CITY OF SANTA CRUZ, CALIFORNIA (“City of Santa Cruz”
25 or “City”) is a municipal corporation located in the County of Santa Cruz in the State of
26 California. It is empowered under Article XI, §§ 5(a), 5(b) and of the California Constitution to
27 make and enforce ordinances and regulations dealing with municipal affairs that do not conflict
28

1 with general laws. This grant of authority, sometimes called the “Home Rule,” gives the City
2 broad police power to regulate, among other things, the public health within its jurisdiction.

3 19. Plaintiff WOMEN’S ALLIANCE FOR MEDICAL MARIJUANA
4 (“WAMM”) is a collective located in the City and County of Santa Cruz. It is composed of
5 seriously ill Californian patients who use medical marijuana with the written recommendations
6 of their physicians, in full compliance with California law. Each WAMM member must sign an
7 agreement requiring a doctor to monitor his or her use of medical marijuana. WAMM patients
8 work together to alleviate their suffering. They provide each other with the support necessary to
9 deal with their illnesses and assist each other in completing day-to-day tasks that their illnesses
10 have made more difficult, such as grocery shopping or traveling to the doctor’s office. Each
11 patient’s “primary caregiver,” defined by the Compassionate Use Act as the individual
12 designated by the patient who consistently assumes responsibility for the housing, health, or
13 safety of the patient, Cal. Health & Safety Code § 11362.5(e), is also a member of WAMM.
14 WAMM sues as an organization on its own behalf and on behalf of all of its members.

15 20. Since WAMM’s inception, at least 160 WAMM members have died.
16 Since the DEA raid on September 5, 2002, at least 48 WAMM members have died. Since the
17 filing of the original complaint in April 2003, 32 WAMM members have died. The remaining
18 Plaintiffs are WAMM members.

19 21. Plaintiff ELADIO V. ACOSTA (“Acosta”) was diagnosed with throat
20 cancer in 1999. The formal diagnosis of his condition is Stage III nasopharyngeal cancer with
21 bilateral cervical lymph node metastases. Currently, he undergoes chemotherapy every week,
22 and has had two chemotherapy ports implanted in his chest to facilitate the administration of
23 chemotherapy treatments. These cause Plaintiff Acosta intolerable pain and discomfort. Without
24 chemotherapy, however, Plaintiff Acosta would have no way to treat his cancer and would die.

25 22. Among other side effects from his treatments, Acosta experiences severe
26 nausea and violent vomiting episodes that continue for two to three days after each treatment.
27 The chemotherapy also causes complete loss of appetite, and Acosta struggles to stay nourished
28 and suffers severe weight loss that renders him nearly unable to live. Plaintiff Acosta’s doctor

1 recommends medical marijuana as necessary to continuing his cancer treatments, which prevent
2 his death by attacking the otherwise fatal cancer in his body.

3 23. Acosta's first use of medical marijuana produced immediate benefits. For
4 the first time since starting chemotherapy, his appetite returned. Acosta's use of medical
5 marijuana cigarettes stimulates his appetite, and he attributes his continued survival to this
6 appetite stimulation. Medical marijuana alleviates pain and aids him in sleeping. Medical
7 marijuana also controls Acosta's pain from surgery he had on January 23, 2006 to remove a
8 tumor behind his eye. Immediately following chemotherapy, medical marijuana helps with
9 nausea and sleeplessness. Without medical marijuana, Acosta would be unable to undergo the
10 treatments needed to combat his otherwise fatal cancer.

11 24. The September 5, 2002 raid had a devastating impact on Acosta's health.
12 Because of the seizure, Acosta's access to medicine decreased and his suffering consequently
13 increased.

14 25. Acosta wishes to use medical marijuana so he can continue receiving his
15 life-saving treatments, and to control the circumstances of his own death.

16 26. Plaintiff JENNIFER LEE HENTZ ("Hentz") has had Stage IV colon
17 cancer since 2001. In November 2001, following emergency surgery in which doctors removed
18 part of her colon, intestine, surrounding lymph nodes, a 6 cm tumor, and her appendix, Hentz
19 began a 9-month course of chemotherapy that produced severe side effects including nausea, loss
20 of appetite, diarrhea, sleeplessness, anxiety, and depression, causing her intolerable pain and
21 discomfort. Six months later, she suffered a recurrence and began a chemotherapy regimen so
22 rigorous that she had to be hospitalized for three days for each treatment. Her physician
23 recommended medical marijuana to control her severe side effects and allow her to continue the
24 life-saving treatments.

25 27. Medical marijuana afforded Hentz almost instantaneous relief, most
26 significantly in the form of reduced nausea. This allowed her to eat and take her other oral
27 medications as needed. Medical marijuana also relieved the debilitating stomach cramping and
28 other severe pain that Hentz suffered as a result of her cancer, the chemotherapy, and her hunger

1 and frequent vomiting, allowing her to continue with her life-saving treatments. Without medical
2 marijuana, Hentz would be unable to undergo the life-saving chemotherapy treatments needed to
3 combat her cancer.

4 28. After the September raid, the amount of medicine available to Hentz was
5 very limited. As her pain increased, she was forced to ingest increasing amounts of marijuana,
6 depleting her supply earlier and leaving her suffering for days without medicine.

7 29. Hentz wishes to use medical marijuana so she can continue receiving her
8 life-saving treatments and control the circumstances of her death so that she may remain lucid
9 and conscious in her final hours with reduced pain. Medical marijuana will enable her to be
10 aware of what is going on in her final moments, such as the presence of loved ones.

11 30. Plaintiff VALERIE CORRAL (“Corral”) has suffered from epilepsy since
12 1972, which causes debilitating seizures that strike with little or no warning. Corral’s doctor
13 recommends medical marijuana to control and prevent the onset of her debilitating seizures.
14 Corral has found no conventional medication that effectively controls her epilepsy. Marijuana is
15 the only medicine that prevents or controls these life-threatening seizures.

16 31. Corral is the founder and executive director of WAMM. She started the
17 collective because she realized that sick and dying people face not only a physical struggle with
18 their illnesses, but also discrimination and intolerance. Corral’s goal was to create a community
19 in which sick and dying patients provide each other with emotional support and physical care.
20 Since founding WAMM, Corral has witnessed over 100 WAMM members’ final moments of
21 life. Medical marijuana allowed these WAMM members to spend conscious and lucid moments
22 with their loved ones during their last hours of life. Medical marijuana afforded these patients
23 significant pain relief and reduced or eliminated these patients’ reliance on opiates and other
24 narcotics, which greatly decrease lucidity.

25 32. Plaintiff HAROLD F. “HAL” MARGOLIN (“Margolin”) has suffered
26 from chronic myelopathy secondary to cervical spondylosis since 1995, and has also been
27 diagnosed with chronic peripheral neuropathy. As a result of these conditions, Margolin suffers
28 chronic nerve pain, limited feeling in his hands and feet, loss of balance, a severe burning

1 sensation in his feet, loss of functioning in his right leg, back and shoulder pain, and a spastic
2 gait that renders him immobile at times.

