

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTITUTE FOR JUSTICE

Jared McClain*	Robert Johnson*
(DC Bar No. 1720062)	(OH Bar No. 0098498)
Joshua House	16781 Chagrin Blvd.,
(CA Bar No. 284856)	Suite 256
901 N. Glebe Rd,	Shaker Heights, OH 44120
Suite 900	T: (703) 682-9320
Arlington, VA 22203	rjohnson@ij.org
T: (703) 682-9320	
jmcclain@ij.org	*Admitted <i>pro hac vice</i>
jhouse@ij.org	

PILLSBURY WINTHROP SHAW PITTMAN LLP

Thomas V. Loran III (CA Bar No. 95255)
 Four Embarcadero Center, 22nd Floor
 San Francisco, CA 94111
 T: (415) 983-1865
 thomas.loran@pillsburylaw.com

Derek M. Mayor (CA Bar No. 307171)
 500 Capitol Mall, Suite 1800
 Sacramento, CA 95814
 T: (916) 329-4703
 derek.mayor@pillsburylaw.com

Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION**

CORRINE MORGAN THOMAS and DOUG THOMAS, a married couple; BLU GRAHAM; RHONDA OLSON; and CYRO GLAD, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

COUNTY OF HUMBOLDT, CALIFORNIA; HUMBOLDT COUNTY BOARD OF SUPERVISORS; HUMBOLDT COUNTY PLANNING AND BUILDING DEPARTMENT; STEVE MADRONE, REX BOHN, MIKE WILSON, MICHELLE BUSHNELL, and NATALIE ARROYO, in their official capacity as Supervisors of Humboldt County; and JOHN H. FORD in his official capacity as Planning and Building Director,

Defendants.

Case No. 1:22-cv-5725-RMI

**AMENDED CLASS ACTION
COMPLAINT**

Magistrate Judge Robert M. Illman

INTRODUCTION

1
2 1. Humboldt County fines landowners hundreds of thousands of dollars for things they
3 never did because it files charges without regard for probable cause. The accused then rarely ever
4 get the chance to defend themselves because the County withholds hearings from those who fight
5 the baseless charges against them.

6 2. While the County makes accused landowners wait indefinitely for an administrative
7 hearing, fines continue to accumulate and the County denies them permits they need to develop their
8 property. The only way out is to pay the County, one way or another.

9 3. The County designed this code-enforcement policy to maximize its proceeds from
10 legalized commercial marijuana growth, squeezing every possible dollar out of residents along the
11 way.

12 4. After California legalized recreational marijuana, Humboldt County created an
13 “abatement” program, under which it cites landowners for nuisances and permitting violations that
14 it alleges have some connection to cultivating marijuana without a permit.

15 5. By alleging the violations are cannabis-related, the daily fines automatically jump
16 from a few hundred dollars to between \$6,000 and \$10,000 per violation, regardless of whether the
17 violations pose any harm to the community.

18 6. The main way the County identifies properties to fine is by reviewing satellite images
19 that show harmless things like greenhouses on a property. The County will allege, without probable
20 cause or any further investigation, that the greenhouse’s presence means the landowner must be
21 growing marijuana illegally. Based solely on that image, the County will typically issue a \$10,000
22 fine for the greenhouse, plus another \$10,000 fine for unpermitted cultivation because the County
23 will allege—again, without any proof or investigation—that the greenhouse must have unpermitted
24 marijuana inside. The County will often tack on another \$10,000 daily fine by alleging that the
25 owner couldn’t have built a greenhouse without grading their land without a permit.

United States District Court
Northern District of California

1 7. The County’s code-enforcement dragnet catches plenty of harmless conduct and
2 innocent landowners, including people growing their own food and people who just purchased their
3 property and have done nothing wrong.

4 8. Landowners cited with cannabis-related violations become trapped in the abatement
5 process unless they pay the County to let them out. The entire system is designed to generate money
6 for the County as efficiently as possible—by forcing accused residents to pay the County even when
7 they have done nothing wrong.

8 9. Providing proof that there is no cannabis on a property is not enough to get the
9 County to drop its cannabis-related fines. Nor can a landowner “abate” their failure to have a permit
10 by simply applying for the permit at issue. Indeed, the County won’t issue *any* permits to properties
11 facing abatement orders, ensuring that the daily fines will accrue while also depriving landowners
12 of their ability to legally develop or repair their property.

13 10. The County makes accused landowners wait several *years* and pay up to \$4,500 for
14 a hearing at which they can finally defend themselves against the County’s accusations. As the
15 County delays the hearing, daily fines continue to accumulate, as do administrative fees that the
16 County charges just to discuss the ongoing abatement.

17 11. In the rare instance that the County ever does schedule an administrative hearing, the
18 County does not let a jury decide whether a landowner violated the code in order to cultivate
19 cannabis—a factual determination that can multiply the penalty by 10 times or more. Instead, a law
20 firm hired by the County decides the facts of the case.

21 12. Humboldt County’s cannabis-abatement program violates due process, imposes
22 unconstitutional conditions and unconstitutionally excessive fines and fees, and deprives accused
23 landowners of their right to a jury.

24 13. Accordingly, the named Plaintiffs—on behalf of themselves and a putative class of
25 similarly situated landowners—seek to enjoin the County’s unconstitutional implementation and
26 enforcement of its abatement program.

27
28

JURISDICTION AND VENUE

14. Plaintiffs bring this civil-rights lawsuit pursuant to 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, for violations of rights, privileges, or immunities secured by the U.S. Constitution.

15. This Court has jurisdiction under 28 U.S.C. § 1331 (federal-question jurisdiction) and 28 U.S.C. § 1343 (civil-rights jurisdiction).

16. Venue is proper in the Northern District of California under 28 U.S.C. § 1391.

PARTIES

17. Plaintiffs Corrine Morgan Thomas and Doug Thomas are adult citizens of the United States and residents of Humboldt County, California. The Thomases face \$1,080,000 in fines, the ordered destruction of their three-story workshop (an additional cost of \$180,000), plus thousands in fees to the County because someone else grew marijuana at their property over two years before they bought it.

18. Plaintiff Blu Graham is an adult citizen of the United States and a resident of Humboldt County, California. He faced \$900,000 in fines for unfounded and uninvestigated allegations that he was growing marijuana in greenhouses that the County saw in satellite images of his property. Really, he was growing vegetables for his restaurant. He waited 4.5 years for the County to a hearing so he could contest the baseless charges that he was growing marijuana, during which time the County withheld a permit he needed for his house. As Blu was preparing the filing of this lawsuit, the County suddenly scheduled his hearing and agreed to drop its claims against him (and issue a permit that it had been wrongfully denying since 2018) if he waived his right to a hearing and paid back the \$3,747 in fees that the County charged him as the County dragged out his case for 4.5 years.

19. Plaintiff Rhonda Olson is an adult citizen of the United States and a resident of Humboldt County, California. She faces over \$7 million in fines because someone else grew marijuana on her property before she purchased it. The County has also prohibited her from

1 developing her property—the very reason she bought it—while her abatement case is pending.
2 She’s been waiting over two years for a hearing.

3 20. Plaintiff Cyro Glad is an adult citizen of the States and a resident of Humboldt
4 County, California. He faces \$900,000 in fines for cannabis-related violations on a property he had
5 just purchased. County officials never visited the property in person; they just levied the allegations
6 and fines without probable cause. Cyro requested an administrative hearing to contest the charges
7 back in November 2018 and is still waiting for the County to provide him an opportunity to be heard.

8 21. Defendant County of Humboldt is a general-law county within California.

9 22. At all times relevant to the facts of this case, Humboldt County and its officials,
10 agents, and employees have acted under color of law. The actions that give rise to Plaintiffs’ claims
11 are, unless otherwise indicated, taken pursuant to the policies, practices, and customs of the County,
12 at the direction of, with the knowledge of, and through the actions of its former and current
13 policymakers, including its Board of Supervisors and its Planning and Building Department.

14 23. Defendant Humboldt County Board of Supervisors is the legislative and executive
15 body of the County’s government. The Board of Supervisors passed the ordinances at issue in this
16 case, and it controls, directs, and funds the County’s Planning and Building Department and its
17 subsidiary Code Enforcement Unit.

18 24. Defendant Humboldt County Planning and Building Department is a division of the
19 Humboldt County government tasked with enforcing laws, ordinances, and policies regarding
20 planning and building, including code violations. Humboldt’s Code Enforcement Unit is part of the
21 Planning and Building Department.

22 25. Defendant Steve Madrone is Chair of the Board of Supervisors.

23 26. Defendant Rex Bohn is Vice Chair of the Board of Supervisors.

24 27. Defendant Mike Wilson is a member of the Board of Supervisors.

25 28. Defendant Michelle Bushnell is a member of the Board of Supervisors.

26 29. Defendant Natalie Arroyo is a member of the Board of Supervisors.

27

28

1 40. The Planning and Building Department instituted an “abatement” program, under
2 which it charges residents with code violations and alleges that those violations must be connected
3 to illegal marijuana growth.

