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**J. DAVID NICK, (CAL SBN 157687)
LAW OFFICE OF J. DAVID NICK
345 FRANKLIN STREET
SAN FRANCISCO, CA 94102
Telephone: (415) 552-4444
Facsimile: (415) 358-5897**

**EDITTE LERMAN, Esq. (SB#241471)
LAW OFFICE OF E.D. LERMAN
695 SOUTH DORA STREET
UKIAH, CA 95482
Telephone: (707) 468-8300
Facsimile: (707) 937-2209**

Attorneys for Petitioners:

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TEHAMA**

**JASON BROWNE, DAWN BROWNE,
WILLIAM BROWNE, MICHAEL BLACK,
GRANT NOTT, LINDSEY CROOKS,
BRIAN LOUCKS, JASON CATER,
JOSH HALLAND and THOMAS SCOTT,**

Petitioners,

vs.

**THE COUNTY OF TEHAMA, THE
TEHAMA COUNTY BOARD OF
SUPERVISORS, and THE TEHAMA
COUNTY DEPARTMENT OF
PLANNING, BUILDING AND CODE
ENFORCEMENT**

Respondents.

**Case No.
PETITION FOR WRIT OF
MANDATE/PROHIBITION PURSUANT
TO CALIFORNIA CODE OF CIVIL
PROCEDURE, SECT. 1085; ACTION TO
REQUIRE OBEDIENCE OF THE
MEDICAL MARIJUANA PROGRAM ACT.**

1 TO THE PRESIDING JUDGE, TEHAMA COUNTY SUPERIOR COURT; THE COUNTY
2 OF TEHAMA; THE TEHAMA COUNTY BOARD OF SUPERVISORS; and THE COUNTY OF
3 TEHAMA DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT:

4 **INTRODUCTION**

5 1.) This Petition for Writ of Mandate or in the alternative Writ of Prohibition seeks mandamus
6 ordering the COUNTY OF TEHAMA and the TEHAMA COUNTY BOARD OF SUPERVISORS to
7 set aside the MARIJUANA CULTIVATION ORDINANCE (hereafter "MCO") enacted on April 6,
8 2010, which was codified at Title 9, Chapter 9.06 of the Tehama County Code (TCC), and ordering
9 the COUNTY OF TEHAMA DEPARTMENT PLANNING, BUILDING AND CODE
10 ENFORCEMENT to discontinue its application of the county's zoning codes in a manner which is not
11 consistent with the *Medical Marijuana Program Act* and in violation of *Health and Safety Code*
12 *section 11362.83*.

13 2.) Respondents' enactment of the MCO and the enforcement of the MCO is preempted by State
14 law. Furthermore the entire MCO and its enforcement procedure also violates the state's equal
15 protection clause as Respondents' actions are motivated exclusively by a desire to drive the
16 cultivation of marijuana for medical purposes pursuant to *Health and Safety Code* section 11362.5,
17 and Medical Marijuana Collectives formed pursuant to *Health and Safety Code* section 11362.775 out
18 of existence.

19
20 **STATEMENT OF FACTS, SUPPORTING RECORD AND NECESSARY ALLEGATIONS TO
21 SUSTAIN A PETITION FOR WRIT OF MANDATE/PROHIBITION.**

22 3.) Petitioners, JASON BROWNE, DAWN BROWNE, WILLIAM BROWNE, MICHAEL
23 BLACK, GRANT NOTT, LINDSEY CROOKS, BRIAN LOUCKS, JASON CATER, JOSH
24 HALLAND and THOMAS SCOTT, each of them, are residents of Tehama County.

25 4.) This writ petition arises out of acts which exclusively occurred in Tehama County.

26 5.) Petitioners, JASON BROWNE, DAWN BROWNE, WILLIAM BROWNE, MICHAEL
27 BLACK, GRANT NOTT, LINDSEY CROOKS, BRIAN LOUCKS, JASON CATER, JOSH
28 HALLAND and THOMAS SCOTT each of them, have California Physician's recommendations for

1 the medical use of marijuana to treat their respective, serious illness. Petitioners, each of them, is a
2 ‘qualified patient’ as defined by Health and Safety Code § 11362.7(f).