3 33. In 1998, Margolin’s doctor recommended medical marijuana to relieve his
4 severe pain. The pain relief Margolin experiences with medical marijuana allows him to engage
5 in life-saving exercise three times a week, a regimen that has become more important since he
6 suffered a heart attack in 2000, and enables him to engage in basic daily activities such as
7 driving, running errands and food shopping.

8 34. To combat the excruciating pain that accompanies Margolin’s neuropathy,
9 his physician prescribed a conventional painkiller, Neurontin, in 1999. The painkiller caused
10 Margolin to lose muscle control so that he jerked and lurched uncontrollably. Because of this
11 reaction, Margolin cannot tolerate enough Neurontin to effectively manage his pain and he can
12 only take it at night when he will be safely confined to a bed. The other conventional
13 medications Margolin tried to combat his neural pain were not effective. Marijuana is the only
14 medicine that he can use during the day to afford him relief and allow him to engage in daily
15 activities. Since the September raid, Margolin’s dosage has decreased due to diminishing supply,
16 increasing the amount of pain that he suffers.

17 35. In or around October 2005, Plaintiff Margolin was additionally diagnosed
18 with chronic Myelocytic Leukemia. With this new diagnosis, he has become terminal. In
19 preparing for the end stage of his life, Margolin intends to use marijuana to control the
20 circumstances of his death. He wants to use marijuana in order to reduce or eliminate the need
21 for pain-killing opiates such as morphine and in turn reduce the intolerable side-effects of these
22 other drugs, such as severe reduction or complete loss of lucidity. Marijuana will enable him to
23 be aware of what is going on in his final moments, such as the presence of loved ones, and be
24 better able to meaningfully communicate with them.

25 36. Plaintiff LEVI CASTRO (“Castro”) is a C3 quadriplegic who is paralyzed
26 from the neck down as a result of a surfing accident in 1999. He is 26 years old. As a result of his
27 severely damaged nervous system, his body is racked by intense spasms and indescribable pain.
28 Castro has tried every other medication for his condition and marijuana is the only medicine that

1 affords him relief. He takes Baclofen and Detrol LA for the spasms, but the side effects are so
2 severe that only in conjunction with marijuana is he able to take a dose that prevents the side
3 effects from impairing his functioning. The marijuana also manages his pain, stimulates his
4 appetite, suppresses his nausea, and relieves the asthma aggravated by the spasms.

5 37. Without medical marijuana, Castro would be forced to live in excruciating
6 pain and in a state of semi-consciousness. He would be at great risk for additional injury and
7 death. Medical marijuana enables him to regain some measure of control over his life and gives
8 him relief from pain and other symptoms. This relief has given him back a life worth living.

9 38. Plaintiff MICHAEL CHESLOSKY (“Cheslosky”) was diagnosed with
10 HIV/AIDS in 1984. He passed away on March 7, 2005. He suffered from several other medical
11 conditions, most of which were associated with or exacerbated by HIV/AIDS, including
12 Kaposi’s sarcoma, Hepatitis C, thrush, liver disease, gastrointestinal disorders, neuropathic
13 illnesses, degenerative disk disease, recurrent pneumonia, and “wasting” syndrome.

14 39. To combat the debilitating side effects caused by chemotherapy and the
15 HIV/AIDS treatments, Cheslosky tried conventional medications, none of which were effective.
16 In 1996, Cheslosky’s physician recommended medical marijuana to treat his nausea and chronic
17 pain. Marijuana was the only medicine that enabled him to continue with his life-prolonging
18 treatments.

19 40. During the months before his death, Cheslosky used medical marijuana to
20 control the circumstances of his death. Medical marijuana allowed him to use almost no other
21 opiates prior to death, enabling him to be present and conscious with his family during his final
22 moments of life.

23 41. Plaintiff JAMES DANIEL “DAN” BAEHR (“Baehr”) was diagnosed with
24 terminal, inoperable prostate cancer in 1994. His cancer metastasized to his spine, hips, rib cage,
25 and eventually brain in an inoperable, aggressive form (glioblastoma). Baehr passed away on
26 December 12, 2005.

1 42. Baehr’s cancer caused severe neuropathic back pain, severe bone pain, and
2 depression. Baehr’s radiation therapy caused several side effects, including severe pain, severe
3 nausea, loss of appetite, peristalsis, digestive and intestinal complications, and depression.

4 43. Toward the end of his course of radiation treatment in December 1995,
5 Baehr joined WAMM. Medical marijuana allowed Baehr to undergo treatments for his terminal
6 cancer and prolonged his life. Medical marijuana alleviated Baehr’s severe nausea, stimulated his
7 appetite, reduced sleeplessness, controlled his pain, reduced his anxiety and depression, and
8 controlled Baehr’s sleep apnea.

9 44. Baehr’s cancer later progressed to include major bone pain, weakness, and
10 severe neurological damage. Baehr used medical marijuana to control the circumstances of his
11 death. With medical marijuana, Baehr was able to cease taking morphine prior to death, allowing
12 him to be present and lucid with his family and loved ones during his final moments of life.

13 45. Plaintiff DOROTHY GIBBS (“Gibbs”) contracted polio as an infant and
14 suffered from post-polio syndrome. She passed away on March 12, 2004. During her life, Gibbs
15 suffered from severe pain in her back and left shoulder and numbness in her legs. Because she
16 had difficulty bending her spine, rising from a sitting position caused her severe pain. Gibbs’
17 condition left her entirely bedridden during her last years. Medical marijuana was the only
18 medicine that provided Gibbs with effective pain relief without severely debilitating side effects.

19 46. Gibbs spent the final three months of her life in the nursing home Bromer
20 Manor in Santa Cruz. She did not have regular access to medical marijuana in that facility. The
21 medication for her pain left her in a semi-conscious state, unable to converse, recognize people,
22 or even perform minor day-to-day tasks like lifting a television remote control. On the days when
23 Gibbs was able to use medical marijuana, she was able to converse with her visitors, recognize
24 who had come to visit her, and perform simple every day tasks. When she was able to use
25 medical marijuana along with the prescription drugs Bromer Manor provided her to relieve her
26 chronic pain, Gibbs maintained her lucidity, making her last days as comfortable as possible, and
27 allowed her to control the circumstances of her death.

1 Act are: To ensure that seriously ill Californians have the right to obtain and use marijuana for
2 medical purposes where the medical use is deemed appropriate and has been recommended by a
3 physician who has determined that the person’s health would benefit from the use of marijuana
4 in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine
5 or any other illness for which marijuana provides relief[;] To ensure that patients and their
6 primary caregivers who obtain and use marijuana for medical purposes upon the
7 recommendation of a physician are not subject to criminal prosecution or sanction[; and] To
8 encourage the federal and state governments to implement a plan to provide for the safe and
9 affordable distribution of marijuana to all patients in medical need of marijuana. Id.

