

July 7, 2006

Clerk of the Court  
Superior Court of California, San Diego  
Civil Business Office  
330 W. Broadway  
San Diego, CA 92101  
Via in-person delivery

**Re: *County of San Diego v. San Diego NORML et al.,*  
Case No. 860665, before the Honorable William R. Nevitt, Jr.,  
Department 64, Superior Court of California, San Diego**

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UNION FOUNDATION

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OFFICERS AND DIRECTORS  
NADINE STROSSEN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

RICHARD ZACKS  
TREASURER

**Notice of Motion and Motion for Leave to File Complaint in  
Intervention and Memorandum of Points and Authorities in  
Support Thereof on behalf of Movants Wendy Christakes,  
Pamela Sakuda, Norbert Litzinger, William Britt, Yvonne  
Westbrook, Stephen O'Brien, Wo/Men's Alliance for Medical  
Marijuana, and Americans for Safe Access**

Dear Clerk of the Court:

Enclosed please find the following original documents for filing in the  
above-referenced cause of action:

- (1) Notice of Motion and Motion for Leave to File Complaint in  
Intervention and Memorandum of Points and Authorities in  
Support Thereof, with Declarations and Exhibits attached; and
- (2) Proposed Complaint in Intervention.

Also enclosed is a check for the filing fee for this motion and proposed  
complaint of \$2,600.00 made out to the "Superior Court."

Please file stamp the extra copies of the above-referenced documents and  
return them to our office in the enclosed, addressed, stamped envelope.

Thank you for your consideration.

Sincerely,

M. Allen Hopper  
Senior Staff Attorney

1 Allen Hopper (#181678)  
American Civil Liberties Union Foundation  
2 Drug Law Reform Project  
1101 Pacific Avenue, Ste. 333  
3 Santa Cruz, CA 95060  
Telephone: 831/471-9000  
4 Facsimile: 831/471-9676  
5

6 **Additional counsel listed on signature page.**  
7

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**  
9

10 COUNTY OF SAN DIEGO,

11 Plaintiff,  
12 v.

13 SAN DIEGO NORML, a California  
Corporation, SANDRA SHEWRY, Director of  
the California Department of Health Services  
14 in her official capacity; and DOES 1 through  
50 inclusive,  
15

16 Defendants  
17

Case No. GIC 860665

**NOTICE OF MOTION AND MOTION  
FOR LEAVE TO FILE COMPLAINT IN  
INTERVENTION AND MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: August 4, 2006

Time: 2:30 p.m.

Dept.: 64

Judge: Honorable William R. Nevitt, Jr.

Action Filed: February 1, 2006  
18

19 COUNTY OF SAN BERNARDINO and  
GARY PENROD as Sheriff of the COUNTY  
20 OF SAN BERNARDINO,

21 Plaintiffs,  
22 v.

23 STATE OF CALIFORNIA; SANDRA  
SHEWRY, in her official capacity as Director  
of California Department of Health Services;  
24 and DOES 1 through 50, inclusive,  
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Defendants

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COUNTY OF MERCED AND MARK PAZIN, as Sheriff of the COUNTY OF MERCED, and DOES 51 through 100 inclusive,

Intervenors

WENDY CHRISTAKES;  
PAEMLASAKUDA; NORBERT LITZINGER; WILLIAM BRITT; YVONNE WESTBROOK; STEPHEN O'BRIEN; WO/MEN'S ALLIANCE FOR MEDICAL MARIJUANA; AND AMERICANS FOR SAFE ACCESS,

Third-Party Plaintiff Intervenors.

1                                   **NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE COMPLAINT IN**  
2                                   **INTERVENTION**

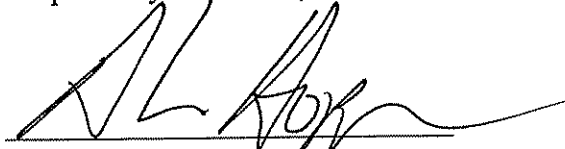
3 **TO ALL PARTIES AND TO THEIR ATTORNEY OF RECORD:**

4           Notice is hereby given that on August 4, 2006, at 2:30 p.m. in Department 64 of the  
5 above-captioned Court, located at Hall of Justice, Fourth Floor, 330 W. Broadway, San Diego,  
6 California, Movants Wendy Christakes, Pamela Sakuda, Norbert Litzinger, William Britt,  
7 Yvonne Westbrook, Stephen O'Brien, the Wo/Men's Alliance for Medical Marijuana  
8 ("WAMM") and Americans for Safe Access ("ASA") will move and do hereby move this Court  
9 for leave to intervene in the above-captioned consolidated action.

10           This Motion is based upon the Court's file in this matter, the pleadings and records on  
11 file herein, this Notice of Motion, and upon the Memorandum of Points and Authorities and  
12 Declarations of Joseph D. Elford, Graham Boyd, Valerie A. Leveroni Corral and Allen Hopper,  
13 with attachments thereto, in support thereof, along with such other and further oral and  
14 documentary evidence as may be present at the hearing thereon.

15 Dated: July 7, 2006

16                                   Respectfully submitted,

17 

18 ALLEN HOPPER (SBN 181678)  
19 ACLU Drug Law Reform Project  
20 1101 Pacific Avenue, Suite 333  
21 Santa Cruz, CA 95060  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**  
2 **LEAVE TO FILE COMPLAINT IN INTERVENTION**

3 **I. FACTUAL AND PROCEDURAL BACKGROUND**

4 Current Plaintiffs and Plaintiff Intervenors in this action are the Counties of San Diego,  
5 San Bernardino, and Merced, as well as the Sheriffs of San Bernardino and Merced Counties.

6 This suit was initiated by the filing of two separate complaints in February 2006, seeking  
7 a Declaratory Judgment that California's medical marijuana laws are invalid. On March 30,  
8 2006, the original actions were consolidated by order of the Court. On June 2, 2006, the Court  
9 overruled Demurrers to the Complaints and also entered an order permitting Merced County and  
10 the Sheriff of Merced County to join the action as Plaintiff Intervenors.

11 Movants are Wendy Christakes, Pamela Sakuda, Norbert Litzinger, William Britt,  
12 Yvonne Westbrook, Stephen O'Brien, the Wo/Men's Alliance for Medical Marijuana  
13 ("WAMM") and Americans for Safe Access ("ASA"), who make this motion because they have  
14 a direct interest in the subject matter of this litigation, which is likely to be directly impacted by  
15 the outcome of the litigation. Intervention will also conserve judicial resources because Movants  
16 have an active controversy with and claims against Plaintiffs and Plaintiff Intervenors. Judicial  
17 economy is better served by Movants intervening in this action, rather than filing a separate  
18 lawsuit -- likely to be consolidated with this action -- addressing identical legal issues.

19 Movants Wendy Christakes, Pamela Sakuda, William Britt and Yvonne Westbrook are  
20 all medical marijuana patients who use marijuana on the recommendation of their physicians,  
21 and in full compliance with California law, to treat serious medical conditions including chronic  
22 pain and sciatica, muscle spasticity resulting from multiple sclerosis, the symptoms and side-  
23 effects of rectal cancer, and the symptoms associated with epilepsy and post-polio syndrome.  
24 See Exhibit 1, Declaration of Joseph D. Elford.

25 Norbert Litzinger is Ms. Sakuda's spouse and "primary caregiver" as defined under the  
Compassionate Use Act of 1996 (Health & Saf. Code §11362) and the Medical Marijuana

1 Program Act, (Health & Saf. Code §§ 11362.7 – 11362.83). See Exhibit 1, Declaration of Joseph  
2 D. Elford at ¶ 5.

3 Dr. Stephen O'Brien is a licensed physician, board certified in internal medicine, who in  
4 full compliance with California law recommends marijuana to patients with serious medical  
5 conditions that could benefit from marijuana as medicine. See Exhibit 2, Declaration of Graham  
6 Boyd at ¶ 3.

7 Movants WAMM and ASA are membership organizations representing their members'  
8 interests as medical marijuana patients, caregivers and physicians who recommend medical  
9 marijuana to their patients. ASA is the largest grassroots organization in California working  
10 solely to protect the rights of patients who use marijuana for medical purposes, as well as the  
11 doctors who recommend marijuana to them. ASA's membership includes thousands of medical  
12 marijuana patients, caregivers and physicians residing in California. See Exhibit 1, Declaration  
13 of Joseph D. Elford at ¶ 8. WAMM is a collective located in the City and County of Santa Cruz  
14 comprised of patients who suffer from HIV/AIDS, multiple sclerosis, glaucoma, epilepsy,  
15 various forms of cancer, and other serious illnesses and diseases. The majority of these patients  
16 are terminally ill. These patients use marijuana with the written recommendations of their  
17 physicians, in full compliance with California's medical marijuana laws. Each patient's  
18 "primary caregiver," defined by California law as the individual designated by the patient who  
19 consistently assumes responsibility for the housing, health, or safety of the patient, Cal. Health &  
20 Safety Code § 11362.5(e), is also a member of WAMM. See Exhibit 3, Declaration of Valerie  
21 A. Leveroni Corral at ¶¶ 15 and 16.

22 **II. MOVANTS ARE ENTITLED TO INTERVENE PURSUANT TO CALIFORNIA**  
23 **CODE OF CIVIL PROCEDURE SECTION 387(b) BECAUSE THEY HAVE**  
24 **SIGNIFICANT RELEVANT INTERESTS NOT ADEQUATELY REPRESENTED**  
25 **BY THE EXISTING PARTIES, DISPOSITION OF THE ACTION WITHOUT**  
**THEM WILL IMPEDE AND IMPAIR THEIR ABILITY TO PROTECT THOSE**  
**INTERESTS, AND THIS APPLICATION TO INTERVENE IS TIMELY.**

1 A person is entitled to intervene as of right, “if the person seeking intervention claims an  
2 interest relating to the property or transaction which is the subject of the action and that person is  
3 so situated that the disposition of the action may as a practical matter impair or impede that  
4 person’s ability to protect that interest, unless that person’s interest is adequately represented by  
5 existing parties . . . .” Code Civ. Proc. § 387 subd. (b). Intervention pursuant to section 387  
6 subdivision (b) is mandatory if the petition to intervene is timely made.

7 The critical language for the applicability of section 387, subdivision (b) is “the property  
8 or transaction which is the subject of the action.” *California Physicians’ Service v. Superior*  
9 *Court* (1980) 102 Cal.App.3d 91, 96. The court must determine what “transaction” is the subject  
10 of this action. A transaction is an “[a]ct of transacting or conducting any business; negotiation,  
11 management, proceeding; that which is done; an affair . . . Something which has taken place,  
12 whereby the cause of action has arisen.” *Ibid.*

13 Movants have a direct interest in the enforcement and implementation of California’s  
14 medical marijuana laws. The transaction underlying this action is Plaintiffs’ opposition to these  
15 very laws, the express refusal to implement those laws, and the request that this Court declare  
16 those laws null and void.

17 The Compassionate Use Act and the Medical Marijuana Program Act protect the patients  
18 and defined caregivers from state criminal laws which otherwise prohibit possession or  
19 cultivation of marijuana, when they possess or cultivate marijuana for medical treatment  
20 recommended by a physician. (Health & Saf. Code, § 11362.5, subd. (d) and Health & Saf. Code  
21 § 11362.765.) These provisions allow seriously and terminally ill patients to use marijuana  
22 legally under state law with a physician’s recommendation. They provide relief from pain to  
23 thousands of Californians. The Compassionate Use Act has had a decisive, profound impact on  
24 improving the quality of care given to, and received by, many California citizens, specifically  
25 including Movants Wendy Christakes, Pamela Sakuda, Norbert Litzinger, William Britt, Yvonne

1 Westbrook and members of WAMM and ASA, who are patients and caregivers falling squarely  
2 within the Act. For these and countless other medical marijuana patients throughout the state,  
3 marijuana provides necessary, effective treatment for pain, nausea, seizures or other serious  
4 medical symptoms without the severe, debilitating side effects caused by other medications. See  
5 Exhibit 3, Declaration of Valerie A. Leveroni Corral at ¶ 17.