4 41. Code violations that the County alleges have a nexus to cannabis—often without
5 evidence or investigation—carry tens of thousands of dollars in daily fines.

6 42. The County’s policy and practice is to accuse landowners of code violations relating
7 to marijuana without regard for probable cause that a landowner grew marijuana illegally.

8 43. The County then imposes ruinous daily fines for things like the failure to get a permit
9 before building structures as basic as a temporary greenhouse if the County says that someone might
10 have, at some point, grown marijuana on the property.

11 44. Even when an alleged code violation is the failure to obtain a permit, the County
12 doesn’t allow the landowner to abate the “nuisance” by obtaining the permit in question. Indeed,
13 the County won’t issue *any* permits to properties under abatement orders.

14 45. Instead, the County orders landowners to destroy unpermitted structures within 10
15 days or it begins issuing daily fines—simply because the County alleges that the structures once had
16 something to do with marijuana.

17 46. Photographic proof that there is no marijuana growing on their property is not enough
18 to get the County to stop the fines.

19 47. Nor is evidence that the violations pre-existed the landowner’s ownership or the
20 County’s allegations of cannabis growth.

21 48. Landowners who weren’t growing marijuana illegally and who don’t want to destroy
22 their property must appeal the charges to an administrative “court” run by Code Enforcement.

23 49. Ever since the County began its abatement program around the end of 2017, the
24 County has had a policy and practice of waiting several years—sometimes over *four years*—before
25 it schedules an initial administrative hearing.

26 50. While landowners wait indefinitely for the County to schedule an initial hearing, the
27 fines continue to accumulate, the County charges administrative fees for every interaction the
28

1 landowner (or their attorney) has with the government about their abatement, and the County refuses
2 to issue other necessary permits unless the landowner agrees to pay the County to settle their case.

3 51. Landowners who agree to apply for permits to grow cannabis commercially,
4 however, can get their fines reduced or even dismissed.

5 52. The County’s enforcement regime is designed to squeeze every dollar the County
6 can out of its residents as it tries to maximize its proceeds from legalized marijuana.

7 53. Landowners fined without probable cause cannot escape the abatement process
8 without paying the County—either in the form of fines, a settlement, administrative fees, or the
9 licensing fees and taxes that the County charges to allow them to grow commercially in exchange
10 for dismissing the code violations.

11 54. The County’s unconstitutional implementation and enforcement of this abatement
12 program gives rise to the facts in this Complaint.

13 **A. Humboldt County Began Aggressively Prosecuting Building Code Violations**
14 **Following Marijuana Legalization**

15 55. California voters passed Prop 64 in November 2016 to legalize marijuana use for
16 adults over 21 years old as of January 1, 2018.

17 56. In response to legalization, Humboldt amended its tax system and civil code
18 throughout 2017.

19 57. Under the County’s tax and fee schemes for marijuana, a commercial permit costs
20 up to \$86,560 in application and licensing fees, plus thousands of dollars in additional fees to cover
21 the time that County staff works on an application. Commercial growers must also pay annual taxes
22 up to \$3 per square foot of a cultivation area, which the County charged for years regardless of
23 whether marijuana was actually grown on the property.

24 58. These laws created a massive financial incentive for the County to push landowners
25 into purchasing commercial permits.

26 59. In 2018 alone, the County took in about \$5 million in permits and fees.

27
28

1 60. Correspondent to this legal pathway for commercial growth, the Board of
2 Supervisors also passed several other ordinances in 2017 to increase enforcement and impose
3 massive fines and fees on anyone who it thinks might be growing marijuana in Humboldt without
4 buying a permit from the County.

5 61. Growing cannabis without a permit now qualifies as a “Category 4 violation” of the
6 county code—the code’s most severe offense, which carries a daily fine of \$6,000 and \$10,000 and
7 applies to those violations that “have a significant and/or substantial impact” on public health and
8 safety.

9 62. But the County did not stop at punishing illegal growth: The Board of Supervisors
10 also amended the county code to increase the penalties for *all* code violations that the County alleges
11 “exist[] as a result of or to facilitate the illegal cultivation of cannabis.”

12 63. As a result of these changes, minor code violations become Category 4 violations
13 subject to \$10,000 in daily fines whenever the County alleges that a violation exists in order to
14 facilitate the unpermitted growth of marijuana.

15 64. Violations that would typically carry fines between \$1 to \$1,000 multiply by a factor
16 of 10 or more based solely on a supposed nexus between the alleged violation and marijuana.

17 65. To increase the County’s capacity to enforce all its new cannabis-related regulations,
18 the Board of Supervisors more than doubled the number of full-time Code Enforcement officers.

19 66. The County also “substantially” reduced the time landowners have to correct alleged
20 nuisances before they face an abatement order: A property owner used to get 30 days to correct any
21 alleged nuisances before they would receive an abatement order, another 30 days to abate the
22 nuisance after receiving an abatement order, and then another 15 days before the County could
23 schedule a hearing to impose a penalty. But the County combined those steps and reduced the total
24 abatement period from 75 days to just 10 days, while landowners now faced exponentially larger
25 fines if they don’t comply in time.

26
27
28

1 67. While the issuance of civil penalties for an abatement used to require a hearing before
2 the Board of Supervisors, the County amended that system to make a hearing by request only and
3 in front of a hired hearing officer instead.

4 68. The explicit purpose of shortening the abatement period and reducing process rights
5 was to streamline the County’s ability to recover costs from abatements.

6 69. Additionally, the 2017 code changes replaced the County’s complaint-based
7 enforcement system and authorized the Code Enforcement Unit to proactively enforce state and
8 local laws regarding marijuana cultivation.

9 70. The County’s proactive, cannabis-focused enforcement mandate extended the
10 purview of the Planning and Building Department and its Code Enforcement Unit beyond the
11 traditional role of processing permit applications and abating nuisances that pose a danger to the
12 public welfare, as the Board of Supervisors made its Code Enforcement Unit the County’s primary
13 enforcement agency for cannabis-related violations.

14 71. The Board of Supervisors directed the Planning and Building Department to
15 implement its new cannabis-related abatement program by January 1, 2018, when legalization
16 would take full effect in California.

17 72. As a result, by the time marijuana became legal, a newly constituted Code
18 Enforcement Unit was in place to aggressively enforce code violations in Humboldt County.

19 73. The County’s code and enforcement policy changes were calculated to boost county
20 revenue by extracting fines and fees from residents who don’t pay for costly commercial permits
21 and increased property taxes for commercial growth.

22 74. To maximize the County’s cannabis-related revenue, County officials, including
23 Planning Director John Ford instituted a policy and practice under which the County tickets all
24 unpermitted greenhouses for cultivating unpermitted cannabis growth.

25 75. Director Ford has also imposed extra-legal requirements on people seeking permits
26 for greenhouses that have nothing to do with cannabis.

27
28

1 76. For instance, Director Ford will personally decide that a greenhouse is larger than
2 what he thinks the landowners need to grow their own food, and he has demanded the landowners
3 get a business license for their greenhouse even though the law requires none.

4 77. Director Ford will also require that landowners seeking a permit for a greenhouse
5 must sign a special form promising to never grow cannabis in the greenhouse under threat of
6 criminal penalties instead of the civil penalties the County typically assesses.

7 78. Director Ford’s Planning Department treats greenhouses as inherently suspect
8 despite their many legal uses.

9 79. Although the County often has no idea what is inside a greenhouse, anyone with an
10 unpermitted greenhouse faces fines for illegal cannabis cultivation to ensure the County does not
11 miss out on any cannabis-related revenue.

12 **B. Humboldt County Imposes Ruinous Fines Without Regard for Probable Cause**

13 80. The Planning and Building Department has run wild with its new fine-driven
14 mandate and adopted a policy and practice of charging cannabis-related code violations without
15 proof or process.

16 81. By charging cannabis-related code violations indiscriminately, the County’s policy
17 has inevitably punished many innocent people throughout the County.

18 82. In 2018, the Department’s first full year prosecuting cannabis-adjacent building and
19 permitting issues, the County increased code enforcement by about 700 percent, resulting in the
20 County’s assessment of \$3 million in fines that year.

21 83. The County accomplished that drastic increase in enforcement through a policy and
22 practice of charging Category 4 violations without regard for probable cause.

23 84. Category 4 violations, which carry fines of \$10,000 per day, are those that are
24 “committed intentionally or through inexcusable neglect and have a significant and/or substantial
25 impact on the health, safety, comfort, and/or general welfare of the public.”

26 85. The County’s policy and practice, however, is to charge cannabis-related Category 4
27 violations without regard for any evidence that landowners violated the county code intentionally,
28

1 or through inexcusable neglect, to grow cannabis illegally, and without regard for whether a
2 cannabis-related code violation has a significant or substantial impact on health, safety, comfort, or
3 general welfare.

4 86. The County administers its blanket enforcement by using drones and a satellite-
5 imaging program that provides the County with aerial images of property in the County.

