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3 against the defendants, the complaint will be held good, although
4 the facts may not be clearly stated, or the plaintiff may demand
5 relief to which he or she is not entitled.

6 COMPLAINT

7 The complaint alleges as follows:

8 Plaintiff Williams was and is a qualified medical marijuana
9 patient who uses marijuana upon the recommendation of his
10 physician. DOES I-IV are also qualified medical marijuana
11 patients who use marijuana upon the recommendation of their
12 physicians, in accordance with the Compassionate Use Act, as part
13 of a seven member collective with the plaintiff. Each of the
14 seven members agreed that they would contribute comparable
15 amounts of money, property, and/or labor, or combination thereof,
16 to the collective cultivation of medical marijuana and each would
17 receive an approximately equal share of the marijuana produced.
18 The marijuana was grown at plaintiff Williams' house. On
19 September 8, 2005, Deputy Hancock came to Williams house without
20 a warrant and, despite being presented with copies of medical
21 marijuana recommendations for Williams and the six other
22 qualified medical marijuana patients and being told that all were
23 members of a private patient collective, Hancock ordered Williams
24 to destroy all but twelve of the forty-one medical marijuana
25 plants growing on his property, under threat of arrest and
26 prosecution. Deputy Hancock remained on Williams' property the
entire time that it took Williams to remove the 22 medical

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marijuana plants. Plaintiffs further allege that the deputy's action was undertaken pursuant to the policy of Butte County to allow qualified patients to grow marijuana collectively only so long as each member actively participates in the actual cultivation of the marijuana by, for example, planting, watering, pruning or harvesting the marijuana.

Plaintiff now sues for (1) violation of the constitutional prohibition against municipal laws which conflict with the California constitution, (2) unreasonable search and seizure, (3) violation of due process, (4) violation of the Bane Civil Rights Act, (5) and conversion. Defendants demur to all causes of action based on failure to state a cause of action, and failure to state a cause of action due to lack of ripeness.

DEMURRER

First Cause of Action - Declaratory and Injunctive Relief

The first cause of action is for violation of the California constitution, Art 11, §7, and Government Code 37100, which essentially provide that a county or city may make and enforce ordinances and regulations not in conflict with general laws of the state. The declaratory relief sought is simply "that this Court declare the rights of all parties". The injunctive relief sought is a preliminary and permanent injunction against "continuing to violate the constitutional rights of qualified medical marijuana patients to be free from unreasonable searches and seizures".

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3 Plaintiffs allege that the Sheriff's Department has a policy
4 that each medical marijuana user may have no more than twelve
5 plants, and that all members of a marijuana growing collective
6 must actively participate in the actual cultivation of the
7 plants. Plaintiffs contend that this policy conflicts with
8 Health & Safety Code 11362.775, and therefore is invalid.

9 Proposition 215, the Compassionate Use Act (CUA), created
10 Health & Safety Code 11362.5, which provides that statutes
11 prohibiting possession and cultivation of marijuana, "do not
12 apply to a patient, or to a patient's primary caregiver, who
13 possesses or cultivates medical marijuana for the personal
14 medical purposes of the patient upon the written or oral
15 recommendation or approval of a physician." The legislature
16 subsequently passed the Medical Marijuana Program Act (MMPA) to
17 clarify and implement the CUA. The MMPA added, among other
18 provisions, section 11362.77 to the Health & Safety Code. This
19 section specifies that an individual may possess no more than
20 eight ounces of dried marijuana, and maintain no more than six
21 mature or twelve immature marijuana plants per qualified patient.
22 The MMPA also added H&S Code Sec. 11362.775, which provides that
23 "Qualified patients, ... who associate within the State of
24 California in order collectively or cooperatively to cultivate
25 marijuana for medical purposes, shall not ... be subject to state
26 criminal sanctions....". In addition, the MMPA expanded the
legal protection given to qualifying patients and primary

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3 caregivers who cooperatively cultivate medical marijuana by
4 making them exempt from criminal liability for numerous
5 additional marijuana laws. Initially, under the CUA, patients
6 and caregivers were only exempt from criminal laws forbidding
7 possession and cultivation of marijuana. Under the MMPA (H&S
8 Code Sec. 11362.775), qualified persons are also exempt from
9 criminal sanctions for possession for sale, transportation or
10 furnishing marijuana, maintaining a location for unlawfully
11 selling, giving away, or using controlled substances, managing a
12 location for the storage, distribution of any controlled
13 substance for sale, and the laws declaring the use of property
14 for these purposes a nuisance. See People v. Urziceanu (2005)
15 132 Cal.App.4th 737, 785. The new law "represents a dramatic
16 change in the prohibitions on the use, distribution, and
17 cultivation of marijuana for persons who are qualified patients
18 or primary caregivers Its specific itemization of the
19 marijuana sales law indicates it contemplates the formation and
20 operation of medicinal marijuana cooperatives that would receive
21 reimbursement for marijuana and the services provided in
22 conjunction with the provision of that marijuana." People v.
23 Urziceanu (2005) 132 Cal.App.4th 737, 785. In light of
24 Urziceanu and the statutes cited therein, it appears that,
25 contrary to the stated policy of the County, the legislature
26 intended collective cultivation of medical marijuana would not
require physical participation in the gardening process by all

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3 members of the collective, but rather would permit that some
4 patients would be able to contribute financially, while others
5 performed the labor and contributed the skills and "know-how."