3 6.) Petitioners, JASON BROWNE, DAWN BROWNE, WILLIAM BROWNE, MICHAEL
4 BLACK, reside on the same, single parcel of land, located in an unincorporated area of Tehama
5 County. The single parcel of land, in which the aforementioned petitioners reside, is less than 20 acres
6 in size. Each of these aforementioned petitioners have an individual right to cultivate at least 6
7 mature marijuana plants for medical use, within their residence, under the provisions of *Health and*
8 *Safety Code* § 11362.77, for a total of 24 mature marijuana plants on the parcel of land where these
9 four individuals reside. However, under MCO § 9.06.040 no more than 12 mature marijuana plants
10 may be cultivated on the Petitioners parcel of land. Therefore, two or more, of the aforementioned
11 petitioners identified in this paragraph have lost their individual right to cultivate 6 mature marijuana
12 plants for their personal medical use, wherein either two of the individuals will be required to entirely
13 forfeit their right to 6 plants, or three or more will have to forfeit their right to 6 plants, and settle for
14 less than what will meet their medical needs in order to remain lawful within the scope of the MCO.

15 7.) Petitioner, THOMAS SCOTT, resides on small one-acre +/- parcel of land, which is
16 approximately 120 feet in width. Since the aforementioned petitioner resides on a parcel of land that
17 is less than 200 feet in width, it is physically impossible for him cultivate any marijuana for medical
18 purposes on any location within his parcel of land that is set back at least 100 feet from all boundaries
19 of the premises. Therefore, the petitioner has lost his right to cultivate marijuana for medical
20 purposes, provided under the *Compassionate Use Act (Health and Safety Code* § 11362.5, hereafter
21 “*CUA*”) and the *Medical Marijuana Program Act (Health and Safety Code* §§ 11362.7 et seq,
22 hereafter “*MMPA*”), for reasons that MCO § (C)(4)(a) has declared unlawful the cultivation of
23 marijuana for medical purposes on any location within a parcel of land that is 20 acres or less, which
24 is not set back at least 100 feet from all boundaries of the premises.

25 8.) Petitioner, THOMAS SCOTT, also resides on a parcel of land, which is less than 1000 feet
26 from a school bus stop. Therefore, said petitioner has lost his right to cultivate marijuana for medical
27 purposes, provided under the *Compassionate Use Act (Health and Safety Code* § 11362.5, hereafter
28 “*CUA*”) and the *Medical Marijuana Program Act (Health and Safety Code* §§ 11362.7 et seq,

1 hereafter “*MMPA*”), for reasons that MCO § 9.06.040(B) prohibits the cultivation of marijuana for
2 medical purposes within 1000 feet of a school bus stop.

3 9.) Petitioners, JASON BROWNE, GRANT NOTT, LINDSEY CROOKS, BRIAN LOUCKS ,
4 JASON CATER and JOSH HALLAND have associated with each other in order to collectively
5 cultivate marijuana for medical purposes, on that parcel of land where Petitioner, JASON BROWNE,
6 resides, under the authority of *Health and Safety Code* Section 11362.775. These Petitioners are
7 particularly aggrieved by Respondents’ actions in that their medical marijuana related activities,
8 which would be necessary to meet their medical needs under the provisions of the *Compassionate Use*
9 *Act* and the *Medical Marijuana Program Act* have now been deemed unlawful under the MCO,
10 wherein the four named medical marijuana collective members have a right to cultivate, at minimum,
11 36 mature plants under the authority provided by the *MMPA*, while the MCO in conflict with the
12 *MMPA*, allows the cultivation of no more than 12 mature marijuana plants for medical use on the
13 parcel of land in which Petitioner, JASON BROWNE resides. Said petitioners have also associated
14 with other un-named qualified patients. Therefore, the minimum number of cannabis plants that they
15 may collectively cultivate had increased by 6 mature plants per un-named qualified patient, on the
16 parcel the parcel of land where Petitioner, JASON BROWNE, resides.

17 10.) Petitioners now seek a Writ of Mandate/Prohibition pursuant to *California Code of Civil*
18 *Procedure* [hereinafter “*CCP*”] §§ 1085 and 1103, to set aside the MCO and to compel Respondents’
19 obedience of state law. Petitioners additionally seek declaratory relief pursuant to *California Code of*
20 *Civil Procedure* § 1060.

21 11.) This Petition for Writ of Mandate also seeks a court order directing the COUNTY OF
22 TEHAMA, THE TEHAMA CONTY BOARD OF SUPERVISORS, and THE COUNTY OF
23 TEHAMA DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT to obey
24 *Health and Safety Code* § 11362.83 and apply the COUNTY OF TEHAMA's land use ordinances in a
25 manner which is consistent with the *Medical Marijuana Program Act* (*Health and Safety Code* §
26 *11362.7 et seq.*; *Health and Safety Code* §11362.775).

