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NORTHERN DISTRICT OF CALIFORNIA

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Counsel for Plaintiff
MICHAEL LEE

E-Filed

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JL

MICHAEL LEE,

Plaintiff,

v.

COUNTY OF CONTRA COSTA, a municipal
corporation; OFFICE OF THE SHERIFF, CONTRA
COSTA COUNTY, an entity of unknown form; and
DOES 1-20, individually and in their official
capacities,

Defendants.

IC 05 3506
No.

**COMPLAINT FOR DAMAGES,
DECLARATORY RELIEF,
PRELIMINARY INJUNCTION,
AND PERMANENT INJUNCTION
DEMAND FOR JURY TRIAL**

I. INTRODUCTION

1. This is a civil rights action for declaratory and injunctive relief, and damages arising out of an unconstitutional policy and practice effectuated by the County of Contra Costa to destroy medical marijuana lawfully possessed under the laws of the State of California without prior notice and a hearing, in violation of due process. Plaintiff Michael Lee ("Lee") is a qualified medical marijuana patient with a physician's recommendation to use marijuana to treat symptoms associated with chronic gastritis, in accordance with California law. The County of Contra Costa; the Office of

1 the Sheriff, Contra Costa County and DOES 1-20 seized his medical marijuana and destroyed it
2 without notice or a hearing, as Michael Lee first learned at the hearing on his motion for the return of
3 his lawfully possessed property. This action and policy violates Lee’s rights under the Fourth, Fifth
4 and Fourteenth Amendments to the United States Constitution and Article I, Sections 7 and 19 of the
5 California Constitution.
6

7 2. In the general election of November 4, 1996, fifty-seven percent of the California
8 electorate approved a ballot measure enacting Proposition 215 (“Proposition 215” or “the
9 Compassionate Use Act”). In so doing, the California voters established that “seriously ill
10 Californians have the right to obtain and use marijuana for medical purposes where that medical use
11 is deemed appropriate and has been recommended by a physician who has determined that the
12 person’s health would benefit from the use of marijuana. . . .” Cal. Health & Safety Code §
13 11362.5(b)(1)(A).
14

15 3. Where property has been confiscated by law enforcement without probable cause to
16 believe that a crime has been committed, the California Legislature has established “special
17 proceedings” for its expeditious return. *See* Penal Code § 1538.5 *et seq.*; *Avelar v. Superior Court*, 7
18 Cal.App.4th 1270, 1276 (1992). Recognizing the important due process and property interests at
19 stake, California has established that once a court finds probable cause lacking, it *must* return seized
20 property to its rightful owner. *See Stern v. Superior Court*, 76 Cal.App.2d 772, 784 (1946).
21

22 4. Notwithstanding these important statutory and constitutional rights, the County of
23 Contra Costa and its employees destroyed the medical marijuana it confiscated from Lee after he had
24 given them clear notice that he was interested in seeking its return. Shortly after Lee’s medical
25 marijuana plants were seized by the Contra Costa Sheriff’s Office on September 25, 2000, he filed a
26 motion for return of property in the Contra Costa Superior Court. To forestall consideration of that
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1 motion, an attorney representing the County of Contra Costa stated that the County would need
2 additional time to consider whether to file charges against Lee. After no such charges were filed and
3 the statute of limitations had run, Lee filed another motion for the return of the property that was
4 confiscated from him. At that hearing, Lee learned for the first time that his medical marijuana had
5 already been destroyed without notice to him. The court commented that the defendants' actions
6 were "unconscionable" and that if Lee were to "pursue this civilly it would be the appropriate thing to
7 do." This suit followed.
8

9 **II. JURISDICTION AND VENUE**

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11 5. Plaintiff brings this action to redress the deprivation of rights secured to him by the
12 Fourth, Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 7
13 and 19 of the California Constitution.

14
15 6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343,
16 and 42 U.S.C. § 1983. Plaintiff also invokes supplemental jurisdiction of this Court over his state
17 claims against defendants pursuant to 28 U.S.C. § 1367, as the state constitutional claims form part of
18 the same case or controversy.

19
20 7. Venue is proper in this judicial district under 28 U.S.C. § 1391 because the events
21 giving rise to the complaint occurred in the County of Contra Costa, which is in this judicial district.

