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9 SKY HIGH HOLISTIC

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

14 SANTA ANA POLICE OFFICER
15 ASSOCIATION and DOE OFFICER 1 and
16 DOE OFFICER 2,

17 Plaintiffs,

18 v.

19 CITY OF SANTA ANA, a Municipal
20 Corporation; SANTA ANA POLICE
21 DEPARTMENT, a public safety
22 department; CARLOS ROJAS, Chief of
23 Police; DOES I-X, inclusive,

24 Defendants.

No.: **30-2015-00801604-CU-OE-CJC**

**EX PARTE APPLICATION FOR
LEAVE TO FILE COMPLAINT IN
INTERVENTION; FOR LEAVE TO
FILE BRIEF IN OPPOSITION TO
PLAINTIFFS' APPLICATION FOR
T.R.O.; AND TO CONTINUE T.R.O.
HEARING PENDING FILING OF
OPPOSITION BY [PROPOSED]
INTERVENOR**

Date: 8-6-2015
Time: 1:30 P.M.
Dept.: C-20

Unlimited Jurisdiction

Action filed: 7-29-2015
Trial date: Not set

25 **TO THE COURT AND THE PARTIES:**

26 PLEASE TAKE NOTICE that pursuant to Code of Civil Procedure Section 387(a),
27 proposed intervenor SKY HIGH HOLISTIC (“SHH”), a California non-profit mutual
28

1 benefit corporation, hereby applies *ex parte* to the Court for leave to file a Complaint in
2 Intervention in the above-captioned proceeding, as follows:

3 **I. INTRODUCTION AND BRIEF PROCEDURAL HISTORY**

4 On May 26, 2015, officers from the Santa Ana Police Department, including
5 plaintiffs DOE OFFICER 1 and DOE OFFICER 2 (collectively, “Officer Plaintiffs”),
6 executed an improperly obtained felony warrant on the property leased and operated by
7 Intervenor as a medical marijuana collective in Santa Ana. After using a battering ram
8 without knocking or announcing themselves, officers attempted to locate and destroy
9 video surveillance equipment including video cameras and recording devices. The
10 officers were well-aware of the video surveillance system when they entered the facility
11 and knew they were being recorded by it. Indeed, Santa Ana’s own recently enacted
12 medical marijuana ordinance requires the use of security and surveillance systems by
13 dispensaries. While they destroyed a number of cameras, officers failed to locate and
14 destroy several other cameras which thereafter captured their actions during the raid.

15 After being made aware of the video footage and alleged misconduct by police
16 officers during the raid, the Santa Ana Police Department and its Chief of Police
17 repeatedly demanded that a complete copy of the recording be provided to them.
18 Accordingly, on or around July 5, 2015, the full video captured on May 26, 2015 was
19 provided by Intervenor to an Internal Affairs officer of the Santa Ana Police Department.

20 On June 15, 2015, the City of Santa Ana, its police department and the Officer
21 Plaintiffs in this case were sued by Intervenor along with several other co-plaintiffs in
22 federal court. (*Matt Chou, et al. v. City of Santa Ana, et al.*, No. 15-CV-00941, filed June
23 15, 2015.) In the federal case, Intervenor and several of its patient members allege
24 officers violated rights protected by the First, Fourth and Fourteenth Amendments to the
25 federal Constitution. (A copy of the federal complaint is attached as Exhibit “A.”)

26 On June 29, 2015, the plaintiffs in this case filed their complaint seeking to enjoin
27 defendants City of Santa Ana and the Santa Ana Police Department from using video
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1 footage of the Officer Plaintiffs captured during the May 26, 2015 raid. (See Complaint,
2 filed on July 29, 2015 (“Complaint”) at p.18, ll.25-28 [seeking injunctive relief under §
3 632].) Subsequent to filing their complaint, the plaintiffs filed an *ex parte* application for
4 a temporary restraining order and order to show cause re: preliminary injunction alleging,
5 *inter alia*, that the video recording captured by Intervenor constituted a criminal act under
6 Cal. Penal Code § 632. (See Plaintiffs’ Ex Parte Application for Temporary Restraining
7 Order filed on August 4, 2015 (“T.R.O. Application”), at p.2, ll.1-4 & 26-28, [alleging
8 criminal violation § 632 by ‘Recording Party’ earlier defined as Intervenor and
9 Intervenor’s attorney]; See also Complaint at ¶¶ 18 & 19.) On August 4, 2015, this
10 Court issued a tentative ruling stating it would likely issue a Temporary Restraining
11 Order based on the moving papers submitted by the plaintiffs. At the time the Court’s
12 tentative ruling was published, the Court’s electronic filing system reported no opposition
13 had been submitted by the defendants.

14 As shown by the facts alleged below, Intervenor has an interest in the subject matter
15 of the litigation given the plaintiffs aver both in their complaint and application for
16 T.R.O. that Intervenor’s video recording was made illegally. Under the theory espoused
17 by plaintiffs, a finding by this Court that a violation of Penal Code § 632 took place
18 would subject Intervenor not only to potential criminal liability, but to pecuniary liability
19 under Penal Code § 637.2(a). The City of Santa Ana and its police department are both
20 defendants in the aforementioned federal case filed by Intervenor and several of its
21 patient members. As such, the interests of the City of Santa Ana are at odds with
22 Intervenor given it has no interest or obligation in protecting Intervenor from allegations
23 it violated section 632. Likewise, the interests of the Officer Plaintiffs in this case and a
24 determination section 632 was violated by this Court could impact the same issue
25 collaterally in the federal case barring Intervenor from litigating the issue in that court.