27 12.) Petitioners, JASON BROWNE, GRANT NOTT, LINDSEY CROOKS, BRIAN LOUCKS
28 JASON CATER and JOSH HALLAND, who have associated with each other in order to collectively

1 cultivate marijuana for medical purposes, comply with *Health and Safety Code § 11362.775*, do not
2 generate a profit, (profit not permitted by *Health and Safety Code § 11362.765 (a)*), and comply with
3 the *California Attorney General's Guidelines for the Non Diversion of Medical Marijuana*.

4 (See, <http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf>)

5 13.) Respondent, TEHAMA COUNTY, is a political subdivision, organized and existing under
6 the constitution and laws of the State of California.

7 14.) Respondent, TEHAMA COUNTY BOARD OF SUPERVISORS, is the legally constituted
8 legislative body of TEHAMA COUNTY consisting of the following individuals: Gregg Avilla, 1st
9 District; George Russell, 2nd District; Charles Willard, 3rd District; Bob Williams, 4th District; and
10 Ron Warner, 5th District. One of the duties with which TEHAMA COUNTY BOARD OF
11 SUPERVISORS is charged is the enactment of county ordinances in accordance with the promotion
12 of the public welfare.

13 15.) Respondent, TEHAMA COUNTY DEPARTMENT OF PLANNING, BUILDING AND
14 CODE ENFORCEMENT, is a duly constituted body of Defendant Tehama County. One of the duties
15 with which the TEHAMA COUNTY DEPARTMENT OF PLANNING, BUILDING AND CODE
16 ENFORCEMENT is charged is enforcement of land use codes within Tehama County.

17 16.) Respondent, TEHAMA COUNTY BOARD OF SUPERVISORS, is also charged with the
18 duty of disbursing County funds.

19 17.) On, April 6, 2010 the TEHAMA COUNTY BOARD OF SUPERVISORS enacted a
20 comprehensive nuisance ordinance, entitled MARIJUANA CULTIVATION, which was codified at
21 Title 9, Chapter 9.06 of the Tehama County Code (TCC). A true and correct copy of the
22 MARIJUANA CULTIVATION ORDINANCE (MCO) is attached hereto as **Exhibit 1**, and is
23 incorporated herein. A certified copy of the (MCO) will be attached when this petition is amended.

24 18.) Within The MARIJUANA CULTIVATION ORDINANCE, the TEHAMA COUNTY
25 BOARD OF SUPERVISORS made the following findings:
26

27 Sec. 9.06.020 (J) - It is the purpose and intent of this Chapter to implement State law by
28 providing a means for regulating the cultivation of medical marijuana in a manner that is
consistent with State law and which balances the needs of medical patients and their
caregivers and promotes the health, safety, and welfare of the residents and businesses

1 within the unincorporated territory of the County of Tehama. This Chapter is intended to
2 be consistent with Proposition 215 and Senate Bill 420, and towards that end, is not
3 intended to prohibit persons from individually, collectively, or cooperatively exercising
4 any right otherwise granted by State law. Rather, the intent and purpose of this Chapter is
5 to establish reasonable regulations upon the manner in which marijuana may be
6 cultivated, including restrictions on the amount of marijuana that may be individually,
7 collectively, or cooperatively cultivated in any location or premises, in order to protect the
8 public health, safety, and welfare in Tehama County.

9 Sec. 9.06.020 (K) - The limited right of qualified patients and their primary caregivers
10 under State law to cultivate marijuana plants for medical purposes does not confer the
11 right to create or maintain a public nuisance. By adopting the regulations contained in this
12 Chapter, the County will achieve a significant reduction in the aforementioned harms
13 caused or threatened by the unregulated cultivation of marijuana in the unincorporated
14 area of Tehama County.

15 19.) Within The MARIJUANA CULTIVATION ORDINANCE the TEHAMA COUNTY
16 BOARD OF SUPERVISORS made the following declarations:

17 9.06.040 Nuisance Declared.

18 A. The cultivation of more than the following number of marijuana plants, either
19 indoors or outdoors, on any premises is hereby declared to be unlawful and a public
20 nuisance that may be abated in accordance with this Chapter:

21 1. If the premises is twenty (20) acres in size or less, no more than 12 mature
22 marijuana plants or 24 immature marijuana plants shall be cultivated on the premises. If
23 both mature and immature marijuana plants are cultivated on the premises, there shall be
24 no more than 12 mature marijuana plants and no more than 24 total marijuana plants.