6 Similarly, California's medical marijuana laws protect physicians who recommend use of  
7 marijuana for medical treatment from prosecution or denial of any right or privilege. (Health &  
8 Saf. Code, § 11362.5, subd. (c).) In the absence of California's medical marijuana laws, Movant  
9 O'Brien would face a substantial risk of losing his medical license for providing this advice and  
10 these recommendations. Like the patients, the physician's interests are at issue in this litigation  
11 and are thus a significantly protectable interest.

12 In a very tangible sense, Movants are the real targets of Plaintiffs' suit. Movants are  
13 medical marijuana patients and care providers who are California residents, as well as  
14 organizations whose membership includes many California medical marijuana patients and care  
15 providers. If the Counties and County Sheriffs are successful in their challenge and California's  
16 medical marijuana laws are invalidated, Movants' ability to protect their interests in access to  
17 medicine and the ability to provide medical care to their loved ones and patients will be severely  
18 impaired.

19 Additionally, Movants' interests are not adequately represented by the existing parties.  
20 Although the State has an interest in defending its laws, as a public actor it is subject to various  
21 pressures, including the upcoming election in November, which may temper its ability to  
22 vigorously defend the use of medical marijuana. The State Defendants have demonstrated in the  
23 past hostility to the very statutes they are now asked to defend. The State and the Director of  
24 California Department of Health Services just months ago improperly suspended operation of  
25 California's Medical Marijuana Program and issuance of patient identification cards required



1 under state law, and resumed compliance with these duly-enacted laws only when counsel for  
2 Movants threatened to bring legal action against them. See Exhibit 4 (attached to Declaration of  
3 Allen Hopper), July 12, 2005 Demand Letter to Governor Arnold Schwarzenegger and  
4 California Department of Health Services Director Sandra Shewry. Finally, the State faces less  
5 risk of harm than do Movants if Plaintiffs were to prevail: while the State will continue to  
6 function normally, Movants face serious impairment of their interests, including criminal  
7 sanctions and the loss of medical licensure. Movants' interest in defending laws that affect them  
8 directly and immediately far outweighs the State's interest in defending laws on the principle that  
9 it is its job to do so.

10 Nor are Movants' interests adequately represented by Defendant San Diego NORML.  
11 There is no evidence whatsoever before this Court describing the membership of San Diego  
12 NORML. There is absolutely no indication that San Diego NORML is comprised primarily or  
13 predominantly of medical marijuana patients and caregivers who would be directly impacted by  
14 a court decision for Plaintiffs. San Diego NORML cannot possibly adequately represent the  
15 interests of Movants, whose ability to receive medicine and provide care will be directly (and  
16 potentially catastrophically) affected by this action. Importantly, San Diego NORML's principle  
17 argument to this Court in its demurrer was that it is *not* a proper defendant in this action, and  
18 there is every reason to believe that it will continue to so argue, perhaps with more success in the  
19 future. Finally, Movants ASA and WAMM have as their *sole* mission the protection of the rights  
20 of medical marijuana patients and exclusively represent the interests of actual medical marijuana  
21 patients and their care providers. Movants' interests are more direct, substantial and compelling  
22 than those of the named defendants.

23 Finally, Movants' petition to intervene is timely made. (See *Sanders v. Pacific Gas &*  
24 *Electric Co.* (1975) 53 Cal.App.3d 661, 668-669 [applying the principle that the right to  
25 intervene should be asserted within a "reasonable time"].). This action was initiated in February

1 2006. Movants do not request any modification of the scheduling order entered on June 30,  
2 2006. All of the activity up to this point has been procedural in nature, including the  
3 Defendants' demurrers and the intervention of Merced County and the Merced County Sheriff.

4 For the above stated reasons, Movants' motion to intervene pursuant to Code of Civil  
5 Procedure section 387(b) should be granted.

6 **III. MOVANTS SHOULD BE PERMITTED TO INTERVENE PURSUANT TO**  
7 **CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 387(a) BECAUSE**  
8 **THEY HAVE A DIRECT INTEREST IN THE LITIGATION, INTERVENTION**  
9 **WILL NOT ENLARGE THE ISSUES AND THEIR REASONS FOR**  
10 **INTERVENTION OUTWEIGH ANY OPPOSITION FROM THE PARTIES.**

11 In the alternative, Movants should be permitted to intervene pursuant to Section 387(a) of  
12 the California Code of Civil Procedure, which provides: "Upon timely application, any person,  
13 who has an interest in the matter in litigation, or in the success of either of the parties, or an  
14 interest against both, may intervene in the action or proceeding." The statute is construed  
15 liberally in favor of intervention, and the intervenor's interest need not be pecuniary. *Simpson*  
16 *Redwood Co. v. State of Calif.* (1987) 196 Cal.App.3d 1192, 1201. It need not be certain that  
17 such interest will be affected by the outcome of the case; a substantial probability is sufficient.  
18 *Timberidge Enterprises, Inc. v. Santa Rosa* (1978) 86 Cal.App.3d 873, 881.

19 "The purposes of intervention are to protect the interests of others who may be affected  
20 by the judgment and to obviate delay and multiplicity of actions." *People ex rel. Rominger v.*  
21 *County of Trinity* (1983) 147 Cal.App.3d 655, 660 (citing *People v. Superior Court (Good)*  
22 (1976) 17 Cal.3d 732, 736.) Courts have granted motions to intervene pursuant to section 387(a)  
23 when (1) the proposed intervenors' "interest in the litigation" is "... of such a direct and  
24 immediate character that the intervenor will either gain or lose by the direct legal operation and  
25 effect of the judgment"; (2) the intervention will "not enlarge the issues so as to litigate matters  
not raised by the original parties"; and (3) the reasons for intervention outweigh any opposition  
of parties presently in the action. *Id.* at 660-661 (quoting *Elliott v. Superior Court* (1914) 168

1 Cal. 727, 734). Movants meet all three requirements and therefore also qualify for permissive  
2 intervention.

3 A. *Movants have a direct and immediate interest in this case.*

4 As discussed above, Movants' interests in this action are urgent and direct. The  
5 *Rominger* case is directly on point. In *Rominger*, the Court of Appeal directed that the Sierra  
6 Club be allowed to intervene in a dispute between the State and a county over whether state law  
7 preempted a county ordinance that imposed stricter restrictions on pesticide use than state law.  
8 Here as in *Rominger*, Movants are, "among those whom the [law at issue] was specifically  
9 designed to protect, and allege[] an injury which the [law at issue] was specifically designed to  
10 prevent." *People ex rel. Rominger, supra*, 147 Cal.App.3d at 661. Like *Rominger*, this case  
11 involves a dispute between the state and a county over the validity of a law enacted to protect  
12 Movants, and, like the intervenors in *Rominger*, Movants should be permitted to intervene to  
13 assert their unique interest in defending that law. As in *Rominger*, denial of intervention here  
14 would be reversible error.

15 As with the intervenors in *Rominger*, the interests of the individual Movants as direct  
16 beneficiaries of the Compassionate Use Act stem from their concern for their own health and the  
17 health of their loved ones and patients. "This interest is compelling enough that they should be  
18 permitted to intervene," notwithstanding that the State may have a general interest in defending  
19 the law. See *id.* at 665 (finding that the interest of individual members of the Sierra Club in  
20 defending county ordinances against a State preemption argument was more direct than that of  
21 the County because their interest stemmed "from concern of their own health and well-being.").

22 Movants should be allowed to intervene because they allege "specific harm" and place  
23 themselves "among the persons that the [Compassionate Use Act and its implementing statutes]  
24 were specifically designed to benefit and protect. Where a statute exists specifically to protect  
25 the public from a hazard to its health and welfare that would allegedly occur without such

1 statute, members of the public have a substantial interest in the protection and benefit provided  
2 by such statute. If a party brings an action to invalidate such statute such action has an  
3 immediate and direct effect on the public's interest in protecting its health and welfare." *Id.* at  
4 662-663.

5 B. *Movants will not expand the legal issues.*

6 Movants raise no new issues by their intervention. The primary issue in this litigation is  
7 whether California's medical marijuana laws are preempted by federal law or an international  
8 treaty. In their Complaint in Intervention, Movants do not raise any new legal or factual issues  
9 to be decided by the trial court. If Movants are permitted to intervene, the only issue before the  
10 trial court will continue to be the validity of California's medical marijuana laws. See *People ex*  
11 *rel. Rominger*, 147 Cal.App.3d at p. 664 (holding that the intervention of Sierra Club members  
12 would not impermissibly enlarge the scope of the lawsuit because the same factual and legal  
13 issues were raised by the proposed interveners).

14 C. *The movants' interests outweigh any opposition to intervention.*

15 Counsel for Movants has attempted to confer with all parties to this action regarding this  
16 motion. Counsel for Plaintiffs San Bernardino County and Gary Penrod and counsel for  
17 Defendant San Diego NORML have advised that they do not object to Movants' proposed  
18 intervention. Counsel for the State of California and Sandra Shewry has previously indicated to  
19 undersigned counsel that the State is not opposed generally to this intervention, but at the time  
20 this motion was finalized was out of the office and not available to provide the State's formal  
21 position. Counsel for the Merced County Plaintiff Intervenors indicated that he would need to  
22 present the question to the Merced County Board of Supervisors at their next meeting, during the  
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1 week of July 10, 2006, in order to take a formal position on this motion. Only counsel for  
2 Plaintiff San Diego County opposes this motion.<sup>1</sup>

3 Movants' reasons for intervention, however, outweigh any possible opposition from the  
4 parties. This litigation, which involves the availability of medicine to seriously and terminally ill  
5 patients, must of necessity result in factual and legal determinations concerning the nature of that  
6 access and use. Of particular significance is the fact that this lawsuit is between public entities  
7 over the fate of laws designed to protect the public's health and security. "Any argument that the  
8 parties should be permitted to litigate without the 'interference' of the very people those [laws]  
9 were designed to protect is an unacceptable assertion of bureaucratic dominion and control to the  
10 exclusion of the citizenry." *Ibid.*

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22 <sup>1</sup> San Diego County's opposition to Movants' intervention stands in stark contrast to its previous legal arguments to  
23 this Court. San Diego County asserted as grounds for naming San Diego NORML as a defendant in this matter a  
24 letter from San Diego NORML to the County threatening legal action. That letter is virtually identical in its  
25 substance to a letter sent two months later by the ACLU on behalf of medical marijuana patients throughout  
California advising San Diego County of the illegality of the County's position regarding the implementation of the  
Medical Marijuana Program Act. See San Diego County Complaint at ¶¶ 6 and 7. See Exhibit 5 (attached to  
Declaration of Allen Hopper), January 19, 2006 Demand Letter to San Diego County Board of Supervisors. By  
suing San Diego NORML as a defendant yet objecting to the intervention of Movants, San Diego appears to seek  
the Court's endorsement to its selection of who, among those expressing concern regarding the County's illegal  
conduct, will be permitted to litigate the important issues of public concern presented by this lawsuit.

