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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**
16

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

21 Plaintiffs,

22 v.

23 ALBERTO R. GONZALES, Attorney General of
the United States; KAREN P. TANDY,
24 Administrator of the Drug Enforcement
Administration; JOHN P. WALTERS, Director of
25 the Office of National Drug Control Policy; and
30 UNKNOWN DRUG ENFORCEMENT
26 ADMINISTRATION AGENTS,

27 Defendants.
28

Case No. CV-03-01802-JF

**FIRST AMENDED COMPLAINT
FOR PERMANENT INJUNCTIVE
RELIEF, DECLARATORY RELIEF,
AND DAMAGES**

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PERMANENT INJUNCTIVE RELIEF,
DECLARATORY RELIEF, AND DAMAGES

INTRODUCTION

1
2 1. The State of California and the City and County of Santa Cruz have
3 enacted legislation and other measures to help their sick and dying citizens safely and
4 responsibly obtain and use a physician-recommended medicine that, among other things,
5 addresses otherwise fatal symptoms of their illness or disease, allows them to undergo treatments
6 that prevent or forestall their deaths, alleviates their suffering, and permits them to control the
7 circumstances and course of their treatment and the circumstances of their deaths. That medicine
8 is marijuana.

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

21 3. On November 5, 1996, the citizens of California approved Proposition
22 215, the Compassionate Use Act, codified at Cal. Health & Safety Code § 11362.5, which makes
23 it lawful under state law for patients to cultivate and use marijuana for medical purposes when
24 they do so with the recommendation and advice of their physicians. In 2003, the California
25 legislature enacted S.B. 420, codified at Cal. Health & Safety Code § 11362.7 *et seq.*, to
26 implement the Compassionate Use Act by establishing, among other provisions, an identification
27 card system and protection from arrest for qualified patients. This combined statutory scheme
28 (hereinafter “California’s medical marijuana laws”) protects from arrest, prosecution and seizure

1 of their medicinal marijuana, qualified individuals who, upon their physician’s recommendation,
2 use marijuana for medical purposes. California has determined that marijuana use for any other
3 purpose shall remain a criminal offense under state law.

4 4. As part of their broad power to legislate and regulate for the welfare of
5 their citizens, the County and City of Santa Cruz authorize and oversee the activities of Plaintiff
6 WAMM. WAMM is a collective of seriously ill patients, some of them named Plaintiffs, who
7 cultivate their own medical marijuana and use that marijuana in accordance with the advice and
8 recommendation of their physicians, and in complete compliance with California law. WAMM
9 is also a community of seriously and, in many instances, terminally ill, individuals that gathers
10 weekly to provide its members with care, support and education, and to assist its dying members
11 live out their final days with dignity and without unnecessary pain and suffering.

12 5. Plaintiffs City of Santa Cruz and County of Santa Cruz have passed
13 several ordinances to implement California’s medical marijuana laws, including Santa Cruz
14 Municipal Code § 6.92, which requires the City to obtain and provide medical marijuana directly
15 to qualified patients and take additional steps to verify that only qualified patients receive
16 marijuana.

17 6. The federal government has consistently and vigorously opposed state
18 efforts in California and throughout the country to enact state legislation that permit medical use
19 while criminalizing non-medical use of marijuana, and has purposefully interfered with the
20 functioning of such legislation. From the enactment of California’s Proposition 215 in 1996
21 through the present day, the federal government has pursued an intentional and concerted policy
22 of threatening and utilizing arrests, forfeitures, criminal prosecutions and other punitive means,
23 all with the purpose of rendering California’s medical marijuana laws impossible to implement
24 and coercing California and its political subdivisions to recriminalize medical marijuana. The
25 federal government’s policy deliberately undermines California’s ability to chart its own
26 legislative course by incapacitating the state’s chosen mechanisms for separating what is legal
27 from what is illegal under state law. The federal policy makes it impossible for California to
28 exempt the use of medical marijuana from the operation of California’s drug laws. The federal

1 government is attempting to force California to keep medical marijuana *de facto* illegal under
2 state law.

3 7. This federal practice and policy exceeds legitimate forms of federal
4 persuasion and effectively commandeers California’s law-making function and political
5 subdivisions in violation of the Tenth Amendment. As a part of its deliberate plan to force
6 California to recriminalize medical marijuana, the federal government uses the targeted
7 enforcement of the federal Controlled Substances Act against the State (codified at 21 U.S.C.
8 § 801, *et seq.*), its political subdivisions, other entities, and individuals as a mechanism to coerce
9 the State into regulating (through criminalization) the behavior of private parties, namely
10 seriously ill patients in need of medical marijuana, that California has decriminalized. Yet, the
11 language of the Controlled Substances Act does not prohibit the individual Plaintiffs and
12 members of WAMM from following the advice of their physicians and using medical marijuana
13 in connection with a valid physician recommendation in accordance with state and local law.