25 2. If the premises is greater than twenty (20) acres in size but less than one
26 hundred and sixty (160) acres in size, no more than 30 mature marijuana plants or 60
27 immature marijuana plants shall be cultivated on the premises. If both mature and
28 immature marijuana plants are cultivated on the premises, there shall be no more than 30
mature marijuana plants and no more than 60 total marijuana plants.

3. If the premises is one hundred and sixty (160) acres or greater in size, no
more than 99 marijuana plants, whether mature or immature, shall be cultivated on the
premises.

The foregoing limitation shall be imposed regardless of the number of qualified patients
or primary caregivers residing at the premises or participating directly or indirectly in the
cultivation. Further, this limitation shall be imposed notwithstanding any assertion that the
person(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that
such person(s) are collectively or cooperatively cultivating marijuana.

B. The cultivation of marijuana, in any amount or quantity, either indoors or
outdoors, upon any premises located within one thousand (1,000) feet of any school,
school bus stop, school evacuation site, church, park, child care center, or youth-oriented

1 facility is hereby declared to be unlawful and a public nuisance that may be abated in
2 accordance with this Chapter.

3 1. Except as provided in Subdivision (B)(2), such distance shall be measured
4 in a straight line from the boundary line of the premises upon which marijuana is
5 cultivated to the boundary line of the premises upon which the school, school bus stop,
6 school evacuation site, church, park, child care center, or youth-oriented facility is
7 located.

8 2. If the premises is twenty (20) acres or greater in size, then such distance
9 shall be measured in a straight line from the building in which the marijuana is cultivated,
10 or, if the marijuana is cultivated in an outdoor area, from the fence required by
11 Subdivision (c)(3), to the boundary line of the premises upon which the school, school bus
12 stop, school evacuation site, church, park, child care center, or youth-oriented facility is
13 located.

14 C. The cultivation of marijuana, in any amount or quantity, either indoors or
15 outdoors, upon any premises is hereby declared to be unlawful and a public nuisance that
16 may be abated in accordance with this Chapter, unless all of the following conditions are
17 satisfied:

18 1. The person(s) owning, leasing, occupying, or having charge or possession
19 of any premises have registered the premises with the Tehama County Health Services
20 Agency, and provided all of the following current information and documentation to the
21 Agency:

22 a. The name of each person, owning, leasing, occupying, or having
23 charge or possession of the premises;

24 b. The name of each qualified patient or primary caregiver who
25 participates in the cultivation, either directly or by providing reimbursement for marijuana
26 or the services provided in conjunction with the provision of that marijuana;

27 c. A copy of the current valid medical recommendation or State-
28 issued medical marijuana card for each qualified patient identified as required above, and
for each qualified patient for whom any person identified as required above is the primary
caregiver;

d. The number of marijuana plants cultivated on the premises; and

e. Such other information and documentation as the Agency
determines is necessary to ensure compliance with State law and this Chapter.

This information and documentation shall be received in confidence, and
shall be used or disclosed only for purposes of administration or enforcement of this
Chapter or State law, or as otherwise required by law.

The Board of Supervisors may, by Resolution, establish a fee for such registration
in accordance with all applicable legal requirements.

1
2 2. If the person(s) cultivating marijuana on any legal parcel is/are not the
3 legal owner(s) of the parcel, such person(s) shall submit a notarized letter from the legal
4 owner(s) consenting to the cultivation of marijuana on the parcel. This letter shall be
5 examined by Agency, and shall then be returned to the submitter. The Agency shall
6 prescribe forms for such letters.

7
8 3. All marijuana grown outside of any building must be fully enclosed by an
9 opaque fence at least six (6) feet in height. The fence must be adequately secure to prevent
10 unauthorized entry. Bushes or hedgerows shall not constitute an adequate fence under this
11 Subdivision.

12
13 4. Each building or outdoor area in which the marijuana is cultivated shall be
14 set back from the boundaries of the premises as follows:

15
16 a. If the premises is twenty (20) acres in size or less, each cultivation
17 building or area shall be set back at least 100 feet from all boundaries of the premises.

18
19 b. If the premises is greater than twenty (20) acres in size but less than
20 one hundred and sixty (160) acres in size, each cultivation building or area shall be set
21 back at least 300 feet from all boundaries of the premises.

22
23 c. If the premises is one hundred and sixty (160) acres or greater in
24 size, each cultivation building or area shall be set back at least 1,000 feet from all
25 boundaries of the premises.