1 **CONCLUSION**

2 For all the reasons set forth in this memorandum, Movants respectfully request this Court  
3 grant the accompanying Motion to Intervene.

4 Respectfully Submitted,

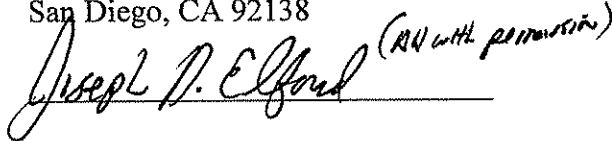
5 Dated: July 7, 2006

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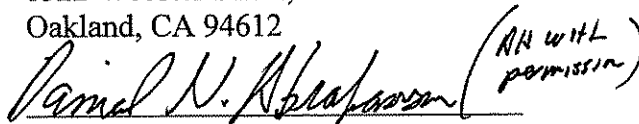
7 ALLEN HOPPER (SBN 181678)  
8 ACLU Drug Law Reform Project  
9 1101 Pacific Avenue, Suite 333  
10 Santa Cruz, CA 95060 *(Att with permission)*

11 

12 DAVID BLAIR-LOY (SBN 229235)  
13 ACLU of San Diego & Imperial Counties  
14 P.O. Box 87131  
15 San Diego, CA 92138 *(Att with permission)*

16 

17 JOSEPH D. ELFORD (SBN 189934)  
18 Americans for Safe Access  
19 1322 Webster Street, Suite 208  
20 Oakland, CA 94612

21 

22 DANIEL N. ABRAHAMSON (SBN 158668)  
23 Drug Policy Alliance  
24 819 Bancroft Way  
25 Berkeley, CA 94710

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2 Drug Law Reform Project  
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3 Santa Cruz, CA 95060  
Telephone: 831/471-9000  
4 Facsimile: 831/471-9676

5  
6 **Additional counsel listed on signature page.**

7  
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

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10 COUNTY OF SAN DIEGO,  
11 Plaintiff,  
12 v.  
13 SAN DIEGO NORML, a California  
Corporation, SANDRA SHEWRY, Director of  
14 the California Department of Health Services  
in her official capacity; and DOES 1 through  
15 50 inclusive,  
Defendants

Case No. GIC 860665

**PROPOSED COMPLAINT IN  
INTERVENTION**

Judge: Honorable William R. Nevitt, Jr.  
Dept.: 64

16 COUNTY OF SAN BERNARDINO and  
17 GARY PENROD as Sheriff of the COUNTY  
OF SAN BERNARDINO,  
18 Plaintiffs,  
19 v.  
20 STATE OF CALIFORNIA; SANDRA  
SHEWRY, in her official capacity as Director  
21 of California Department of Health Services;  
22 and DOES 1 through 50, inclusive,  
23 Defendants

24  
25 COUNTY OF MERCED AND MARK  
PAZIN, as Sheriff of the COUNTY OF

1 MERCED, and DOES 51 through 100  
2 inclusive,  
3 Intervenor  
4 WENDY CHRISTAKES;  
5 PAEMPLASAKUDA; NORBERT  
6 LITZINGER; WILLIAM BRITT; YVONNE  
7 WESTBROOK; STEPHEN O'BRIEN;  
8 WO/MEN'S ALLIANCE FOR MEDICAL  
9 MARIJUANA; AND AMERICANS FOR  
10 SAFE ACCESS,  
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12 Third-Party Plaintiff Intervenor.

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**PROPOSED COMPLAINT IN INTERVENTION**

By leave of court Third-Party Plaintiff Intervenor Wendy Christakes, Pamela Sakuda, Norbert Litzinger, William Britt, Yvonne Westbrook, Stephen O'Brien, Wo/Men's Alliance for Medical Marijuana ("WAMM") and Americans for Safe Access ("ASA") (hereinafter "Intervenor"), file this cross-complaint and thereby intervene in this action. Intervenor bring claims against Plaintiff County of San Diego, County of San Bernadino, Gary Penrod, as Sheriff of the County of San Bernadino ("Plaintiff") and Plaintiff Intervenor County of Merced and Mark Pazin, as Sheriff of County of Merced ("Plaintiff Intervenor").

1. In February 2006, Plaintiff filed separate complaints in the above-entitled action, seeking declaratory relief concerning the State of California's medical marijuana laws. The matters were consolidated and Defendant appeared, filing demurrers to both complaints. On June 2, 2006, the Court overruled Defendant's demurrers and granted Plaintiff Intervenor's motion to intervene.

2. As shown by the facts alleged below, Intervenor have a direct interest in the subject matter of this litigation, which interest is likely to be directly affected by the outcome of the



1 litigation. Adjudication of Intervenor's interests will not unduly delay nor expand the trial of this  
2 action.

3 3. Intervenor WENDY CHRISTAKES ("Christakes") is, and at all times mentioned herein  
4 was, a resident of the County of San Diego. Christakes is a twenty-nine-year-old mother of two  
5 children who uses marijuana on the recommendation of her physician, in full compliance with  
6 California law, to treat chronic pain, sciatica, and other symptoms associated with a herniated  
7 disk. Christakes is a member of ASA.

8 4. Intervenor PAMELA SAKUDA ("Sakuda") is, and at all times relevant to this action  
9 was, a resident of the County of San Diego. Sakuda is a fifty-eight-year-old medical marijuana  
10 patient who uses marijuana on the recommendation of her physician, in full compliance with  
11 California law, to treat symptoms and side-effects of stage four rectal cancer.

12 5. Intervenor NORBERT LITZINGER ("Litzinger") is, and at all times relevant to this  
13 action was, a resident of the County of San Diego. Litzinger is the husband of Intervenor Pamela  
14 Sakuda, and he is her "primary caregiver," as defined under California state law.

15 6. Intervenor WILLIAM BRITT ("Britt") is, and at all times relevant to this action was, a  
16 resident of Long Beach, Los Angeles County, California. Britt is a forty-six-year-old medical  
17 marijuana patient who uses marijuana on the recommendation of his physician, in full  
18 compliance with California law, to treat symptoms associated with epilepsy and post-polio  
19 syndrome. Britt is a member of ASA.

20 7. Intervenor YVONNE WESTBROOK ("Westbrook") is, and at all times relevant to this  
21 action was, a resident of Richmond, Contra Costa County, California. Westbrook is a fifty-three-  
22 year-old medical marijuana patient who uses marijuana on the recommendation of her physician,  
23 in full compliance with California law, to treat muscle spasticity resulting from multiple  
24 sclerosis. Westbrook is a member of ASA.

1 8. Intervenor STEPHEN O'BRIEN, M.D., ("O'Brien") is, and at all times relevant to this  
2 action was, a resident of the City of El Cerrito, Contra Costa County, California. O'Brien is a  
3 physician licensed to practice in the State of California, is board certified in internal medicine,  
4 and practices medicine in Oakland, California. O'Brien recommends marijuana to some of his  
5 patients in full compliance with California law, and it is his professional medical opinion that for  
6 some of his patients, marijuana provides a necessary and effective treatment for their serious  
7 medical conditions.

8 9. Intervenor WAMM is a collective located in the City and County of Santa Cruz.  
9 WAMM has a maximum membership of 250 patients who suffer from HIV/AIDS, multiple  
10 sclerosis, glaucoma, epilepsy, various forms of cancer, and other serious illnesses and diseases.  
11 The majority of these patients are terminally ill. These patients use marijuana with the written  
12 recommendations of their physicians, in full compliance with California's medical marijuana  
13 laws. Each patient's "primary caregiver," defined by California law as the individual designated  
14 by the patient who consistently assumes responsibility for the housing, health, or safety of the  
15 patient, Cal. Health & Safety Code § 11362.5(e), is also a member of WAMM.

16 10. Intervenor ASA is the largest grassroots organization working solely to protect the rights  
17 of patients who use marijuana for medical purposes, as well as the doctors who recommend  
18 marijuana to them. ASA's goal is to ensure safe and legal access to medical marijuana to the  
19 seriously ill who need it. ASA is a membership organization whose membership includes  
20 thousands of medical marijuana patients, caregivers and physicians residing in California.

21 11. Plaintiff San Diego County is a political subdivision of the State of California and is  
22 organized and existing under the laws of the State of California.

23 12. Plaintiff San Bernadino County is a political subdivision of the State of California and is  
24 organized and existing under the laws of the State of California.

1 13. Plaintiff Gary Penrod is a resident of San Bernadino County, California, and is the duly  
2 elected Sheriff of San Bernadino County. As Sheriff of San Bernadino County, Plaintiff Penrod  
3 is responsible for enforcement of the laws of the State of California.

4 14. Plaintiff Intervenor Merced County is a political subdivision of the State of California  
5 and is organized and existing under the laws of the State of California.

6 15. Plaintiff Intervenor Mark Pazin is a resident of Merced County, California, and is the  
7 duly elected Sheriff of Merced County. As Sheriff of Merced County, Plaintiff Intervenor Pazin  
8 is responsible for the enforcement of the laws of the State of California.

9 16. In 1996, California voters passed Proposition 215, entitled "the Compassionate Use Act  
10 of 1996," which added Section 11362.5 to California's Health and Safety Code. The Act states  
11 one of its purposes to be: "To ensure that seriously ill Californians have the right to obtain and  
12 use marijuana for medical purposes where that medical use is deemed appropriate and has been  
13 recommended by a physician who has determined that the person's health would benefit from the  
14 use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma,  
15 arthritis, migraine, or any other illness for which marijuana provides relief." (Health & Saf.  
16 Code, § 11362.5 subd. (b)(1)(A).)

17 17. The Compassionate Use Act protects patients and caregivers by encouraging "the federal  
18 and state governments to implement a plan to provide for the safe and affordable distribution of  
19 marijuana to all patients in medical need of marijuana." (Health & Saf. Code, § 11362.5 subd.  
20 (b)(1)(C).)

21 18. The Compassionate Use Act also protects patients and caregivers by exempting them  
22 from California Health & Safety Code section 11357, which criminalizes the possession of  
23 marijuana, and section 11358, which criminalizes the cultivation of marijuana, when they  
24 possess or cultivate, "marijuana for the personal medical purposes of a medical marijuana patient  
25

1 upon the written or oral recommendation or approval of a physician.” (Health & Saf. Code, §  
2 11362.5 subd. (d).)

3 19. The Act protects physicians by establishing that “no physician in this state shall be  
4 punished, or denied any right or privilege, for having recommended marijuana to a patient for  
5 medical purposes.” (Health & Saf. Code, § 11362.5 subd. (c).)

6 20. In 2003, the California Legislature enacted the Medical Marijuana Program Act, Health  
7 & Safety Code sections 11362.7 – 11362.83. This Act establishes a uniform statewide voluntary  
8 identification card program for medical marijuana patients and caregivers and makes explicit that  
9 individuals in possession of valid identification cards may not be arrested in certain  
10 circumstances. (Health & Saf. Code, §§ 11362.7 – 11362.83).

11 21. Plaintiffs and Plaintiff Intervenors have asserted the position that the Compassionate Use  
12 Act and the Medical Marijuana Program Act are invalid as a reason not to fulfill their obligations  
13 under the Medical Marijuana Program Act to implement the voluntary identification card  
14 program.

15 22. If the Compassionate Use Act and the Medical Marijuana Program Act is invalidated,  
16 Intervenors Christakes, Sakuda, Britt and Westbrook, as well as members of Intervenors  
17 WAMM and ASA, will be exposed to the threat of arrest and incarceration for the possession,  
18 cultivation and use of marijuana to treat their serious health conditions.