10 53. In 2003, the California legislature enacted S.B. 420, Cal. Health & Safety
11 Code §§ 11362.7 et seq. to implement the Compassionate Use Act by establishing, among other
12 provisions, an identification card system and protection from arrest for qualified patients.
13 California’s medical marijuana laws protect from arrest, prosecution and seizure of their
14 marijuana, qualified individuals who upon receipt of a physician’s recommendation, cultivate or
15 use marijuana for medical purposes. Marijuana use for any other purpose remains a crime under
16 California law.

17 **City And County Legislation Implementing State Medical Marijuana Laws**

18 54. Pursuant to its mandate to protect and promote local health, the County of
19 Santa Cruz, on June 26, 2003, adopted an ordinance to implement California’s medical
20 marijuana laws by establishing an identification card program to help law enforcement officers
21 identify individuals whose possession of medical cannabis is permissible under State law. Santa
22 Cruz County Code §§ 7.123.010-7.123.060 (“the County Ordinance”). Pursuant to the County
23 Ordinance, the County investigates and verifies whether an applicant is a qualified medical
24 marijuana patient and institutes a penalty for falsifying documents used in the process. Pursuant
25 to this ordinance, the County has issued identification cards to qualified patients.

26 55. Pursuant to Article XI, § 3(a) of the California Constitution, the City of
27 Santa Cruz adopted a charter. Under Section 401 of the Charter of the City of Santa Cruz, the
28 City has the power to make and enforce all laws and regulations dealing with municipal affairs

1 subject only to limitations provided in the Charter or in the State Constitution. The Charter also
2 gives the City the power to exercise any and all rights, powers and privileges established by any
3 law of the State, by the Charter, or by other lawful authority, or that a municipal corporation can
4 exercise under the State Constitution.

5 56. The State Constitution and the City Charter give the City broad authority
6 to enact and enforce regulations promoting and protecting local health. Acting pursuant to the
7 City’s police power to protect the health and welfare of its residents, the City has taken certain
8 legislative steps to implement California’s medical marijuana laws as they apply and function
9 within the City. Specifically, in May 2000 the City enacted an ordinance concerning use of
10 medical marijuana within the City (“Personal Use City Ordinance,” codified at Santa Cruz
11 Municipal Code §§ 6.90.010-6.90.090), and enacted in November 2005 an ordinance creating a
12 Compassionate Use Program concerning provision of medical marijuana within the City.
13 (“Office of Compassionate Use Ordinance,” codified at Santa Cruz Municipal Code §§ 6.92.020
14 – 6.92.100).

15 57. The Personal Use City Ordinance facilitates the City’s effort to implement
16 State law by distinguishing between legal (medical) use of marijuana and illegal (non-medical)
17 use. The Personal Use City Ordinance provides that the City of Santa Cruz shall recognize an
18 individual as a patient qualified to use medical marijuana when he or she possesses a licensed
19 physician’s written recommendation or when he or she is under a physician’s care “for any of
20 those certain medical conditions listed under the definition of ‘qualified patient’ in accordance
21 with the Compassionate Use Act of 1996.” Santa Cruz Municipal Code § 6.90.020(1).
22 Additionally, the Personal Use City Ordinance provides that cultivation of marijuana shall be
23 lawful “when said cultivation is conducted solely for the personal medical purposes of qualified
24 patients in accordance with [the Compassionate Use Act].” Santa Cruz Municipal Code §
25 6.90.040(1).

26 58. The Personal Use City Ordinance also allows the City to officially
27 recognize a “medical marijuana provider association,” which is defined as “a collective of
28 individuals comprised of qualified patients and primary caregivers, the sole intent of which is to

1 provide education, referral, or network services and to facilitate/assist in the lawful production,
2 acquisition, and provision of medical marijuana to qualified patients.” Santa Cruz Municipal
3 Code § 6.90.010(4). The City of Santa Cruz officially recognizes WAMM as a medical
4 marijuana provider association.

5 59. To assist the City in distinguishing between legal (medical) and illegal
6 (non-medical) users of marijuana, the Personal Use City Ordinance provides that recognized
7 medical marijuana provider associations may issue identification cards to qualified patients and
8 primary caregivers. Santa Cruz Municipal Code § 6.90.010(2) and 6.90.020(2).

9 60. To obtain official City recognition as a medical marijuana provider
10 association, the association must, among other things: (1) not predicate participation upon a
11 patient’s ability to pay for services or medical marijuana; (2) strictly prohibit patients and their
12 primary caregivers from selling or distributing medical marijuana; (3) have regulations that
13 require the immediate termination of participation by a patient or primary caregiver who misuses
14 the association’s services, misrepresents his or her qualifications to participate, or otherwise
15 violates association rules; and (4) have regulations limiting attendance at medical marijuana
16 provision sites to qualified patients, primary caregivers, and cultivators. Santa Cruz Municipal
17 Code §§ 6.90.020(4)(e), (4)(h), (4)(i), (4)(j) and (4)(k).

18 61. The Personal Use City Ordinance also provides that the City of Santa Cruz
19 may deputize individuals and organizations to function as medical marijuana providers to assist
20 the City in implementing the Personal Use City Ordinance and California’s medical marijuana
21 laws. Santa Cruz Municipal Code §6.90.080. On December 10, 2002, the Santa Cruz City
22 Council adopted a resolution deputizing WAMM, Plaintiff Valerie Corral, and her husband and
23 primary caregiver Michael Corral to function as medical marijuana providers. By virtue of their
24 status as deputies, WAMM and the Corrals are authorized to assist the City of Santa Cruz in
25 administering the Personal Use City Ordinance and California’s medical marijuana laws.

26 62. California’s medical marijuana laws are in part designed “to encourage the
27 federal and state governments to implement a plan to provide for the safe and affordable
28

1 plants that WAMM members were collectively cultivating for their own lawful medical use, in
2 complete compliance with California law, including seven plants that Plaintiff Corral was
3 cultivating in her personal vegetable garden, also in complete compliance with California law.
4 The DEA agents remained on the premises for eight hours, conducting an unconstitutional
5 exploratory general search that was not authorized by the search warrant.

6 66. The agents raided the WAMM garden without probable cause that any
7 evidence of criminal activity was on the premises, and without reasonably contemplating
8 criminally prosecuting Valerie or Michael Corral or any other WAMM members. The use of
9 searches and seizures to conduct punitive expeditions where criminal prosecution is not
10 reasonably contemplated violates the prohibition against unreasonable searches and seizures.
11 Additionally, the DEA agents forcibly entered Plaintiff Valerie Corral’s home without knocking
12 and announcing their authority or purpose for entry. They used unreasonable force in restraining
13 Valerie and Michael Corral, who did not offer resistance. They arrested Valerie and Michael
14 Corral in their home without an arrest warrant. They acted pursuant to a search warrant that did
15 not particularly describe the items to be searched for and seized. They seized items that were not
16 described in the search warrant. They engaged in an unlawful general search.

17 67. The DEA raid on WAMM headquarters resulted from a broader federal
18 policy and practice of targeting medical marijuana providers who, like WAMM, have been
19 officially authorized by a municipality to provide medical marijuana. These municipalities
20 authorize providers in order to assist the municipality in distinguishing between lawful and
21 unlawful marijuana activity. Federal targeting of these authorized providers disrupts the
22 municipalities’ ability to implement state medical marijuana laws.