6 Defendants' argument does not focus on interpretation of the
7 MMPA, however, but on their contention that Prop. 215 provides a
8 defense in criminal court, and nothing more. Under defendants'
9 theory, if the plaintiff wished to contest the deputy's order
10 directing plaintiff to cut down the plants, the plaintiff's only
11 recourse was to refuse the deputy's order, be arrested and
12 address the matter in criminal court after criminal charges were
13 brought against him. Defendants also argue that these issues are
14 being litigated in criminal court, and that this court's
15 involvement would waste judicial resources and could easily
16 result in inconsistent rulings. Defendants cite other situations
17 in which a prior case must be resolved before a action may be
18 brought, such as in a case of malicious prosecution.

19 The court finds that the argument that patients may assert
20 their rights to grow medical marijuana cooperatively only as a
21 defense in criminal court to be without merit. While it is true
22 that the medical marijuana provisions do not specifically
23 authorize an action by a patient for unlawful seizure of his
24 marijuana, the constitution and laws of the state which otherwise
25 protect the rights of citizens may nevertheless provide an avenue
26 for relief. Thus, if plaintiff can show that he had a legal
right to possess the marijuana in question, and that his rights

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3 were violated, he may bring his action based on generally
4 applicable legal principles. Seriously ill patients certainly
5 should not be required to risk criminal penalties and the stress
6 and expense of a criminal trial in order to assert their rights.
7 The plaintiff states a theory which would allow a civil court,
8 rather than the criminal courts, to interpret and determine what
9 constitutes Compassionate Use, who are qualified patients and
10 what cooperative/collective efforts are included under the
11 statute. The civil court appears to be an equally appropriate
12 forum to address the issues of medical patients' rights. The
13 court does not see a likelihood of inconsistent rulings in this
14 case, as there is no criminal case pending or any indication that
15 a criminal case is likely to be brought in connection with this
16 matter. Defendants' other main argument, that under Prop 215,
17 only a primary caregiver can provide medical marijuana, does not
18 directly address the question of the effect of MMPA and whether
19 the sheriff's deputy could require destruction of any plants in
20 excess of 12 on the theory that other collective members were not
21 directly participating in cultivation of the plants.

22 For the foregoing reasons, the demurrer is overruled.

23 Second Cause of Action - Unreasonable Search & Seizure

24 The second cause of action is for unreasonable search and
25 seizure, in violation of Calif Const. Art I, §13. Plaintiff
26 alleges that the deputy entered plaintiff's property without a
warrant and ordered the destruction of lawfully possessed medical

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3 marijuana plants, and further that the deputy remained on the
4 property after it was clear that there was no probable cause to
5 believe a crime had been committed.

6 Defendants demur to this cause of action for failure to
7 state a cause of action. In support of the demurrer, defendants
8 argue that the medical marijuana laws do not prohibit police from
9 investigating possible violations of the marijuana laws. This is
10 true, however the complaint is based also on the destruction of
11 the marijuana plants, which was directed by the officer on pain
12 of arrest. This could certainly be considered a seizure, and is
13 sufficient to support the cause of action, even without reference
14 to the alleged warrantless search.

15 The demurrer is overruled.

16 Third Cause of Action - Due Process

17 The third cause of action is for deprivation of property or
18 liberty without due process of law under article I, section 7(a)
19 of the California constitution. Defendants demur to this cause
20 of action based on the argument that the only way plaintiff could
21 establish a valid patient collective would be to refuse the
22 officer's instruction to destroy the plants, and suffer arrest,
23 and then raise the argument in the subsequent criminal case.
24 Again, this argument is without merit. The civil court can and
25 should evaluate if a patient collective has been legally formed
26 and whether the medical marijuana is lawfully possessed, or is
subject to seizure. If there was a valid patient collective, the

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3 destruction of plaintiffs' property was improper, and plaintiff
4 should not be required to undergo criminal proceedings to
5 vindicate his rights. The demurrer is overruled.

6 Fourth Cause of Action - Bane Civil Rights Act

7 The fourth cause of action is for interference with
8 peaceable exercise and enjoyment of the rights secured by the
9 constitution and laws of the State of California in violation of
10 the Bane Civil Rights Act, Civil Code 52.1. Defendants demur
11 generally to this cause of action, on the theory that the first
12 amended complaint fails to demonstrate an underlying
13 constitutional or statutory right that was violated.

14 The court has overruled the demurrers on the constitutional
15 causes of action, and therefore this demurrer, being based on the
16 others, is also overruled.

17 Fifth Cause of Action - Conversion

18 Defendants demur on the theory that the officer did not
19 exercise physical control over the marijuana, and also on the
20 theory that plaintiff's only recourse was to defy the officer and
21 challenge the issue in criminal court.

22 Plaintiff cites cases in which a claim of conversion was
23 based on destruction of personal property by police. The
24 instruction by a police officer to destroy property, or face
25 arrest, is sufficiently coercive to amount to conversion of that
26 property. The court does not find that plaintiff was required to
risk criminal liability to establish his rights herein.

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3 The demurrer is overruled.

4 MOTION TO STRIKE

5 The motion to strike is made on the ground that money
6 damages are not available as a remedy for plaintiff's claim for
7 violation of his right under the California constitution to be
8 free from unreasonable searches and seizures. In ruling on the
9 previous demurrer, the court found that defendants have not
10 established as a matter of law that money damages are unavailable
11 in this situation. Because new case authority may be
12 forthcoming, and because the parties have not provided thorough
13 briefing, the court is reluctant to make a final determination at
14 this stage on a matter as to which, at present, there is no clear
15 authority in California. Therefore, the motion to strike is
16 denied at this time, leaving a final determination on the issue
17 for a later stage in the proceedings.

18 CONCLUSION

19 For the reasons set forth above, the demurrer is overruled
20 as to all causes of action, and the motion to strike is denied.

21 Sept. 6, 2007
22 Date

23 Barbara L. Roberts
24 Barbara Roberts
25 Superior Court Judge
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