19 23. If the Compassionate Use Act and the Medical Marijuana Program Act is invalidated,  
20 some Intervenors and others like them will be denied access to necessary medicine effective in  
21 treating their pain, nausea, seizures and other serious medical symptoms without the severe,  
22 debilitating side effects of other medications.

23 24. If the Compassionate Use Act and the Medical Marijuana Program Act is invalidated,  
24 Intervenor Litzinger, as well as members of Intervenors WAMM and ASA, will be exposed to  
25 the threat of arrest and incarceration for the possession, cultivation and use of marijuana to treat

1 the serious health conditions of the medical marijuana patients to whom they provide care in full  
2 compliance with existing California law.

3 25. If the Compassionate Use Act and the Medical Marijuana Program Act is invalidated,  
4 Intervenor Stephen O'Brien will be put at substantial risk of losing his medical license for  
5 recommending to his patients that medical marijuana could provide them with treatment for their  
6 serious medical conditions and relief from the pain caused by serious medical conditions.

7 26. The Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7 – 11362.83) was  
8 enacted consistent with Cal. Const., art. II, section 10.

9 27. Neither the Compassionate Use Act (Health & Saf. Code, § 11362.5) nor the Medical  
10 Marijuana Program Act (Health & Saf. Code, §§ 11362.7 – 11362.83) are preempted, under the  
11 Supremacy Clause of the United States Constitution, by the Controlled Substances Act (21  
12 U.S.C. §§ 801-904) or the Single Convention on Narcotic Drugs, 1961, as amended by the 1972  
13 Protocol ("Single Convention").

14 FIRST CAUSE OF ACTION

15 (Declaratory Relief)

16 28. Intervenor reallege and incorporate herein by reference Paragraphs 1 through 28 as  
17 though set forth in full.

18 29. An actual controversy has arisen and now exists between Intervenor, on one hand, and  
19 Plaintiffs and Plaintiff Intervenor, on the other hand, in that Intervenor contend, and Plaintiffs  
20 and Plaintiff Intervenor deny, that:

- 21 a. The Compassionate Use Act (Health & Saf. Code, § 11362.5) and the Medical  
22 Marijuana Program Act (Health & Saf. Code, §§ 11362.7 – 11362.83) do not conflict  
23 with the Controlled Substances Act (21 U.S.C. §§ 801-904) and/or the Single  
24 Convention so as to result in their preemption.

1 b. The Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7 – 11362.83)  
2 does not violate Cal. Const., art. II, section 10, and is therefore, valid.

3 c. Plaintiffs and Plaintiff Intervenors are obligated to comply with California law,  
4 including the Compassionate Use Act (Health & Saf. Code, § 11362.5) and the  
5 Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7 – 11362.83).

6 30. Based on the foregoing, a clear, actual, and present controversy has arisen between  
7 Intervenors and Plaintiffs and Plaintiff Intervenors, which controversy cannot be resolved  
8 without judicial determination. Accordingly, Intervenors seek the following judicial  
9 determinations:

10 a. That the Compassionate Use Act (Health & Saf. Code, § 11362.5) and the Medical  
11 Marijuana Program Act (Health & Saf. Code, §§ 11362.7 – 11362.83) continue to be  
12 valid and enforceable California law not preempted under the Supremacy Clause of  
13 the United States Constitution (Article VI);

14 b. That the Medical Marijuana Program Act is valid because it does not violate Cal.  
15 Const., art. II, section 10, and;

16 c. That Plaintiffs and Plaintiff Intervenors are obligated to comply with the  
17 Compassionate Use Act (Health & Saf. Code, § 11362.5) and the Medical Marijuana  
18 Program Act (Health & Saf. Code, §§ 11362.7 – 11362.83).

19 31. Such declaration is necessary and appropriate at this time in that there is no adequate  
20 remedy at law, and in order for Intervenors to protect their rights with respect to Plaintiffs' and  
21 Plaintiff Intervenors' attempts to invalidate California law.

1 SECOND CAUSE OF ACTION

2 (Injunctive Relief)

3 32. Intervenors reallege and incorporate herein by reference Paragraphs 1 through 32 as  
4 though set forth in full.

5 33. Plaintiffs and Plaintiff Intervenors must be enjoined to comply with lawfully enacted,  
6 valid and enforceable California law, the Compassionate Use Act (Health & Saf. Code, §  
7 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7 – 11362.83).

8 34. Intervenors have no plain, speedy and adequate remedy at law.

9 PRAYER FOR RELIEF

10 WHEREFORE, Intervenors pray for judgment against Plaintiffs and Plaintiff Intervenors,  
11 and each of them, as follows:

- 12 1. For a declaration that the Medical Marijuana Program Act is valid as a matter  
13 of law, in that it does not violate Cal. Const., art. II, section 10;
- 14 2. For a declaration that the Compassionate Use Act (Health & Saf. Code, §  
15 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code, §§  
16 11362.7 – 11362.83) are not preempted under the Supremacy Clause of the  
17 United States Constitution (Article VI);
- 18 3. For a declaration that Plaintiffs and Plaintiff Intervenors must comply with the  
19 requirements of the Compassionate Use Act (Health & Saf. Code, § 11362.5)  
20 and the Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7 –  
21 11362.83);
- 22 4. For an injunction, enjoining Plaintiffs and Plaintiff Intervenors to comply with  
23 California law, the Compassionate Use Act (Health & Saf. Code, § 11362.5)  
24 and the Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7 –  
25 11362.83);

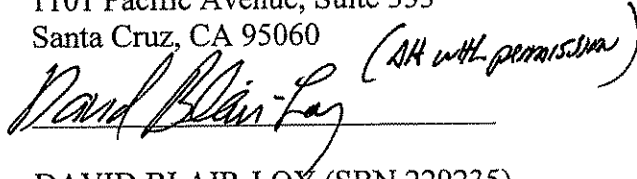
- 1           5.       For costs and attorneys fees incurred herein; and  
2           6.       For such other and further relief as the Court deems just and proper.

3  
4 Dated: July 7, 2006

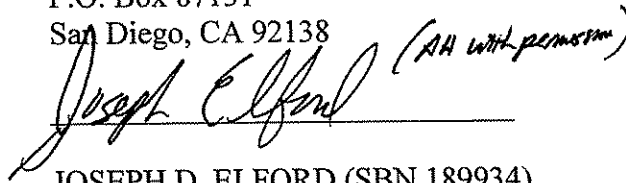
Respectfully submitted,



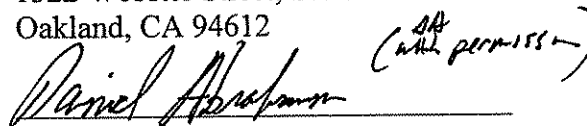
5  
6 ALLEN HOPPER (SBN 181678)  
7 ACLU Drug Law Reform Project  
8 1101 Pacific Avenue, Suite 333  
9 Santa Cruz, CA 95060



10 DAVID BLAIR-LOY (SBN 229235)  
11 ACLU of San Diego & Imperial Counties  
12 P.O. Box 87131  
13 San Diego, CA 92138



14 JOSEPH D. ELFORD (SBN 189934)  
15 Americans for Safe Access  
16 1322 Webster Street, Suite 208  
17 Oakland, CA 94612



18 DANIEL N. ABRAHAMSON (SBN 158668)  
19 Drug Policy Alliance  
20 819 Bancroft Way  
21 Berkeley, CA 94710



# EXHIBIT 1

1 Allen Hopper (#181678)  
2 American Civil Liberties Union Foundation  
3 Drug Law Reform Project  
4 1101 Pacific Avenue, Ste. 333  
5 Santa Cruz, CA 95060  
6 Telephone: 831/471-9000  
7 Facsimile: 831/471-9676

8 Additional counsel listed on signature page.

9  
10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

11 COUNTY OF SAN DIEGO,

12 Plaintiff,  
13 v.

14 SAN DIEGO NORML, a California  
15 Corporation, SANDRA SHEWRY, Director of  
16 the California Department of Health Services  
17 in her official capacity; and DOES 1 through  
18 50 inclusive,

19 Defendants

20 COUNTY OF SAN BERNARDINO and  
21 GARY PENROD as Sheriff of the COUNTY  
22 OF SAN BERNARDINO,

23 Plaintiffs,  
24 v.

25 STATE OF CALIFORNIA; SANDRA  
SHEWRY, in her official capacity as Director  
of California Department of Health Services;  
and DOES 1 through 50, inclusive,

Defendants

Case No. GIC 860665

**DECLARATION OF JOSEPH D. ELFORD  
IN SUPPORT OF NOTICE OF MOTION  
AND MOTION FOR LEAVE TO FILE  
COMPLAINT IN INTERVENTION AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: August 4, 2006

Time: 2:30 p.m.

Dept.: 64

Judge: Honorable William R. Nevitt, Jr.

Action Filed: February 1, 2006

1  
2 COUNTY OF MERCED AND MARK  
3 PAZIN, as Sheriff of the COUNTY OF  
4 MERCED, and DOES 51 through 100  
inclusive,

5 Intervenor

6 WENDY CHRISTAKES;  
7 PAEMPLASAKUDA; NORBERT  
8 LITZINGER; WILLIAM BRITT; YVONNE  
9 WESTBROOK; STEPHEN O'BRIEN;  
10 WO/MEN'S ALLIANCE FOR MEDICAL  
SAFE ACCESS,

11 Third-Party Plaintiff Intervenor.

12 **DECLARATION OF JOSEPH D. ELFORD**

13 1. I am chief counsel for Americans for Safe Access and a member in good standing of the  
14 State Bar of California.

15 2. Based upon my investigation into this case, I understand the following facts regarding the  
16 proposed Intervenor:

17 3. Intervenor Wendy Christakes ("Christakes") is, and at all times mentioned herein was, a  
18 resident of the County of San Diego. Christakes is a twenty-nine-year-old mother of two  
19 children who uses marijuana on the recommendation of her physician, in full compliance with  
20 California law, to treat chronic pain, sciatica, and other symptoms associated with a herniated  
21 disk. Christakes is a member of ASA.

22 4. Intervenor Pamela Sakuda ("Sakuda") is, and at all times relevant to this action was, a  
23 resident of the County of San Diego. Sakuda is a fifty-eight-year-old medical marijuana patient  
24 who uses marijuana on the recommendation of her physician, in full compliance with California  
25 law, to treat symptoms and side-effects of stage four rectal cancer.

1 5. Intervenor Norbert Litzinger ("Litzinger") is, and at all times relevant to this action was,  
2 a resident of the County of San Diego. Litzinger is the husband of Intervenor Pamela Sakuda,  
3 and he is her "primary caregiver," as defined under California state law.

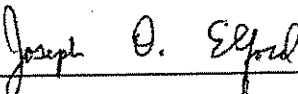
4 6. Intervenor William Britt ("Britt") is, and at all times relevant to this action was, a resident  
5 of Long Beach, Los Angeles County, California. Britt is a forty-six-year-old medical marijuana  
6 patient who uses marijuana on the recommendation of his physician, in full compliance with  
7 California law, to treat symptoms associated with epilepsy and post-polio syndrome. Britt is a  
8 member of ASA.

9 7. Intervenor Yvonne Westbrook ("Westbrook") is, and at all times relevant to this action  
10 was, a resident of Richmond, Contra Costa County, California. Westbrook is a fifty-three-year-  
11 old medical marijuana patient who uses marijuana on the recommendation of her physician, in  
12 full compliance with California law, to treat muscle spasticity resulting from multiple sclerosis.  
13 Westbrook is a member of ASA.