23 68. Federal officials targeted WAMM for investigation, arrest and threats of
24 future arrest and prosecution while not investigating, arresting or prosecuting individuals and
25 entities who are not authorized medical marijuana providers but who engage in similar non-
26 medical cultivation or who possess comparable amounts of marijuana in California and
27 elsewhere.

1 69. WAMM has a maximum membership of 200 patients who suffer from
2 HIV/AIDS, multiple sclerosis, glaucoma, epilepsy, various forms of cancer, and other serious
3 illnesses and diseases. The majority of these patients are terminally ill. Membership is limited, so
4 that new patients generally are admitted only after a current member dies or, in rare
5 circumstances, leaves the collective. Since the DEA raid on September 5, 2002, 48 WAMM
6 members have died.

7 70. Among the individually named WAMM patient Plaintiffs and other
8 WAMM members are those with serious and life-threatening conditions for whom marijuana
9 addresses otherwise fatal symptoms or aspects of their condition. Medical marijuana is the only
10 effective treatment for some of these plaintiffs who have tried all other legal and available
11 remedies. Without medical marijuana, these individuals will die.

12 71. Among the individually named WAMM patient Plaintiffs and other
13 WAMM members are those with serious and life-threatening medical conditions for whom use
14 of marijuana allows them to continue with medical treatments that prevent or forestall their
15 death. Medical marijuana is the only thing that permits some of these plaintiffs, who have tried
16 all other legal and available remedies, to continue with the treatments that prevent or forestall
17 their death. Without medical marijuana, these individuals will die.

18 72. Among the individually named WAMM patient Plaintiffs and other
19 WAMM members are those with serious and/or life-threatening conditions for whom marijuana
20 directly alleviates otherwise unbearable or debilitating symptoms of their condition. Medical
21 marijuana is the only effective treatment for some of these plaintiffs who have tried all other
22 legal and available remedies. Without medical marijuana, these individuals would have no ability
23 to direct their lives, control the quality of life, or make intimate personal decisions central to their
24 autonomy.

25 73. Among the individually named WAMM patient Plaintiffs and other
26 WAMM members are those with serious and life-threatening medical conditions for whom use
27 of marijuana allows them to continue with medical treatments that make their lives bearable.
28 Medical marijuana is the only medicine that permits some of these plaintiffs, who have tried all

1 other legal and available remedies, to continue with the treatments that make their lives bearable.
2 Without medical marijuana, these individuals would have no ability to direct their lives, control
3 the quality of life, or make intimate personal decisions central to their autonomy.

4 74. Among the individually named WAMM patient Plaintiffs and other
5 WAMM members are those with terminal illnesses who intend to use medical marijuana as an
6 integral part of their dying process. Without marijuana, their final days would be spent in
7 excruciating pain or in a morphine-induced haze. These individuals intend to use marijuana in
8 their final days and moments to provide them with relief from their pain while allowing them the
9 lucidity to be with their loved ones and attend to the final matters of their life. Only marijuana
10 allows them to direct the course of their medical treatment, improve their quality of life during
11 their final days, and control the circumstances of their death.

12 **The Federal Policy To Force States To Re-Criminalize The Medical Use Of Marijuana**
13 **and to Thereby Force State Officials to Assist in the Enforcement of Federal Statutes**

14 **Introduction**

15 75. Since 1996, California and twelve other states¹ have enacted legislation to
16 allow the medical use of marijuana, while leaving intact state laws criminalizing non-medical use
17 of marijuana. The most recent of these, New Mexico, enacted legislation in the time period
18 elapsed since the First Amended Complaint was filed in the instant matter. The Lynn and Erin
19 Compassionate Use Act was signed into law by the Governor on April 2, 2007.

20 76. The federal government has consistently and vigorously opposed these
21 state efforts to enact legislation that permits medical use while also criminalizing non-medical
22 use of marijuana. From the enactment of California's Proposition 215 in 1996 through the
23 _____

24 ¹ At least twelve other states (Alaska, Colorado, Maine, Maryland, Montana, Nevada, New
25 Mexico, Oregon, Rhode Island, Vermont, Washington, and Hawaii) have passed laws approving
26 the use of medical marijuana. *See* Alaska Stat. Ann. §§ 11.71.090, 17.37.010 to 17.37.080; Colo.
27 Const. art. XVIII, § 14; Me. Rev. Stat. Ann. tit. 22, § 2383-B5; MD Code §§ 5-601(c) and 5-
28 619(c); Mont Stat. Ann. §§ 50-46-101 to 50-46-210; Nev. Const. art. 4, § 38; N. M. S. A. 1978, §
26-2B-1 to 26-2B-7; Or. Rev. Stat. §§ 475.300 to 475.346; RI ST §§ 21-28.6-1 to 21-28.6-11;
VT ST. T. 18 §§ 4472-4474; Wash. Rev. Code §§ 69.51A.005 - 69.51A.070 and §§ 69.51A.900 -
69.51A.902; and Haw. Rev. Stat. §§ 329-121 to 329-128.

1 present day, the federal government has pursued an intentional and concerted policy of
2 threatening and utilizing arrests, forfeitures, criminal prosecutions and other punitive means,
3 selectively targeted in order to: 1) render California's and other states' medical marijuana laws
4 impossible to implement; 2) force California and other states and their political subdivisions to
5 enact laws and regulations recriminalizing medical use of marijuana under state law, and; 3)
6 thereby require state and local officials to assist in the enforcement of federal statutes prohibiting
7 private individuals' use of marijuana for medical purposes.

8 77. The federal government's policy goes far beyond the mere displacement
9 of state law with neutral enforcement of contrary federal law; rather, this federal policy
10 deliberately undermines California's and other states' ability to chart their own legislative course
11 by incapacitating the states' chosen mechanisms for separating what is legal from what is illegal
12 under state law, and seeks to disable the regulatory mechanism of the states in order to force the
13 states to legislate according to a federal scheme, in violation of the anti-commandeering
14 provisions of the 10th Amendment to the U.S. Constitution.

15 78. The federal policy intentional makes it impossible for California and other
16 states to continue to exempt the use of medical marijuana from the operation of state drug laws.
17 The federal government's policy requires California and other states to keep medical marijuana
18 *de facto* illegal under state law. This federal practice and policy exceeds legitimate forms of
19 federal persuasion and effectively commandeers states' law-making function in violation of the
20 Tenth Amendment.

21 79. As a part of its deliberate plan to force California and other states to
22 recriminalize medical marijuana, the federal government uses the targeted enforcement of the
23 federal Controlled Substances Act ("CSA") (codified at 21 U.S.C. § 801, *et seq.*) against the
24 states and their political subdivisions, as well as other entities and individuals working
25 collaboratively with state and local governments, in order to force the states to regulate (through
26 criminalization) the behavior of private parties, namely seriously ill patients.