6 87. Satellite imaging is the County’s primary basis of enforcement, with 119 of the 200
7 abatement cases in 2021 coming through the County’s satellite program.

8 88. Prior to the County’s use of drones and satellite imagery, it issued far less than 100
9 citations per year.

10 89. In the four years after the County began using drones and satellite imagery, it has
11 issued cannabis-related citations to over 1,200 properties.

12 90. Using aerial imaging, County officials identify properties that may have a
13 greenhouse, building, a graded flat of land, an access road, or trees removed without a permit on
14 record.

15 91. One problem with the County’s reliance on these aerial images is that they often
16 misrepresent property boundaries.

17 92. The County has ticketed a residents for their neighbors’ greenhouses, simply because
18 Code Enforcement was mistaken about where the property boundaries lined up with their satellite
19 images.

20 93. Worse, the County’s inability to properly identify property lines on its aerial images
21 has led county officials to execute armed *raids* of properties for growing cannabis without a permit
22 based on permitted activity on a neighbor’s property.

23 94. When the County does identify the correct property, its crude satellite images reveal
24 plenty of activities wholly unrelated to cannabis growth—let alone *illegal* growth in a state that
25 allows residents to grow cannabis for medical and recreational use.

26
27
28

1 107. Many people in Humboldt live on property once owned by logging companies that
2 graded the land to help clear timber for decades.

3 108. The crude satellite images that the County relies on, which merely provide a snapshot
4 in time, are unable to reveal the purpose of a grade.

5 109. Nor can the crude satellite images show whether the amount of soil graded exceeded
6 the threshold that requires a permit.

7 110. Indeed, the two-dimensional images often can't show whether there is any grade at
8 all.

9 111. But the County treats a greenhouse as proof that there must be grading.

10 112. A greenhouse in a crude satellite image is not probable cause that a landowner graded
11 land without a permit.

12 113. More importantly, the County cannot determine from a crude satellite image alone
13 that a landowner built a greenhouse or graded their land *for the purpose of* cultivating cannabis.

14 114. The County charges a range of cannabis-related Category 4 violations based solely
15 on satellite images that show greenhouses, gardens, graded flats of land, and rainwater-catchment
16 units.

17 115. The County elevates these charges to Category 4 violations without evidence of
18 cannabis cultivation—let alone evidence amounting to probable cause that the landowner violated
19 the code to facilitate illegal growth.

20 116. The County often takes no investigative steps to confirm the presence of *any* cannabis
21 in the greenhouse or on the graded flat found in a satellite image—let alone whether the cultivation
22 is illegal.

23 117. Code Enforcement refers to these satellite-imaging cases it brings as “unreviewed.”

24 118. When accused landowners have protested fines based on only satellite images,
25 County officials have responded that they are not authorized to come check the property to confirm
26 the presence of cannabis before issuing a fine.

1 119. Yet the County also maintains that it has all the evidence of a code violation it needs
2 before it issues a notice of violation.

3 120. The clear implication is that the County (wrongly) believes it can issue code
4 violations accompanied by hundreds of thousands of dollars in penalties, administrative fees, and
5 restrictions on the use of property based on a lower quantum of suspicion than the probable cause
6 required to obtain a warrant.

7 121. When the County does have probable cause of illegal cultivation, the Sheriff's
8 Department seeks a warrant and raids the property along with Code Enforcement (and other
9 government agencies).

10 122. When the County does not have probable cause of illegal cultivation, it issues fines
11 and notices of violations instead.

12 123. The County also has a policy and practice of imposing fines on new purchasers or
13 inheritors of land in Humboldt despite lacking any probable cause that these new owners committed
14 Category 4 violations.

15 124. This policy ignores the *mens rea* requirement for Category 4 violations, which limits
16 the code's most severe punishments to those committed intentionally or with inexcusable neglect.

17 125. The County charges cannabis-related Category 4 violations without regard for intent
18 or culpability.

19 126. When someone purchases or inherits a parcel, the County's policy and practice is to
20 wait until a new owner records their title and then fine the new purchaser for violations relating to
21 a prior owner's alleged cannabis growth—even when the County knows that the new owner has not
22 grown cannabis or committed the cannabis-related violations it charges.

23 127. The County treats the fines as if they run with the land, holding new owners
24 responsible for the violations and corresponding fines that were based on a prior owner's conduct.

25 128. Director Ford has announced the County's position when someone purchases a piece
26 of property not knowing there were outstanding violations: "Not wanting to be cold-hearted, but the
27

1 reality is that a property owner is responsible for their property and subsequent property owners
2 inherit that responsibility.”

3 129. Consistent with this policy of holding new owners responsible for the conduct of
4 prior owners, the County has cited new purchasers for the prior owner’s abatement orders, sent new
5 purchasers a prior owner’s outstanding bills, and even told new purchasers that they should track
6 down prior owners and get them to pay if the new owners do not want to pay themselves.

7 130. Although county law requires the County to record code violations against the
8 property after the 10 days to abate the violation has elapsed, the County has not and does not do so.

9 131. As a result of the County’s failure to record outstanding abatement orders, the alleged
10 code violations and corresponding penalties do not appear in a title search, depriving new purchasers
11 of fair notice that the County plans to hold them responsible for someone else’s wrongdoing.

12 132. Without regard for notice or culpability, the County will still insist, under threat of
13 tens of thousands of dollars in daily fines, that the new owner must return their new property to its
14 “pre-cannabis state,” a murky concept that requires the owner to destroy any structures and re-grade
15 land that the County alleges once had a nexus to cannabis.

16 133. In many cases, the County’s punitive order that landowners return a property to its
17 pre-cannabis state is more hazardous to the environment than leaving structures or grading in place.

18 134. The County imposes these penalties and fees regardless of the cost to the current
19 owner and regardless of whether there was no cannabis cultivated in a structure or on a flat of land
20 after the current owner’s purchase of the property.

21 **C. The County’s Abatement Program Is Designed to Force Owners into Settlements**

22 135. The County designed its cannabis-related enforcement regime to inflict so much pain
23 and pressure on accused landowners that they feel compelled to settle the County’s claims,
24 regardless of their validity.

25 136. The County creates settlement pressure from the very day it issues a Notice of
26 Violation and Proposed Administrative Civil Penalty and Notice of Abatement (together an
27 “NOV”).

1 147. Landowners who have done nothing wrong still face over \$650 in administrative
2 fees, including \$207 to cover the cost of publishing the County’s untrue accusations against them.
3 If they refuse to pay, the County will send them to collections.

4 148. Once served with an abatement order, landowners face immediate costs and immense
5 pressure to settle due to the County’s issuance of ruinous fines unsupported by any legitimate
6 governmental interest, its refusal to drop baseless charges, its undue delay in providing hearings, its
7 denial of permits while abatements are pending, and the cost the County imposes to prove one’s
8 innocence.

9 **1. Humboldt County Issues Ruinous Fines and Fees Unsupported by Any**
10 **Governmental Interest**

11 149. The County imposes cannabis-related Category 4 penalties without any regard for
12 whether the penalty serves a valid governmental interest.

13 150. When assessing fines for cannabis-related code violations, the County’s policy and
14 practice is to ignore the county code’s mitigating factors such as the owner’s culpability, history of
15 similar offenses, and the severity of the impact on public health and safety.

16 151. The County’s policy and practice is to issue the maximum \$10,000 daily fines even
17 when there are no health and safety concerns, complaints, prior violations, or culpability, and even
18 when the County’s entire investigation consisted of viewing a satellite image.

19 152. County officials even have insisted that a violation does not need to cause *any* actual
20 harm to justify a maximum daily fine of \$10,000.

21 153. While one daily fine of \$10,000 would be unconstitutionally excessive for the
22 innocent and harmless conduct and the paperwork violations for which the County imposes
23 Category 4 violations, the County multiplies exponentially the pressure it places on landowners
24 through a policy and practice of charging duplicative violations.

25 154. On average, the County charges about three Category 4 violations per property.

26
27
28

1 155. The most typical trifecta of fines are for a single unpermitted hoop house: (1)
2 building a hoop house without a permit; (2) grading the land without a permit to build the
3 hoophouse; and (3) growing marijuana illegally in the hoophouse.

4 156. Taken together, Code Enforcement will impose up to \$30,000 in *daily* fines for
5 building a temporary hoop house without a permit by alleging—without further investigation or
6 evidence—that a hoop house itself is proof that a landowner also graded their land and grew
7 cannabis without a permit.

8 157. A single day’s worth of \$30,000 daily fines already exceeds the average yearly
9 income for Humboldt residents.

10 158. The daily fines accumulate for 90 days—quickly exceeding one million dollars in
11 many cases—unless the landowner “abates” the alleged nuisance within 10 days.

12 159. To afford the County’s excessive fines, the average Humboldt resident would have
13 to work for over 90 years just to earn enough gross income to cover the penalties for not obtaining
14 a building permit that would have cost a couple hundred dollars.