26
27 Such setback distance shall be measured in a straight line from the building in which the
28 marijuana is cultivated, or, if the marijuana is cultivated in an outdoor area, from the fence
required by Subdivision (c)(3), to the boundary line of the premises.

D. No person owning, leasing, occupying, or having charge or possession of any
premises within the County shall cause, allow, suffer, or permit such premises to be used
for the outdoor or indoor cultivation of marijuana plants in violation of this Chapter.

20.) The provisions of 9.06.040 (C) declaring that “[t]he cultivation of marijuana, in any amount
or quantity, either indoors or outdoors, upon any premises is hereby declared to be unlawful and a
public nuisance that may be abated in accordance with [Chapter 9.06] unless all of the [conditions
contained within the subsections of 9.06.040 (C) are satisfied,] is effectively a complete prohibition of
indoor cultivation of marijuana for medical purposes in all residences which have housing structures
located within 100 feet of its boundary, and is effectively a complete prohibition of all cultivation of
marijuana for medical purposes on all parcel of land that are less than 200 feet wide. The provisions
of 9.06.040 (C) is also effectively a complete prohibition of cultivation of marijuana for medical

1 purposes against all qualified persons who have received, or choose to only receive, an oral approval
2 or recommendation for the medical use of marijuana from their California physician.

3 21.) On the basis of the TEHAMA COUNTY BOARD OF SUPERVISORS' findings and
4 declarations, including, but not limited to the forgoing findings enumerated at Sec. 9.06.020 and
5 9.06.040, the ordinance regulates the cultivation of marijuana for medical purposes throughout the
6 County of Tehama, regulating the amount of marijuana a qualified patient¹, or primary caregiver of a
7 qualified patient, and/or an association of a qualified patients and/or primary caregivers may cultivate
8 pursuant to the *Compassionate Use Act* and/or the *Medical Marijuana Program Act*, and regulated the
9 location where a qualified patient, or a primary caregiver of a qualified patient, and/or an association
10 of qualified patients and/or primary caregivers may cultivate pursuant to the *Compassionate Use Act*
11 and/or the *Medical Marijuana Program Act*.

12 22.) Section 9.06.050 - Notice to Abate Unlawful Marijuana Cultivation, provides:

13 Whenever the enforcing officer determines that a public nuisance as described in Chapter
14 exists on any premises within the unincorporated area of Tehama County, he or she is
15 authorized to notify the owner(s) and/or occupant(s) of the property, through issuance of a
16 "Notice to Abate Unlawful Marijuana Cultivation."

17 23.) 9.06.110 Enforcement, provides:

18 (a) Whenever the enforcing officer becomes aware that an owner or occupant has
19 failed to abate any unlawful marijuana cultivation within fourteen (14) days the date of
20 service of the Notice to Unlawful Marijuana Cultivation, unless timely appealed, or of the
21 date of the decision of the Board of Supervisors requiring such abatement, the enforcing
22 officer may take one or more of the following actions:

23 (1) Enter upon the property and abate the nuisance by County personnel, or by private
24 contractor under the direction of the enforcing officer. The enforcing officer may
25 apply to a court of competent jurisdiction for a warrant authorizing entry upon the
26 property for purposes of undertaking the work, if necessary. If any part of the work is
27 to be accomplished by private contract, that contract shall be submitted to and
28 approved by the Board of Supervisors prior to commencement of work. Nothing
herein shall be construed to require that any private contract under this Code be
awarded through competitive bidding procedures where such procedures are not
required by the general laws of the State of California; and/or

(2) Request that the County Counsel commence a civil action to redress, enjoin, and
abate the public nuisance.

¹ The terms "qualified patient" means a person who is entitled to the protections of section 11362.5. (See H&S § 11362.7)

1 24.) The Respondents' are sued herein on the grounds that the ordinance is unconstitutional on its
2 face, for reasons that the ordinance has limited the cultivation of marijuana for medical purposes to
3 the amounts described in section 9.06.040, which are less than the amounts permitted by the
4 *Compassionate Use Act* of 1996 and the *2004 Medical Marijuana Program Act*.

5 25.) The Respondents' are sued herein on the grounds that the ordinance is unconstitutional on its
6 face, for reasons that the ordinance has burdened a qualified patient's right to cultivate marijuana for
7 medical purposes under the *Compassionate Use Act* of 1996.

8 26.) The California voters enacted by initiative the *Compassionate Use Act* of 1996, which did
9 not place any limits on the amount of marijuana plants qualified patients, and/or their primary
10 caregivers may cultivate so long as the amount of marijuana is reasonably related to qualified
11 patients' medical needs.