History and Origins of the Federal Policy

80. The federal policy of coercing state conformity to federal marijuana law began with the federal reaction to California's passage of Proposition 215 in 1996. Beginning in late 1996, the President of the United States directed White House officials to convene meetings among relevant cabinet agencies to formulate plans to compel the reversal of California's decision to allow medical use of marijuana and to force the state to recriminalize the medical use of marijuana.

81. An interagency working group chaired by the Office of National Drug Control Policy (ONDCP) included the Departments of Justice, Treasury, Defense, Health and Human Services, Transportation, and Education, the Postal Service, and the Nuclear Regulatory Commission. This group met at least four times in November and December of 1996 to develop strategic objectives for a coordinated Federal response to the passage of Proposition 215.

82. The written summary of the interagency working group meeting on December 6, 1996, identified the following impacts caused by passage of medical marijuana laws: "balkanizes the nation's 'national' drug strategy"; "creates law enforcement conflicts – limited federal prosecution and enforcement resources, impact on prosecution thresholds, case targeting procedures, investigative authority, deputization and immunity issues, contraband seizure authority/immunity;" and "pits federal government against the states – 10th Amendment issues." The summary goes on to state the goals of the working group, including: "blunt the negative consequences, including obtaining the repeal, of Proposition 200 and 215 and other 'medicinal marijuana' or similar provisions already passed in other states."

83. Shortly after passage of Proposition 215, including in a meeting among federal officials in Washington, D.C. on November 16, 1996, officials from the Drug Enforcement Administration explicitly stated that taking medical marijuana cases into the federal system would grind the federal system to a halt. Thus, the federal government's plan was *not* to simply step up enforcement of federal law to replace Proposition 215's removal of state law enforcement for the narrow class of California citizens exempted from otherwise generally applicable state laws prohibiting marijuana use. Rather, the federal government set out to create

1 a policy to deliberately undermine and render state medical marijuana laws unenforceable, and
2 coerce California to recriminalize medical marijuana.

3 84. Federal officials initially contemplated filing a suit claiming that federal
4 law preempted the medical marijuana initiative, but Department of Justice attorneys ultimately
5 concluded that there was no valid legal basis for such a lawsuit because the CSA does not
6 preempt state medical marijuana laws. Realizing there was no legitimate legal claim to judicially
7 achieve its goal of invalidating state law, the White House interagency working group turned to
8 other strategies intended to force the State to recriminalize the medical use of marijuana.

9 85. Specifically, the working group recommended, the President approved,
10 and the federal government enacted a policy of threatening criminal prosecution and revocation
11 of the federal prescription license and eligibility to receive Medicare and Medicaid
12 reimbursements of any physician who recommended to a patient the medical use of marijuana.

13 86. Then-head of the ONDCP, General Barry McCaffrey, stated at a press
14 conference that, “U.S. Attorneys in [Arizona and California] will continue to review cases for
15 prosecution and DEA officials will review cases as they have to determine whether to revoke the
16 registration of any physician who recommends or prescribes so-called Schedule I controlled
17 substances.”

18 87. Pursuant to this federal policy of targeting physicians, the Department of
19 Justice (DOJ) and Department of Health and Human Services (HHS) were tasked to send a letter
20 to national, state, and local practitioner associations and licensing boards conveying these
21 threats. This letter (and the policy it reflected) had the intended effect of causing most California
22 physicians to cease providing any advice or recommendations concerning marijuana, effectively
23 disabling California’s ability to distinguish legal (medical) and illegal (non-medical) marijuana
24 use.

25 88. While the federal government generally has the authority to regulate
26 physicians’ ability to prescribe controlled substances and the authority to determine which
27 physicians shall be entitled to receive Medicare and Medicaid reimbursements, this federal
28 policy of targeting physicians was not enacted with the intent of merely enforcing federal law

1 and thereby displacing state law. The state relies on the recommendation of a state-licensed
2 physician to define the line between legal and illegal marijuana use. The policy of targeting
3 physicians was enacted specifically to incapacitate this central mechanism California had created
4 to distinguish between legal (medical) and illegal (non-medical) marijuana use, by eliminating
5 the ability of physicians to recommend marijuana for patients, effectively forcing the State to
6 treat all marijuana as a crime.

7 89. The federal policy of targeting physicians using selective enforcement of
8 the CSA, selective enforcement of the federal government’s authority to license physicians to
9 prescribe controlled substances, and selective enforcement of the federal government’s authority
10 to limit physicians’ ability to receive Medicare and Medicaid reimbursements, sought to
11 effectively force the state to treat all marijuana as a crime; that is, it sought to force the state to
12 keep medical marijuana illegal. By precluding doctors—on pain of federal prosecution, losing
13 their DEA registration and losing their eligibility to receive Medicare and Medicaid
14 reimbursements—from making a recommendation that would serve to identify which patients
15 are authorized to use marijuana under state law, the federal policy made it impossible for the
16 state to implement its legislative choice to exempt the use of medical marijuana from the
17 operation of its otherwise applicable drug laws prohibiting marijuana use.

18 90. The federal policy of targeting physicians was enjoined in *Conant v.*
19 *Walters*, 309 F.3d 629 (9th Cir. 2002), *cert. den.* 540 U.S. 946 (2003), because that policy
20 violated physicians’ First Amendment Rights, with a concurring judge observing that the policy
21 also violated the Tenth Amendment because it, “deliberately undermines the state by
22 incapacitating the mechanism the state has chosen for separating what is legal from what is
23 illegal under state law.” *Id.* at 639 (Kozinski, J., concurring).

24 91. The *Conant* injunction prohibits the federal government from either
25 revoking a physician’s license to prescribe controlled substances or conducting an investigation
26 of a physician that might lead to such revocation, where the basis for the government’s action is
27 solely the physician’s professional recommendation of the use of medical marijuana.

1 1089 (E.D. Wash. 2007). The court specifically found that Federal
2 efforts to penetrate the confidentiality of a state medical registry
3 would have seriously interfered with the functioning of the Oregon
4 medical marijuana law and that federal efforts to require a medical
5 clinic to disclose its confidential patient records would have seriously
6 interfered with the functioning of state medical marijuana laws in
7 Oregon and Washington State.

8 **After *Conant*: The Ensuing Federal Policy To Force States To**
9 **Re-Criminalize the Medical Use Of Marijuana**

10 93. Enjoined from pursuing its policy of targeting physicians, the federal
11 government has turned to other means of selectively enforcing and threatening to enforce federal
12 drug laws in order to force California and other states to recriminalize medical marijuana. Rather
13 than merely displacing state law by enforcing contrary federal law, defendants are continuing a
14 purposeful strategy to interfere with and disable California's and other states' medical marijuana
15 laws, and force these states to adopt and enforce federal prohibitions of medical marijuana use.

