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SOUTHERN DISTRICT OF CALIFORNIA

BY _____ DEPUTY

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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10
11 COUNTY OF SAN DIEGO,

12 Plaintiff,

13 v.

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

17 Defendants.

NO6 CV 0 130

WQH JMA

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

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

20 **PRELIMINARY STATEMENT**

21 As required by treaty obligations, the United States has enacted legislation declaring that
22 there is no accepted medical use for marijuana and has generally outlawed its use, possession,
23 distribution and cultivation. Contrary to federal law and an international treaty, California has
24 enacted laws declaring that certain persons have a right to use marijuana for medical purposes
25 and has authorized those individuals to use, possess, distribute and cultivate marijuana without
26 criminal sanction.

27 The County brings this lawsuit because it believes California's medical marijuana laws
28 are preempted under the Supremacy Clause of the United States Constitution (Article VI)

1 because they conflict with a federal statute (the Controlled Substances Act) and an international
2 treaty (the Single Convention on Narcotic Drugs). Thus, the County believes that it should not
3 be required to implement California's preempted and therefore void medical marijuana laws.

4 THE PARTIES

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

7 2. Defendant State of California ("State") is, and at all times herein mentioned was, a
8 state government.

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

12 4. The true names and capacities of defendants Does 1 through 50, inclusive, are
13 unknown to the County, and the County therefore sues said defendants by such fictitious names.
14 The County will amend the complaint to allege the true names and capacities of the defendants
15 sued herein as Does 1 through 50, inclusive, when ascertained.

16 JURISDICTION

17 5. This Court has jurisdiction under 28 U.S.C. § 1331 because the County alleges
18 that proposition 215 (Cal. Health & Safety Code § 11362.5) and its implementing legislation
19 (Cal. Health & Safety Code §§ 11362.7-11362.83) are preempted under the Supremacy Clause of
20 the United States Constitution (Article VI) because they conflict with a federal law (the
21 Controlled Substances Act) and an international treaty to which the United States is a party (the
22 Single Convention on Narcotic Drugs).

23 CALIFORNIA'S MEDICAL MARIJUANA LAWS ARE PREEMPTED

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

28 7. Marijuana (cannabis) is specifically addressed in the Single Convention.

1 Marijuana is listed under Schedule IV of the treaty. For Schedule IV drugs such as marijuana, a
2 party to the treaty “shall, if in its opinion prevailing conditions in its country render it the most
3 appropriate means of protecting the public health and welfare, prohibit the production,
4 manufacture, export and import of, trade in, possession or use of any such drug *except for*
5 *amounts which may be necessary for medical and scientific research only*, including clinical
6 trials therewith to be conducted under or subject to the direct supervision and control of the
7 Party.” (art. 2, § 5.b.)

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

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

19 10. The Single Convention is not self-executing. It requires parties to take legislative
20 or administrative action to carry out its provisions.

21 11. In 1970, Congress passed the Controlled Substances Act (21 U.S.C. §§ 801-904)
22 in order to comply with its obligations under the Single Convention. 21 U.S.C. § 801(7). In the
23 Controlled Substances Act, Congress determined that marijuana has “no currently accepted
24 medical use in treatment in the United States.” 21 U.S.C. § 812(b)(1)(B),
25 812(c)(sched. I)(c)(10). Therefore, Congress criminalized the manufacture, possession and
26 distribution of marijuana for any purpose. 21 U.S.C. §§ 841(a), 844(a).

27 12. In addition, as authorized by the Single Convention, the United States has decided
28 to allow cultivation of limited amounts of marijuana for research purposes. The United States

1 has designated the National Institute on Drug Abuse (“NIDA”) as the agency responsible for
2 administering the cultivation of marijuana according to the terms of the Single Convention.
3 NIDA has entered into a contract with the University of Mississippi whereby the Institute has
4 the option in any given year of growing 1.5 or 6.5 acres of marijuana, or no marijuana at all,
5 depending on the research demand. NIDA is the only legal source for marijuana in the United
6 States.

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

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

20 15. In 2003, the California Legislature enacted a statutory scheme implementing
21 Proposition 215 (Cal. Health & Safety Code §§ 11362.7-11362.83). This statutory scheme
22 requires the County to issue identification cards to “a person authorized to engage in the medical
23 use of marijuana and the person’s designated caregiver” Cal. Health & Safety Code §§
24 11362.7(g), 11362.71(b)(5).

25 16. Despite the provisions of the federal Controlled Substances Act, California’s
26 statutory scheme declares that “[n]o person or designated primary caregiver in possession of a
27 valid identification card shall be subject to arrest for possession, transportation, delivery, or
28 cultivation of medical marijuana in an amount established pursuant to this article” Cal.

1 Health & Safety Code § 11362.71(e).

2 17. The California Legislature also authorized patients and caregivers to cultivate “no
3 more than six mature or 12 immature marijuana plants per qualified patient” even though under
4 the Single Convention only the NIDA may license individuals to cultivate marijuana. Cal.

5 Health & Safety Code § 11362.77(a).

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

16 **FIRST CAUSE OF ACTION**

17 **(Declaratory Relief)**

18 19. The County refers to and incorporates herein by reference Paragraphs 1
19 through 18.

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

22 21. The County also seeks a declaration whether Proposition 215 (Cal. Health &
23 Safety Code § 11362.5) and its implementing legislation (Cal. Health & Safety Code §§
24 11362.7-11362.83) are preempted under the Supremacy Clause of the United States
25 Constitution.

26 22. An actual controversy has arisen in that the County contends that California
27 Health & Safety Code §§ 11362.5 and 11362.7 through 11362.83 are preempted under the
28 Supremacy Clause of the United States Constitution, and Defendants contend that those

1 provisions are not preempted under the Supremacy Clause.

2 23. Based upon the foregoing, a clear, actual and present controversy has arisen
3 between the County and the State and its officers, which controversy cannot be resolved without
4 a judicial determination.

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

10 **SECOND CAUSE OF ACTION**

11 **(Injunctive Relief)**

12 25. The County refers to and incorporates herein by reference Paragraphs 1 through 24
13 above as though fully incorporated herein.

14 26. The State and Defendant Shewry must be enjoined from enforcing Proposition 215
15 (Cal. Health & Safety Code § 11362.5) and its implementing legislation (Cal. Health & Safety
16 Code §§ 11362.7-11362.83) because these provisions are preempted under the Supremacy
17 Clause of the United States Constitution because they conflict with the federal Controlled
18 Substances Act and the Single Convention.

19 27. The County has no plain, speedy and adequate remedy at law.

20 WHEREFORE, plaintiff, the County of San Diego, prays for judgment, against
21 defendants, and each of them, as follows:

22 1. Declaring that Proposition 215 (Cal. Health & Safety Code § 11362.5) and its
23 implementing legislation (Cal. Health & Safety Code §§ 11362.7-11362.83) are preempted
24 under the Supremacy Clause of the United States Constitution;

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

27 3. Enjoining defendants State and Shewry from enforcing California Health & Safety
28 Code §§ 11362.5 and 11362.7 through 11362.83;

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- 4. For costs of suit incurred herein; and
- 5. For such other and further relief as the Court deems just and proper.

DATED: January 17, 2006 JOHN J. SANSONE, County Counsel

By *Thomas D. Bunton*
THOMAS D. BUNTON, Senior Deputy
Attorneys for Plaintiff County of San Diego