22 **III. THE PARTIES**

23 **A. Plaintiff**

24
25 8. Plaintiff MICHAEL LEE ("Lee") is, and at all times mentioned herein, was a resident
26 of the County of Contra Costa in the State of California and a qualified medical marijuana patient
27 under California law.
28

1 **B. Defendants**

2 9. Defendant COUNTY OF CONTRA COSTA (“Contra Costa”) is, and at all times
3 mentioned herein was, a municipal corporation within the State of California. Defendant Contra
4 Costa operates and governs the Office of the Sheriff, Contra Costa County pursuant to the laws of
5 State of California.
6

7 10. Defendant OFFICE OF THE SHERIFF, CONTRA COSTA COUNTY (“Contra Costa
8 Sheriff’s Office”) is, and at all times mentioned herein was, a department within the State of
9 California, which is owned and operated by it.
10

11 11. Plaintiff is ignorant of the true names of defendants sued herein as DOES 1 through
12 20, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff will amend this
13 complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
14 believes and therefore alleges that each of the Doe defendants is legally responsible and liable for the
15 injuries and damages hereinafter set forth, and that each of said defendants proximately caused said
16 injuries and damages by reason of their violation of constitutional and legal rights. Plaintiff will ask
17 leave to amend this complaint to insert further charging allegations when such facts are ascertained.
18

19 12. Each of the defendants, including defendants DOES 1 through 20, caused and is
20 responsible for the below-described unlawful conduct and resulting injuries by, among other things,
21 personally participating in the unlawful conduct or acting jointly or conspiring with others who did
22 so; by authorizing, acquiescing in or setting in motion policies, plans or actions that led to the
23 unlawful conduct; by failing to take action to prevent the unlawful conduct; by failing and refusing
24 with deliberate indifference to plaintiff’s rights to initiate and maintain adequate training and
25 supervision; and by ratifying the unlawful conduct that occurred by agents and officers under their
26 direction and control, including failing to take remedial or disciplinary action.
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1 27. At all times pertinent hereto, the supervisors who supervised the defendant officers
2 who unlawfully violated Lee’s constitutional rights encouraged and tolerated the policies and
3 practices described herein.
4

5 28. Defendants County of Contra Costa and the Contra Costa Sheriff’s Office refused
6 adequately to train, direct, supervise, or control the individual defendant officers so as to prevent the
7 violation of plaintiff’s constitutional rights.

8 29. At all times pertinent hereto, the individual defendant officers were acting within the
9 scope of their employment and pursuant to the aforementioned policies and practices of the County of
10 Contra Costa and the Contra Costa Sheriff’s Office. These policies and practices were enforced by
11 defendants County of Contra Costa, the Contra Costa Sheriff’s Office, and their employee
12 supervisors and were the moving force, proximate cause, or affirmative link behind the conduct
13 causing plaintiff’s injury. These defendants are therefore liable for the violation of plaintiff’s
14 constitutional rights by the individual defendant officers.
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17 **SECOND CAUSE OF ACTION--DUE PROCESS**

18 **Violation of California Constitution, Article I, § 7(a)**

19 **(AGAINST ALL DEFENDANTS)**

20 30. Plaintiff realleges and incorporates by reference paragraphs 1 through 29 of this
21 complaint as though fully set forth herein.
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23 31. Defendants’ above-described conduct violated Plaintiff’s right not to be deprived of
24 property or liberty without due process of law under article I, section 7(a) of the California
25 Constitution.
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1 **THIRD CAUSE OF ACTION--TAKINGS/INVERSE CONDEMNATION**

2 **Violation of the Fifth and Fourteenth Amendments to the United States Constitution**
3 **(42 U.S.C. § 1983)**

4 (AGAINST ALL DEFENDANTS)

5 32. Plaintiff realleges and incorporates by reference paragraphs 1 through 31 of this
6 complaint as though fully set forth herein.

7
8 33. At all times mentioned herein, plaintiff was the legal owner of the medical marijuana
9 and cultivate equipment when it was confiscated and destroyed by the defendants.

10 34. Defendants took plaintiff’s medical marijuana and cultivation equipment for public
11 use without a legitimate public health or safety interest.