26 As set forth in the [Proposed] Complaint in Intervention (which is attached as
27 Exhibit “B” to this application), an order granting plaintiffs’ application for a T.R.O.
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1 would be reversible error. Section 632 “excludes a communication made . . . in any . . .
2 circumstance in which the parties to the communication may reasonably expect that the
3 communication may be overheard or recorded” and while the officers may have desired
4 communications during the raid be kept confidential, the circumstances of the
5 communication were such that they had to expect they might be overheard or recorded.
6 (*People v. Nazary* (2010) 191 Cal.App.4th 727, 746-47 [*Nazary*].) Given Intervenor is
7 directly impacted by the allegation made against it by the plaintiffs, its application for
8 leave to intervene in this case should be granted.

9 **II. THE COURT SHOULD GRANT INTERVENOR LEAVE TO FILE ITS**
10 **[PROPOSED] COMPLAINT IN INTERVENTION AND LEAVE TO FILE**
11 **AN OPPOSITION BRIEF TO PLAINTIFFS’ APPLICATION FOR T.R.O.**

12 Upon timely application, any person who has an interest in the matter in litigation,
13 or in the success of either of the parties, or an interest against both, may intervene in the
14 action or proceeding. (Cal.Civ.Proc.Code § 387(a).) Under C.C.P. § 387(a), a court may
15 grant leave to non-parties to join the plaintiff in claiming what is sought by the
16 complaint; to unite with the defendant in resisting the plaintiff’s claims; or to demand
17 anything adverse to both parties. (Cal.Civ.Proc.Code § 387(a).)

18 Courts have interpreted Section 387(a) to hold that intervention is proper where: (1)
19 the nonparty has a direct and immediate interest in the litigation; (2) intervention will not
20 enlarge the issues in the case; and (3) the reasons for intervention outweigh any
21 opposition by the existing parties. (See *Truck Ins. Exch. v. Superior Court* (1997) 60
22 Cal.App.4th 342, 346 [“Transco”] (citing *Weil & Brown*, Cal. Practice Guide: Civil
23 Procedure Before Trial (Rutter, rev.# 1, 1996) § 2:414, p. 2–55, *emphasis omitted*);
24 *Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386 [“Wells”]. An order
25 denying intervention is appealable. (See *Mallick v. Superior Court* (1979) 89 Cal.App.3d
26 434, 439.)

1 **A. Intervenor has an adequate, direct and immediate interest in this**
2 **proceeding.**

3 Courts grant leave to intervene when the intervening party has some potential stake
4 in the outcome of the underlying case. (See *Fireman’s Fund Ins. v. Gerlach* (1976) 56
5 Cal.App.3d 299, 303-05, 128 Cal.Rptr. 396, 398-99.) Furthermore, the intervening party
6 must stand to gain or lose by direct operation of the judgment, although it need not have a
7 pecuniary interest in the dispute. (See *Simpson Redwood Co. v. State* (1987) 196
8 Cal.App. 3d 1192, 242 Cal.Rptr. 447.) However, the third party need not show that its
9 interest will inevitably be affected by the litigation. Intervention will be allowed if there
10 is a substantial probability of the effects of the litigation on the third party’s interests.
11 (*Timberidge Enters, Inc. v. Santa Rosa* (1978) 86 Cal. App. 3d 873, 150 Cal. Rptr. 606.)
12 In this case, the plaintiffs allege a criminal violation of Penal Code § 632 by Intervenor
13 and Intervenor’s attorney in their complaint:

14 Unbeknownst to involved officers, the owners of the business and/or their attorney
15 (collectively “Recording Party”), in anticipation that the Dispensary would be
16 raided, placed additional hidden cameras in the Dispensary to record the
17 communications (actions and words) of law enforcement officers. The Recording
18 Party did not seek nor obtain the consent of any officer to record their
19 communications. The Recording Party, which was not a party to the
20 communications, in fact secretly recorded the private communications of the
21 involved officers, including Doe Officer 1 and Doe Officer 2. The Recording Party
22 then released edited portions of the secret and **illegal recording** to media outlets in a
23 manner to distort the officers actions and cause problems for both the involved
24 officers and the City’s enforcement actions. (Complaint at pp.5-6, ¶¶ 18-19.)

25 Penal Code section 637.2(a) provides:

26 Any person who has been injured by a violation of this chapter may bring an action
27 against the person who committed the violation for the greater of the following
28 amounts: (1) Five thousand dollars (\$5,000). (2) Three times the amount of actual
 damages, if any, sustained by the plaintiff.

1 It follows that Intervenor will be directly impacted by any decision rendered on the
2 primary claim asserted by plaintiffs since such decision is persuasive for purposes of the
3 currently filed and ongoing federal case, the ability to use the video evidence in the
4 federal case is collaterally impacted by any section 632 determination by this court and a
5 decision by this court finding a section 632 violation took place will operate *res judicata*
6 against Intervenor in respect to any or all of the plaintiffs who seek relief under section
7 637.2(a). Likewise important are the allegations throughout the plaintiffs' complaint
8 alleging illegal conduct by Intervenor. Any decision rendered adverse to the existing
9 defendants in this case will have a negative impact on the Intervenor and its patient
10 members seeking recompense in state claims filed against the City and the Plaintiff
11 Officers as well as the federal case which is subject to California law for purposes of the
12 video evidence at issue there as well as in this case.