14 8. Intervenor ASA is the largest grassroots organization working solely to protect the rights  
15 of patients who use marijuana for medical purposes, as well as the doctors who recommend  
16 marijuana to them. ASA's goal is to ensure safe and legal access to medical marijuana to the  
17 seriously ill who need it. ASA is a membership organization whose membership includes  
18 thousands of medical marijuana patients, caregivers and physicians residing in California.

19 I certify under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct of my own personal knowledge.

21 Executed on July 6, 2006 in Oakland, California.

22  
23   
24 \_\_\_\_\_  
25 Joseph D. Elford (SBN 189934)

# EXHIBIT 2

1 Allen Hopper (#181678)  
American Civil Liberties Union Foundation  
2 Drug Law Reform Project  
1101 Pacific Avenue, Ste. 333  
3 Santa Cruz, CA 95060  
Telephone: 831/471-9000  
4 Facsimile: 831/471-9676

5  
6 **Additional counsel listed on signature page.**

7  
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

9  
10 COUNTY OF SAN DIEGO,

11 Plaintiff,  
v.

12 SAN DIEGO NORML, a California  
13 Corporation, SANDRA SHEWRY, Director of  
the California Department of Health Services  
14 in her official capacity; and DOES 1 through  
50 inclusive,

15 Defendants

Case No. GIC 860665

16  
17 **DECLARATION OF GRAHAM BOYD IN  
SUPPORT OF NOTICE OF MOTION  
AND MOTION FOR LEAVE TO FILE  
COMPLAINT IN INTERVENTION AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: August 4, 2006

Time: 2:30 p.m.

Dept.: 64

Judge: Honorable William R. Nevitt, Jr.

Action Filed: February 1, 2006

18  
19 COUNTY OF SAN BERNARDINO and  
20 GARY PENROD as Sheriff of the COUNTY  
OF SAN BERNARDINO,

21 Plaintiffs,  
v.

22 STATE OF CALIFORNIA; SANDRA  
23 SHEWRY, in her official capacity as Director  
of California Department of Health Services;  
24 and DOES 1 through 50, inclusive,

25 Defendants

1  
2 COUNTY OF MERCED AND MARK  
3 PAZIN, as Sheriff of the COUNTY OF  
4 MERCED, and DOES 51 through 100  
inclusive,

5 Intervenor

6 WENDY CHRISTAKES;  
7 PAEMLASAKUDA; NORBERT  
8 LITZINGER; WILLIAM BRITT; YVONNE  
9 WESTBROOK; STEPHEN O'BRIEN;  
10 WO/MEN'S ALLIANCE FOR MEDICAL  
11 MARIJUANA; AND AMERICANS FOR  
SAFE ACCESS,

12 Third-Party Plaintiff Intervenor.

13 **DECLARATION OF GRAHAM BOYD**

14 1. I, Graham Boyd, am an attorney at law, duly licensed to practice before all courts of the  
15 State of California. I am the Project Director of the ACLU Drug Law Reform Project, attorneys  
16 for Movants Wendy Christakes, Pamela Sakuda, Norman Litzinger, William Britt, Yvonne  
17 Westbrook, Stephen O'Brien, Wo/Men's Alliance for Medical Marijuana and Americans for  
18 Safe Access. I maintain my professional office at 1101 Pacific Avenue, Suite 333, Santa Cruz,  
California, 95060.

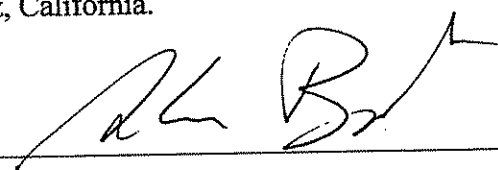
19 2. Based upon my investigation into this case, I understand the following facts regarding the  
20 proposed Intervenor Stephen O'Brien:

21 3. Intervenor Stephen O'Brien ("O'Brien") is, and at all times relevant to this action was, a  
22 resident of the City of El Cerrito, Contra Costa County, California. O'Brien is a physician  
23 licensed to practice in the State of California, is board certified in internal medicine, and  
24 practices medicine in Oakland, California. O'Brien recommends marijuana to some of his  
25 patients in full compliance with California law, and it is his professional medical opinion that for

1 some of his patients, marijuana provides a necessary and effective treatment for their serious  
2 medical conditions.

3 I certify under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct of my own personal knowledge.

5 Executed on July 6, 2006 in Santa Cruz, California.

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7 

8 Graham Boyd (SBN 167727)

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# EXHIBIT 3

1 Allen Hopper (#181678)  
American Civil Liberties Union Foundation  
2 Drug Law Reform Project  
1101 Pacific Avenue, Ste. 333  
3 Santa Cruz, CA 95060  
Telephone: 831/471-9000  
4 Facsimile: 831/471-9676

5  
6 **Additional counsel listed on signature page.**

7  
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

9  
10 COUNTY OF SAN DIEGO,

11 Plaintiff,  
12 v.

13 SAN DIEGO NORML, a California  
Corporation, SANDRA SHEWRY, Director of  
14 the California Department of Health Services  
in her official capacity; and DOES 1 through  
15 50 inclusive,

16 Defendants

Case No. GIC 860665

**DECLARATION OF VALERIE A.  
LEVERONI CORRAL IN SUPPORT OF  
NOTICE OF MOTION AND MOTION  
FOR LEAVE TO FILE COMPLAINT IN  
INTERVENTION AND MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: August 4, 2006

Time: 2:30 p.m.

Dept.: 64

Judge: Honorable William R. Nevitt, Jr.

Action Filed: February 1, 2006

17  
18  
19 COUNTY OF SAN BERNARDINO and  
20 GARY PENROD as Sheriff of the COUNTY  
OF SAN BERNARDINO,

21 Plaintiffs,  
22 v.

23 STATE OF CALIFORNIA; SANDRA  
24 SHEWRY, in her official capacity as Director  
of California Department of Health Services;  
25 and DOES 1 through 50, inclusive,

1 Defendants

2  
3 COUNTY OF MERCED AND MARK  
4 PAZIN, as Sheriff of the COUNTY OF  
5 MERCED, and DOES 51 through 100  
6 inclusive,

7 Intervenors

8 WENDY CHRISTAKES;  
9 PAEMLASAKUDA; NORBERT  
10 LITZINGER; WILLIAM BRITT; YVONNE  
11 WESTBROOK; STEPHEN O'BRIEN;  
12 WO/MEN'S ALLIANCE FOR MEDICAL  
13 MARIJUANA; AND AMERICANS FOR  
14 SAFE ACCESS,

15 Third-Party Plaintiff Intervenors.

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**DECLARATION OF VALERIE A. LEVERONI CORRAL**

1. On March 24, 1973, I was involved in a freak automobile accident. I was a passenger in a Volkswagen "Beetle" that was buzzed by a small private airplane. The plane swooped within feet of the car. The resulting air currents lifted the vehicle off the road causing the driver to lose control. The car rolled three times across a distance of 365 feet. I was thrown from the car and knocked unconscious. I suffered severe closed head trauma and later was hospitalized for a week.

2. I was 20 years old. Before this accident, I was a bright, motivated student who excelled in her studies. I lived alone, was independent, and ambitious. I was active in the peace movement and the feminist movement. I was eager to take on the world.

3. Shortly after my release from the hospital, I suffered my first grand mal seizure. Then I suffered a second and a third. Because I was living alone, I did not immediately understand what was happening to me -- or even know for sure that something was happening to me. One moment

1 I would be doing something, the next moment I would be waking up. Sometimes when I awoke,  
2 I was covered with cuts and bruises. In the words of Feodor Dostoevesky, an epileptic, my  
3 "consciousness was instantly extinguished and complete darkness followed."

4 4. Not until my parents saw me convulse was I, or anyone else, aware of the full magnitude  
5 of my medical problem. I immediately moved back into my parents' home. Soon, I was being  
6 stricken by up to five seizures a day. When I began to convulse, my parents had to turn me on  
7 my side to keep me from swallowing my tongue. They held me on the floor while I foamed at the  
8 mouth and lost control of my bladder, urinating all over myself. I had no control over my  
9 muscles. After a seizure dissipated, I slept for several hours. Always, when I awoke, I lacked any  
10 memory of having seized.

11 5. After I tried Mysoline and Dilantin to no avail, doctors prescribed still other anti-epileptic  
12 drugs, phenobarbital, and diazepam. But I fared little better with these medications. Each drug,  
13 effective in about 75% of persons who suffer from seizure disorders, failed to relieve my  
14 symptoms. I continued to suffer as many as three to five grand mal seizures a day. For pain I  
15 continued to take Percodan and Valium.

16 6. These anti-convulsant and pain medications, however, heavily sedated me to the point  
17 that I lived in a near vegetative state. My parents described me as "catatonic." I was rendered  
18 wholly dysfunctional. I had to be reminded to eat. I could not think clearly. I did not sleep well. I  
19 stumbled through an ever-present drug haze in a futile attempt to control my spasms. I changed  
20 medications and tried different dosages, but I continued to be struck by seizures that descended  
21 with little warning. The medications also depleted my white blood cells, rendering me vulnerable  
22 to viruses with which I came into contact. I constantly battled ordinary colds and flus, often  
23 resulting in hospitalization.

24 7. To make matters worse, I eventually became physically dependent on my medications. I  
25 descended ever deeper into a pharmaceutical stupor. I could not work. I could not cross the street

1 by myself. I could not be left unattended, for fear that I would be overtaken by a seizure, or that,  
2 in my stupor, I would injure myself. I had a bad habit of walking into oncoming traffic and  
3 nearly drowning while taking baths -- all because of my seizure disorder and the prescription  
4 drugs used to treat it. My parents, then, after I married, my husband, Michael, were my ever-  
5 present caretakers. I had gone from a young woman who had the world at her feet to a prisoner in  
6 my own spasmodic body. I lacked freedom, mobility and independence.

7 8. I lived this way for more than two years. Meanwhile, my husband scoured scientific and  
8 medical journals for a sign of some promising new therapy. My life changed forever when he  
9 discovered an article discussing the ability of marijuana to control seizures in laboratory animals.

10 9. I obtained some marijuana and smoked a small amount of it. To my astonishment, my  
11 seizure activity diminished. I continued to smoke a little marijuana each day. The seizures stayed  
12 away. Whenever I felt an aura (the premonitory sensation that often precedes a seizure), I took a  
13 puff of marijuana to control the onset of convulsions.

14 10. Legally available medicines had failed to control my seizure disorder and had left me  
15 debilitated and addicted to prescription drugs. With what little perspective I had left, I convinced  
16 myself to stop my failed pill-popping regimen. I told my physician that I could not bear the way I  
17 felt, and that I frankly preferred the prospect of suffering a full complement of seizures daily  
18 than continuing my medications. Fortunately, my doctor was sympathetic to my efforts to reduce  
19 my prescription drugs. He was aware of the dangerous side effects such drugs could cause, and  
20 saw those very side effects slowly ruining the quality of my life.

21 11. At first, I tried to quit my medications cold turkey. But I did not realize just how  
22 dependent on them I had become. I immediately suffered a series of seizures. After three days of  
23 withdrawals, my husband persuaded me to take a half-dose of Mysoline. Within 30 minutes my  
24 symptoms ceased. We then realized I was addicted. We then opted to gradually wean me from  
25 prescription drugs. For the next two and one-half years, I slowly decreased my dosages and

1 finally stopped my anti-convulsants altogether. The only medication that I continued to rely on  
2 was the single one that would control my seizures and restore a somewhat normal life. That  
3 medicine is marijuana.