12 27.) The California voters enacted by initiative the *Compassionate Use Act* of 1996, which did
13 not place any limits on the location where qualified patients, and/or their primary caregivers may
14 cultivate of marijuana plants for that qualified patients' medical needs.

15 28.) The Respondents' are also sued herein on the grounds that the ordinance is unconstitutional
16 on its face, for reasons that the ordinance has limited the cultivation of marijuana for medical
17 purposes to the amounts described in section 9.06.040, regardless of the number of patients
18 associating for the purposes of collectively or cooperatively cultivating the marijuana as a "qualified
19 patient" or "primary caregivers" under the provisions of *Health and Safety Code* § 11362.775.

20 29.) The California Legislature enacted the *Medical Marijuana Program Act* of 2004 which did
21 not place any limits on the number of qualified patients, and/or their primary caregivers who may
22 associate in order to collectively or cooperatively cultivate marijuana for medical purposes, and as
23 such did not place any limits on the numbers of marijuana plants a medical marijuana association may
24 collectively or cooperatively cultivate at any single location, or parcel of land, so long as the amount
25 of marijuana is within the guidelines set within *Health and Safety Code* § 11362.77.

26 30.) The Respondents' are also sued herein on the grounds that the ordinance is unconstitutional
27 on its face for reasons that the ordinance has declared the cultivation of marijuana for medical use, in
28 any amount or quantity, if it is being cultivated within one thousand (1,000) feet of any school, school

1 bus stop, school evacuation site, church, park, child care center, or youth-oriented facility, or within a
2 building or residence that does not meet the following requirements:

3 a. If the premises is twenty (20) acres in size or less, each cultivation
4 building or area shall be set back at least 100 feet from all boundaries of the premises;

5 b. If the premises is greater than twenty (20) acres in size but less than
6 one hundred and sixty (160) acres in size, each cultivation building or area shall be set
7 back at least 300 feet from all boundaries of the premises;

8 c. If the premises is one hundred and sixty (160) acres or greater in
9 size, each cultivation building or area shall be set back at least 1,000 feet from all
10 boundaries of the premises;

11 while state law through the Compassionate Use Act of 1996, and the *Medical Marijuana Program Act*
12 of 2004 permits the cultivation of marijuana plants at any privately owned residence or location.

13 31.) The Respondents' are also sued herein on the grounds that the ordinance is unconstitutional
14 on its face for reasons that the ordinance has placed the following addition burdens upon qualified
15 patients, who intend to exercise their rights provided by the *Compassionate Use Act*, and/or the
16 *Medical Marijuana Program Act*:

17 1. The person(s) owning, leasing, occupying, or having charge or possession of any
18 premises have registered the premises with the Tehama County Health Services Agency,
19 and provided all of the following current information and documentation to the Agency:

20 a. The name of each person, owning, leasing, occupying, or having
21 charge or possession of the premises;

22 b. The name of each qualified patient or primary caregiver who
23 participates in the cultivation, either directly or by providing reimbursement for marijuana
24 or the services provided in conjunction with the provision of that marijuana;

25 c. A copy of the current valid medical recommendation or State-
26 issued medical marijuana card for each qualified patient identified as required above, and
27 for each qualified patient for whom any person identified as required above is the primary
28 caregiver;

29 d. The number of marijuana plants cultivated on the premises; and

30 e. Such other information and documentation as the Agency
31 determines is necessary to ensure compliance with State law and this Chapter.

32 This information and documentation shall be received in confidence, and
33 shall be used or disclosed only for purposes of administration or enforcement of this

Chapter or State law, or as otherwise required by law.

The Board of Supervisors may, by Resolution, establish a fee for such registration in accordance with all applicable legal requirements.

2. If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall submit a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel. This letter shall be examined by Agency, and shall then be returned to the submitter. The Agency shall prescribe forms for such letters.

3. All marijuana grown outside of any building must be fully enclosed by an opaque fence at least six (6) feet in height. The fence must be adequately secure to prevent unauthorized entry. Bushes or hedgerows shall not constitute an adequate fence under this Subdivision.

4. Each building or outdoor area in which the marijuana is cultivated shall be set back from the boundaries of the premises as follows:

a. If the premises is twenty (20) acres in size or less, each cultivation building or area shall be set back at least 100 feet from all boundaries of the premises.

b. If the premises is greater than twenty (20) acres in size but less than one hundred and sixty (160) acres in size, each cultivation building or area shall be set back at least 300 feet from all boundaries of the premises.

c. If the premises is one hundred and sixty (160) acres or greater in size, each cultivation building or area shall be set back at least 1,000 feet from all boundaries of the premises.