12 35. Plaintiff received no monetary compensation for the damage to his property.

13
14 36. In doing the aforesaid acts, defendants violated plaintiff’s right to just compensation
15 for property taken or damaged for public use without a legitimate public health or safety interest
16 under the Fifth and Fourteenth Amendments to the United States Constitution.

17 **FOURTH CAUSE OF ACTION--TAKINGS/INVERSE CONDEMNATION**

18 **Violation of California Constitution, Article I, Section 19**

19 (AGAINST ALL DEFENDANTS)

20
21 37. Plaintiff realleges and incorporates by reference paragraphs 1 through 36 of this
22 complaint as though fully set forth herein.

23
24 38. At all times mentioned herein, plaintiff was the legal owner of the medical marijuana
25 and cultivation equipment when it was confiscated and destroyed by the defendants.

26 39. Defendants took plaintiff’s medical marijuana and cultivation equipment for public
27 use without a legitimate public health or safety interest.

28 40. Plaintiff received no monetary compensation for the damage to his property.

1 41. In doing the aforesaid acts, defendants violated plaintiff's right to just compensation
2 for property taken or damaged for public use without a legitimate public health or safety interest
3 under article I, section 19 of the California Constitution.
4

5 **FIFTH CAUSE OF ACTION--CONSPIRACY TO VIOLATE CIVIL RIGHTS**

6 **(42 U.S.C. §§ 1983 and 1985)**

7 **(AGAINST DOES 1-20)**

8 42. Plaintiff realleges and incorporates by reference paragraphs 1 through 41 of this
9 complaint as though fully set forth herein.
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11 43. The individual defendant officers conspired to violate plaintiff's statutory civil rights
12 by acting in concert to destroy his medical marijuana and cultivation equipment, as more fully
13 described in the preceding paragraphs, all in violation of 42 U.S.C. §§ 1983 and 1985, for which the
14 individual defendant officers are individually liable.
15

16 **VI. STATEMENT OF DAMAGES**

17 44. As a direct and proximate result of the wrongful acts and/or omissions of the
18 Defendants, as set forth above, Plaintiff has sustained the following injuries and damages:

- 19 a. Physical pain and mental anguish, past and present;
20 b. Severe emotional distress, humiliation, fear, and embarrassment;
21 c. Loss of property and labor, and costs of replacing property and labor;
22 d. Time and effort to secure the return of property unlawfully taken; and
23 e. Attorney's fees.
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25 45. The actions of Defendants were malicious or oppressive, and amounted to gross
26 negligence and a reckless disregard for the Plaintiff, and justify the imposition of punitive or
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1 exemplary damages upon these Defendants in order to encourage and ensure that these Defendants,
2 as well as other police officers, will not repeat the same, or substantially similar conduct.

3 WHEREFORE, the Plaintiff prays for damages as follows:

4 a. That this Court declare the rights of all parties;

5 b. Compensatory damages, including, but not limited to general and special damages,
6 according to proof at trial, or \$50,000.00, whichever is greater;

7 c. Exemplary and punitive damages in the amount of \$200,000.00 or according to proof
8 at trial, whichever is greater;

9 d. Reasonable attorney's fees, pursuant to 42 U.S.C. § 1988;

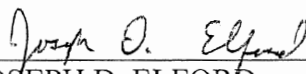
10 e. Costs of suit incurred herein;

11 f. That this Court issue an order requiring Defendants to show cause why they should
12 not be enjoined, as hereinafter set forth;

13 g. That this Court issue a preliminary injunction, and a permanent injunction, enjoining
14 Defendants and their agents, servants, and employees, and all persons acting under and in concert
15 with, or for them, from continuing to violate the constitutional rights of qualified medical marijuana
16 patients by destroying their property without prior notice and hearing; and

17 h. All other compensatory, equitable and declaratory relief as this Court
18 deems just.

19 Respectfully submitted, this 3rd day of August, 2005.

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JOSEPH D. ELFORD
Attorney for Plaintiff
MICHAEL LEE

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial of this action.

Respectfully submitted, this 30th day of August, 2005.



JOSEPH D. ELFORD
Attorney for Plaintiffs