15 160. The fines are so unaffordable that even Supervisor Rex Bohn, one of the program’s
16 chief architects, asked the Planning Department what the fines are meant to accomplish: “We throw
17 out these fines that are gonna be 35 million dollars if you don’t do anything. ... Should we bring
18 that back to something more reasonable or is it to scare the panties off them?”

19 161. And, as if 90 days of excessive fines were not enough, the County can re-notice the
20 violation after 90 days and impose another set of daily fines for 90 more days.

21 **2. Innocent Landowners Cannot Escape an Abatement Order Without Paying**

22 162. Other than immediately paying to settle an abatement order, there is rarely a way for
23 innocent landowners to quickly resolve their case.

24 163. For instance, when the County charges a Category 4 violation for the failure to obtain
25 a permit, its policy and practice is to refuse to issue the permit(s) necessary to resolve the abatement
26 order on the grounds that the property is facing the abatement order that the permit would resolve.

27

28

1 173. At that meeting, Director Ford bemoaned publicly that the article elicited sympathy
2 for the innocent purchasers whom his office was fining millions of dollars for someone else’s code
3 violations.

4 174. Director Ford confirmed his Department’s policy that new owners like the Thomases
5 and Rhonda had inherited responsibility for all issues on the property, even if his office had not
6 recorded the violations to provide them notice of the violations and penalties they were inheriting.

7 175. Under the new policy adopted at the March 22 meeting, property owners can now
8 prepare a plan describing their desired non-cannabis use for an unpermitted structure if:

- 9 a. The use is permitted under zoning and land-use laws;
- 10 b. The structure is within the 2-acre curtilage of an existing residence;
- 11 c. The structure can be permitted;

12 176. If the building does not fit those criteria, the owner must seek a conditional use
13 permit, even if the use would be allowed without a conditional use permit had there not been
14 cannabis on the property.

15 177. Innocent owners must also pay for all permits, “including penalty fees (i.e., triple
16 fees for building permits),” because of the prior cannabis cultivation on the property.

17 178. Demolishing a structure within 10 days instead of seeking a permit is often still not
18 enough to get the County to dismiss a violation.

19 179. Owners willing to demolish a structure fare no better than those who can’t obtain a
20 permit: the County refuses to dismiss their violations either way.

21 180. Dozens of landowners in Humboldt have sent the County pictures during the 10-day
22 abatement period to show that they destroyed an unpermitted hoop house and that there is no
23 cannabis on their land, and the County still refused to drop the charges. Often, the County doesn’t
24 even respond.

25 181. Neither proof of innocence nor proof that the alleged nuisance is abated is enough to
26 escape the County’s clutches.

27
28

1 182. The County’s policy and practice is to keep landowners trapped in its abatement
2 process until they pay the County, one way or another.

3 **3. The County Refuses to Provide Timely Administrative Hearings While It**
4 **Pressures Accused Landowners to Settle**

5 183. Another way the County pressures landowners to settle is by delaying administrative
6 hearings indefinitely.

7 184. An NOV includes an “Attachment C,” which an accused landowner can file to seek
8 an initial administrative hearing to contest the County’s charges.

9 185. Once an accused landowner files their Attachment C, the county code permits Code
10 Enforcement to schedule an administrative hearing “no *sooner*” than 15 days after the notice of
11 appeal—even though the daily fines begin to accrue after just 10 days.

12 186. The code does not impose a maximum time limit on how long the County can take
13 to schedule an administrative hearing.

14 187. The County does not stay the accrual of daily fines upon the filing of an Attachment
15 C to request an administrative hearing, nor does it do so during settlement negotiations.

16 188. Since the County adopted its new abatement program in 2017, the County’s policy
17 and practice has been and still is to wait years before scheduling an administrative hearing.

18 189. There is no legitimate governmental reason for the delay in scheduling initial
19 hearings on abatement orders, as the County maintains that it has all the evidence it needs *before* it
20 issues an NOV.

21 190. The purpose of the delay is to increase the pressure the County places on those
22 landowners facing abatement orders.

23 191. Even if the County were to schedule a hearing within 15 days, the soonest the code
24 allows, a landowner must incur *at least* five days of daily fines before they are even allowed to
25 receive their hearing.

26 192. Again, a single day of fines typically exceeds the average yearly income of county
27 residents, so five days of fines quickly becomes unpayable for accused landowners.

1 193. To make matters worse, the County’s policy and practice is to ensure that the full 90
2 days of fines run against anyone who seeks an administrative hearing.

3 194. Consequently, people who seek an administrative hearing must incur hundreds of
4 thousands—if not *millions*—of dollars in fines just to defend themselves.

5 195. The fines that accrue while an owner waits for a hearing multiply the risk and cost
6 of exercising one’s right to a hearing—even when the County brought the charges without regard
7 for probable cause and cannot ultimately prove that the accused violated the code to cultivate
8 cannabis.

9 196. If a landowner requests a hearing because they were falsely accused of violating the
10 code *for the purpose* of growing cannabis, and then successfully shows at their hearing that they did
11 not grow cannabis, the County can still “prevail” by proving simply that the accused committed the
12 underlying code violation (*e.g.*, building a cannabis-free greenhouse without a permit).

13 197. In other words, by delaying hearings and refusing to stay the accrual of fines, the
14 County ensures that a landowner subjects themselves to 90 days’ worth of *some* fines—even when
15 the County never had the evidence to prove the alleged nexus to cannabis that led the County to file
16 the charges and the landowner to insist on their right to a hearing.

17 198. So even when the County can’t prove its allegations of cannabis cultivation that were
18 the crux of its case, it can still demand that landowners pay \$90,000 per violation—instead of
19 \$900,000—for exercising their right to a hearing instead of “abating” the issue within 10 days.

20 199. As landowners wait indefinitely for the County to schedule their hearing, they must
21 also work with the County to address the very abatement orders they haven’t yet had the chance to
22 oppose in order to maintain any hope of leniency from the County’s hearing officer, because the
23 code restricts the hearing officer’s authority to reduce the fines unless the landowner took
24 “immediate steps” to abate an issue.

25 200. Working with the County also comes at an additional cost, as the County charges
26 administrative fees for the time its officials and employees spend talking to landowners and their
27 attorneys about pending abatement orders.

1 201. County officials have told accused landowners exactly that: hiring an attorney to
2 contest an abatement order increases the ultimate cost that the County charges landowners in
3 administrative fees.

4 202. Code Enforcement officials will even contact landowners without their lawyers
5 present to pressure them into a settlement, even when the County knows that landowner has retained
6 counsel to challenge the abatement order.

7 203. In some cases, the County makes clear that it is more willing to work with
8 landowners if they do not bring their lawyer to negotiations.

9 204. Fully aware of the financial and psychological costs that its abatement regime brings
10 to bear, County officials routinely check in with landowners to pressure them into waiving their
11 right to a hearing and settling their case instead.

12 205. Code Enforcement officials warn landowners that an appeal is not in their personal
13 interest because the County does not lose before its own hearing officer.

14 206. Code Enforcement Officer Warren Black has told innocent landowners, “You’re
15 going to lose the hearing; it’s our people. We’re going to impose the maximum fine on you [if you
16 insist on a hearing], and you’re going to owe us \$270,000.”

17 207. Similarly, Mr. Black has told other landowners that it “would be better to enter into
18 an agreement” than go forward with their demand for a hearing because “the judges and attorneys
19 work for the county and are on the side of the Code Enforcement Unit.”

20 208. The County’s threats appear to be correct: Whenever the County actually does
21 schedule a hearing before the law firm it hired to decide cannabis-related cases, the County wins.

22 209. The County makes clear to accused landowners that settling their case is the only
23 logical thing to do in the face of ever-increasing penalties and indefinite delays.

24 210. Granted, the County’s win-rate is, at least in part, a product of its refusal to schedule
25 hearings on charges brought without probable cause and its willingness to drop cannabis-related
26 allegations once it schedules a hearing.

27

28

1 211. The system works as it's designed: to streamline the County's collection of fines and
2 fees without regard for culpability.

3 212. The County's undue delay in scheduling hearings facilitates this unjust outcome by
4 forcing an accused landowner to endure years under the threat of fines, fees, and abatement costs,
5 while also being unable to develop their land with no guarantee that the County will ever schedule
6 their hearing.

7 **4. The County Illegally Prohibits Landowners from Developing Their Property**
8 **While an Abatement Order Is Pending**

9 213. The County also increases settlement pressure by making permits costly or
10 completely unavailable to landowners facing abatement orders.

11 214. The County has a policy and practice of denying all permits to landowners with
12 pending cannabis-related abatement orders, even if the permits are wholly unrelated to the
13 abatement issue.

14 215. The County adopted this blanket-denial policy despite a county ordinance that limits
15 its authority to deny permits to only those *projects* that are subject to unpaid administrative civil
16 penalties.

17 216. As part of this policy, the County denies landowners the very permits that the County
18 is fining them for not having.

19 217. The County will also deny unrelated permits to landowners who are awaiting a
20 hearing on an abatement order, including permits under the County's "Safe Home Program."