13 **B. Intervenor's interests are not and will not be adequately represented**
14 **by existing party litigants.**

15 Where the proposed third-party's interests are being adequately represented by an
16 existing litigant, intervention is not appropriate. (Code Civ. Proc. §387(b).) However,
17 the court has "broad discretion in determining whether to permit intervention," especially
18 when there is evidence showing that the interests in defending claims would not
19 necessarily be adequately represented by the named defendants. See *U.S. Ecology, Inc. v.*
20 *State of Calif.* (2001) 92 Cal.App.4th 113, 139-140; *People v. Superior Court (Good)*
21 (1976) 17 Cal.3d 732, 737; *Jade K. v. Viguri* (1989) 210 Cal.App.3d 1459, 1468; and
22 *Simpson Redwood, supra*. Here, the defendants are both adverse parties to the proposed
23 Intervenor in an already filed federal civil case and in a pending Government Claim Act
24 notice. While the plaintiffs erroneously aver the City and Police Department have
25 violated Penal Code §632, the factual allegations from the complaint and T.R.O.
26 application claim the violative actions were taken by Intervenor. Moreover, at the time
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1 the trial court announced its tentative decision to grant a T.R.O. in favor of the plaintiffs,
2 no opposition appeared filed on the Court’s electronic filing system.

3 The Police Department has had a long-standing relationship with the Police Officer
4 Association plaintiff in this case as well. While a finding against the City and police
5 department in this case might result in some pecuniary liability for the existing
6 defendants, the benefit for those same defendants in the federal case is markedly greater.
7 Indeed, a judgment in favor of the plaintiffs here benefits people who have a long-
8 standing relationship with the city, its police department and other people working within
9 the city. It follows that the interests of the existing defendants in defending the assertions
10 made in this case are at issue. Also, liability under the remedy provisions of section
11 637.2(a) falls to the recording party – not to the named defendants in this case.
12 Accordingly, the interests of the existing defendants and their noted lack of opposition
13 and response make clear that intervention is proper in this case.

14 **C. Intervention will not enlarge the issues in this case.**

15 Intervention will not in any way enlarge the issues in this case. Intervenor does not
16 seek to expand or complicate the issues. Instead, it seeks to participate in the proceeding
17 for the sole purpose of ensuring that the issue that has a direct impact on it (*i.e.* whether it
18 violated section 632) is properly litigated and represented. Indeed, with the hearing on
19 the requested application for T.R.O. scheduled for the day this application is being filed,
20 there is little or no time for Intervenor to do anything other than appear and argue against
21 any pre-trial finding a violation of that section took place. It follows that Intervenor’s
22 request for a very short continuance of the *ex parte* T.R.O. hearing be granted and that it
23 be given a very short period of time to file a brief in opposition.

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1 **D. Given the court’s announced tentative decision in this case and the lack**
2 **of filed opposition as of the publication of that tentative ruling, leave to**
3 **intervene is necessary in this case.**

4 Just hours ago, this court announced a tentative decision to grant the T.R.O.
5 requested by the plaintiffs. In their brief in support of injunctive relief, the plaintiffs’
6 argument supporting relief under section 632 is limited to two (2) paragraphs found on
7 page 12, lines 9-17:

8 Plaintiffs will prevail in establishing that the recording of their conversations was
9 illegal. First, all civilian personnel were removed and detained outside; the only
10 people that remained were public safety officials. **Next, all know[n] security**
11 **cameras were disabled and the DVR was confiscated.** The officers then began
12 to act and speak freely while going about their duties. In fact, undercover officers
13 felt safe enough to remove their masks— which the **illegal** recordings then
14 videotaped their faces. The illegal recordings were recorded through a second set
15 of hidden cameras that the officers were not aware of. Finally, none of the officers
16 believed that they were being overheard or recorded, they did not consent to being
17 recorded and they would not have acted or spoken in the same manner if they had
18 know[n] that they were being recorded.

19 A decision to grant relief in favor of the plaintiffs without opportunity for the Intervenor
20 to oppose and argue against such an order will result in an order based solely on the
21 conclusory argument included in less than a page of the plaintiffs’ moving papers.
22 Indeed, the plaintiffs failed to cite *Nazari, supra*, where an employee of a gas station was
23 aware the station had video surveillance deployed and in similar circumstances attempted
24 to invoke section 632. At one point, suspecting additional cameras had been deployed,
25 he covered over ceiling areas preventing the cameras from recording him (“Nazary
26 further was aware that cameras had been installed in the ceiling of the manager's office
27 during his absence, plastering over them as soon as he knew of their existence.” *Id.* at
28 p.747).. Those cameras were later replaced by the owners of the gas station when Nazari
was not present. He was later charged criminally after the recordings caught him
embezzling money, using drugs and engaged in a confrontation with owners and

1 managers of the facility. Although he did not seek to exclude video evidence of the
2 embezzlement, he did assert section 632 to exclude parts of the video recorded in the
3 private office area and near PIC machines where he was unaware cameras had been
4 placed. These recordings showed his drug activities as well as the confrontation with
5 owners. Referring to the part of section 632 that excludes applicability “ in any . . .
6 circumstance in which the parties to the communication may reasonably expect that the
7 communication may be overheard or recorded” (*Id.* at p.746), the Fourth District Court of
8 Appeal held Nazari had to have reasonably expected his communications would be
9 overheard or recorded. The court also noted, “Nazary was aware of K.A.'s continuing
10 interest in assuring the safety and security of their property, which had led it to install
11 video surveillance equipment.” Despite Nazary’s covering over of cameras with plaster
12 in an attempt to hide his nefarious activities, the court concluded that, “[u]nder these
13 circumstances, it was not objectively reasonable for Nazary to expect the
14 communications during the confrontation regarding his embezzlement of cash from the
15 station's PIC machines to be confidential and not overheard or recorded.” (*Id.* at p.747.)