16 94. Federal officials recognize that municipalities seeking to implement
17 medical marijuana laws in California and other states, while also continuing to enforce state laws
18 prohibiting non-medical marijuana use, have developed a number of mechanisms to distinguish
19 legal (medical) from illegal (non-medical) marijuana. Federal officials have purposefully
20 interfered with each of these mechanisms in order to coerce states into recriminalizing all
21 marijuana. These mechanisms include but are not limited to:

- 22 a. Creating identification card programs in order to permit law
23 enforcement to distinguish legal (medical) from illegal (non-medical)
24 marijuana activity;
- 25 b. Deputizing, licensing or permitting specified individuals or entities to
26 provide medical marijuana, thereby permitting law enforcement to
27 distinguish legal (medical) from illegal (non-medical) marijuana
28 activity;

- 1 c. Utilizing zoning and other local regulatory powers (including
- 2 moratoriums on new providers) to restrict and control the provision of
- 3 medical marijuana to patients;
- 4 d. Carefully selecting organizations and individuals with whom to
- 5 collaborate through use of public financing or local government
- 6 property to facilitate provision of medical marijuana to patients;
- 7 e. Working closely with carefully selected non-profit collectives
- 8 comprised solely of patients and caretakers in order to minimize the
- 9 profit motive and risk of diversion of marijuana to non-medical uses.

10 95. California and other states have enacted medical marijuana identification
11 card programs to assist in distinguishing between legal (medical) and illegal (non-medical) use
12 of marijuana. Elimination of state identification card programs would render state medical
13 marijuana laws inoperable, effectively forcing the State to recriminalize the medical use of
14 marijuana. In order to interfere with and disable California's and other states' medical marijuana
15 laws, and to force states to adopt and enforce federal prohibitions of medical marijuana use,
16 federal officials have threatened action against state and local government officials who issue
17 identification cards as part of a medical marijuana program.

18 96. In response to federal threats and policies, officials in California and other
19 states have halted or threatened to halt the implementation of such state medical marijuana
20 identification card programs, despite these programs being mandated by state law. States so
21 acted out of a reasonable fear of federal prosecution under the CSA and other related federal
22 sanctions. Examples include but are not limited to the following:

- 23 a. In July 2005, the California Department of Health Services ("CDHS")
- 24 suspended California's identification card program due to fear that
- 25 state and county employees who issued identification cards to
- 26 qualified patients would be prosecuted by federal authorities. The
- 27 CDHS reinstated the Program only after the California Attorney
- 28 General issued an opinion determining that state officials could not be

1 subject to federal criminal prosecution for issuing state medical
2 marijuana identification cards or for declining to arrest persons acting
3 in compliance with the state's medical marijuana provisions.

- 4 b. In November 2005, the San Diego County Board of Supervisors
5 announced it would refuse to implement the state-mandated medical
6 marijuana identification card program, claiming in published media
7 statements a fear that county employees would be prosecuted by
8 federal authorities.
- 9 c. In June 2005, the Oregon Department of Human Services ("ODHS")
10 suspended its issuance of identification cards due to an articulated
11 fear of federal criminal prosecution of state or county employees. The
12 ODHS resumed issuance of identification cards only after Oregon's
13 Attorney General issued an opinion.
- 14 d. In June 2005, the Governor of Alaska threatened to suspend its
15 identification card program for medical marijuana patients due to fear
16 of federal prosecution.

17 97. In California and other states, municipalities license, permit or deputize
18 authorized providers of medical marijuana. In order to interfere with and disable California's
19 and other states' medical marijuana laws, and to force states to adopt and enforce federal
20 prohibitions of medical marijuana use, federal officials have selectively arrested, prosecuted
21 and/or sought forfeiture of property from numerous cultivators and/or providers of medical
22 marijuana on the basis that these entities or individuals were licensed, permitted, deputized or
23 otherwise operating with the express permission of and in close cooperation with city and county
24 governments in order to implement state law. Federal officials have not enforced federal laws
25 against similarly situated individuals or entities engaged in either non-medical marijuana
26 activity, or medical marijuana activity undertaken without the express permission and
27 cooperation of local governments. Defendants' actions against plaintiff WAMM and its
28 members fall within this federal strategy.

1 98. In order to render unworkable these responsible attempts by local
2 governments to implement state medical marijuana laws, the federal government has repeatedly
3 targeted their law enforcement powers to selectively disable the chosen implementation
4 mechanisms. While any single one of these federal enforcement actions might, taken in isolation,
5 be a legitimate exercise of federal authority, taken in concert they constitute a purposeful federal
6 policy to require local governments to abandon attempts to implement state medical marijuana
7 laws, render state medical marijuana laws unenforceable, coerce the state to recriminalize
8 medical marijuana, and coerce state and local officials to assist in the enforcement of federal
9 laws prohibiting medical use of marijuana.

10 99. Illustrating this federal practice and policy of targeted investigation,
11 enforcement, and prosecution in order to sabotage and render unenforceable California’s medical
12 marijuana regulations, then-Administrator of the DEA Asa Hutchinson publicly confirmed that
13 medical marijuana raids (such as those that took place in San Francisco and Oakland in February,
14 2002) were a part of the federal government’s commitment to disrupt implementation of the
15 Compassionate Use Act. Hutchinson also reiterated the federal policy of disrupting
16 implementation of the state’s medical marijuana laws in a September 30, 2002 letter to
17 California Attorney General Bill Lockyer. Lockyer concluded, based on communication with
18 federal officials, that federal enforcement actions against cultivators and providers of medical
19 marijuana (including plaintiffs herein) during his tenure were intended to be punitive and
20 intimidating gestures, not aimed at enforcement of legitimate federal interests, but at interfering
21 with implementation of California law.

22 100. The federal policy of targeted raids, seizures, and forfeiture actions against
23 medical marijuana providers who were licensed, permitted, deputized or otherwise authorized by
24 the local government include but are not limited to the following:

- 25 a. Federal officials closed the non-profit medical marijuana provider
26 Oakland Cannabis Buyers Cooperative (“OCBC”), which was
27 licensed by the City of Oakland, pursuant to a local ordinance enacted
28 specifically for that purpose.

- 1 b. Federal officials prosecuted Ed Rosenthal, who had been deputized by
2 the City of Oakland to cultivate medical marijuana for OCBC. A
3 federal judge subsequently found Rosenthal had been vindictively
4 prosecuted, and on that basis dismissed tax evasion and money
5 laundering charges against him.
- 6 c. Federal agents raided the Los Angeles Cannabis Resource Center,
7 which operated under a permit from the City of West Hollywood.
8 The federal government seized and subjected to forfeiture related
9 property and funds, including property owned by the City of West
10 Hollywood. The government agreed to modify its forfeiture claim to
11 exclude the interest in the property claimed by Wells Fargo bank, but
12 proceeded without quarter or compromise against the property interest
13 claimed by the City of West Hollywood.
- 14 d. Soon after Los Angeles City Council members sent a letter to DEA
15 administrator Karen Tandy requesting the federal government cease
16 threatening medical marijuana clinics with asset forfeiture notices and
17 just before the City Council was set to vote on a resolution to impose
18 regulations upon existing organizations providing medical marijuana
19 to patients, including a moratorium on the establishment of any new
20 such organizations, the DEA coordinated raids of several Los Angeles
21 area medical marijuana provider organizations that had been working
22 closely with, and with full permission of, the local government. The
23 raids were purposefully timed to intimidate City Council members
24 and prevent them from enacting measures that would implement the
25 state's medical marijuana laws.
- 26 e. In 2007, Tom O'Brien, then-Chief of the Criminal Division for the
27 United States Attorney's Office in Los Angeles, addressed a meeting
28 of the Public Safety Committee of the Coachella Valley Association

1 of Governments (CVAG). O'Brien stated that local government
2 officials would face federal prosecution for enacting an ordinance that
3 would license medical marijuana providers. O'Brien also threatened
4 seizure of any municipal property involved in the provision of
5 medical marijuana to patients.