Such setback distance shall be measured in a straight line from the building in which the marijuana is cultivated, or, if the marijuana is cultivated in an outdoor area, from the fence required by Subdivision (c)(3), to the boundary line of the premises.

32.) A person's medical profile is an area of privacy infinitely more intimate, more personal in quality and nature than many areas already judicially recognized and protected.

33.) The Respondents' are also sued herein on the grounds that the ordinance is unconstitutional on its face and as applied, for reasons that the MARIJUANA CULTIVATION ORDINANCE invades a qualified patient's right to privacy.

34.) The Respondents' are also sued herein on the grounds that the ordinance is unconstitutional as applied, for reasons that Defendant, TEHAMA COUNTY DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT, and/or its agents under the policies and/or practices of the TEHAMA COUNTY DEPARTMENT OF PLANNING, BUILDING AND CODE

1 ENFORCEMENT have and will maintain actions based upon violations of the TCC and/or MCO
2 which were in conflict with *CUA* and/or the *MMPA*.

3 35.) An actual controversy exists between Petitioners and Respondents relating to the legal rights
4 and duties of the respective parties.

5 36.) Respondent TEHAMA COUNTY BOARD OF SUPERVISORS and COUNTY OF
6 TEHAMA has adopted and enacted the MCO which permanently zoned out of existence a medical
7 marijuana collective established pursuant to *Health and Safety Code section 11362.775*.

8 37.) Respondents' asserted legal authority for banning petitioners' land use as stated in the MCO
9 (Exhibit 1) is not correct, for reasons that it conflicts with the *Medical Marijuana Program Act*
10 (*Health and Safety Code section 11362.7 et seq; Health and Safety Code section 11362.775*) which
11 permits the association members who qualify for the medicinal use of cannabis to collectively
12 cultivate medical marijuana without any restrictions less than those provided within the MMPA which
13 preempts any zoning ordinance that conflicts with the stated purpose of said legislation.

14 Respondents' asserted authority is also in violation of *Health and Safety Code section 11362.83*
15 which prohibits the enforcement of local ordinances in a manner which is NOT consistent with the
16 *Medical Marijuana Program Act* and its Legislative purpose.

17 38.) Respondents intend to continue their unlawful activities as complained of herein if not
18 ordered by the court to obey the *Health and Safety Code section 11362.83* and all other laws which
19 they are violating, as will be further set out in Petitioner's Memorandum of Points And Authorities in
20 support of this petition, which is to be filed in this action at a later date.

21 39.) Respondents, acted in excess of their jurisdiction by not obeying the laws complained of
22 herein and as further set out in Petitioner's Memorandum of Points And Authorities in support of this
23 petition which will be incorporated into this petition as if having been fully set out herein.

24 40.) This court has jurisdiction to rule on this petition pursuant to *California Code of Civil*
25 *Procedure §§ 1085 and 1102*.

26 41.) Petitioners contend that the above-described ordinance is unconstitutional on its face for
27 reasons that:
28

1. The findings are not supported by objective, empirical evidence;

1 2. The MARIJUANA CULTIVATION ORDINANCE is unconstitutionally
2 unreasonable because it arbitrarily creates a presumption of health and safety risk based solely
3 on the number of plants cultivated, regardless of the size and location of the land where
4 marijuana is being cultivated for medical purposes;

5 3. The MARIJUANA CULTIVATION ORDINANCE is unconstitutionally
6 unreasonable because it attempts to improperly set arbitrary limits on the number of plants a
7 qualified patient and/or an association of qualified medical marijuana patients can cultivate on
8 any one single parcel of land;

9 4. The MARIJUANA CULTIVATION ORDINANCE amends the *Compassionate Use*
10 *Act* without the approval of the electors in violation of Article 2, section 10 of the California
11 Constitution and the Elections Code;

12 5. The MARIJUANA CULTIVATION ORDINANCE conflicts with the 2004 *Medical*
13 *Marijuana Program Act*;

14 6. The MARIJUANA CULTIVATION ORDINANCE conflicts with *California Civil*
15 *Code* § 3482 clear proclamation that acts done under the statutory authority of State law
16 cannot be deemed a nuisance.

17 7. The MARIJUANA CULTIVATION ORDINANCE conflicts with *Health and Safety*
18 *Code* §§ 11570, 11571 and 11571.1.