16 Here, the officers were well-aware of the existence of video surveillance equipment.
17 Officers should have been aware of the provisions in both the proposed Santa Ana ballot
18 measures and the measure adopted by voters requiring surveillance and security systems
19 in collectives. Similar to the defendant in *Nazari*, knowing there would be surveillance
20 systems in-place, the officers attempted to destroy or disable those systems. However, it
21 was never objectively reasonable for them to expect their communications would not be
22 recorded. Like in *Nazari*, the destruction and disabling of video cameras supports the
23 conclusion that the officers had reason to know there was a surveillance system in-place
24 that could very well include cameras they missed. It follows it was not *objectively*
25 reasonable for any of them to assume their conversations would be private in a highly
26 secured medical marijuana collective.


27 The unfounded and hearsay allegations included by the plaintiffs that secondary
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1 cameras were deployed by Intervenor solely in anticipation of a raid by police are without
2 basis and improper. While the officer declarations set forth the plaintiffs’ **desire** they not
3 be subject to recording, as the court in *Nazari* noted, “although Nazary may have
4 **desired** any communications with the owners of K.A. and Casarez during the
5 confrontation be kept confidential, **the circumstances of the communication were such**
6 **that Nazary could reasonably expect that they might be overheard or recorded.”**
7 The facts and circumstances here – that the officers knew of multiple cameras and
8 recording devices, attempted to destroy those devices, were aware of the very secure and
9 controlled environment of medical marijuana collectives through the City’s own
10 ordinance regulating them – are different than the **desire** of the officers and the actions
11 they took to try to eliminate surveillance. In any case, it was unreasonable for them to
12 assume there might not be cameras they missed. Unfounded allegations that the
13 Intervenor intended to record officers are not supported by any evidence submitted by the
14 plaintiffs. In fact, surveillance is deployed to capture **any** crimes that might be
15 committed in order to protect the collective from those committing the crimes and the
16 damage done by them. Here, the video surveillance worked directly to that end and the
17 officers’ desires to not have been recorded are not the same as whether it was reasonable
18 under the circumstances to believe they might be recorded.

19 **CONCLUSION**

20 For all of the foregoing reasons, Intervenors application to intervene, to be granted
21 leave to file an opposition brief to plaintiffs’ request for a T.R.O. and for a very short
22 continuance of the *ex parte* hearing now scheduled for this afternoon should be
23 GRANTED.

24 DATED: August 5, 2015

25 
26 _____
27 MATTHEW PAPPAS
28 Attorney for [Proposed] Intervenor

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8 Attorney for Plaintiff

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 MATT CHOU; BRADLEY IDELSHON;
12 MARLA JAMES; DAVID JAMES; and
13 SKY HIGH HOLISTIC, a group of
14 patients operating in conformance with
15 California law,

16 Plaintiffs,

17 v.

18 CITY OF SANTA ANA, a California city;
19 MIGUEL PULIDO, individually and as
20 Mayor of the City of Santa Ana; YVETTE
21 AGUILAR; and DOES 1 through 10,

22 Defendants.

No.:

**COMPLAINT FOR DECLARATORY
RELIEF; INJUNCTIVE RELIEF;
VIOLATION OF 42 U.S.C. § 1983;
AND DEMAND FOR JURY TRIAL**

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24 **JURISDICTION AND VENUE**

25 1. The claims raised by the Plaintiffs in this complaint are based on violation of
26 the United States Constitution and the laws of the United States. This Court has federal
27 question jurisdiction (28 U.S.C. §§ 1331, 1343(a), 2201, and 2202). Venue is proper
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1 because this is the district in which all of the events giving rise to the Plaintiffs' claims
2 occurred (28 U.S.C. § 1391[b]).

3 **PARTIES**

4 2. Defendant CITY OF SANTA ANA ("CITY") is municipal government
5 established under the laws of the State of California.

6 3. Defendant MIGUEL PULIDO ("PULIDO") is the mayor of CITY.

7 4. Defendant YVETTE AGUILAR ("AGUILAR") is an employee of CITY.

8 5. Plaintiffs MATT CHOU, BRADLEY IDELSHON, MARLA JAMES and
9 DAVID JAMES are individuals each residing in Orange County, California.

10 6. Plaintiff SKY HIGH HOLISTIC is a non-profit entity operating pursuant to
11 Ca. Health & Safety Code § 11362.775 and Section IV of the 2008 Ca. Attorney General
12 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical
13 Purposes.

14 7. Plaintiff BRADLEY IDELSHON is a licensed California physician.