21 218. The County created its Safe Home Program at the same time it adopted its cannabis-
22 driven code enforcement. The program, as extended, gives landowners from October 2017 through
23 the end of 2027 to come forward and apply for as-built permits for their property without facing
24 penalties.

25 219. While the County dangled the carrot of amnesty for permitting violations, its Code
26 Enforcement unit began blindly swinging the stick of crippling fines at any violation it perceived to
27 have a nexus to cannabis.

1 220. The County will refuse to issue as-built permits for homes—or any other permits—
2 to landowners facing a cannabis-related abatement order unless a landowner agrees to enter a
3 settlement agreement or apply for a permit to grow cannabis commercially.

4 221. County officials go so far as to make the extortive settlement pressure explicit—
5 telling landowners that they cannot get permits for their property unless they settle their abatement
6 cases.

7 222. The County’s denial of permits leaves an accused landowner unable to develop or
8 maintain their property for years as they await an initial hearing on the merits of the County’s
9 cannabis-related abatement order.

10 223. The County’s illegal denial of permits increases the undue pressure on landowners
11 to settle by denying their right to develop their property and by putting them at risk of additional
12 permitting violations unless they give up their right to appeal any abatement orders.

13 **5. Challenging an Abatement Order Comes at a Great Cost**

14 224. If the County would ever finally provide an accused an administrative hearing, the
15 hearings are extremely costly.

16 225. Administrative hearings take place before a hearing officer for Code Enforcement.

17 226. Despite the massive fines that the County levies “to minimize the expense and delay
18 associated with pursuing alternative remedies through the ... criminal justice system,” the County
19 does not allow the accused to have a jury decide the facts of their case.

20 227. The hearing is conducted before a contractor from a private law firm that the County
21 hires to serve as the hearing officer.

22 228. Under the County’s agreement with this private firm, the County pays hearing
23 officers \$240 per hour for their work plus \$120 per hour for their travel time.

24 229. The County passes on the cost of the hearing officer to the accused in the form of
25 another administrative fee.

26 230. The County charges up to \$4,500 in administrative fees to landowners who request
27 an administrative hearing.

1 240. The County can enforce its administrative order and collect any penalties before a
2 landowner appeals the hearing officer’s decision and receives a hearing in superior court.

3 241. As a result, the County can collect the ruinous fines it issued without probable cause
4 before an accused landowner can ever step foot in a real court.

5 **6. The Pressure Is the Point**

6 242. The pressure campaign described throughout this section—with the ruinous fines,
7 time pressure, the inability to obtain permits, the lack of a timely hearing, and the County’s refusal
8 to dismiss baseless charges—is all designed to generate revenue for the County.

9 243. Once a landowner receives an NOV, they are trapped in an abatement unless they
10 pay the County to let them out.

11 244. When a landowner appeals an NOV, the County typically responds by immediately
12 offering a compliance agreement under which the landowner agrees to pay one day’s worth of the
13 daily fines plus administrative fees up to \$4,500.

14 245. The administrative fees include things like the time that County employees have
15 spent answering a landowner’s phone calls or responding to emails about the case, down to the 15-
16 minute increment.

17 246. The fees also include the cost of the County publishing its accusations against the
18 landowner in the newspaper.

19 247. Paying fines and fees as part of a settlement agreement isn’t the only way a
20 landowner can pay their way out of an abatement order.

21 248. The County has also offered to drop cannabis-related abatement orders for
22 landowners who will agree to enter the costly process to grow commercially.

23 249. The County has even offered to dismiss a cannabis-related abatement order in
24 exchange for a landowner transferring to the County the title to the very unpermitted building that
25 the County insisted the landowners had no other choice but to destroy.

26
27
28

1 250. In other words, because someone else once grew marijuana on a property before their
2 purchase, the new landowners would have to pay to destroy a structure on their property or turn over
3 the property to the County, without compensation, for public use.

4 251. Those landowners who don't respond to an NOV get a \$900,000 lien put on their
5 property.

6 252. As of August 2022, the County had placed a \$900,000 lien on 24 properties, plus a
7 \$150,000 lien on a 25th.

8 253. For those who resist the County's settlement offers and insist on an administrative
9 hearing, the financial and psychological pressures remain unabated indefinitely, until the County
10 eventually agrees to schedule an administrative hearing.

11 254. Once the County does schedule a hearing, it increases the pressure to settle yet again
12 by finally dropping any pretext of its baseless cannabis allegations and instead seeking 90 days'
13 worth of fines for the underlying code violations that the landowner might not have ever contested
14 if not for the cannabis charges, plus thousands in administrative fees.

15 255. For many landowners, the only sensible way out of a cannabis-related abatement
16 order—whether brought based on probable cause or not—is to settle before the fines and fees
17 become insurmountable.

18 256. About one-third of landowners facing abatement orders have agreed to settle their
19 case and waive their right to a hearing, generating millions in fines and fees for the County without
20 Code Enforcement ever having to prove the allegations it brings without regard for probable cause.

21 **D. The County's Violation of the Individual Plaintiffs' Constitutional Rights**

22 **1. Corrine Morgan Thomas & Doug Thomas**

23 257. Corrine and Doug Thomas live in Miranda, California.

24 258. The Thomases are both disabled and on a fixed income.

25 259. They are retired aside from their work for a non-profit they run called the Miracle
26 Run Foundation for Autism.

27

28

1 260. The Miracle Run Foundation is named after a book Corrine wrote and the movie
2 based on that book, which depicts their twin autistic sons’ perseverance through school.

3 261. Through their foundation, the Thomases raise awareness and money to support
4 families with autism.

5 262. The Thomases lived in Los Angeles County with their twin sons until the Woolsey
6 Fire destroyed their home in November 2018.

7 263. Using the insurance money from the fire, the Thomases decided to purchase their
8 “forever home” in the middle of a redwood forest in Humboldt, where they always dreamt of living.

9 264. The Thomases closed on a home in Miranda on August 20, 2021.

10 265. The home sits on top of a ridge above the Avenue of the Giants.

11 266. Behind the home, there is a detached garage alongside a three-story building that the
12 listing referred to as a workshop.

13 267. When the Thomases purchased the property, the workshop was empty and the
14 electrical wiring inside had all been cut.

15 268. Six days after the Thomases closed on their new home, on August 26, they received
16 an NOV addressed to Summerville Creek LLC, the property’s prior owner.

17 269. The code-enforcement case for the violations listed in the notice had existed since
18 2019, over two years prior to the Thomases’ purchase of the property.

19 270. The notice listed two violations: (1) violation of the commercial cannabis land use
20 ordinance; (2)(a) construction of building/structure in violation of building, plumbing and/or
21 electrical codes; and (b) facilities/activities in violation of the commercial cannabis land use
22 ordinance.

23 271. The paperwork described the conditions causing a nuisance as “[u]npermitted
24 commercial cannabis operation with approximately 2,500 square feet of cultivation” and a
25 “[s]tructure facilitating commercial cannabis activity and constructed contrary to the provisions of
26 Humboldt County Code.”

27

28

1 281. No County official has ever suggested to the Thomases or the attorney they hired to
2 defend themselves against the County’s charges that the Thomases are not responsible for the NOV
3 and its corresponding civil penalties.

4 282. To the contrary, since the County issued the Thomases an NOV for someone else’s
5 conduct, the County has made clear consistently that, pursuant to the County’s established policy
6 and practice, the Thomases must pay fines and fees for the prior owner’s conduct or sign a settlement
7 agreement pursuant to which they relinquish a variety of their rights as landowners.

8 283. Having successfully terrified the Thomases under the threat of more than a million
9 dollars in fines, the County sought the Thomases’ consent to inspect their property, ostensibly so
10 the County could confirm once again that the workshop had been used to cultivate cannabis—
11 something, again, the County was well aware of already.

12 284. Code Enforcement Officer Brian Bowes visited the Thomases property on September
13 8, 2020.

14 285. The Thomases told him that they do not smoke pot and do not grow pot.

15 286. Mr. Bowes responded that he did not care who they are or what they’ve done and
16 that the Thomases are still responsible for the violations on the property they bought, including the
17 citation for the unpermitted cultivation of cannabis.

18 287. The Thomases asked if they could just get the building permitted because they
19 intended to use it for woodworking and storage, but Mr. Bowes responded that the County would
20 not let them permit it and said that the Thomases were stuck having to tear it down.

21 288. Mr. Bowes concluded that—even if the County did not have a policy prohibiting the
22 permitting of buildings used to cultivate cannabis—the only permissible use for the building was a
23 barn, but the Thomases could not use the workshop as a barn because they do not raise livestock or
24 store agricultural products on their property.

25 289. Even though the Thomases did nothing wrong, the County still insisted that they
26 must destroy the three-story workshop solely because the prior owners used it to cultivate cannabis.

27

28

1 290. The three-story workshop that the County wants to demolish is situated behind the
2 family’s home, surrounded by old-growth trees.

