

1 Name _____

2 Address _____

3 In Pro Per

4 **Superior Court of California**

5 County of _____

6 **THE PEOPLE OF THE STATE OF**

7 **CALIFORNIA**

8 Plaintiff,

9 vs.

10 Name _____

11 Defendant in Pro Per

) Case No.: No.

) **DEMURRER, MEMORANDUM OF**
) **POINTS AND AUTHORITIES,**
) **DECLARATION**

12 **DEMURRER**

13 Defendant _____ demurs and objects to
14 the jurisdiction of this court in this matter. _____ is a qualified
15 patient under the Compassionate Use Act of 1996 ("Act"), enacted by initiative Proposition 215
16 by the electorate November 5, 1996. The only qualification required by the Act is the patient's
17 recommendation letter of his physician (see Exhibit A). A qualified patient under the Act is
18 exempt from criminal penalties and criminal prosecution regarding the cultivation and
19 possession of marijuana. Where there is no criminal penalties and prosecution is prohibited the
20 court has no jurisdiction.

21 **POINTS AND AUTHORITIES:**

22 1. Health and Safety Code §11362.5 (d) holds: " Section 11357, relating to the possession of
23 marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a
24 patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal
25 medical purposes of the patient upon the written or oral recommendation or approval of a
physician."

1 2. The California Supreme Court in *People v. Mower*, 28 Cal 4th 457, held in 2002:

2 Inasmuch as this statute provides that sections 11357 and 11358, which criminalize the
3 possession and cultivation of marijuana, "shall not apply to a patient, or to a patient's primary
4 caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient
5 upon the written or oral recommendation or approval of a physician" (§ 11362.5(d)), the
6 provision renders possession and cultivation of marijuana noncriminal under the conditions
7 specified. (*Mower*, *ibid.* p. 482)

8 ... in view of his or her status as a qualified patient or primary caregiver, the grand jury or the
9 magistrate should not indict or commit the defendant in the first place, but instead should bring
10 the prosecution to an end at that point. *Mower*, *ibid.* 473

11 Evidence of a defendant's status as a qualified patient or primary caregiver exculpates him or her
12 from guilt of the crimes of possession or cultivation of marijuana, because such a status renders
13 possession and cultivation of marijuana noncriminal. *Mower*, *ibid.* 485, FN5

14 As a result of the enactment of section 11362.5(d), the possession and cultivation of marijuana is
15 no more criminal-so long as its conditions are satisfied-than the possession and acquisition of
16 any prescription drug with a physician's prescription. *People v. Mower*, 28 Cal 4th 457, 482

17 ... the Court of Appeal stated that "jurisdictional issues can be raised at any time," and implied
18 that such issues include immunity from prosecution. We recognize that we sometimes have
19 spoken of immunity from prosecution as "jurisdictional."... the limited immunity from
20 prosecution granted by section 11362.5(d) implicates jurisdiction in its less fundamental sense; it
21 surely does not undermine a court's personal or subject matter jurisdiction. Hence, it is subject to
22 bars including waiver and forfeiture. *Mower*, *ibid.* 485, FN6

23 3. Health and Safety Code §11362.775 holds: Qualified patients, persons with valid
24 identification cards, and the designated primary caregivers of qualified patients and persons with
25 identification cards, who associate within the State of California in order collectively or

1 cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that
2 fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366,
3 11366.5, or 11570.

4 4. Health and Safety Code §11362.765 holds: (a) Subject to the requirements of this article, the
5 individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal
6 liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However,
7 nothing in this section shall authorize the individual to smoke or otherwise consume marijuana
8 unless otherwise authorized by this article, nor shall anything in this section authorize any
9 individual or group to cultivate or distribute marijuana for profit.

10 (b) Subdivision (a) shall apply to all of the following:

11 (1) A qualified patient or a person with an identification card who transports or processes
12 marijuana for his or her own personal medical use.

13 (2) A designated primary caregiver who transports, processes, administers, delivers, or
14 gives away marijuana for medical purposes, in amounts not exceeding those established in
15 subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to
16 the person with an identification card who has designated the individual as a primary caregiver.

17 (3) Any individual who provides assistance to a qualified patient or a person with an
18 identification card, or his or her designated primary caregiver, in administering medical
19 marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or
20 administer marijuana for medical purposes to the qualified patient or person.

21 (c) A primary caregiver who receives compensation for actual expenses, including reasonable
22 compensation incurred for services provided to an eligible qualified patient or person with an
23 identification card to enable that person to use marijuana under this article, or for payment for
24 out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis
25 of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

1 DECLARATION:

2 _____ is a qualified patient under the Act as evidenced by
3 the recommendation letter of his physician (see Exhibit A). As such a qualified patient, he/she
4 committed no crime in cultivating and possession of marijuana for his/her medical purposes, and
5 criminal prosecution is prohibited. The above cited statutes abrogates the application of
6 §§11357, 11358, 11359, and 11360, which statutes include language to the effect, "Unless
7 otherwise authorized or provided by law,..."

8 _____ is a patient who is innocent, exempt, and immune
9 from criminal laws regarding the cultivation and possession of marijuana. _____
10 was merely exercising legal rights pursuant to the California Constitution, as outlined above.

11
12 Prayer:

13 _____ requests the court to dismiss with prejudice all counts without leave to
14 amend.

15 Respectfully,

16 Name _____ Date _____

17 _____
18 IN PRO PER

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