15 8. Plaintiffs do not know the true names and capacities of defendants sued as
16 DOES 1 through 10 and when such information is ascertained shall amend this complaint
17 to reflect such information.

18 9. Defendants sued as DOES 1 through 10 are each and together responsible
19 for the actions complained of herein.

20 **COMMON FACTUAL ALLEGATIONS**

21
22 10. In 2013, a group of citizens obtained the necessary number of signatures to
23 qualify a City of Santa Ana ballot-initiative ("Measure CC") regulating medical
24 marijuana for the November 2014 general election.

25 11. In or around June, 2014, the Santa Ana City Council caused a competing
26 ballot-initiative ("Measure BB") regulating medical marijuana to be prepared by the
27 CITY's attorney.
28

1 12. In or around July 2014, the Santa Ana City Council voted in favor of putting
2 the CITY prepared ballot-initiative before the voters in the November 2014 general
3 election.

4 13. The CITY's ballot proposal -- Measure BB -- included provisions for a
5 marijuana permit lottery.

6 14. Prior to the November 2014 election, a person hired by the CITY to
7 support the Measure BB campaign solicited \$25,000.00 payments from various people
8 affiliated with existing medical marijuana collectives in or around the City of Santa Ana
9 and promised successful inclusion in the Lottery and assistance finding a collective
10 location if the \$25,000.00 was provided to support Measure BB.

11 15. Plaintiffs are informed and believe and based upon such information and
12 belief allege that PULIDO, several DOE defendants, existing marijuana entities in Santa
13 Ana and other individuals affiliated with the CITY met, discussed and conspired to have
14 Measure BB placed on the ballot to compete with the signature based, grass roots
15 Measure CC and that such action was taken to ensure a pecuniary benefit inured to those
16 entities, individuals and CITY officials.

17 16. In November 2014, both Measure BB and Measure CC garnered more than
18 fifty percent (50%) of the vote during the general election. Measure BB obtained a higher
19 percentage of approval votes.

20 17. Following the November 2014 general election, Measure BB became
21 effective in the CITY which thereafter began implementing it as a CITY ordinance. The
22 marijuana permit lottery provided for in Measure BB was scheduled for and conducted in
23 February 2015.

24 18. Between June 2014 and August 2014, at the same time the City Council had
25 been presented with proposed Measure BB, PULIDO and other city officials named as
26 DOE defendants were receiving benefits, including limousine services, expensive dinners
27 and shows, currency and gifts from individuals and entities seeking to establish control
28 over the Santa Ana marijuana market.

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1 19. Prior to the November 2014 general election, city officials, employees and
2 family members of city officials involved in the decision-making process related to
3 Measure BB had direct pecuniary interests or memberships in Santa Ana medical
4 marijuana collectives.

5 20. Between August 2014 and June 2015, PULIDO received financial benefits
6 from a medical marijuana collective in Santa Ana, intervened to warn that collective
7 when CITY action was pending, was observed at the collective and intervened with police
8 officials on behalf of the collective.

9 21. Prior to the February 2015 permit lottery, various Santa Ana medical
10 marijuana permit applicants submitted multiple lottery applications and paid multiple fees
11 in an effort to subvert the process and win permits in the CITY. These applicants
12 solicited individuals to serve in the stead of the applicant for purpose of the multiple
13 applications made. Several of these applicants won marijuana permits.

14 22. The medical marijuana collective affiliated with PULIDO in which he has a
15 pecuniary or membership interest and from which he has received money successfully
16 obtained a CITY medical marijuana permit through the lottery process.

17 23. Plaintiffs are informed and believe and based upon such information and
18 belief allege that following the lottery, PULIDO, successful permit applicants, Santa Ana
19 police officials, other city officials and city employees met at various times and places,
20 individually and through attorneys or representatives, and agreed to create an
21 Enforcement Program the purpose of which was to close existing Santa Ana medical
22 marijuana patient collectives that had operated for months or years in the CITY thereby
23 eliminating competition for the successful permit applicants and collectives in which city
24 officials and employees have pecuniary or membership interests.

25 24. Plaintiffs are informed and believe and based upon such information and
26 belief allege that the Enforcement Program incorporated strong-arm tactics designed to
27 result in permanent removal of competing medical marijuana collectives already operating
28 in the CITY that were not successful in the permit lottery. Such strong-arm tactics

1 included, but were not limited to, termination of water and power to entire buildings
2 where medical marijuana collectives operated, removal of license plates from vehicles
3 used by police officers and city employees so as to prevent citizens from knowing who was
4 taking action against them, use of masks to prevent people from knowing that it was
5 police officers or city officials taking action and destructive police raids designed to cause
6 such massive damage to property so as to prevent collectives from operating further and
7 prevent them from mounting any legal challenge to the CITY's illegal actions.

8 25. In March 2015 and April 2015, officers from the Santa Ana Police
9 Department, acting pursuant to the Enforcement Program, observed Plaintiff CHOU on
10 the sidewalk outside of a medical marijuana collective then being raided by police.
11 Plaintiff CHOU was not on the property of the collective and was not a member of the
12 collective. CHOU had no interest in or affiliation with the property subject to the
13 destructive police raid. CHOU was observing from the sidewalk and did not say anything
14 to or in any way interfere with officers. While observing, CHOU received a telephone call
15 and while on the call was, without warning, tackled by police officers who physically hurt
16 him, handcuffed him, took his phone and took him into custody. CHOU was thereafter
17 detained by police for at least five (5) hours. Plaintiffs are informed and believe and
18 based upon such information and belief allege that the actions taken by police officers
19 against Plaintiff CHOU were done pursuant to the aforementioned Enforcement Program
20 and were specifically designed to exact punishment on Plaintiff CHOU without due
21 process of law.