3 291. The Thomases hired an engineer in response to the abatement order. He estimated
4 that the cost to remove the building with minimal environmental impact was about \$180,000 plus
5 the cost of the necessary demolition permits.

6 292. The Thomases do not want to destroy the three-story building, which Doug planned
7 to use as a workshop for projects related to his renovations to their home.

8 293. Nor do the Thomases want to remove old-growth trees from their scenic yard,
9 considering the trees were the main appeal to the Thomases living in a redwood forest.

10 294. The Thomases also cannot afford the cost of removing the building.

11 295. After losing everything in the Woolsey Fire, the Thomases invested their insurance
12 money into their new home.

13 296. They cannot afford nearly \$200,000 in abatement costs designed to punish someone
14 else’s wrongdoing.

15 297. The threat of over a million dollars in fines, plus nearly \$200,000 in abatement costs
16 has caused the Thomases an incredible amount of emotional distress, as they could not afford the
17 costs and penalties.

18 298. On October 7, 2021, rather than rescinding the NOV, the County offered the
19 Thomases a settlement agreement under which they would be required to admit to the County’s
20 cannabis-related accusations, remove the unpermitted structure from their property, and pay
21 administrative fees.

22 299. The settlement offer confirmed that Code Enforcement opened the case against the
23 Thomases on July 12, 2019, more than two years before they purchased the property.

24 300. As the Thomases contemplated their options, the fines continued to accrue.

25 301. By November 8, 2021, the fines had reached \$756,000, plus the \$200,000 to destroy
26 their workshop.

1 302. The Thomases’ fixed retirement income does not include a spare \$956,000 to pay for
2 someone else’s wrongdoing.

3 303. Out of duress, and feeling like they had no other option, the Thomases signed a
4 settlement agreement under which the County was willing to “stay enforcement” of its NOV and
5 proposed civil penalty if the Thomases purchased a demolition permit and paid to demolish the
6 workshop within six months.

7 304. The agreement also required the Thomases to consent to warrantless inspections of
8 their property and prohibited them from transferring ownership.

9 305. If they failed to comply, the County would reinstitute the abatement order and civil
10 penalties.

11 306. The Thomases could not afford the associated costs and decided not to destroy their
12 building; instead, they waited for their administrative hearing.

13 307. On March 22, 2022, a news story about the plight of the Thomases and other innocent
14 purchasers in Humboldt caused the Planning Department and the Board to Supervisors to reconsider
15 their policy toward unpermitted buildings used for unpermitted cannabis cultivation.

16 308. The County confirmed at that meeting that new owners like the Thomases inherited
17 responsibility for all violations on the property prior to their purchase—regardless of whether they
18 had notice of those violations.

19 309. Under the new policy adopted at the March 22 meeting, the Thomases can obtain a
20 permit for their workshop only if their desired use is permitted under the zoning and land-use laws.

21 310. Accepting Mr. Bowes’ conclusion that the Thomases’ workshop has no permissible
22 use under the county code, the Thomases would have to seek a conditional use permit.

23 311. To do so, they must pay treble fees as a penalty for the prior owner’s cannabis
24 cultivation on the property.

25 312. As the County has made clear to the Thomases’ attorney, there is no guarantee that
26 the County will issue a conditional use permit even after the Thomases pay a penalty for someone
27 else’s wrongdoing.

1 324. The Thomases rejected the agreement because they remain intent on keeping the
2 three-story accessory structure they purchased with their property, but they are not willing to pay
3 penalties for the prior owner’s wrongdoing.

4 325. The Thomases also do not want to admit guilt or otherwise waive their right to
5 privacy, their right to be heard, or their right to sell or transfer their property.

6 326. To date, the Thomases have still not received an administrative hearing since filing
7 their notice of appeal on September 2, 2021.

8 **2. Blu Graham**

9 327. Blu Graham has lived in and around southern Humboldt County for most of his life.

10 328. Blu owns a hiking company called Lost Coast Adventure Tours and, along with his
11 wife, owns a restaurant called Mi Mochima near their home in Shelter Cove. Blu also works as a
12 contractor for a national outdoor-recreation retailer, serving as a guide on hiking tours in Humboldt.

13 329. Blu was the chief of the Whale Gulch Volunteer Fire Company for about five years
14 and remains a captain for the company.

15 330. Back in December 2012, Blu purchased an 80% interest in a parcel of land in
16 Whitethorn, and he has been slowly developing a homestead there ever since.

17 331. Blu constructed greenhouses on his property to grow fresh produce for his family’s
18 restaurant.

19 332. Blu’s property also contains a fire road and rainwater-catchment pond for fire
20 control.

21 333. Back in May 2018, Blu was in the second group of Humboldt residents to receive an
22 NOV from the County.

23 334. The notice alleged three violations: (1) violation of the commercial cannabis
24 ordinance; (2) construction of building/structure in violation of building, plumbing, and/or electrical
25 codes; and (3) grading land to install a rainwater-catchment pond without permits.

26 335. The notice informed Blu that he’d face \$10,000 in fines per day for a period of 90
27 days unless he completely abated the alleged nuisances within 10 days.

1 348. The officers provided Blu with four aerial pictures of his property from 2012, 2014,
2 2015, and 2017.

3 349. None of the images on which the County relied showed the property at the time of
4 the alleged violation in 2018, when its cannabis-related code provisions became law.

5 350. It is impossible to detect marijuana cultivation from these crude images.

6 351. It is impossible to detect *anything* inside Blu’s greenhouses from these crude images.

7 352. There was no marijuana cultivation on the property.

8 353. The rainwater-catchment pond that the County alleged that Blu dug to cultivate
9 cannabis is situated about 1,000 feet up a ridge from Blu’s house and greenhouses. The pond exists
10 solely for fire prevention; it is designed so a firefighting helicopter can drop down and scoop up
11 water to fight a nearby fire.

12 354. There are no pipes or irrigation leading from the pond to Blu’s greenhouses below.

13 355. Blu was not using his pond to grow marijuana illegally.

14 356. Blu retained an attorney and timely filed his notice to request a hearing on the
15 abatement order, asserting that there was no marijuana on his property.

16 357. On May 22, 2018, Blu’s attorney sent a letter to the County inviting Code
17 Enforcement to come inspect the property. The letter also explained that Blu wanted to keep and
18 permit his greenhouses because he uses them to grow fresh produce for his wife’s restaurant.

19 358. Along with the letter, Blu’s attorney included pictures to show that there was no
20 illegal cultivation on Blu’s property.

21 359. The County made clear in response that they had no intention of visiting Blu’s
22 property and refused to issue a permit for his greenhouses. The County insisted that its cannabis
23 allegations pre-dated 2018.

24 360. Unable to obtain a permit from the County, Blu removed his greenhouses to comply
25 with the abatement order despite his hopes to retain them to continue growing vegetables.

26
27
28

1 370. The County still refused to provide Blu an administrative hearing.

2 371. Blu hired a register engineer to inspect the grade of his pond.

3 372. On January 15, 2019, the engineer sent a letter to Bob Russell advising him that he
4 did not observe any commercial-cannabis activity on Blu’s property and that “[t]he property [was]
5 developed for use as a rural homestead with site grading activities and building development
6 occurring a little at a time over the past 40 years.”

7 373. The letter concluded that the grading did not create a geologic or erosion hazard and
8 that the rainwater-catchment pond is stable and does not require corrective action to protect against
9 erosion and sediment runoff.

10 374. On February 6, 2019, the County offered another compliance agreement that would
11 have required Blu to pay \$20,000 (an increase from the \$10,000 it offered the year before). Blu
12 again refused to pay the County’s settlement demand and wrongfully admit that he was growing
13 cannabis on his property.

14 375. In a conversation with Code Enforcement officer Warren Black, Blu objected to the
15 County’s issuance of Category 4 violations without any evidence that a greenhouse contains
16 cannabis. Mr. Black responded that the prevalence of cannabis throughout Humboldt justifies the
17 County’s policy and practice of levying fines without individualized suspicion—just as police would
18 be right to suspect that any shed contains methamphetamine in a region that has problems with that
19 drug.

20 376. The County offered Blu another settlement agreement on August 5, 2021. He again
21 refused to sign and—once again—insisted on an administrative hearing because the offer required
22 him to accept responsibility for the County’s baseless claim that he was cultivating cannabis.

23 377. With his abatement case still unresolved, Blu went to the Planning Department to try
24 to obtain a permit for his home through the Safe Home Program. He paid \$799 for the initial startup
25 fee.

26
27
28

1 378. Code Enforcement, however, learned that Blu was trying to participate in the Safe
2 Home Program and put a hold on his application after he already began the process, paid the County
3 fees, and hired and paid for contractors.

4 379. Even though Code Enforcement knew that Blu had retained counsel for his
5 abatement case who had already participated in settlement negotiations, County officials contacted
6 Blu directly to pressure him into signing a settlement agreement in exchange for his Safe Home
7 permit.