4 12. By the end of 1977 I was seizure free and liberated from my drug-induced stupor.  
5 Whereas before I had taken up to 15 pills each day, I now only needed a few puffs of marijuana.  
6 Whereas before I could barely function, the debilitating side effects of the prescription drugs  
7 were now gone. I could do virtually everything that I did before my accident, including driving.

8 13. Incidentally, since using medical marijuana, I have come to learn that the annals of  
9 medicine contain several references to the anticonvulsant quality of marijuana. Medical literature  
10 from the 19th century made frequent mention of the use of cannabis preparations for the  
11 treatment of seizures. A 1975 case report published in the *Journal of the American Medical*  
12 *Association* noted the complete control of seizures was achieved with a combination of  
13 conventional medication and marijuana. And a 1980 article in *Pharmacology* reports the  
14 successful use of cannabidiol, a constituent of marijuana, in some epileptic patients. Since 1980,  
15 articles reporting similar findings have also appeared in the *Journal of Clinical Pharmacology*  
16 and the *American Journal of Epidemiology*, among other publications. And the literature is  
17 expanding.

18 14. I am the co-founder with my husband Mike, and executive director of the WO/MEN'S  
19 ALLIANCE FOR MEDICAL MARIJUANA ("WAMM"). We started WAMM because we  
20 realize that sick and dying people face not only a physical struggle with their illnesses, but also  
21 discrimination and intolerance. Our goal is to create a community in which sick and dying  
22 patients provide each other with emotional support and physical care.

23 15. WAMM is a collective located in the City and County of Santa Cruz, California.  
24 WAMM has a maximum membership of 250 patients who suffer from HIV/AIDS, multiple  
25 sclerosis, glaucoma, epilepsy, various forms of cancer, and other serious illnesses and diseases.

1 WAMM members receive and use marijuana for their medical needs, to treat symptoms of their  
2 illnesses or to relieve serious side effects from conventional medical treatment. These patients  
3 use the marijuana with the written recommendations of their physicians, in full compliance with  
4 California's medical marijuana laws. The majority of our members are terminally ill.

5 16. Membership is limited, so that new patients generally are admitted only after a current  
6 member dies or, in rare circumstances, leaves the collective. WAMM patients work together to  
7 alleviate their suffering. They provide each other with emotional support to deal with their  
8 illnesses and assist each other in completing day-to-day tasks that their illnesses have made more  
9 difficult, such as grocery shopping or traveling to the doctor's office. Each patient's "primary  
10 caregiver," defined by California law as the individual designated by the patient who consistently  
11 assumes responsibility for the housing, health, or safety of the patient, Cal. Health & Safety  
12 Code § 11362.5(e), is also a member of WAMM.

13 17. For members of WAMM, marijuana provides relief from intolerable pain and other  
14 incapacitating symptoms of serious or terminal illness, and marijuana alleviates the debilitating  
15 side effects of necessary medications and treatments; for some of these individuals, marijuana is  
16 the only medication that will provide these forms of critical, sometimes life-sustaining,  
17 assistance; and for all of these individuals, the ability to use marijuana is a necessary means of  
18 controlling circumstances and course of their treatment.

19 18. For some WAMM members who have been diagnosed with a terminal medical condition,  
20 use of marijuana is also a critical means of controlling the circumstances of their approaching  
21 death – a medication these individuals anticipate and plan to use in their final days and hours,  
22 often as an alternative to stupor-inducing narcotics, as a way of easing and directing the passage  
23 from life into death. Since founding WAMM, I have witnessed many WAMM members' final  
24 moments of life. Medical marijuana allowed these WAMM members to spend lucid moments  
25

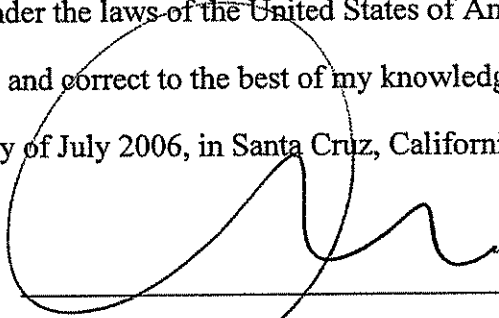
1 with their loved ones during their last hours. These members have told me that marijuana has  
2 allowed them to accept their deaths more easily.

3 19. WAMM is and has been a vigorous advocate of Proposition 215 and S.B. 420, the  
4 legislation codified at California Health & Safety Code §§ 11362.5 and 11362.7 through  
5 11362.83.

6 20. Prior to the enactment of Proposition 215, I attended as a representative of WAMM  
7 meetings held by the sponsors of Proposition 215 and contributed meaningfully to the  
8 discussions at those meetings that led directly to the specific language of the Proposition as it  
9 was eventually enacted.

10 21. WAMM and individual WAMM members, including myself, are co-plaintiffs, along with  
11 the City and County of Santa Cruz, California, in *County of Santa Cruz, California et al. v.*  
12 *Ashcroft et al.*, Case No. C 03-01802, currently pending in the federal district court for the  
13 Northern District of California. We have raised claims in that case seeking to defend and  
14 vindicate California's medical marijuana laws and the rights of patients and their physicians  
15 under those laws.

16 I declare under penalty of perjury under the laws of the United States of America and the  
17 State of California that the foregoing is true and correct to the best of my knowledge, and that  
18 this declaration was executed on this 6th day of July 2006, in Santa Cruz, California.



21 Valerie A. Leveroni Corral



DECLARATION OF  
ALLEN HOPPER

1 Allen Hopper (#181678)  
American Civil Liberties Union Foundation  
2 Drug Law Reform Project  
1101 Pacific Avenue, Ste. 333  
3 Santa Cruz, CA 95060  
Telephone: 831/471-9000  
4 Facsimile: 831/471-9676

5  
6 **Additional counsel listed on signature page.**

7  
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

9  
10 COUNTY OF SAN DIEGO,

11 Plaintiff,  
12 v.

13 SAN DIEGO NORML, a California  
Corporation, SANDRA SHEWRY, Director of  
14 the California Department of Health Services  
in her official capacity; and DOES 1 through  
15 50 inclusive,

16 Defendants

Case No. GIC 860665

17 **DECLARATION OF ALLEN HOPPER IN  
SUPPORT OF NOTICE OF MOTION  
AND MOTION FOR LEAVE TO FILE  
COMPLAINT IN INTERVENTION AND  
MEMORANDUM OF POINTS AND  
18 AUTHORITIES IN SUPPORT THEREOF**

Date: August 4, 2006

Time: 2:30 p.m.

Dept.: 64

Judge: Honorable William R. Nevitt, Jr.

Action Filed: February 1, 2006

19 COUNTY OF SAN BERNARDINO and  
GARY PENROD as Sheriff of the COUNTY  
20 OF SAN BERNARDINO,

21 Plaintiffs,  
22 v.

23 STATE OF CALIFORNIA; SANDRA  
SHEWRY, in her official capacity as Director  
of California Department of Health Services;  
24 and DOES 1 through 50, inclusive,

25 Defendants

1 COUNTY OF MERCED AND MARK  
2 PAZIN, as Sheriff of the COUNTY OF  
3 MERCED, and DOES 51 through 100  
4 inclusive,

Intervenors

5 WENDY CHRISTAKES;  
6 PAEMLASAKUDA; NORBERT  
7 LITZINGER; WILLIAM BRITT; YVONNE  
8 WESTBROOK; STEPHEN O'BRIEN;  
9 WO/MEN'S ALLIANCE FOR MEDICAL  
10 MARIJUANA; AND AMERICANS FOR  
11 SAFE ACCESS,

Third-Party Plaintiff Intervenors.

### DECLARATION OF ALLEN HOPPER

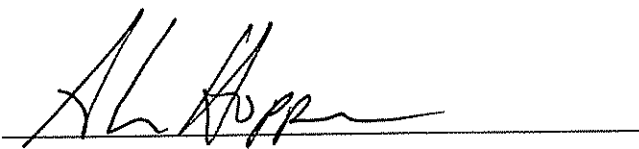
- 12 1. I, Allen Hopper am an attorney at law, duly licensed to practice before all courts of the  
13 State of California. I am a Senior Staff Attorney for the ACLU Drug Law Reform Project,  
14 attorneys for Movants Wendy Christakes, Pamela Sakuda, Norman Litzinger, William Britt,  
15 Yvonne Westbrook, Stephen O'Brien, Wo/Men's Alliance for Medical Marijuana and  
16 Americans for Safe Access. I maintain my professional office at 1101 Pacific Avenue, Suite  
17 333, Santa Cruz, California, 95060.
- 18 2. Attached to this Declaration, as Exhibit 4, is a true and correct copy of a Demand Letter I  
19 sent to Governor Schwarzenegger and the Director of the California Department of Health  
20 Services Sandra Shewry, dated July 12, 2005.
- 21 3. Attached to this Declaration, as Exhibit 5, is a true and correct copy of a Demand Letter I  
22 sent to the San Diego County Board of Supervisors dated January 19, 2006.

23  
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I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own personal knowledge.

Executed on July 6, 2006 in Santa Cruz, California.

A handwritten signature in black ink, appearing to read "Allen Hopper", is written over a horizontal line.

Allen Hopper (#181678)

# EXHIBIT 4



Governor Arnold Schwarzenegger  
State Capitol Building  
Sacramento, CA 95814  
Sent this date via facsimile to:  
Fax: 916-445-4633

Sandra Shewy, Director  
California Department of Health Services  
Director's Office  
MS 0000  
P.O. Box 997413  
Sacramento, CA 95899-7413  
Sent this date via facsimile to:  
(916) 440-7656

July 12, 2005

Dear Governor Schwarzenegger and Director Shewy:

We are writing on behalf of the American Civil Liberties Union (ACLU) and the Drug Policy Alliance to demand that you immediately reinstate implementation of the California Department of Health Services (CDHS) Medical Marijuana Program and the issuance of identification cards to qualified patients and their primary caregivers.

Last Friday afternoon, July 8, 2005, CDHS posted on its website a press release and a letter to all County Health Directors stating that you were suspending the implementation of the Medical Marijuana Program and the issuance of medical marijuana identification cards to qualified patients and their primary caregivers. According to that press release, CDHS has requested from the Attorney General a formal legal opinion regarding whether, "in light of" the June 6, 2005 U.S. Supreme Court decision in Gonzales v. Raich, continued operation of California's Medical Marijuana program would aid and abet individuals in committing a federal crime.

Your decision to suspend the medical marijuana program and issuance of identification cards on the basis of Raich is completely unfounded and a clear violation of California law for several reasons:

1) The CDHS does not have the authority to "suspend" duly-enacted state law on the basis of a perceived conflict with federal law;

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UNION FOUNDATION

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Fax: 202-638-1001  
www.aclu.org

California Chapter  
1100 17th Street, N.W.  
Washington, D.C. 20036  
Tel: 202-638-1000  
Fax: 202-638-1001  
www.aclu.org

OFFICERS AND DIRECTORS

President: ...

Vice President: ...

Executive Director: ...

Legal Director: ...

Public Affairs: ...

...

2) state employees implementing and enforcing state medical marijuana laws, including the identification card program, are not in violation of federal aiding and abetting laws;

3) Attorney General Lockyer has already issued several official statements affirming the continued validity of California state medical marijuana laws after the Supreme Court's decision in Raich, and ordering that California state and local peace officers may not refuse to abide by those state laws on the basis that they conflict with federal law, and;

4) CDHS concerns about providing patients with a "false sense of security" and maintaining confidentiality of state records provide no legal basis for your unilateral suspension of duly-enacted state medical marijuana laws, since it is for the legislature, not CDHS, to determine if changes to state law are warranted to better inform patients of risks under federal law or protect patient information contained in state or county-maintained records.

