SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

STATE OF CALIFORNIA, and DOES 1 through 100

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DAVID ARMSTRONG

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED
FILED

2015 OCT 21 P 2:59

Clerk of the Superior Court
By Smith

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (*www.sucorte.ca.gov*), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (*www.lawhelpcalifornia.org*), en el Centro de Ayuda de las Cortes de California, (*www.sucorte.ca.gov*) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.*

The name and address of the court is:
(El nombre y dirección de la corte es): Santa Clara County Superior Court
191 N. First Street
San Jose, CA 95113

DAVID H. YAMASAKI
Chief Executive Officer/Clerk

CASE NUMBER:
(Número del Caso): 115CV287130

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Nicholas G. Emanuel; 125 S. Market Street, Suite 1200; San Jose, CA 95113 Ph: (408) 288-8100

DATE: OCT 21 2015
(Fecha)

Clerk, by *(Secretario)* S. Smith, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify):*

4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

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Attorneys for Plaintiff: David Armstrong

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

DAVID ARMSTRONG,

Plaintiff,

vs.

STATE OF CALIFORNIA, and DOES 1 through 100,

Defendants.

Case No. 115CV287130

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, David Armstrong, alleges as follows:

NATURE OF THE CASE

1. This is an action challenging the validity of California's recently enacted Medical Marijuana Regulation and Safety Act ("MMRSA"), a statutory scheme which confers upon the state government broad regulatory powers over the use, possession, distribution, and cultivation of medicinal cannabis. Plaintiff seeks a declaratory

judgment that the MMRSA violates the California Constitution because it amends a voter initiative without voter approval, and that it is preempted by federal law.

PARTIES

2. Plaintiff, David Armstrong, is an individual residing in the County of Santa Clara, State of California. Mr. Armstrong operates a medical marijuana collective, which facilitates the distribution of medical cannabis to patients whose doctors have recommended that they use marijuana to treat a medical condition. He is affected by and comes within the scope of the regulations imposed by the MMRSA and would be subject to various penalties, both civil and criminal, if he were to violate the provisions of the MMRSA.

3. Defendant, State of California, is the governmental entity which passed the MMRSA into law and which enforces the various provisions of the MMRSA.

4. The true names and capacities of defendants who are sued herein as Does 1 through 100, inclusive, whether individual, associate, or otherwise, are unknown to Plaintiff at this time, and therefore, Plaintiff sues such fictitiously named defendants by such fictitious names and capacities. Each of the defendants designated herein by fictitious names is, in some manner, responsible for the events and happenings referred to herein, and caused damage proximately and foreseeably thereby, whether such responsibility was negligent, intentional, or otherwise. Plaintiff will seek leave of this court to amend this complaint with respect to the true names and capacities of such defendants when such fictitiously named defendants have been ascertained with reasonable certainty.

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FACTS

8. In 1996, California voters passed a ballot measure which allowed for persons with certain medical conditions to use marijuana if a doctor recommends it for a medical purpose. This voter initiative was codified as Health and Safety Code §11362.5 and is known as the "Compassionate Use Act."

9. The purpose of the Compassionate Use Act, as stated in the initiative text, is "to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes," and "to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction."

10. In order to accomplish its objectives, the Compassionate Use Act mandates that persons who possess and grow marijuana for personal medical purposes cannot be criminally prosecuted for violating the state's general prohibition against possessing or growing marijuana. Additionally, the Compassionate Use Act provides that no physician shall be punished for having recommended marijuana to a patient for medical purposes.

11. On October 9, 2015, the State of California passed into law the "Medical Marijuana Regulation and Safety Act" and related legislation, a comprehensive scheme of regulations which includes a number of amendments and additions to the Business and Professions Code, the Health and Safety Code, the Labor Code, the Revenue and Taxation Code, the Fish and Game Code, and the Water Code. (Specifically, the MMRSA and related legislation amended Sections 27, 101, 144, 2220.05, 2241.5, and 2242.1 of the Business and Professions Code; amended Section 9147.7 of the Government Code; amended Section 11362.775 of the Health and Safety Code; added Chapter 3.5 [commencing with Section 19300] to Division 8 of the Business and Professions Code; added Article 13 [commencing with Section 19350], Article 17 [commencing with Section 19360], Article 6 [commencing with Section 19331], Article 7.5 [commencing with Section 19335], Article 8 [commencing with Section 19337], and

Article 11 [commencing with Section 19348] to Chapter 3.5 of Division 8 of the Business and Professions Code; added Article 25 [commencing with Section 2525] to Chapter 5 of Division 2 of the Business and Professions Code; added Section 12029 to the Fish and Game Code; added Sections 11362.769 and 11362.777 to the Health and Safety Code; added Section 13276 to the Water Code; added Section 147.5 to the Labor Code; and added Section 31020 to the Revenue and Taxation Code.)

12. The MMRSA and related legislation violates the California Constitution because it amends, without voter approval, the Compassionate Use Act that was passed by the voters in 1996.

13. The MMRSA restricts the manner in which ill Californians are able to possess and grow marijuana for medical purposes and allows for criminal penalties and professional discipline for physicians who recommend marijuana under certain circumstances. As such, this new statutory scheme is contrary to the expressly stated purpose of the Compassionate Use Act.