14 8. As part of this intentional effort to force California to recriminalize
15 medical marijuana, the federal government embarked upon a crusade to disrupt WAMM’s
16 activities – fully legal under state law – to deprive these patients of their medicine, violating the
17 patients’ rights secured by the Due Process Clause, including bodily integrity, freedom from
18 unnecessary suffering, preservation of life, the ability to consult with their physicians and to act
19 on their physicians’ recommendations, control over intimate personal choices in their lives, and
20 the ability to control the circumstances of their own deaths.

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

28 10. The federal government’s campaign against California’s medical

1 marijuana laws has continued unabated since the DEA raid of WAMM premises. The federal
2 government continues to purposefully interfere with California’s and other states’ medical
3 marijuana laws, intending to coerce the states to recriminalize medical marijuana. Otherwise
4 law-abiding seriously ill patients and caregivers are forced to live under the constant fear of
5 federal arrest, seizure of medicine essential to their continued well-being and survival, seizure of
6 other property, and further punishment.

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

9 **JURISDICTION AND VENUE**

10 12. The claims for damages in this action arise under the Fourth, Fifth, Ninth
11 and Tenth Amendments to the United States Constitution.

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

15 14. The claims for injunctive relief arise under the Fifth, Ninth, and Tenth
16 Amendments of the United States Constitution; Article I, § 8 of the Constitution; 21 U.S.C.
17 § 885(d); the doctrine of medical necessity; and 5 U.S.C. § 702.

18 15. This court has subject matter jurisdiction over this action under 28 U.S.C.
19 § 1346(a)(2) because the United States is a defendant, and under 28 U.S.C. § 1331 because the
20 case involves a federal question.

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

24 **PARTIES**

25 **Plaintiffs**

26 17. Plaintiff COUNTY OF SANTA CRUZ, CALIFORNIA (“County of Santa
27 Cruz” or “County”) is a political subdivision of the State of California. The County is
28 empowered under Article XI, § 7 of the California Constitution to make and enforce ordinances

1 and regulations dealing with local affairs that do not conflict with general laws.

2 18. Plaintiff CITY OF SANTA CRUZ, CALIFORNIA (“City of Santa Cruz”
3 or “City”) is a municipal corporation located in the County of Santa Cruz in the State of
4 California. It is empowered under Article XI, §§ 5(a), 5(b) and 7 of the California Constitution
5 to make and enforce ordinances and regulations dealing with municipal affairs that do not
6 conflict with general laws. This grant of authority, sometimes called the “Home Rule,” gives the
7 City broad police power to regulate, among other things, the public health within its jurisdiction.

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

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

24 21. Plaintiff ELADIO V. ACOSTA (“Acosta”) was diagnosed with throat
25 cancer in 1999. The formal diagnosis of his condition is Stage III nasopharyngeal cancer with
26 bilateral cervical lymph node metastases. Currently, he undergoes chemotherapy every week,
27 and has had two chemotherapy ports implanted in his chest to facilitate the administration of
28 chemotherapy treatments. These cause Plaintiff Acosta intolerable pain and discomfort.

1 Without chemotherapy, however, Plaintiff Acosta would have no way to treat his cancer and
2 would die.

3 22. Among other side effects from his treatments, Acosta experiences severe
4 nausea and violent vomiting episodes that continue for two to three days after each treatment.
5 The chemotherapy also causes complete loss of appetite, and Acosta struggles to stay nourished
6 and suffers severe weight loss that renders him nearly unable to live. Plaintiff Acosta's doctor
7 recommends medical marijuana as necessary to continuing his cancer treatments, which prevent
8 his death by attacking the otherwise fatal cancer in his body.

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

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

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

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

1 recommended medical marijuana to control her severe side effects and allow her to continue the
2 life-saving treatments.

3 27. Medical marijuana afforded Hentz almost instantaneous relief, most
4 significantly in the form of reduced nausea. This allowed her to eat and take her other oral
5 medications as needed. Medical marijuana also relieved the debilitating stomach cramping and
6 other severe pain that Hentz suffered as a result of her cancer, the chemotherapy, and her hunger
7 and frequent vomiting, allowing her to continue with her life-saving treatments. Without
8 medical marijuana, Hentz would be unable to undergo the life-saving chemotherapy treatments
9 needed to combat her cancer.

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

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

17 30. Plaintiff VALERIE CORRAL (“Corral”) has suffered from epilepsy since
18 1972, which causes debilitating seizures that strike with little or no warning. Corral’s doctor
19 recommends medical marijuana to control and prevent the onset of her debilitating seizures.
20 Corral has found no conventional medication that effectively controls her epilepsy. Marijuana is
21 the only medicine that prevents or controls these life-threatening seizures.