- 6 f. The federal government has engaged in a coordinated effort to
7 intimidate property owners who rent premises to medical marijuana
8 providers with a history of working closely with, and with full
9 permission of, local governments. DEA has sent letters warning
10 property owners that they were liable to forfeiture and criminal
11 charges for allowing distribution of illegal drugs on their property.
12 Forfeiture attorneys typically advise landlords who have received
13 such notices to promptly evict tenants or take other action to ensure
14 that they desist from illegal activity.
- 15 g. While the Santa Barbara City Council was considering the imposition
16 of regulations to strictly govern existing organizations providing
17 medical marijuana, including a moratorium on the establishment of
18 any new such organizations, the DEA coordinated raids of several
19 Santa Barbara area medical marijuana provider organizations that had
20 been working closely with, and with full permission of, the local
21 government. DEA also advised local property owners that they could
22 face potential seizures of their property and assets if they continue to
23 rent space to organizations providing medical marijuana to patients.
24 The targeted organizations had been working closely with, and with
25 full permission of, the local government.
- 26 h. The federal government raided and closed C-3, a medical marijuana
27 collective in Orange County that had been working closely with, and
28 with full permission of, the local government. The federal raid

1 occurred shortly after the Orange County Board of Supervisors voted
2 against an outright ban on all medical marijuana provider
3 organizations. The DEA filed a forfeiture notice on the property in
4 which the collective was located, with no prior warning to the
5 property owner from the DEA.

- 6 i. The federal government raided and closed an Alameda county
7 medical marijuana provider that had been working closely with, and
8 with full permission of, the local government, operating under a
9 county permit. A county supervisor publicly denounced the raid.
- 10 j. The federal government conducted a coordinated series of raids,
11 arrests and seizures closing down medical marijuana providers in
12 Bakersfield, Morrow Bay, Corona, and West Hollywood that had
13 been working closely with, and with full permission of, their local
14 governments. The counties' policies of issuing permits were left in
15 shambles and forced remaining medical marijuana providers to close
16 voluntarily.

17 101. Federal officials have urged state and local law enforcement officials to
18 make arrests and seizures related to medical marijuana, even where the conduct complies with
19 state law, leaving defendants to raise state medical marijuana protections only after being forced
20 to appear in court to defend themselves against state criminal prosecution. For example, in
21 Bakersfield, a medical marijuana provider targeted by the federal government was licensed by
22 the Sheriff's department, which then assisted DEA with the raid against the provider. This
23 practice, initiated and encouraged by the federal government, continues today, in spite of
24 numerous official pronouncements by the California Attorney General instructing state law
25 enforcement to enforce state, not federal, laws.

1 102. Federal officials have taken a number of other actions designed to pressure
2 states to legislate according to federal policy on marijuana. Examples include but not limited to
3 the following:

4 a. Congress has passed legislation expressing its disagreement with state
5 efforts to allow medical use of marijuana and, in a rare exemption
6 from the general prohibition against expending federal funds to
7 influence state elections, has authorized federal officials to oppose
8 enactment of state laws allowing medical use of marijuana.

9 b. In expending federal funds to oppose state ballot initiatives and
10 legislative enactments that would allow medical use of marijuana,
11 federal officials have violated state election laws, including but not
12 limited to the following examples:

13 i. John Walters, Director of the White House Office of National
14 Drug Control Policy (ONDCP) failed to file a statutorily
15 required Report of Campaign Contributions and Expenses when
16 traveling in Nevada and advocating the defeat of a medical
17 marijuana initiative in Nevada.

18 ii. Walters approved and authorized a series of anti-marijuana
19 commercials which aired virtually around the clock in Nevada
20 during the latter months of the campaign. Walters and ONDCP
21 were required by state law to, but did not, file a Report of
22 Campaign Contributions and Expenses.

23 iii. In 2004, ONDCP Director Scott Burns traveled to Montana to
24 oppose I-148, the Montana Medical Marijuana Act voter
25 initiative. Burns and ONDCP Director Walters, along with
26 other ONDCP staff, jointly planned the trip to Montana and
27 authorized expenditures. In campaigning against the initiative,
28 ONDCP violated state finance laws.

1 iv. ONDCP violated Rhode Island election laws by failing to
2 register as lobbyists when it sent representatives to oppose a
3 medical marijuana measure there in 2006.

4 v. ONDCP violated South Dakota campaign finance reporting
5 laws when opposing the state's November 2006 medical
6 marijuana measure.

7 c. Federal officials aggressively opposed efforts to enact a medical
8 marijuana law in New Mexico. Officials threatened to target New
9 Mexico state officials with federal prosecution if the state legalized
10 medical marijuana. The Governor of New Mexico stated in a letter to
11 President Bush that the state's Department of Health is now impaired
12 in its ability to fully comply with new state medical marijuana law for
13 fear of federal prosecution.

14 **California Pain Management Laws**

15 93. In addition to the Compassionate Use Act, California has enacted other
16 laws directed at pain management for seriously ill patients. In 1990, the Legislature enacted the
17 Intractable Pain Law, Cal. Bus. & Prof. Code § 2241.5, which exempts from disciplinary action a
18 physician or surgeon who prescribes or administers controlled substances for treatment of a
19 person suffering from intractable pain. In 1997, the Legislature enacted the Pain Patient's Bill of
20 Rights, Cal. Health & Safety Code §§ 124960-124961, which provides that "[a] patient suffering
21 from severe chronic intractable pain has the option to request or reject the use of any or all
22 modalities in order to relieve his or her severe chronic intractable pain." Cal. Health & Safety
23 Code § 124961(a). This includes the use of physician-prescribed opiate medications. Cal. Health
24 & Safety Code §§ 124960(g), (h), and (i). In enacting the Pain Patient's Bill of Rights, the
25 Legislature recognized that "[i]nadequate treatment of acute and chronic pain originating from
26 cancer or noncancerous conditions is a significant health problem." Cal. Health & Safety Code §
27 124960(b). An analysis that accompanied the Legislature's third reading of Senate Bill 402,
28 which enacted the Pain Patient's Bill of Rights, indicates that the legislature intended to create a

1 positive legal duty to treat pain and suffering effectively. The bill analysis also indicates that one
2 of the Legislature’s goals in enacting the Pain Patient’s Bill of Rights was to express “[t]hat
3 treatment for severe, chronic, intractable pain is a fundamental human right.”