22 26. Plaintiffs are informed and believe and based upon such information and
23 belief allege that Defendant AGUILAR, knowing who Plaintiff CHOU was and
24 recognizing him as the owner of a completely different property where a previously
25 existing medical marijuana collective had leased space and operated but since closed
26 down, directed police officers to tackle and arrest Plaintiff CHOU.

27 27. In May 2015, while volunteering at Plaintiff SKY HIGH HOLISTIC
28 medical marijuana collective in Santa Ana, Plaintiffs MARLA JAMES and DAVID

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1 JAMES, who are both patient members of that collective, were arrested and detained by
2 police officers as part of the aforementioned Enforcement Program during a raid
3 conducted by Defendant CITY through its police officers and city employees, including
4 Defendant AGUILAR. Police officers obtained a warrant not from a judge at the Santa
5 Ana courthouse, but rather from a judge at the Fullerton courthouse who had a prior
6 personal relationship with officers involved in the raid. Officers present at the raid knew
7 the raid was for violation of a municipal ordinance, a non-violent misdemeanor. Officers
8 participating in the raid had no basis to believe their lives would be in danger at any time
9 and knew that medical marijuana collectives are permitted under state law. Officers
10 further knew they had not ever been in a situation where they were endangered when
11 going to, dealing with or raiding medical marijuana collectives in Santa Ana.

12 28. During the raid of SKY HIGH HOLISTIC, officers were intentionally
13 destructive and destroyed video surveillance equipment, safes, furniture, fixtures, doors
14 and other property at the collective.

15 29. During the raid of SKY HIGH HOLISTIC, officers caused tens of
16 thousands of dollars of damage to the property and took thousands of dollars of currency
17 as well as marijuana medication.

18 30. During the raid of SKY HIGH HOLISTIC, officers consumed food
19 products that were the property of the collective.

20 31. During the raid of SKY HIGH HOLISTIC, officers made discriminatory
21 statements about Plaintiff MARLA JAMES, who is a disabled individual protected by
22 state and federal anti-discrimination laws.

23 32. During the raid of SKY HIGH HOLISTIC, volunteers and employees,
24 including Plaintiffs DAVID JAMES and MARLA JAMES, were detained for hours and
25 placed in fear by officers.

26 33. Plaintiffs are informed and believe and based upon such information and
27 belief allege that the actions taken by police officers during the raid of Plaintiff SKY
28 HIGH HOLISTIC were done pursuant to the aforementioned Enforcement Program and

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1 were specifically designed to exact punishment on Plaintiffs without due process of law to
2 ensure that SKY HIGH HOLISTIC, a competitor of lottery-winning collectives and of
3 collectives in which city officials have pecuniary or membership interests, was
4 permanently closed and unable to seek legal redress.

5 34. The police actions taken during the raid of SKY HIGH HOLISTIC were
6 excessive in light of the non-violent city ordinance violation police officers knew before
7 and at the time of the raid was the reason and basis for the actions.

8 35. In May 2015, Defendant CITY, through its police officers, city employees
9 and Defendant AGUILAR, without any advance notice or warning, caused power and
10 water services to be terminated at a building located at the intersection of French and 17th
11 streets in Santa Ana where Plaintiff IDELSHON, a licensed California doctor, leased
12 space. IDELSHON does not distribute or store marijuana nor does IDELSHON operate
13 a medical marijuana collective. As a result of the power and water termination, the toilet
14 in the restroom located next to Dr. Idelshon’s suite in the building malfunctioned and
15 significant damage was done to his suite. As a further result of the power and water
16 termination, Dr. Idelshon could not provide services as a doctor in his suite, has been
17 forced to vacate the suite and has suffered significant damages.

18 36. Defendant CITY failed to implement and follow the provisions of Measure
19 BB when it took action ahead of the November 2014 election seeking \$25,000.00
20 contributions from medical marijuana collectives and individuals, when it implemented
21 the provisions of the law and when it conducted the marijuana permit lottery thus
22 depriving the Plaintiffs of due process rights protected by the state and federal
23 constitutions.

24 **FIRST CLAIM FOR RELIEF**
25 **DECLARATORY RELIEF (28 U.S.C. § 2201)**

26 37. Plaintiffs hereby incorporate and re-allege paragraphs 1-36 of this
27 Complaint.
28

1 38. An actual controversy exists between the Plaintiffs and Defendant CITY
2 that requires the Court to determine whether the local ordinance at issue in this case,
3 Santa Ana Measure BB, was implemented in a manner consistent with the due process
4 provisions of the Fourteenth Amendment to the Constitution and whether the election
5 conducted by the City for approval of Measure BB was conducted in a manner that
6 violated the due process rights of the Plaintiffs.

7 39. The Defendants contend the CITY’s implementation of Measure BB met
8 all constitutional due process requirements. The Defendants further contend the election
9 conducted in respect to Measure BB did not involve solicitation of money in exchange for
10 favorable treatment during the lottery process and therefore did not violate the due
11 process rights of the Plaintiffs.