22 31. Corral is the founder and executive director of WAMM. She started the
23 collective because she realized that sick and dying people face not only a physical struggle with
24 their illnesses, but also discrimination and intolerance. Corral’s goal was to create a community
25 in which sick and dying patients provide each other with emotional support and physical care.
26 Since founding WAMM, Corral has witnessed over 100 WAMM members’ final moments of
27 life. Medical marijuana allowed these WAMM members to spend conscious and lucid moments
28 with their loved ones during their last hours of life. Medical marijuana afforded these patients

1 significant pain relief and reduced or eliminated these patients’ reliance on opiates and other
2 narcotics, which greatly decrease lucidity.

3 32. Plaintiff HAROLD F. “HAL” MARGOLIN (“Margolin”) has suffered
4 from chronic myelopathy secondary to cervical spondylosis since 1995, and has also been
5 diagnosed with chronic peripheral neuropathy. As a result of these conditions, Margolin suffers
6 chronic nerve pain, limited feeling in his hands and feet, loss of balance, a severe burning
7 sensation in his feet, loss of functioning in his right leg, back and shoulder pain, and a spastic
8 gait that renders him immobile at times.

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

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

23 35. In or around October 2005, Plaintiff Margolin was additionally diagnosed
24 with chronic Myelocytic Leukemia. With this new diagnosis, he has become terminal. In
25 preparing for the end stage of his life, Margolin intends to use marijuana to control the
26 circumstances of his death. He wants to use marijuana in order to reduce or eliminate the need
27 for pain-killing opiates such as morphine and in turn reduce the intolerable side-effects of these
28 other drugs, such as severe reduction or complete loss of lucidity. Marijuana will enable him to

1 be aware of what is going on in his final moments, such as the presence of loved ones, and be
2 better able to meaningfully communicate with them.

3 36. Plaintiff LEVI CASTRO (“Castro”) is a C3 quadriplegic who is paralyzed
4 from the neck down as a result of a surfing accident in 1999. He is 26 years old. As a result of
5 his severely damaged nervous system, his body is racked by intense spasms and indescribable
6 pain. Castro has tried every other medication for his condition and marijuana is the only
7 medicine that affords him relief. He takes Baclofen and Detrol LA for the spasms, but the side
8 effects are so severe that only in conjunction with marijuana is he able to take a dose that
9 prevents the side effects from impairing his functioning. The marijuana also manages his pain,
10 stimulates his appetite, suppresses his nausea, and relieves the asthma aggravated by the spasms.

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

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

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

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

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

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

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

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

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

24 46. Gibbs spent the final three months of her life in the nursing home Bromer
25 Manor in Santa Cruz. She did not have regular access to medical marijuana in that facility. The
26 medication for her pain left her in a semi-conscious state, unable to converse, recognize people,
27 or even perform minor day-to-day tasks like lifting a television remote control. On the days
28 when Gibbs was able to use medical marijuana, she was able to converse with her visitors,

1 recognize who had come to visit her, and perform simple every day tasks. When she was able to
2 use medical marijuana along with the prescription drugs Bromer Manor provided her to relieve
3 her chronic pain, Gibbs maintained her lucidity, making her last days as comfortable as possible,
4 and allowed her to control the circumstances of her death.

5 47. Plaintiffs Cheslosky, Baehr, and Gibbs were California residents and all
6 used medical marijuana in complete compliance with California state law and local ordinances
7 with the written recommendation of their physicians. They relied on WAMM for access to
8 medical marijuana that was medically safe and free from chemical adulterants that could
9 jeopardize their health.

10 48. Plaintiffs Acosta, Hentz, Corral, Morgolin and Castro are California
11 residents and all use medical marijuana in complete compliance with California state law and
12 local ordinances with the written recommendation of their physicians. They wish to rely upon
13 WAMM for access to medical marijuana that is medically safe and free from chemical
14 adulterants that could jeopardize their health.

15 Defendants

16 49. Defendant ALBERTO R. GONZALES (“Gonzales”) is sued in his official
17 capacity as the Attorney General of the United States. Defendant Gonzales executes the federal
18 policy of disrupting implementation of the Compassionate Use Act, including the Plaintiffs’
19 lawful activities.

20 50. Defendant KAREN P. TANDY (“Tandy”) is sued in her official capacity
21 as the Administrator of the DEA. Defendant Tandy executes the federal policy of disrupting
22 implementation of the Compassionate Use Act, including the Plaintiffs’ lawful activities.

23 51. Defendant JOHN P. WALTERS (“Walters”) is sued in his official
24 capacity as the Director of the Office of National Drug Control Policy. Defendant Walters
25 executes the federal policy of disrupting implementation of California’s medical marijuana laws,
26 including the Plaintiffs’ lawful activities.

27 52. Defendants 30 UNKNOWN DRUG ENFORCEMENT
28 ADMINISTRATION AGENTS conducted the September 5, 2002 raid on WAMM’s collective.

1 They are sued in their individual capacities. The identities of the DEA agents who conducted the
2 raid are unknown to Plaintiffs at this time.