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Unless you have resumed implementation of the Medical Marijuana Program and issuance of identification cards in compliance with California Health and Safety Code sections 11362.7 et. seq. and issued a public statement to this effect by 5:00 p.m. July 19, 2005, we will take appropriate legal action.

**CDHS Does Not Have The Authority To "Suspend" State Medical Marijuana Laws.**

CDHS does not have the authority to unilaterally declare California's medical marijuana statutes unenforceable, or to refuse to enforce those statutes, on the basis of agency concerns about federal law. Article III, section 3.5(c) of the California Constitution provides that, "An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power ... to declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations." See also Lockyer v. City and County of San Francisco (2004) 33 Ca.4th 1055.

The determination of whether or not there are conflicts between federal and state law can be made only by an appropriate appellate court. CDHS has mandatory ministerial duties under Health and Safety Code section 11362.7 et. seq., and has exceeded its authority by suspending implementation and enforcement of a duly-enacted state law absent a decision from an appellate court. While you may certainly request a

clarifying opinion from the Attorney General, you are without authority to suspend or refuse to enforce the law pending issuance of such an opinion.

**State Employees Implementing And Enforcing State Medical Marijuana Laws, Including The Identification Card Program, Are Not Aiding And Abetting Violation Of Federal Marijuana Laws.**

Under federal criminal law governing accomplice liability, state employees implementing the Medical Marijuana Program and issuing identification cards are clearly not aiding and abetting the commission of a federal crime. In order to show that someone has aided and abetted the commission of a crime, the government must prove four elements: (1) that the accused had the specific intent to facilitate the commission of a crime by another; (2) that the accused had the requisite intent of the underlying substantive offense; (3) that the accused assisted or participated in the commission of the underlying substantive offense, and; (4) that someone committed the underlying substantive offense. United States v. Gaskins, 849 F.2d 454, 459 (9th Cir.1988). Under California law, medical marijuana identification cards serve the limited purpose of officially memorializing the fact that a physician has recommended medical use of marijuana for a qualified patient under California Health and Safety Code section 11362.5. The cards merely identify for law enforcement personnel those persons who possess a valid physician's recommendation entitling them to protection from arrest and prosecution by state law enforcement officials for violation of state controlled substance laws.

In Conant v. Walters, 309 F.3d 629 (9<sup>th</sup> Cir. 2002), *cert. denied*, 540 U.S. 946 (2003), the United States Court of Appeals for the Ninth Circuit examined California's medical marijuana provisions and rejected the suggestion that California doctors who recommended marijuana for qualified patients were aiding and abetting violations of federal drug laws. In Conant, the district court had issued an injunction prohibiting the federal government from either revoking a physician's license to prescribe controlled substances or conducting an investigation of a physician that might lead to such revocation, where the basis for the government's action was solely the physician's professional recommendation of the use of medical marijuana under Health and Safety Code section 11362.5. Conant, 309 F.3d at 632.

The government argued that the district court's permanent injunction applied whether or not a physician anticipated that a patient would, in turn, use his or her recommendation to obtain marijuana in violation of federal law, and suggested that the injunction thus protected criminal conduct, because a recommendation under such circumstances would constitute aiding and abetting the patient's violation of federal law.



The Court soundly rejected this misinterpretation of criminal accomplice liability:

“A doctor’s anticipation of patient conduct ... does not translate into aiding and abetting, or conspiracy. A doctor would aid and abet by acting with the specific intent to provide a patient with the means to acquire marijuana. Similarly, a conspiracy would require that a doctor have knowledge that a patient intends to acquire marijuana, agree to help the patient acquire marijuana, and intend to help the patient acquire marijuana. Holding doctors responsible for whatever conduct the doctor could anticipate a patient might engage in after leaving the doctor’s office is simply beyond the scope of either conspiracy or aiding and abetting.”

Conant, 309 F.3d at 635-636 (citations omitted; emphasis added).

If a physician’s act of issuing a recommendation to a qualified patient under Health and Safety Code section 11362.5 is not aiding and abetting the violation of federal marijuana laws, then neither is a state employee’s even more attenuated act of issuing such a patient a state identification card which merely verifies and memorializes the fact of the physician’s recommendation.

**Attorney General Lockyer Has Already Unambiguously Confirmed That The U.S. Supreme Court’s Decision In Raich Did Not Invalidate Or Render Unenforceable California Medical Marijuana Laws.**

In the time since the Supreme Court’s Raich decision, California Attorney General Bill Lockyer has issued an official statement (June 6, 2005), two bulletins to law enforcement (June 9 and June 22, 2005) and a formal opinion (June 23, 2005) concerning the state’s medical marijuana laws, unambiguously affirming their continued validity. As Attorney General Lockyer has confirmed, nothing in the Raich decision changed anything about the validity and enforceability of California’s medical marijuana provisions. Even after Raich it is clear that states retain the power to enact and enforce state protections shielding medical marijuana patients from arrest and prosecution under state marijuana laws, and California government officials must continue to enforce and comply with California medical marijuana laws. Moreover, there is no federal law which prohibits the issuance of medical marijuana cards by state employees, and any such law, even if enacted, would be ruled an unconstitutional infringement of state authority. The Raich decision does nothing to grant the federal government power to require states to enforce federal drug laws or to enact state laws prohibiting medical marijuana.

Like Attorney General Lockyer, every other state attorney general who has reviewed the validity of state medical marijuana laws in the wake of the Raich decision has concluded that state laws are still valid and in full force and effect. No government official from any of the ten other states with medical marijuana laws has indicated any concern or belief that state employees could be guilty of violating federal marijuana laws simply by virtue of participating in the implementation and enforcement of those states' medical marijuana provisions. Nor has any federal government official voiced such a concern or belief.

**CDHS Concerns About Providing Patients With A "False Sense Of Security" And Maintaining Confidentiality Of State Records Provide No Legal Basis For The Unilateral Suspension Of State Medical Marijuana Laws.**

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The CDHS July 8, 2005 press release listed as "additional factors" underlying the decision to suspend the medical marijuana program claims that "the possession of a state medical marijuana card could give patients a false sense of security and lead them to believe that they are protected from federal prosecution," and, "information gathered from card holders could potentially be seized by federal officials to identify medical marijuana users for prosecution." As to patients' false sense of security, Oregon's Attorney General, in responding to a similar concern from the Department of Human Services, stated, "It is our belief that the vast majority of patients and caregivers already knew, before Raich was decided, that [state law] did not protect against possible federal prosecution." (June 17, 2005 Letter from Oregon Attorney General Hardy Meyers to Department of Human Services, available on the Oregon Attorney General's website, at <http://www.doj.state.or.us/releases/pdf/GENM9991.pdf>). The same is just as true of patients in California, where Proposition 215 was enacted in 1996, years before the Ninth Circuit's decision in Raich granted new, but short-lived, protection from federal law enforcement.

As to the potential federal seizure of state records, given that the identification card registry program is completely voluntary, California patients can decide for themselves whether the additional protection from state law enforcement arrest and seizure is worth the risk that the federal government will obtain their identifying information by seizing state records and then use that information to arrest them or seize their medication. California patients may reasonably determine that they have more to fear from state and local law enforcement officials unconvinced of their legal status in the absence of a valid state-approved identification card than from the federal government, which has not, to date, seized registry information or targeted individual patients in any state, no doubt

for a variety of practical and strategic reasons. Most importantly, it is for the legislature, not CDHS, to determine if changes to state law are warranted to better protect patients' information. CDHS's perception of this potential danger provides no legal basis for CDHS to unilaterally suspend valid state law.

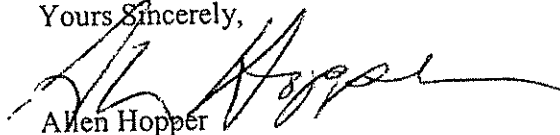
### Conclusion

There is still much uncertainty among the public regarding the impact of the Raich decision. Emotions are running high and sick and dying patients and their physicians are understandably concerned about their legal status. Under these circumstances, California government officials have the responsibility to ameliorate, not exacerbate, the public's fear and confusion. Instead, CDHS's improper actions have unnecessarily frightened and confused California's medical marijuana patients.

California Health and Safety Code section 11362.7 et. seq. requires CDHS to, "establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program." We demand that you comply with this mandatory duty and immediately lift the suspension of the Medical Marijuana Program and the issuance of identification cards.

Thank you for your prompt attention. Do not hesitate to contact us if you would like to discuss this matter.

Yours Sincerely,



Allen Hopper  
Senior Staff Attorney  
National ACLU Drug Law Reform Project



Daniel Abrahamson  
Director of Legal Affairs  
Drug Policy Alliance

cc: Attorney General Bill Lockyer

# EXHIBIT 5

LEGAL DEPARTMENT  
DRUG LAW  
REFORM PROJECT



January 19, 2006

San Diego County Board of Supervisors  
County Administration Center  
1600 Pacific Highway, Room 335  
San Diego, CA 92101

Mr. John Sansone  
San Diego County Counsel  
County Administration Center  
1600 Pacific Highway, Room 355  
San Diego, CA 92101

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T/212.549.2500  
T/DIRECT/212.549.2660  
F/212.549.2654  
WWW.ACLU.ORG

OFFICERS AND DIRECTORS  
NADINE STROSSEN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

KENNETH B. CLARK  
CHAIR, NATIONAL  
ADVISORY COUNCIL

RICHARD ZACKS  
TREASURER

**Sent this date for overnight delivery via Federal Express**

**Sent this date via facsimile to: (619) 557-4025 and (619) 531-5506**

Dear Honorable Members of the Board of Supervisors,

According to recent reports in the media, San Diego County is refusing to implement the state-mandated medical marijuana patient identification card program ("I.D. card program") and plans to file a lawsuit in federal court challenging California's medical marijuana laws.

We are writing on behalf of the American Civil Liberties Union (ACLU) and medical marijuana patients around the state to urge you to reconsider these ill-advised decisions, and to demand that you immediately begin implementation of the I.D. card program in compliance with state law.

Especially in light of the U.S. Supreme Court's decision two days ago in *Gonzales v. Oregon*, --- S.Ct. ---, 2006 WL 89200 (U.S.), it is clear that federal law does not pre-empt California's medical marijuana laws. It is equally clear that state and local government officials carrying out their duties under the I.D. card program are not violating federal controlled substance laws. The contemplated lawsuit has no legitimate legal basis and unnecessarily threatens the well-being of seriously ill and dying medical marijuana patients throughout California.

If San Diego County does file the proposed lawsuit, the ACLU will take immediate legal action to intervene in the litigation to defend California's valid medical marijuana laws and to protect the rights and interests of California's seriously ill and dying medical marijuana patients, and of California voters who overwhelmingly approved Proposition 215.

## California Medical Marijuana Laws Are Not Preempted By Federal Law.

Though federal preemption was not the determinative issue before the U.S. Supreme Court in the recent *Gonzales v. Oregon* case, the Court's decision includes a discussion of pre-emption that is dispositive to any argument that California's medical marijuana laws are pre-empted by federal law. At issue in *Gonzales v. Oregon* was an Attorney General's Directive indicating that physicians who assist suicide of terminally ill patients pursuant to an Oregon state law would be violating the federal Controlled Substances Act ("CSA").

