AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

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Carmen A. Trutanich
Los Angeles City Attorney
1645 Corinth Avenue, Room 209
Los Angeles, CA 90025

Re: *People v. Organica, Inc.*, No. BC432005
***People v. Holistic Caregivers,* No. BC432003**

Dear Mr. Trutanich:

On Thursday, February 18, 2010, your office filed an injunctive relief action against the two medical marijuana collectives listed above, which were in compliance with California law. This action by your office directly conflicts with both the letter and spirit of state law and Los Angeles Municipal Ordinance No. 179,027 and violate both the state and federal constitutions. I write on behalf of Americans for Safe Access [hereinafter "ASA"], which is the largest grassroots organization devoted to protecting the rights of medical marijuana patients and their physicians, to withdraw these and related unlawful actions. Otherwise, ASA, on behalf of its patient constituency, will seek to intervene in these lawsuits to protect patients, as it did in the case of *San Diego v. San Diego NORML* (4th Dist. July 31, 2008) 165 Cal.App.4th 798.

Your injunctive relief actions in the above-entitled actions, as well as your threats directed against approximately eighteen landlords, violate the state and federal constitutions and state law in multiple ways. *First,* your complaints are based primarily on California Health and Safety Code Section 11570 *et seq.*; however, the Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7-11362.9) [hereinafter "the MMPA"] expressly excluded medical marijuana collectives and cooperatives from sanctions under this statute. (See Health & Saf. Code, § 11362.775.) Your injunctive relief actions, therefore, violate the MMPA.

Second, your Third and Fourth Causes of Action, based on Business and Professions Code Sections 17200 *et seq.* and Health and Safety Code Section 109925 *et seq.* [hereinafter "the Sherman Food, Drug and Cosmetic Law" or "Sherman Law"] fail

to take into account the intent of the California electorate who passed Health and Safety Code Section 11362.5 [hereinafter "proposition 215" or "the Compassionate Use Act"]. These voters explicitly declared that marijuana has medical use – "seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the persons health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine or any other illness for which marijuana provides relief." (Cal. Health & Saf. Code, § 11362.5, subd. (b)(1)(A).) Especially when read in conjunction with [the MMPA's] specific itemization of the marijuana sales law, [these laws] indicate[] [the contemplation of] the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 785; see also Stats. 2003, C. 875, Section 1, subd. (b)(3) [declaring that the purpose of the MMPA is to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects"].) Your third and fourth causes of actions directly conflict with and are, therefore, preempted by this legislative intent.

Third, and perhaps most egregiously, your lawsuits violate due process under both the state and federal constitutions. It is well established that due process demands that "justice . . . must satisfy the appearance of justice." (*Offutt v. United States* (1971) 348 U.S. 11, 14, 75 S.Ct. 11, 13; *see also Mayberry v. Pennsylvania* (1971) 400 U.S. 455, 469, 91 S.Ct. 499, 507 (Harlan, J., concurring) ["[T]he appearance of evenhanded justice . . . is at the core of due process"].) One manifestation of this principle is the defense of reasonable reliance on misleading government conduct, frequently referred to as "entrapment-by-estoppel," which is based on the recognition that it is fundamentally unfair to prosecute those who have been led by government conduct to believe that their actions are authorized. (See *Raley v. Ohio* (1959) 360 U.S. 423, 438-39, 79 S.Ct. 1257, 1266-67; *United States v. Brebner* (9th Cir. 1991) 951 F.2d 1017, 1025; *United States v. Tallmadge* (9th Cir. 1987) 829 F.2d 767, 774; *United States v. Timmins* (9th Cir. 1972) 464 F.2d 385, 386-87; *United States v. Lansing* (9th Cir. 1970) 424 F.2d 225, 226.) Here, not one, but several authorities have led defendants to believe their actions were authorized under state law. For one, there is the Los Angeles City Council which, through the enactment of Municipal Ordinance No. 179,027, has deemed the defendant's actions legal. *Second,* there is the California Legislature, which has exempted defendants' actions from the laws relating to the Narcotics Abatement Law and the laws relating to marijuana sales. (See Health & Saf. Code, § 11362.775; *Urziceanu, supra*, 132 Cal.App.4th at p.785.) Also, there is the California Attorney General, who is deemed storefront dispensaries legal and has effectively allowed for sales. (See Attorney General Guidelines at pp. 9-10.) Your actions in prosecuting the defendants in these cases, despite these assurances by the Los Angeles City Council, the California Legislature and the State Attorney General, violate due process.

Lest there be any doubt that your intention is to undermine the will of the governing bodies, your office has stated publicly that "sales [or medical marijuana] are not permitted" (Statement of David Berger, Special Assistant City Attorney, http://www.scpr.org/programs/airtalk/2009/11/13/joint-committee-takes-up-pot-ordinance-again/) and you, as well as District Attorney Steve Cooley, attended a meeting sponsored by the California Narcotics Officers Association entitled "The Eradication of Medical Marijuana Dispensaries in the City of Los Angeles and Los Angeles County" (http://americansforsafeaccess.org/downloads/CNOA_flyer_9_2009.pdf). Furthermore, D.A. Cooley has stated, "we are going to enforce the laws of the State of California, despite [that] the City Council thinks otherwise." (Statement of Steve Cooley, http://www.scpr.org/programs/airtalk/2009/11/18/da-to-la-sell-medical-pot-get-busted/) Because your lawsuits are unlawful, unconstitutional, and contravene the spirit and letter of the governing laws, I urge you to withdraw them immediately. Otherwise, we will soon intervene on behalf of the seriously ill patients who rely on the defendants, and others like them, to provide the medicine needed by the sick and dying.

Sincerely,

Joseph D. Elford