3 **FACTS**

4 **California's Medical Marijuana Laws**

5 53. On November 5, 1996, the citizens of California approved Proposition
6 215, the Compassionate Use Act, Cal. Health & Safety Code § 11362.5, which makes it lawful
7 for patients to cultivate and use marijuana for medical purposes when they do so with the
8 recommendation or advice of their physicians. The primary purposes of the Compassionate Use
9 Act are:

10 To ensure that seriously ill Californians have the right to obtain and use
11 marijuana for medical purposes where the medical use is deemed
12 appropriate and has been recommended by a physician who has
13 determined that the person's health would benefit from the use of
marijuana in the treatment of cancer, anorexia, AIDS, chronic pain,
spasticity, glaucoma, arthritis, migraine or any other illness for which
marijuana provides relief[;]

14 To ensure that patients and their primary caregivers who obtain and use
15 marijuana for medical purposes upon the recommendation of a physician
are not subject to criminal prosecution or sanction[; and]

16 To encourage the federal and state governments to implement a plan to
17 provide for the safe and affordable distribution of marijuana to all patients
in medical need of marijuana. *Id.*

18 54. In 2003, the California legislature enacted S.B. 420, Cal. Health & Safety
19 Code §§ 11362.7 *et seq.* to implement the Compassionate Use Act by establishing, among other
20 provisions, an identification card system and protection from arrest for qualified patients.
21 California's medical marijuana laws protect from arrest, prosecution and seizure of their
22 marijuana, qualified individuals who upon receipt of a physician's recommendation, cultivate or
23 use marijuana for medical purposes. Marijuana use for any other purpose remains a crime under
24 California law.

25 **WAMM and WAMM Members**

26 55. During the early morning hours of September 5, 2002, a task force
27 including between 20 and 30 armed DEA agents raided WAMM headquarters, then located at
28 the home of Plaintiff Valerie Corral. (WAMM headquarters has since moved to downtown

1 Santa Cruz.) The DEA agents forcibly entered without knocking or announcing their authority
2 and purpose for entry. The agents pointed loaded guns at Corral and her husband, forced them to
3 the ground, and cuffed them. The DEA agents detained the Corrals for approximately four
4 hours, then transported them 30 miles to the federal courthouse in San Jose, where they were
5 eventually released without being charged.

6 56. The DEA agents seized WAMM patients' weekly medical marijuana
7 allotments, which had been measured and placed in envelopes labeled with the patients' names
8 and other private patient information. The agents also cut down and removed 167 marijuana
9 plants that WAMM members were collectively cultivating for their own lawful medical use, in
10 complete compliance with California law, including seven plants that Plaintiff Corral was
11 cultivating in her personal vegetable garden, also in complete compliance with California law.
12 The DEA agents remained on the premises for eight hours, conducting an unconstitutional
13 exploratory general search that was not authorized by the search warrant.

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

25 58. The task force that raided WAMM headquarters also included personnel
26 from the Santa Clara County Sheriff's Department and the San Jose Police Department. Federal
27 officials effectively required or compelled state law enforcement officers to participate in the
28 raid.

1 59. The DEA raid on WAMM headquarters was motivated by a federal policy
2 of harassing WAMM, disrupting its activities, and attempting to stop its seriously ill patient
3 members from cultivating medical marijuana, even though they are entitled to do so under
4 California law, and was further intended to force California to recriminalize medical marijuana.

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

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

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

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

1 64. Among the individually named WAMM patient Plaintiffs and other
2 WAMM members are those with serious and life-threatening medical conditions for whom use
3 of marijuana allows them to continue with medical treatments that make their lives bearable.
4 Medical marijuana is the only medicine that permits some of these plaintiffs, who have tried all
5 other legal and available remedies, to continue with the treatments that make their lives bearable.
6 Without medical marijuana, these individuals would have no ability to direct their lives, control
7 the quality of life, or make intimate personal decisions central to their autonomy.

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

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

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

25 67. Pursuant to Article XI, § 3(a) of the California Constitution, the City of
26 Santa Cruz adopted a charter. Under Section 401 of the Charter of the City of Santa Cruz, the
27 City has the power to make and enforce all laws and regulations dealing with municipal affairs
28 subject only to limitations provided in the Charter or in the State Constitution. The Charter also

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

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

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

25 70. The Personal Use City Ordinance also allows the City to officially
26 recognize a “medical marijuana provider association,” which is defined as “a collective of
27 individuals comprised of qualified patients and primary caregivers, the sole intent of which is to
28 provide education, referral, or network services and to facilitate/assist in the lawful production,

1 acquisition, and provision of medical marijuana to qualified patients.” Santa Cruz Municipal
2 Code § 6.90.010(4). The City of Santa Cruz officially recognizes WAMM as a medical
3 marijuana provider association.

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

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

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

25 74. California’s medical marijuana laws are in part designed “to encourage the
26 federal and state governments to implement a plan to provide for the safe and affordable
27 distribution of marijuana to all patients in medical need of marijuana.” Cal. Health & Safety
28 Code § 11362.5(b)(1)(C).