8 380. Warren Black told Blu that it was in Blu's best interest to drop his request for a
9 hearing and sign a settlement agreement instead because the County would not issue Blu a permit
10 for his house while his abatement order was outstanding and because no one can win their
11 administrative hearing before the County's hand-picked hearing officer.

12 381. Mr. Black went so far as to encourage Blu to submit public-records requests to see
13 the County's perfect win-rate in administrative hearings.

14 382. Mr. Black followed up by email later the same day and gave Blu instructions on how
15 to submit an information request for the results of all the administrative hearings held on cannabis-
16 related charges.

17 383. Blu interpreted this email as telling him he should settle his case because Code
18 Enforcement does not lose at its administrative hearings.

19 384. Mr. Black emailed Blu again on August 4, 2022, and confirmed that he would only
20 "release the hold on [Blu's] safe homes project" if Blu signed the County's settlement offer in his
21 unrelated abatement case.

22 385. In September 2022, over four years after Blu requested his initial hearing but only a
23 few weeks after he retained undersigned counsel to challenge the County's code-enforcement
24 system, Code Enforcement suddenly sent Blu a notice of administrative hearing, scheduled for
25 October 14.

26 386. Shortly after the County served the notice of administrative hearing, Mr. Black once
27 again contacted Blu directly to pressure him to settle.

1 387. The County informed Blu that it was no longer pursuing the cannabis-related claims
2 that Blu had contested for over four years.

3 388. Instead, the County would limit its case at the hearing to one count of grading without
4 a permit—wholly unrelated to the cultivation of cannabis.

5 389. The County informed Blu that, if he exercised his right to a hearing, he would face
6 \$90,000 in fines for the failure to obtain a grading permit after he received an NOV: a fine of \$1,000
7 per day for the full 90 days allowed by the ordinance, all of which ran while Blu awaited his hearing.

8 390. Blu had tried to obtain the permit at issue back in 2018 but the County denied his
9 request because he had a pending cannabis-abatement order.

10 391. In other words, if Blu exercised his right to an administrative hearing, he faced
11 \$90,000 in penalties for failing to obtain the very permit that the County refused to issue him because
12 he exercised his right to an administrative hearing.

13 392. The County, however, offered to settle Blu’s case if he would admit to grading land
14 for the pond without a permit, pay up to \$4,500 in fees, and waive his right to an administrative
15 hearing.

16 393. Rather than signing the settlement agreement, Blu contacted the County and
17 requested a meeting with Director Ford.

18 394. Blu met with Director Ford and other County officials on September 26, 2022.

19 395. At the meeting, Director Ford confirmed the County’s policy of refusing to issue *any*
20 permits for a property under an abatement order.

21 396. Director Ford agreed to drop Blu’s case and to issue a permit for Blu’s pond (which,
22 again, Blu had been requesting—without success—since 2018) without a signed settlement
23 agreement if Blu paid over \$3,700 in administrative fees to cover the cost of the County prosecuting
24 Blu’s case while he was waiting for his initial hearing.

25 397. Director Ford confirmed that the engineering report Blu’s attorney submitted back in
26 January 2019 was sufficient to obtain a grading permit for the pond.

1 398. Deputy Director Bob Russell told Blu that settling his case would have been a lot
2 cheaper if Blu had not hired an attorney to defend himself against the County’s claims for so long.

3 399. That same day, Blu gave the County a cashier’s check for \$3,747.29 to pay the
4 administrative fees associated with his case.

5 400. These fees included \$207 to post notice of his alleged cannabis-related violations in
6 the newspaper and \$3,747.10 in general staffing costs.

7 401. In exchange for Blu paying the administrative fees, the County agreed to expedite
8 the permit for his pond that it had denied him for over four years.

9 402. Director Ford followed up by email and confirmed that the County would resolve the
10 violations on Blu’s property if he paid his administrative fees and paid for the grading permit.

11 403. The County sent Blu a letter dated September 28, 2022, stating that it was processing
12 a refund for him to return \$2,951.18 of what he paid in administrative fees as a reduction for costs
13 associated with preparing for his administrative hearing that the County never held.

14 404. All told, Blu had to pay the County \$795.92 in administrative fees to defend himself
15 against baseless cannabis-related charges that the County filed against him without probable cause
16 and eventually dropped over four years later for lack of evidence.

17 405. The only reason Blu paid these administrative fees in exchange for the County
18 dropping his abatement case was because the County was holding hostage the permits Blu needed
19 for his property.

20 406. On Monday, October 3, 2022, Blu paid the County another \$936 for his grading
21 permit.

22 407. That same day, the County issued a permit for Blu’s pond and closed its abatement
23 case against him.

24 408. The County then released its hold on the permit for Blu’s house under the Safe Home
25 program because he paid the County \$795.92 in administrative fees to drop his abatement case.

26
27
28

1 421. The first NOV, for the vacant parcel across the street, cited four nuisances: (1)
2 unpermitted commercial cannabis cultivation; (2) two hoop-house structures facilitating commercial
3 cannabis activity; (3) grading without permit to facilitate commercial cannabis cultivation; and (4)
4 multiple piles of junk.

5 422. The first NOV assessed daily fines of \$31,000: a \$10,000 fine for each of the
6 cannabis-related violations and \$1,000 for the junk.

7 423. There was no cannabis on the property at the time of the NOV, and an engineer would
8 later confirm that no grading was done on the parcel.

9 424. The second NOV, for the parcel with the house, also cited four nuisances: (1)
10 unpermitted commercial cannabis operation; (2) structures facilitating commercial cannabis activity
11 and constructed contrary to the county code; (3) grading to facilitate commercial cannabis
12 cultivation activity; and (4) piles of junk.

13 425. The second NOV also assessed daily fines of \$31,000: a \$10,000 fine for each of the
14 cannabis violations and \$1,000 for the junk.

15 426. There was no cannabis on the second parcel at the time of the NOV, and a simple
16 check of tax records or historical satellite imaging would have confirmed for the County that the
17 structure at issue was constructed decades ago—not as part of the prior owner’s cannabis operation.

18 427. The third NOV, for the parcel up the hill with the modular home, cited six violations:
19 (1) unpermitted commercial cannabis cultivation; (2) four structures facilitating commercial
20 cannabis activity and constructed contrary to the county ode; (3) grading to facilitate commercial
21 cannabis cultivation; (4) development in a mapped streamside management area to facilitate
22 commercial cannabis cultivation; (5) junk and/or inoperable vehicles; and (6) piles of junk.

23 428. The third NOV assessed daily fines of \$42,000: a \$10,000 fine for each of the four
24 cannabis-related violations and \$1,000 each for the two junk-related violations.

25 429. As with the other two parcels, there was no cannabis while Rhonda owned it; the
26 police had cleared it all out during their raid of the prior owner, before the County issued NOV’s.

27
28

1 430. Code Enforcement officials later acknowledged in March 2022 that the grading on
2 this parcel was an “old logging pad” that they were “not really worried about” because it pre-dated
3 any cannabis cultivation on the property.

4 431. The County fined her for it anyway.

5 432. In total, Rhonda faced \$104,000 in daily fines for cannabis-related charges on land
6 she just bought days prior for \$60,000.

7 433. Rhonda has never grown marijuana on the property.

8 434. The day after receiving the abatement orders, Rhonda hired an engineer to inspect
9 her property.

10 435. The engineer sent the County a letter on October 5, 2020. He explained that law
11 enforcement had terminated the illegal growing operation, there was no cannabis on the property,
12 and any grading happened more than a decade before Rhonda purchased the property. He also noted
13 (and included pictures showing) that Rhonda had removed all the hoop houses and was in the
14 process of removing the junk.

15 436. Rhonda filled out the Attachment C forms to request an administrative hearing and
16 sent them by certified mail on October 7, 2020.

17 437. She explained on her Attachment C that she was the new owner and “did not make
18 the nuisance and had a clear title as of September 10, 2020.” She let the County know she was
19 working to correct any nuisances the prior owners left, including by clearing out the junk.

20 438. Rhonda contracted an engineer to put together a plan relating to all the alleged
21 grading on the property. He recommended filling in some soil on the parcel and not rebuilding the
22 hoop houses on top of the ridge.

23 439. Filling in the soil was not enough for the County, however.

24 440. Having not heard anything from the County following her submission of proof that
25 she cleared up the abatement issues on the third parcel with the grapevines, Rhonda paid an engineer
26 \$3,200 to test the soil and water in preparation for installing septic and building a home.

27

28

1 441. She emailed the County to let them know she conducted the testing and to request
2 the necessary permits to begin building and installing a septic system.

3 442. County officials responded by email on March 23, 2021, and warned, “Just an FYI,
4 no permits will be issued for properties with open Code Enforcement cases.”

5 443. The email also clarified that the County prosecutes grading as a Category 4 violation
6 even when the grading originally had nothing to do with cannabis: “I also received your email
7 regarding another property where you stated that the grading was done for a timber harvest plan.
8 Unfortunately, the fact that the flats were used for cannabis cultivation is why the violation exists.
9 For normal timber operations flats are permitted but the moment they are used for unpermitted
10 cannabis cultivation they will need to be addressed by a licensed engineer.”