In reaching its conclusion that the Attorney General's Directive incorrectly interpreted the CSA, the Court's majority opinion noted that the CSA "explicitly contemplates a role for the states in regulating controlled substances, as evidenced by its pre-emption provision." 2006 WL 89200 at p.6. The pre-emption provision referred to by the Court, found at 21 U.S.C. § 903, specifically states that the CSA is not to be construed as pre-empting state law. The only exception is if there is a "positive conflict" between state law and the CSA, "so that the two cannot consistently stand together." 21 U.S.C. § 903.

The meaning of the phrase "positive conflict" in this context was explained by Justice Scalia. Justice Scalia, joined by Chief Justice Roberts and Justice Thomas, dissented from the majority's decision. But in that dissenting opinion, Justice Scalia noted that the non-pre-emption clause was "embarrassingly inapplicable" to the assisted suicide issue before the Court, because the Attorney General's Directive,

does not purport to pre-empt state law in any way, not even by conflict pre-emption – unless the Court is under the misimpression that some States require assisted suicide. The Directive merely interprets the CSA to prohibit, like countless other federal criminal provisions, conduct that happens not to be forbidden under state law (or at least the law of the State of Oregon).

2006 WL 89200 at p. 29, emphasis added. As Justice Scalia's comments make clear, in order for there to be a "positive conflict," such that federal and state law "cannot consistently stand together," the state law at issue would need to require some action that specifically violated federal law. The mere existence of federal law that prohibits "conduct that happens not to be forbidden under state law" does not rise to the level of "positive conflict" triggering pre-emption. As Justice Scalia points out, there are "countless other federal criminal provisions" that criminalize conduct that is legal under state law, and these do not

trigger federal pre-emption. Indeed, this is a fundamental tenet of federalism.

That is precisely the situation in California. Federal law prohibits uses of marijuana that are not prohibited under California law. That does not mean that California's medical marijuana laws are pre-empted by the CSA, because there is no "positive conflict." The federal laws and California's laws can and do "consistently stand together." The federal government can, within certain restrictions, enforce its own federal marijuana laws, even in states like California where state law permits medical marijuana use. But federal marijuana laws do not pre-empt California's medical marijuana laws.

**The U.S. Supreme Court's June, 2005 Decision In *Gonzales V. Raich* Did Not Render California's Medical Marijuana Laws Invalid Or Pre-Empted.**

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Since San Diego County did not file a lawsuit challenging the validity of California's medical marijuana laws in 1996, when Proposition 215 was enacted, nor in 2003, when S.B. 420 was enacted (establishing the state-wide patient identification card program), the decision to take legal action now may be premised at least in part upon the June, 2005 decision of the U.S. Supreme Court in *Gonzales v. Raich*, 545 U.S. --- (2005). If so, such reliance is entirely misplaced and misinterprets the *Raich* holding.

In the time since the Supreme Court's *Raich* decision, California Attorney General Bill Lockyer has issued an official statement (June 6, 2005), two bulletins to law enforcement (June 9 and June 22, 2005), a formal opinion (June 23, 2005), and a letter providing legal advice to the California Department of Health (July 15, 2005) concerning the state's medical marijuana laws, all unambiguously affirming their continued validity. As Attorney General Lockyer has confirmed, nothing in the *Raich* decision changed anything about the validity and enforceability of California's medical marijuana provisions.

The Supreme Court did not even suggest in *Raich* that the CSA pre-empted California's medical marijuana laws, nor call into question the continued validity of state medical marijuana laws. The Court merely affirmed that under the Commerce Clause, federal law enforcement officers may enforce federal marijuana laws even in states where medical marijuana use is legal under state law. Even after *Raich* it is clear that states retain the power to enact and enforce their own individual state protections shielding medical marijuana patients from arrest and prosecution under state marijuana laws, and California government officials must continue to enforce and comply with California medical marijuana laws.

The *Raich* decision did nothing to grant the federal government power to require states to enforce federal drug laws, or to enact state laws prohibiting medical marijuana, or force states to repeal existing state laws permitting medical marijuana use. “The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.” *Printz v. United States*, 521 U.S. 898, 935 (1997); *see also New York v. United States*, 505 U.S. 144 (1992).

Like Attorney General Lockyer, every other state attorney general who has reviewed the validity of state medical marijuana laws in the wake of the *Raich* decision has concluded that such state laws are still valid and in full force and effect.

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**State Employees Implementing And Enforcing State Medical Marijuana Laws, Including The I.D. Card Program, Are Not Aiding And Abetting Violation Of Federal Marijuana Laws, Or Otherwise Violating Federal Law.**

Just as there is clearly no federal pre-emption problem with California’s medical marijuana laws generally, likewise there is no pre-emption problem with the specific California provisions concerning issuance of patient identification cards by county officials. For the same reasons (discussed in more detail below) that state or county officials could not conceivably be found in violation of the federal CSA simply by virtue of issuing state identification cards to qualified patients, there is no “positive conflict” between the CSA and California’s I.D. card program provisions.

There is no federal law which prohibits the issuance of medical marijuana cards by state employees, and any such law, even if enacted, would be ruled an unconstitutional infringement of state authority. Under federal criminal law governing accomplice liability, state employees implementing California’s Medical Marijuana Program and issuing identification cards are clearly not aiding and abetting the commission of a federal crime.

In order to show that someone has aided and abetted the commission of a crime, the government must prove four elements: (1) that the accused had the specific intent to facilitate the commission of a crime by another; (2) that the accused had the requisite intent of the underlying substantive offense; (3) that the accused assisted or participated in the commission of the underlying substantive offense, and; (4) that someone committed the underlying substantive offense. *United States v. Gaskins*, 849 F.2d 454, 459 (9th Cir.1988).

Under California law, medical marijuana identification cards serve the limited purpose of officially memorializing the fact that a physician has recommended medical use of marijuana for a qualified patient under



California Health and Safety Code section 11362.5. The cards merely identify for law enforcement personnel and other government officials those persons who possess a valid physician's recommendation entitling them to protection from arrest and prosecution by state law enforcement officials for violation of state controlled substance laws.

In *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002), *cert. denied*, 540 U.S. 946 (2003), the United States Court of Appeals for the Ninth Circuit examined California's medical marijuana provisions and rejected the suggestion that California doctors who recommended marijuana for qualified patients were aiding and abetting violations of federal drug laws. In *Conant*, the district court had issued an injunction prohibiting the federal government from either revoking a physician's license to prescribe controlled substances or conducting an investigation of a physician that might lead to such revocation, where the basis for the government's action was solely the physician's professional recommendation of the use of medical marijuana under Health and Safety Code section 11362.5. *Conant*, 309 F.3d at 632.

The government argued that the district court's permanent injunction applied whether or not a physician anticipated that a patient would, in turn, use his or her recommendation to obtain marijuana in violation of federal law, and suggested that the injunction thus protected criminal conduct, because a recommendation under such circumstances would constitute aiding and abetting the patient's violation of federal law. The Court soundly rejected this misinterpretation of federal law governing criminal accomplice liability:

A doctor's anticipation of patient conduct ... does not translate into aiding and abetting, or conspiracy. A doctor would aid and abet by acting with the specific intent to provide a patient with the means to acquire marijuana. Similarly, a conspiracy would require that a doctor have knowledge that a patient intends to acquire marijuana, agree to help the patient acquire marijuana, and intend to help the patient acquire marijuana. Holding doctors responsible for whatever conduct the doctor could anticipate a patient might engage in after leaving the doctor's office is simply beyond the scope of either conspiracy or aiding and abetting.

*Conant*, 309 F.3d at 635-636 (citations omitted; emphasis added).

If a physician's act of issuing a recommendation to a qualified patient under Health and Safety Code section 11362.5 is not aiding and abetting the violation of federal marijuana laws, then neither is a state or county employee's even more attenuated act of issuing such a patient a state identification card which merely verifies and memorializes the fact of the physician's recommendation.

## Conclusion

Since California's pioneering enactment of Proposition 215 nearly ten years ago, ten additional states have enacted similar medical marijuana law provisions. At no time over the past decade has any government official from any of the ten other states with medical marijuana laws concluded that state employees would be guilty of violating federal marijuana laws simply by virtue of participating in the implementation and enforcement of those states' medical marijuana provisions. In fact, at least two state Attorneys General, in Oregon and California, have conclusively found precisely the opposite, that state employees issuing identification cards could not be found in violation of federal law. Nor has any federal government official publicly voiced any such concern or belief. Despite its demonstrated antipathy to state medical marijuana laws, the federal government has not, in all this time, made any claim that such state laws are pre-empted by federal law.

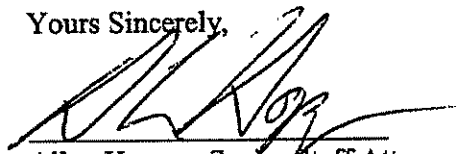
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Because there is clearly no viable legal argument to be made in support of a pre-emption claim, we are concerned that the Board of Supervisors may be acting out of political, rather than legal, motivations, such as the Board's political disagreement with the wisdom of state laws permitting medical marijuana use. Such motivation, especially coupled with the complete lack of legal support for the lawsuit, would, of course, render the lawsuit an improper use of taxpayer funds and, moreover, of the federal courts.

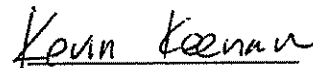
We therefore urge the Board of Supervisors to reconsider this ill-advised legal action and refrain from filing the proposed lawsuit. We also demand that the Board of Supervisors immediately begin implementing the marijuana patient identification card program as required by duly enacted state law.

Be assured that the ACLU stands fully prepared to take immediate legal action to protect the interests of California's seriously ill and dying medical marijuana patients and to defend the state's long-standing medical marijuana laws against this unwarranted, unreasonable and unfounded attack.

Yours Sincerely,



Allen Hopper, Senior Staff Attorney  
National ACLU  
Drug Law Reform Project



Kevin Keenan,  
Executive Director  
ACLU Foundation of  
San Diego & Imperial  
Counties

1 **CERTIFICATE OF SERVICE**

2  
3 I am employed in Santa Cruz County, California. My business address is 1101 Pacific Avenue,  
4 Suite 333, Santa Cruz, California 95060. I am over the age of 18 years and not a party to the  
5 within cause.

6  
7 On July 6, 2006, I served the within:

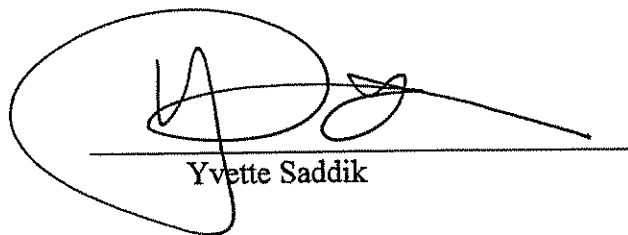
8 **NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE COMPLAINT IN**  
9 **INTERVENTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN**  
10 **SUPPORT THEREOF;**  
11 **PROPOSED COMPLAINT INTERVENTION**

12 On the interested person(s) and/or party(ies) in said cause by placing ( ) the original (x) a true  
13 copy thereof in a sealed envelope, addressed as follows:

14 **SEE ATTACHED LIST**

15  
16  X  **FEDERAL EXPRESS:** I deposited such envelope into a drop box in Santa Cruz,  
17 CA regularly maintained by Federal Express for overnight delivery, with fees provided for or  
18 paid.

19  
20 I declare under penalty of perjury, under the laws of that state of California, that the forgoing is  
21 true and correct. Executed on **July 6, 2006**, at Santa Cruz, California.

22  
23  
24   
25 Yvette Saddik

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