1 75. The City has designed a program that follows the directive of Cal. Health
2 & Safety Code § 11362.5(b)(1)(C) and implements a plan to provide for the safe and affordable
3 distribution of marijuana to patients in Santa Cruz in medical need. The City’s second ordinance
4 concerning medical marijuana, the Office of Compassionate Use Ordinance, requires the City to
5 distribute medical marijuana directly to qualified patients through an Office of Compassionate
6 Use (“OCU”). Santa Cruz Municipal Code §§ 6.92.010-6.92.100. Pursuant to the ordinance, the
7 City is required to obtain marijuana from a legal source and store it in a secure location. The
8 City is required to provide individuals who have a valid Santa Cruz County authorized
9 compassionate use identification card with a statutorily defined amount of marijuana. The OCU
10 must associate with a medical review officer to determine such amounts. The ordinance
11 established a Commission to assist the OCU. The OCU maintains records of the patients who
12 participate in the program in a manner intended to protect the privacy of patients and doctors.
13 The OCU is responsible for reviewing current scientific research on medical marijuana and
14 keeping the City Council apprised of such research.

15 **Federal Efforts To Force States To Criminalize The Medical Use Of Marijuana**

16 76. Since 1996, California and eleven other states¹ have enacted legislation to
17 allow the medical use of marijuana, while leaving intact the laws criminalizing non-medical use
18 of marijuana.

19 77. The federal government has vigorously opposed state efforts to enact
20 legislation that permits medical use while also criminalizing non-medical use of marijuana.
21 Congress has passed legislation expressing its disagreement with state efforts to allow medical
22 use of marijuana and has directed federal officials to oppose enactment of state laws allowing
23 _____

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

1 medical use of marijuana. Federal officials have expended federal funds to oppose state ballot
2 initiatives and legislative enactments that would allow medical use of marijuana. In campaigning
3 against medical marijuana initiatives, federal officials have violated state election laws.

4 78. The federal government has pursued a policy of threatening and utilizing
5 arrests, forfeitures, criminal prosecutions and other punitive means, all with the purpose of
6 rendering California's medical marijuana laws impossible to implement and with the intent of
7 coercing California and its political subdivisions to enact legislation recriminalizing medical
8 marijuana. This consistent and long-standing practice and policy of the federal government
9 exceeds legitimate forms of persuasion and effectively commandeers the law-making function of
10 California and its political subdivisions. As a part of that deliberate plan to force California to
11 make medical marijuana illegal, the federal government selectively uses the enforcement and
12 threat of enforcement of the Controlled Substances Act against the State and other entities as a
13 mechanism to coerce the State into regulating through criminalization the behavior of private
14 parties -- namely seriously ill patients in need of medical marijuana -- that the State wishes not to
15 criminalize.

16 79. The federal policy of coercing state conformity to federal marijuana law
17 began with the federal reaction to California's passage of Proposition 215 in 1996. Beginning in
18 late 1996, White House officials convened meetings among relevant cabinet agencies to
19 formulate plans to reverse California's decision to allow medical use of marijuana and to
20 effectively force the state to recriminalize the medical use of marijuana. The federal policy was
21 promulgated by an inter-agency working group that included, among other agencies, the Office
22 on National Drug Control Policy, the Drug Enforcement Agency, and the Department of Justice.
23 The federal government initially contemplated filing a suit claiming that federal law preempted
24 the medical marijuana initiative, but concluded that there was no legal basis for such a lawsuit
25 because federal law does not preempt state law in this area. The working group then turned to
26 other strategies intended to render California law inoperable, effectively forcing the State to
27 recriminalize the medical use of marijuana.

28 80. Specifically, the federal government enacted a policy of threatening to

1 revoke or revoking the federal prescription license and eligibility to receive Medicare and
2 Medicaid reimbursements of any physician who recommended to a patient the medical use of
3 marijuana. The federal policy also threatened possible criminal prosecution against any such
4 physician. This federal policy was enacted with the specific intention of eliminating the only
5 viable mechanism for California to distinguish between legal (medical) and illegal (non-medical)
6 marijuana use, effectively forcing the State to treat all marijuana as a crime. The federal policy
7 was enjoined in *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002), *cert. den.* 540 U.S. 946 (2003),
8 because it violated physicians' First Amendment Rights, with a concurring judge observing that
9 the policy also violated the Tenth Amendment. *Id.* at 639 (Kozinski, J., concurring).

10 81. Despite the permanent injunction in *Conant*, the U.S. Attorney for Hawaii
11 made public statements in June 2005, widely reported in the local press, threatening to prosecute
12 physicians who made medical findings that would allow patients to qualify under Hawaii's
13 medical marijuana law. The U.S. Attorney made clear that he believed his actions would render
14 Hawaii's law a dead letter, effectively forcing the State to recriminalize medical use of
15 marijuana.