12 40. Plaintiffs are entitled to a declaration in respect to: 1) whether
13 implementation of Measure BB through the flawed lottery process violated their due
14 process rights thereby resulting in direct injury to them; and 2) whether, by soliciting
15 money in exchange for favorable treatment in the lottery process, Defendant CITY
16 violated the Plaintiffs’ due process rights before and at the time Measure BB was enacted
17 by voters.

18 **SECOND CLAIM FOR RELIEF**
19 **PRELIMINARY AND PERMANENT INJUNCTIONS**
20 **(28 U.S.C. § 2201)**

21 41. Plaintiffs hereby incorporate and re-allege paragraphs 1-40 of this
22 Complaint.

23 42. The implementation of Measure BB through the flawed lottery process as
24 well as the planned Enforcement Actions put in-place by the CITY were done in a
25 manner that violated the procedural and substantive due process rights of the Plaintiffs
26 that are protected by the federal Constitution.

27 43. The conduct of city officials and employees in advance of the placement of
28 Measure BB on the ballot as well as prior to the November 2014 election in taking gifts

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1 and money as well as in soliciting \$25,000.00 payments by potential lottery applicants and
2 individuals in exchange for favorable treatment violated federally protected procedural
3 and substantive due process rights of the Plaintiffs.

4 44. Continuing enforcement of Measure BB against the Plaintiffs violates their
5 procedural and substantive due process rights under the federal constitution and an
6 injunction prohibiting such enforcement must issue to protect those rights.

7 45. The Plaintiffs have a significant likelihood of prevailing on the merits in this
8 case. The Defendant CITY will not be harmed by an order preventing enforcement of
9 Measure BB. Accordingly, the balance of hardships weighs in favor of both preliminary
10 and permanent injunctive relief.

11 **THIRD CLAIM FOR RELIEF**
12 **EXCESSIVE FORCE, DENIAL OF MEDICAL ATTENTION**
13 **AND SUMMARY PUNISHMENT WITHOUT DUE PROCESS OF LAW**

14 46. Plaintiffs hereby incorporate and re-allege paragraphs 1-36 of this
15 Complaint.

16 47. During the raid of SKY HIGH HOLISTIC, the police officer DOE
17 defendants each used excessive and unreasonable force when conducting the raid and
18 arresting and detaining Plaintiffs DAVID and MARLA JAMES.

19 48. During the raid of SKY HIGH HOLISTIC, the police officer DOE
20 defendants used excessive force against DAVID and MARLA JAMES thereby violating
21 the JAMES'S Fourth and Fourteenth Amendment rights when they had guns drawn on
22 them for a non-violent misdemeanor action, engaged in destructive behavior and when
23 they caused DAVID JAMES to suffer physical injuries when arresting and handcuffing
24 him.

25 49. During the raid of SKY HIGH HOLISTIC, the police officer DOE
26 defendants deprived Plaintiff MARLA JAMES of medical attention and care despite her
27 complaints to them when they forced her to keep her hands above her head and notified
28

1 them that she was in pain and in need of medical care thereby violating her Fourth and
2 Fourteenth Amendment rights.

3 50. During the raid of SKY HIGH HOLISTIC, the police officer DOE
4 defendants used excessive and unreasonable force in light of the municipal code violation
5 they were there to enforce and deprived Plaintiffs MARLA and DAVID JAMES of their
6 Fourteenth Amendment rights by summarily punishing them through excessive
7 detention and enforcement action without due process of law.

8 51. The unreasonable use of force by the police officer DOE defendants
9 deprived the Plaintiffs MARLA and DAVID JAMES of their right to be secure in their
10 persons against unreasonable searches and seizures as guaranteed to them under the
11 Fourth Amendment to the United States Constitution and as applied to state actors by
12 the Fourteenth Amendment.

13 52. The police officer DOE defendants knew that failure to provide timely
14 medical treatment to Plaintiff MARLA JAMES could result in further significant injury or
15 unnecessary pain and suffering by her and their actions did in-fact result in deprivation of
16 her right to be secure in her person against unreasonable search and seizure and wanton
17 infliction of pain. The Defendants disregarded that serious medical need of MARLA
18 JAMES causing her harm and depriving her of medical care, as well as by using excessive
19 force on an individual detained and handcuffed and thus summarily punished her further
20 depriving her of due process of the law.

21 53. The conduct of the police officer DOE defendants was willful, wanton,
22 malicious, and done with reckless disregard for the rights and safety of Plaintiffs DAVID
23 and MARLA JAMES and therefore warrants the imposition of exemplary and punitive
24 damages.

25 54. The conduct of the police officers named as DOE defendants in respect to
26 damaging SKY HIGH HOLISTIC and its patient members for alleged violation of a non-
27 violent municipal misdemeanor was excessive and unreasonable and resulted in damages
28 in excess of \$100,000.00 to Plaintiff SKY HIGH HOLISTIC and was thus summary

1 punishment that violated the Fourth and Fourteenth Amendments to the United States
2 Constitution.

3 55. The conduct of the police officers named as DOE defendants in obtaining a
4 warrant from a state judge that one of the officers had a former personal relationship
5 involving drinking alcohol while driving in a vehicle was improper and violated the Fourth
6 Amendment rights of the Plaintiffs to be free from unreasonable and warrantless searches
7 and seizures thus depriving the Plaintiffs of rights protected by the Fourth and
8 Fourteenth Amendments to the federal constitution.