14. The provisions of the MMRSA that invade the Compassionate Use Act and restrict the right of ill Californians to use marijuana for medical purposes, include, but are not limited to, (a) the restriction on the amount of marijuana a person can grow for medical purposes; (b) the restriction on the amount of marijuana a patient's primary caregiver can grow for medical use; (c) the limitation on the number of patients to whom a physician can recommend marijuana for medical use; (d) the limitation on the manner in which a physician can recommend marijuana for medical use; (e) the imposition of mandatory licensing and fee payments upon any patient who possesses medical marijuana for personal use and also donates or distributes cannabis to others for medical use (such as within a medical marijuana collective; and, (f) the imposition of mandatory licensing and fee payments upon any primary caregiver who provides medical marijuana to more than five qualified patients (such as within a medical marijuana collective).

15. In addition to restricting the rights provided to Californians by the Compassionate Use Act, the MMRSA is preempted by federal law. The federal Controlled Substances Act (21 U.S.C. §844, *et seq.*) prohibits the possession of marijuana, for any purpose. This federal statutory provision conflicts with and preempts the MMRSA and related legislation.

16. For the reasons stated above, plaintiff seeks a judicial declaration that the following statutes violate the Article II, Section 10 of the California Constitution and are preempted by federal law: Business and Professions Code §§ 2241.5(a)(3); 2525; 2525.2; 2525.3; 2525.4; 19300; 19300.5; 19300.7; 19302; 19303; 19304; 19305; 19306; 19307; 19308; 19309; 19310; 19311; 19312; 19313; 19314; 19315; 19316; 19317; 19318; 19319; 19320; 19321; 19322; 19323; 19324; 19326; 19327; 19328; 19329; 19330; 19331; 19332; 19334; 19335; 19337; 19338; 19340; 19341; 19342; 19343; 19344; 19345; 19347; 19350; 19351; 19353 19360; 2220.05(a)(4); and Health and Safety Code §§11362.775 (as amended); and 11362.777.

INCORPORATION OF PRELIMINARY ALLEGATIONS

17. Unless the context clearly indicates otherwise, the preliminary allegations contained in paragraphs 1 through 16, inclusive, shall be deemed to be incorporated herein by reference, as though fully set forth at length in each and every cause of action set forth in this complaint.

CAUSE OF ACTION FOR DECLARATORY RELIEF

Count One – Violation of Article II, Section 10 of the California Constitution

PARTIES

18. Plaintiff brings this cause of action against Defendants.

19. There presently exists an actual controversy relating to the rights and obligations of the parties to this suit under the provisions of the MMRSA, and plaintiff desires a judicial determination regarding each party's rights and obligations under those statutes.

20. Plaintiff requests a judicial declaration that the following statutes violate Article II, Section 10 of the California Constitution: Business and Professions Code §§ 2241.5(a)(3); 2525; 2525.2; 2525.3; 2525.4; 19300; 19300.5; 19300.7; 19302; 19303; 19304; 19305; 19306; 19307; 19308; 19309; 19310; 19311; 19312; 19313; 19314; 19315; 19316; 19317; 19318; 19319; 19320; 19321; 19322; 19323; 19324; 19326; 19327; 19328; 19329; 19330; 19331; 19332; 19334; 19335; 19337; 19338; 19340; 19341; 19342; 19343; 19344; 19345; 19347; 19350; 19351; 19353 19360; 2220.05(a)(4); and Health and Safety Code §§11362.775 (as amended); and 11362.777.

CAUSE OF ACTION FOR DECLARATORY RELIEF

Count Two – Violation of Article II, Section 10 of the California Constitution

PARTIES

21. Plaintiff brings this cause of action against Defendants.

22. There presently exists an actual controversy relating to the rights and obligations of the parties to this suit under the provisions of the MMRSA, and plaintiff desires a judicial determination regarding each party's rights and obligations under those statutes.

23. Plaintiff requests a judicial declaration that the following statutes are preempted by the federal Controlled Substances Act (21 U.S.C. §844, *et seq.*): Business and Professions Code §§2241.5(a)(3); 2525; 2525.2; 2525.3; 2525.4; 19300; 19300.5; 19300.7; 19302; 19303; 19304; 19305; 19306; 19307; 19308; 19309; 19310;

19311; 19312; 19313; 19314; 19315; 19316; 19317; 19318; 19319; 19320; 19321; 19322; 19323; 19324; 19326; 19327; 19328; 19329; 19330; 19331; 19332; 19334; 19335; 19337; 19338; 19340; 19341; 19342; 19343; 19344; 19345; 19347; 19350; 19351; 19353 19360; 2220.05(a)(4); and Health and Safety Code §§11362.775 (as amended); and 11362.777.

PRAYER

WHEREFORE, Plaintiff prays judgment as follows:

1. As against defendants, for a declaratory judgment that the statutes specified hereinabove violate Article II, Section 10 of the California Constitution;

2. As against defendants, for a declaratory judgment that the statutes specified hereinabove are preempted by the federal Controlled Substances Act (21 U.S.C. §844, *et seq.*):

3. For attorney's fees and costs of suit;

4. For such other and further relief as the court deems just and proper.

Dated: October 21, 2015

GATES EISENHART DAWSON

Nicholas G. Emanuel
Attorney for Plaintiff