16 82. Federal officials have arrested and, in some cases, prosecuted numerous
17 cultivators of medical marijuana who were operating in compliance with state law (including
18 plaintiffs herein), while selecting not to investigate, arrest or prosecute similarly situated
19 cultivators whose marijuana the federal officials believed was not intended for medical use. This
20 practice and policy of targeted investigation, enforcement, and prosecution is intended to
21 sabotage and render unenforceable California's medical marijuana regulations and effectively
22 force the State to recriminalize medical marijuana use.

23 83. Federal officials have arrested and, in some cases, prosecuted numerous
24 providers of medical marijuana who were operating in compliance with state law (including
25 plaintiffs herein), while selecting not to investigate, arrest or prosecute similarly situated
26 distributors whose marijuana the federal officials believed was not intended for medical use.
27 This practice and policy of targeted investigation, enforcement, and prosecution is intended to
28 sabotage and render unenforceable California's medical marijuana laws and effectively force the

1 State to recriminalize medical marijuana use.

2 84. The federal government has sought, and in some cases obtained, forfeiture
3 of property from individuals and entities engaged in medical marijuana-related activities in
4 compliance with state law, while selecting not to investigate, arrest or prosecute similarly
5 situated individuals and entities whose marijuana the federal officials believed was not intended
6 for medical use. This practice and policy of targeted investigation, enforcement and prosecution
7 is intended to sabotage and render unenforceable California’s medical marijuana laws and
8 effectively force the State to recriminalize medical marijuana use.

9 85. California Attorney General Bill Lockyer concluded, based on
10 communication with federal officials, that federal enforcement actions against cultivators and
11 providers of medical marijuana (including plaintiffs herein) were intended to be punitive and
12 intimidating gestures, not aimed at enforcement of legitimate federal interests, but at interfering
13 with implementation of California law. In February 2002, then-Administrator of the Drug
14 Enforcement Agency Asa Hutchinson publicly confirmed that medical marijuana raids (such as
15 those that took place in San Francisco and Oakland on February 12, 2002) were a part of the
16 federal government’s commitment to disrupt implementation of the Compassionate Use Act.
17 Hutchinson also reiterated the federal policy of disrupting use of medical marijuana in a
18 September 30, 2002 letter to California Attorney General Bill Lockyer.

19 86. The federal government took action against the Oakland Cannabis Buyers
20 Cooperative (“OCBC”) and criminally prosecuted Ed Rosenthal, who had been deputized by the
21 City of Oakland to cultivate medical marijuana for OCBC.

22 87. The federal government raided the Los Angeles Cannabis Resource
23 Center, and seized and subjected to forfeiture related property and funds, including property
24 owned by the City of West Hollywood.

25 88. Federal officials have urged state and local law enforcement officials to
26 make arrests and seizures related to medical marijuana, even where the conduct complies with
27 State law, leaving defendants to raise state medical marijuana protections only after being forced
28 to appear in court to defend themselves against state criminal prosecution. This practice,

1 initiated and encouraged by the federal government, continues today, in spite of numerous
2 official pronouncements by the California Attorney General instructing state law enforcement to
3 enforce state, not federal, laws.

4 89. The Office of National Drug Control Policy recently sent an official to
5 New Mexico to discourage the state’s Senate Judiciary Committee from moving forward with a
6 proposed medical marijuana statute. The federal official derided supporters of the law and tried
7 to persuade state legislators from sending the law to the New Mexico Senate for a vote.

8 90. California and other states have enacted medical marijuana patient
9 identification card programs to assist in distinguishing between legal (medical) and illegal (non-
10 medical) use of marijuana. Elimination of state identification card programs would render
11 California law inoperable, effectively forcing the State to recriminalize the medical use of
12 marijuana. In response to the federal policy of using the threat of federal prosecution as a means
13 of coercing state conformity to federal marijuana law, California and other states halted or
14 considered halting the implementation of such state medical marijuana identification card
15 systems mandated by state law. States so acted out of an articulated fear of federal prosecution
16 under the Controlled Substance Act and other related federal sanctions. For example:

17 a. In July 2005, the California Department of Health Services
18 (“CDHS”) suspended California’s Medical Marijuana Program due
19 to an articulated fear that state and county employees who issued
20 identification cards to qualified patients would be prosecuted by
21 federal authorities. The CDHS reinstated the Program only after
22 the California Attorney General issued an opinion asserting that
23 state officials could not be subject to federal criminal prosecution
24 for issuing state medical marijuana identification cards, or for
25 declining to arrest persons acting in compliance with the state’s
26 medical marijuana provisions.

27 b. In November 2005, the San Diego County Board of Supervisors
28 announced it would refuse to implement the state-mandated

1 medical marijuana identification card program for qualified
2 patients, claiming in published media statements a fear that county
3 employees would be prosecuted by federal authorities.