19 42.) Under Respondents' MARIJUANA CULTIVATION ORDINANCE, a person aggrieved by
20 an abatement action of defendant may contest the abatement action for violations of County Code §
21 9.06, which are raised either by an administrative review pursuant to Sections 9.06.050 through
22 9.06.080 or by the prosecution of a civil action for injunctive relief under Section 9.06.170.

23 43.) While the administrative remedies are available to Petitioners against an abatement action
24 under Chapter 9.06, the administrative remedies pertaining to the defense of an abatement action are
25 over burdensome and do not offer the remedies sought herein.

26 44.) Petitioners desire a judicial determination of his/her rights and a declaration that the above-
27 described ordinance is unconstitutional and void.

28 45.) A judicial determination is necessary and appropriate at this time under the circumstances in
order that Petitioners may ascertain his/her rights and duties under the above-described ordinance.

46.) No other petition for writ of mandate and/or prohibition has been made by or on behalf of
Petitioners relating to this matter.

1 47.) Petitioners have no other plain adequate and/or speedy remedy at law to restrain
2 Respondents' unlawful actions or to order that Respondents obey the law.

3 48.) This petition has been verified by JASON BROWNE, who is most familiar with the
4 proceedings.

5 49.) This petition has been filed in order to preserve any limitations set forth in Government Code
6 § 65009 or other controlling statutes, without its supporting memorandum of points and authorities,
7 which will be prepared and filed at a later date.

8 50.) The memorandum of points and authorities which is to be filed at a later date will be
9 included in the petition to support Petitioners' contentions and will be incorporated herein.

10 WHEREFORE, Petitioners pray:

11
12 1. A writ of mandate issued under the seal of the Court commanding respondents, to set aside
13 and withdraw and rescind their MEDICAL MARIJUANA CULTIVATION ORDINANCE (**Exhibit**
14 **1**) as unlawful, preempted by state law;

15 2. A writ of mandate issued under the seal of the Court commanding respondents, to set aside
16 and withdraw and rescind their MEDICAL MARIJUANA CULTIVATION ORDINANCE (**Exhibit**
17 **1**) as in violation of *Health and Safety Code section 11362.83*;

18 3. A writ of mandate issued under the seal of the Court commanding respondents, to set aside
19 and withdraw and rescind their MEDICAL MARIJUANA CULTIVATION ORDINANCE (**Exhibit**
20 **1**) as in violation of *Health and Safety Code sections 11570 et seq*;

21 4. Or that an alternative writ of prohibition be issued directing respondents, to show cause
22 before this court at a specified time and place, why it has not done so, and why a preemptory writ
23 should not issue;

24 3. A declaration of Petitioners' rights pursuant to *California Code of Civil Procedure § 1060*;

25 4. A declaration that the MCO is unconstitutional pursuant to *California Code of Civil*
26 *Procedure § 1060*;

27 5. Costs and attorney's fees according to proof under the private attorney general laws;

28 6. Petitioners be granted such other relief as may be appropriate and just.

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Date: June 4, 2010

E. D. Lerman
Attorney for Petitioners

1 VERIFICATION

2
3 I, _____ [name], am a petitioner in the above-entitled action. I have read the
4 foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as
5 to those matters which are therein alleged on information and belief, and as to those matters, I believe
it to be true.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
7 and correct.

8 _____ [date]

9 _____ [signature]

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12 VERIFICATION

13
14 I, _____ [name], am a petitioner in the above-entitled action. I have read the
15 foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as
16 to those matters which are therein alleged on information and belief, and as to those matters, I believe
it to be true.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
18 and correct.

19 _____ [date]

20 _____ [signature]

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VERIFICATION

I, _____ [*name*], am a petitioner in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ [*date*]

_____ [*signature*]

VERIFICATION

I, _____ [*name*], am a petitioner in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ [*date*]

_____ [*signature*]

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2 VERIFICATION

3
4 I, _____ [name], am a petitioner in the above-entitled action. I have read the
5 foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as
6 to those matters which are therein alleged on information and belief, and as to those matters, I believe
7 it to be true.

8
9 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
10 and correct.

11 _____ [date]

12 _____ [signature]

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15 VERIFICATION

16
17 I, _____ [name], am a petitioner in the above-entitled action. I have read the
18 foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as
19 to those matters which are therein alleged on information and belief, and as to those matters, I believe
20 it to be true.

21
22 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
23 and correct.

24 _____ [date]

25 _____ [signature]