4 94. The California Legislature has secured the fundamental rights of patients
5 suffering from chronic, severe, intractable pain to maintain bodily integrity, ameliorate pain,
6 preserve life, make certain important personal decisions, and to consult with their physicians and
7 act on their physicians’ recommendations through the Intractable Pain Law and the Pain
8 Patient’s Bill of Rights.

9 95. The use of marijuana for medical purposes is deeply ingrained in this
10 nation’s history and tradition. Under common law, use of medical cannabis was not proscribed.
11 When the original 13 states ratified the Bill of Rights, cannabis was in use as a medicine.
12 Indeed, until 1941, cannabis was indicated for numerous medical conditions in the
13 pharmacopoeia of the United States. This nation’s long, historical tradition of liberty concerning
14 the use of medical marijuana contrasts sharply with the relatively recent assertion of federal
15 power to restrict the use of marijuana. The first federal restriction on the sale of marijuana did
16 not appear until almost the middle of the 20th Century, in the form of the Marihuana Tax of
17 1937.

18 **FIRST CAUSE OF ACTION**
19 **(Injunctive And Declaratory Relief For Violation Of**
20 **Other Fundamental Rights Secured By**
21 **The Fifth And Ninth Amendments Of**
22 **The United States Constitution)**

23 96. Plaintiffs incorporate by reference the allegations set forth in all of the
24 preceding paragraphs.

25 97. An actual controversy has arisen and now exists between Plaintiffs and
26 Defendants, and Plaintiffs have no adequate remedy at law.

27 98. The Due Process clause of the Fifth Amendment of the U.S. Constitution
28 protects unenumerated liberties from federal intrusion if they are fundamental rights. The Ninth
Amendment of the U.S. Constitution also protects unenumerated liberties. The actions of

1 Defendants, as alleged herein, violated the following fundamental rights of the
2 individually named WAMM patient Plaintiffs and other members of WAMM, which are secured
3 by the Fifth and Ninth Amendments of the U.S. Constitution:

- 4 • the fundamental right to preserve life;
- 5 • the fundamental right to ameliorate pain;
- 6 • the fundamental right to maintain bodily integrity;
- 7 • the fundamental right to consult with their physicians regarding
- 8 treatment and to act on the physicians' recommendations; and
- 9 • the fundamental right to make certain intimate and personal decisions.

10 99. Each of these rights is deeply rooted in American history and tradition and
11 inherent in the concept of ordered liberty.

12 100. The actions of Defendants, as alleged herein, violate Plaintiffs' rights
13 secured under the Fifth and Ninth Amendments, and Plaintiffs request the relief set forth in the
14 Prayer for Relief.

15 **SECOND CAUSE OF ACTION**
16 **(Injunctive And Declaratory Relief For Deprivation**
17 **Of The Fundamental Right To Control**
18 **The Circumstances Of One's Own Death Secured**
19 **By The Fifth And Ninth Amendments Of The**
20 **United States Constitution)**

21 101. Plaintiffs incorporate by reference the allegations set forth in all of the
22 preceding paragraphs.

23 102. An actual controversy has arisen and now exists between Plaintiffs and
24 Defendants, and Plaintiffs have no adequate remedy at law.

25 103. The Due Process clause of the Fifth Amendment of the U.S. Constitution
26 protects unenumerated liberties from federal intrusion if they are fundamental rights. The Ninth
27 Amendment of the U.S. Constitution also protects unenumerated liberties. The actions of
28 Defendants, as alleged herein, violated the fundamental right to control the circumstances of
their own deaths of the individually named WAMM patient Plaintiffs and other members of
WAMM, which are secured by the Fifth and Ninth Amendments of the U.S. Constitution:

1 **FIFTH CAUSE OF ACTION**
2 **(Injunctive And Declaratory Relief For**
3 **Violations Of The Fourth, Fifth,**
4 **Ninth, And Tenth Amendments Of**
5 **The United States Constitution)**

6 112. Plaintiffs incorporate by reference the allegations set forth in all of the
7 preceding paragraphs.

8 113. An actual controversy has arisen and now exists between Plaintiffs and
9 Defendants.

10 114. Federal actions described herein that lead to the seizure of the WAMM
11 patient Plaintiffs' medical marijuana violated their rights under the Fourth, Fifth, Ninth, and
12 Tenth Amendments of the U.S. Constitution.

13 115. The actions of Defendants, as alleged herein, violate Plaintiffs' rights
14 secured under the Fourth, Fifth, Ninth and Tenth Amendments, and Plaintiffs request the relief
15 set forth in the Prayer for Relief.

16 **SIXTH CAUSE OF ACTION**
17 **(Injunctive and Declaratory Relief:**
18 **Medical Necessity Doctrine)**

19 116. Plaintiffs incorporate by reference the allegations set forth in all of the
20 preceding paragraphs.

21 117. An actual controversy has arisen and now exists between Plaintiffs and
22 Defendants.

23 118. Under the doctrine of medical necessity, individual patients who (1) suffer
24 from a serious medical condition, (2) will suffer imminent harm without access to medical
25 marijuana, (3) need marijuana for the treatment of their medical condition or to alleviate the
26 medical condition or symptoms associated with the medical condition or to prevent or forestall
27 their own deaths, and (4) have no reasonable legal alternative to marijuana for the effective
28 treatment or alleviation of their medical condition or symptoms associated with the medical
condition because they have tried all other legal alternatives to marijuana and the alternatives
have been ineffective or result in intolerable side effects, may use and obtain medical marijuana
for their own personal medical treatment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: November 28, 2007

BINGHAM McCUTCHEN LLP

By: /s/
Frank Kennamer
Attorneys for WAMM Plaintiffs

Additional Counsel:

Daniel Abrahamson (SBN 158668)
DRUG POLICY ALLIANCE
Office Of Legal Affairs
717 Washington Street
Oakland, California 94607
Telephone: 510.208.7711
Facsimile: 510.208.7722

DRUG POLICY ALLIANCE

By: /s/
Daniel Abrahamson
Attorneys for WAMM Plaintiffs

Graham Boyd (SBN 167727)
American Civil Liberties Union Foundation
1101 Pacific Avenue, Suite 333
Santa Cruz, CA 95062
Telephone: (831) 471-9000
Facsimile: (831) 471-9676

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

By: /s/
Graham Boyd
Attorneys for City of Santa Cruz and
WAMM Plaintiffs

Allen Hopper (SBN 181678)
American Civil Liberties Union Foundation
1101 Pacific Avenue, Suite 333
Santa Cruz, CA 95062
Telephone: (831) 471-9000
Facsimile: (831) 471-9676

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

By: /s/
Allen Hopper
Attorneys for City of Santa Cruz and
WAMM Plaintiffs

Benjamin Rice (SBN 98551)
331 Soquel Avenue, Suite 203
Santa Cruz, California 95062
Telephone: 831.425.0555
Facsimile: 831.459.9815

By: /s/
Benjamin Rice
Attorneys for County of Santa Cruz
and WAMM Plaintiffs