4 c. In June 2005, the Oregon Department of Human Services
5 (“ODHS”) suspended its issuance of identification cards to medical
6 marijuana patients due to an articulated fear of federal criminal
7 prosecution of state or county employees. The ODHS resumed
8 issuance of identification cards only after Oregon’s Attorney
9 General issued an opinion.

10 d. In June 2005, the Governor of Alaska threatened to suspend its
11 identification card program for medical marijuana patients due to
12 an articulated fear of federal prosecution.

13 91. The longstanding policies and practices of the federal government, as
14 recounted herein, are intended to and have thwarted the County and City of Santa Cruz in their
15 efforts to implement California’s medical marijuana laws and local ordinances to protect
16 individuals operating within the scope of state law.

17 92. The federal government’s raid of WAMM, a medical marijuana collective
18 designated by the City of Santa Cruz as a medical marijuana provider association, and similar
19 enforcement actions undermine the City’s ability to regulate and legislate the health and welfare
20 of its citizens generally, and these actions specifically and intentionally interfere with the City’s
21 ability to implement state medical marijuana laws. In particular, the City has a responsibility
22 under state law to distinguish between legal (medical) and illegal (non-medical) use and
23 provision of medical marijuana, but federal enforcement actions threaten to make all marijuana
24 activity exist only within an underground, black market, where medical and non-medical
25 marijuana are indistinguishable. In order to best meet its responsibilities to implement state
26 medical marijuana laws, the City has chosen to become a provider of medical marijuana, creating
27 a safe and reliable supply mechanism that is clearly distinguishable from illegal, non-medical
28 sources.

1 nation's history and tradition. Under common law, use of medical cannabis was not proscribed.
2 When the original 13 states ratified the Bill of Rights, cannabis was in use as a medicine.
3 Indeed, until 1941, cannabis was indicated for numerous medical conditions in the
4 pharmacopoeia of the United States. This nation's long, historical tradition of liberty concerning
5 the use of medical marijuana contrasts sharply with the relatively recent assertion of federal
6 power to restrict the use of marijuana. The first federal restriction on the sale of marijuana did
7 not appear until almost the middle of the 20th Century, in the form of the Marihuana Tax of
8 1937.

9
10 **FIRST CAUSE OF ACTION**
11 **(Injunctive And Declaratory Relief For Violation Of**
12 **Other Fundamental Rights Secured By**
13 **The Fifth And Ninth Amendments Of The**
14 **United States Constitution)**

15 97. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1
16 through 96.

17 98. An actual controversy has arisen and now exists between Plaintiffs and
18 Defendants, and Plaintiffs have no adequate remedy at law.

19 99. The Due Process clause of the Fifth Amendment of the U.S. Constitution
20 protects unenumerated liberties from federal intrusion if they are fundamental rights. The Ninth
21 Amendment of the U.S. Constitution also protects unenumerated liberties. The actions of
22 Defendants, as alleged herein, violated the following fundamental rights of the individually-
23 named WAMM patient Plaintiffs and other members of WAMM, which are secured by the Fifth
24 and Ninth Amendments of the U.S. Constitution:

- 25 • the fundamental right to preserve life;
- 26 • the fundamental right to ameliorate pain;
- 27 • the fundamental right to maintain bodily integrity;
- 28 • the fundamental right to consult with their physicians regarding treatment and
to act on the physicians' recommendations; and
- the fundamental right to make certain intimate and personal decisions.

100. Each of these rights is deeply rooted in American history and tradition and

1 inherent in the concept of ordered liberty.

2 101. The actions of Defendants, as alleged herein, violate Plaintiffs' rights
3 secured under the Fifth and Ninth Amendments, and Plaintiffs request the relief set forth in the
4 Prayer for Relief.

5
6 **SECOND CAUSE OF ACTION**
7 **(Injunctive And Declaratory Relief For Deprivation**
8 **Of The Fundamental Right To Control**
9 **The Circumstances Of One's Own Death Secured**
10 **By The Fifth And Ninth Amendments Of The**
11 **United States Constitution)**

12 102. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1
13 through 101.

14 103. An actual controversy has arisen and now exists between Plaintiffs and
15 Defendants, and Plaintiffs have no adequate remedy at law.

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

22 105. The actions of Defendants, as alleged herein, violate Plaintiffs' rights
23 secured under the Fifth and Ninth Amendments, and Plaintiffs request the relief set forth in the
24 Prayer for Relief.

25
26 **THIRD CAUSE OF ACTION**
27 **(Injunctive And Declaratory Relief For**
28 **Violation Of The Tenth Amendment Of The**
United States Constitution)

106. Plaintiffs incorporate by reference the allegations in paragraphs 1 through
105.

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

1 *Federal Bureau of Narcotics*, 403 U.S. 388 (1971), to damages to compensate for the
2 Defendants' violation of their constitutional rights.

3 117. The actions of Defendants, as alleged herein, violate Plaintiffs' rights
4 secured under the Fourth, Fifth, Ninth and Tenth Amendments, and Plaintiffs request the relief
5 set forth in the Prayer for Relief.