9 56. The conduct of police officers named as DOE defendants in tackling,
10 arresting and detaining Plaintiff CHOU with no probable cause, no basis to believe he was
11 engaged in any illegal conduct as well as without a warrant was excessive, unreasonable
12 and illegal thus subjecting him to summary punishment without due process of law and
13 depriving him of his rights protected by the Fourth and Fourteenth Amendments to the
14 United States Constitution.

15 57. The conduct of police officers named as DOE defendants and Defendant
16 AGUILAR in engaging in actions terminating the water and power services for the suite
17 leased by Plaintiff BRADLEY IDELSHON, were done without notice and opportunity by
18 a municipal government and without a warrant and thus violated the due process rights of
19 Dr. Idelshon protected by the Fourteenth Amendment to the United States Constitution.

20 58. The actions of the Defendants deprived Plaintiffs of their rights under the
21 Fourth and Fourteenth Amendments to the United States Constitution. Accordingly,
22 Plaintiffs claim damages for the violation of these rights under 42 U.S.C. § 1983. As a
23 direct and legal result of Defendants' acts and omissions, Plaintiffs have suffered bodily
24 injury, humiliation, fear, anxiety, torment, degradation, and emotional distress and should
25 be awarded damages as set forth below.

26 //
27 //
28 //

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FOURTH CLAIM FOR RELIEF
**MUNICIPAL LIABILITY FOR UNCONSTITUTIONAL
CUSTOM OR POLICY**

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2
3 59. Plaintiffs hereby incorporate and re-allege paragraphs 1-58 of this
4 Complaint.

5 60. On and for some time prior to May, 2015, (and continuing to the present
6 date) the Defendants deprived Plaintiffs of the rights and liberties secured to them by the
7 Fourth and Fourteenth Amendments to the United States Constitution, in that said
8 Defendants and their supervising and managerial employees, agents, and representatives,
9 acting with gross negligence and with reckless and deliberate indifference to the rights
10 and liberties of the public in general, those of the Plaintiffs and those of persons in their
11 class, situation and comparable position, knowingly maintained, enforced and applied an
12 official recognized custom, policy, and practice of:

- 13 (A) employing and retaining as City police officer those police officer DOE
- 14 defendants that had dangerous propensities for abusing their authority, mistreating
- 15 citizens and engaging in use of excessive force;
- 16 (B) inadequately supervising, training, controlling, assigning, and disciplining
- 17 CITY police officers and other personnel, including the police officer DOE
- 18 defendants the CITY knew or in the exercise of reasonable care should have
- 19 known had the aforementioned propensities and character traits;
- 20 (C) failing to institute appropriate policies regarding constitutional procedures and
- 21 practices for municipal code enforcement and alleged municipal code violations for
- 22 CITY police officers including the police officer DOE defendants;
- 23 (D) failing to discipline police officers including the police officer DOE defendants
- 24 for conduct, including of unlawful detention and excessive force;
- 25 (E) failing to properly investigate claims of unlawful detention and excessive force
- 26 by CITY police officers including claims for incidents CITY should reasonably
- 27 have known involve officers with dangerous propensities for abusing their
- 28

1 authority and for mistreating citizens by failing to follow written Police
2 Department policies;
3 (F) maintaining grossly inadequate procedures for reporting, supervising,
4 investigating, reviewing, disciplining and controlling the intentional misconduct by
5 the police officer DOE defendants;
6 (G) failing to adequately train officers, including the police officer DOE
7 defendants;
8 (H) ratifying the intentional misconduct of the police officer DOE defendants;
9 (I) conspiring to give a false account to justify the excessive use of force; and
10 (J) having and maintaining an unconstitutional policy, custom, and practice of
11 detaining and arresting individuals without probable cause or reasonable suspicion,
12 and using excessive force, which also is demonstrated by inadequate training
13 regarding these subjects and these police officer DOE defendants.

14 61. The policies, customs, and practices of the police officer DOE defendants
15 and CITY were done with a deliberate indifference to individuals' safety and rights and
16 by reason of the aforementioned policies and practices of the police officer DOE
17 defendants and CITY, Plaintiffs were injured, subjected to pain and suffering, denied
18 medical care, summarily punished and denied due process of law.

19 62. The police officer DOE defendants and CITY, together with various other
20 officials, whether named or unnamed, had either actual or constructive knowledge of the
21 deficient policies, practices and customs alleged in the paragraphs above. Despite having
22 knowledge as stated above these Defendants condoned, tolerated and through actions and
23 inactions thereby ratified such policies. Plaintiffs are informed and believe and based
24 upon such information and belief allege that the Enforcement Program was created
25 intentionally and in furtherance of an agreement that resulted in the deprivation of the
26 Plaintiffs' rights. The Defendants also acted with deliberate indifference to the
27 foreseeable effects and consequences of these policies with respect to the constitutional
28 rights of Plaintiffs and other individuals similarly situated.

- 1 G. For judgment awarding Plaintiffs cost of suit;
2 8. For attorney's fees; and
3 H. For such other and further relief the Court deems proper.
4

5 DATED: 6-15-2015

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7 

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10 Long Beach, CA 90802

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DEMAND FOR JURY TRIAL

The Plaintiffs hereby demand a jury trial.

DATED: 6-15-2015



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