6 **SIXTH CAUSE OF ACTION**
7 **(Injunctive and Declaratory Relief:**
8 **Medical Necessity Doctrine)**

9 118. The Plaintiffs hereby incorporate by reference the allegations in
10 paragraphs 1 through 117.

11 119. An actual controversy has arisen and now exists between Plaintiffs and
12 Defendants.

13 120. Under the doctrine of medical necessity, individual patients who (1) suffer
14 from a serious medical condition, (2) will suffer imminent harm without access to medical
15 marijuana, (3) need marijuana for the treatment of their medical condition or to alleviate the
16 medical condition or symptoms associated with the medical condition or to prevent or forestall
17 their own deaths, and (4) have no reasonable legal alternative to marijuana for the effective
18 treatment or alleviation of their medical condition or symptoms associated with the medical
19 condition because they have tried all other legal alternatives to marijuana and the alternatives
20 have been ineffective or result in intolerable side effects, may use and obtain medical marijuana
21 for their own personal medical treatment.

22 121. The doctrine of medical necessity permits individually named WAMM
23 patient Plaintiffs and other members of WAMM to use and obtain marijuana for their personal
24 medical treatment free from the threat of Defendants' actions to raid, arrest, prosecute, punish,
25 seize medical marijuana of, forfeit property of, or seek civil or administrative sanctions against
26 them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a permanent injunction barring Defendants, their agents, employees, assigns, and all persons acting in concert or participating with them from violating the Fifth, Ninth, and Tenth Amendments of the U.S. Constitution, 21 U.S.C. § 885(d), and the doctrine of medical necessity through continued seizures of medical marijuana and/or other interference with the Plaintiffs’ cultivation, possession, distribution, and use of medical marijuana, including but not limited to threats of or actual criminal prosecutions, asset forfeitures, or additional raids;

2. For a judicial declaration that the ability to use medical marijuana is necessary to protect Plaintiffs’ fundamental right to control the circumstances of their own deaths, as secured by the Fifth and/or Ninth Amendments to the United States Constitution;

3. For a judicial declaration that the ability to use medical marijuana is necessary to protect Plaintiffs’ fundamental rights to maintain bodily integrity, ameliorate pain, preserve life, make intimate and personal decisions, and to consult their physicians regarding treatment and to act on their physicians’ recommendations, as secured by the Fifth and/or Ninth Amendments to the United States Constitution;

4. For a judicial declaration that federal policy designed to subvert and control implementation of California medical marijuana laws with the intent of coercing California to recriminalize medical marijuana constitutes commandeering of the police power and executive functions of State of California and its political subdivisions, in violation of the Tenth Amendment;

5. For a judicial declaration that under 21 U.S.C. § 885(d), WAMM and the patient Plaintiffs and, additionally or alternatively, City of Santa Cruz employees and agents who engage in medical marijuana activities in compliance with California law and Santa Cruz Municipal Code § 6.92, are immune from criminal and civil liability under the Controlled Substances Act;

6. For a judicial declaration that subjecting City of Santa Cruz employees or agents to federal arrest or criminal prosecution, or subjecting City-owned, leased or controlled

1 property to federal civil or criminal forfeiture proceedings, or otherwise enforcing the Controlled
2 Substances Act against the City of Santa Cruz or its employees, agents or property for providing
3 medical marijuana to qualified patients in compliance with state law and with Santa Cruz
4 Municipal Code, and additionally or alternatively, the September 5, 2002 DEA raid and seizure
5 of WAMM patients’ medical marijuana, constitute federal commandeering of the police power
6 and executive functions of the State of California and its political subdivisions, in violation of the
7 Tenth Amendment;

8 7. For a judicial declaration that the doctrine of medical necessity allows
9 individual Plaintiffs and members of WAMM to use marijuana for their medical conditions;

10 8. For a judicial declaration that the language of the Controlled Substances
11 Act does not prohibit the individual Plaintiffs and members of WAMM from following the
12 advice of their physicians and using medical marijuana in connection with a valid physician
13 recommendation in accordance with state and local law;

14 9. For an injunction ordering Defendants to return the medical marijuana
15 unconstitutionally seized from WAMM on September 5, 2002;

16 10. For compensatory damages in an amount according to proof arising from
17 Defendants’ violations of Plaintiffs’ rights under the Fourth, Fifth, Ninth, and Tenth
18 Amendments;

19 11. For punitive damages arising from Defendants’ callous disregard of
20 Plaintiffs’ rights under the Fourth, Fifth, Ninth, and Tenth Amendments;

21 12. For reasonable attorneys’ fees and costs of suit; and

22 13. For such other and further relief as the Court may deem necessary and
23 proper.

24 **JURY DEMAND**

25 Plaintiffs demand a jury trial of those causes of action triable to a jury.
26
27
28

1 DATED: January 30, 2006

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2
3
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