11 444. County officials also acknowledged by email that the police removed all cannabis
12 from the property prior to Rhonda’s purchase, despite the notices of violations citing her for
13 cultivating cannabis on the property.

14 445. Similarly, in public comments on March 22, 2022, Code Enforcement told the Board
15 of Supervisors that “all that’s left is some grading” on Rhonda’s properties, which could be
16 “chalk[ed] up to pre-cannabis logging activity.”

17 446. But despite acknowledging that nearly all of the alleged conditions do not exist, pre-
18 dated cannabis cultivation, and were not Rhonda’s fault, the County kept its abatement orders—
19 with their \$9.36 million in fines—in place anyway.

20 447. The County sent Rhonda an offer to settle the abatements in March 2021. The
21 agreement, which noted that it opened its case against her property on April 16, 2018—over two
22 years before she purchased it—required Rhonda to wrongfully admit that she committed all the
23 violations on the property.

24 448. After Rhonda refused the settlement agreement, the County sent Rhonda an invoice
25 in her name dated April 27, 2021, stamped “PAST DUE,” telling Rhonda she had 30 days to pay
26 \$15,000 in “carryover fines and penalties” that the prior owner still owed on a settlement agreement
27

1 with the County, it seems, from some time in 2018—several years before Rhonda purchased the
2 property.

3 449. About a year later, on April 21, 2022, the county re-issued NOVs (dated April 5,
4 2022) for the prior owner’s conduct, this time in Rhonda’s name.

5 450. The new set of NOVs dropped a few of the allegations from the first and reduced the
6 daily penalties to \$83,000, bringing the fines that Rhonda faces down to a still staggering
7 \$7,470,000.

8 451. The County re-charged Rhonda with the same cannabis-related violations from the
9 last NOVs even though the County had already publicly acknowledged that Rhonda had cleaned up
10 almost all of the prior owner’s violations and that it was “not really worried” about the legacy
11 logging grades.

12 452. Emails between Code Enforcement Officers Brian Bowes and Warren Black reveal
13 that the County re-noticed the violations in Rhonda’s name because she had not completed the
14 abatement “voluntarily.” (Ironic quotation marks in original).

15 453. Rhonda again submitted her Attachment C to request an administrative hearing.

16 454. Rhonda developed shingles on her face due to the stress of the millions of dollars in
17 fines hanging over her head, and she temporarily lost the use of her eye.

18 455. To date, the County has not provided her a hearing or issued her the permits she
19 needs to develop her property.

20 4. Cyro Glad

21 456. Cyro Glad moved to Humboldt County from North Lake Tahoe in the 1990s to attend
22 the Heartwood Institute for vocational training as a massage therapist.

23 457. After working between Humboldt and Tahoe for years, in 2008, Cyro began leasing
24 a property in New Harris, an unincorporated area of Humboldt to the southeast of Garberville.

25 458. He cared for and helped develop a piece of rental property for several years until the
26 tragic death of his life partner in 2015.

1 459. Following her death, Cyro left the property in Humboldt for several years during
2 which he spent most of his time in Nevada caring for his mother while she suffered from terminal
3 cancer.

4 460. Then, in 2018, one of Cyro’s former landlords in Humboldt contacted him and
5 offered to sell him a set of adjacent properties where he used to live.

6 461. They were selling the land because they were aging and explained that they wanted
7 to sell to Cyro because he had always cared for the property and the subsequent tenants had not
8 treated the property with the same respect.

9 462. Cyro had always dreamed of owning a piece of land in Humboldt but never thought
10 he’d have the chance; with his mother’s blessing, he jumped at the opportunity.

11 463. The property consists of adjacent 40-acre parcels in New Harris.

12 464. At the time of purchase, there was a greenhouse and several hoop houses scattered
13 around the front parcel; the back parcel consisted almost entirely of an undeveloped mountain
14 covered in forest.

15 465. Cyro closed on the properties on September 1, 2018, and recorded the transfer of
16 ownership with the County. He began moving onto the property shortly thereafter.

17 466. When Cyro took over the property, there was no cannabis cultivation and none of the
18 structures on the property were being used to cultivate cannabis.

19 467. Cyro began immediately cleaning up the property—clearing junk, removing the
20 hoophouses, and preparing the dirt driveways for winter.

21 468. On November 16, 2018, just over two months after he purchased the property, Cyro’s
22 neighbor called him to let him know that he found a NOV addressed to Cyro posted on a gate a few
23 roads over from Cyro’s address.

24 469. The NOV, dated November 2, 2018, listed four violations: (1) violation of the
25 building code to cultivate cannabis; (2) grading without a permit to cultivate cannabis; (3)
26 unpermitted cultivation of cannabis; and (4) development within a streamside management system.

27

28

1 470. The NOV informed Cyro that he had 10 days to abate all nuisances or else he'd face
2 \$10,000 in daily fines for 90 days.

3 471. The notice did not specify which structures or grading on the 40-acre parcel that the
4 County believed were constructed to cultivate cannabis.

5 472. Indeed, the County never visited the property to have any idea whether any of the
6 structures or grading were constructed to cultivate cannabis—it couldn't even find the correct gate
7 (or road, even) to post Cyro's NOV.

8 473. Had the County bothered to investigate its charges, it would have learned that Cyro
9 just moved in a few weeks prior and had not been cultivating cannabis on the property.

10 474. The County assessed \$10,000 in daily fines against the property based solely on
11 satellite images showing hoop houses.

12 475. Cyro filled out the Attachment C, requesting an administrative hearing the same day
13 he received the NOV. He explained on the form that the property just became his responsibility as
14 of September 2018 and that he was already working to clean the property and bring it up to the
15 County's standards.

16 476. When Cyro got to the post office to mail in his Attachment C, he found another copy
17 of the NOV waiting for him at the post office, so he filled out and submitted that Attachment C as
18 well.

19 477. Cyro then hired an engineer to assess the property, and he continued his work of
20 cleaning up the mess that the prior occupants had left.

21 478. Having still not heard anything else from the County by February 2019, Cyro sent a
22 letter to Director Ford to plead with him and seek compassion over the violations the County cited
23 Cyro for just weeks after he purchased the property.

24 479. Cyro never received a response.

25 480. Over four years have passed since Cyro requested his initial hearing, but the County
26 has still not scheduled one for him.

27

28

- 1 c. Refusing to allow landowners to abate permitting violations by obtaining the permit
- 2 at issue;
- 3 d. Refusing to dismiss citations for enhanced cannabis-related violations based on
- 4 photographic proof that cannabis is not on the property;
- 5 e. Refusing to provide a timely administrative hearing;
- 6 f. Refusing to issue unrelated permits to landowners while abatement orders are
- 7 pending;
- 8 g. Exacting unconstitutional conditions for the issuance of permits from landowners
- 9 facing abatement orders;
- 10 h. Obscuring the time landowners have to challenge or comply with an abatement order;
- 11 i. Failing to toll the accrual of fines before an accused can receive an administrative
- 12 hearing;
- 13 j. Charging excessive administrative fees for basic interactions with the County;
- 14 k. Charging up to \$4,500 for an administrative hearing or a settlement agreement;
- 15 l. Failing to provide a jury at the administrative hearing.

16 486. The proposed Class meets all the Rule 23(a) prerequisites for maintaining a class
17 action.

18 487. **Numerosity:** The proposed Class is so numerous that joinder of all members is
19 impracticable. On information and belief, the County has issued cannabis-related Category 4
20 violations to over 1,200 landowners since it began its cannabis-enforcement program in 2018. On
21 information and belief and based on publicly available records, at least 48 landowners who have
22 requested a hearing still face penalties but have not yet received hearings. As a result, the proposed
23 class is so numerous that individual joinder of all members is impracticable.

24 488. **Commonality:** This action presents questions of law and fact common to the
25 proposed Class, resolution of which will not require individualized determinations of the
26 circumstances of any particular plaintiff.

- 27 a. Common questions of fact include but are not limited to:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- i. Does the County issue citations and impose enhanced penalties for cannabis-related violations without adequate investigation or regard for probable cause?
 - ii. Does the County issue citations and impose enhanced penalties for cannabis-related violations without regard for actual harm to public health and safety?
 - iii. Does the County fail to schedule timely administrative hearings?
 - iv. Does the County refuse to dismiss charges in the face of exculpatory evidence?
 - v. Does the County deny the issuance of permits to properties under abatement orders?
 - vi. Does the County impose unconstitutional conditions on permits for properties under abatement orders?
 - vii. Does the County refuse to toll the accrual of daily fines while landowners await an initial administrative hearing?
 - viii. Does the County charge up to \$4,500 for an administrative hearing or a settlement?
 - ix. Does the County provide a jury at administrative hearings?
- b. Common questions of law include but are not limited to:
- i. Do the County’s cannabis-related code-enforcement policies and practices violate the Due Process Clause?
 - ii. Does the County’s policy of issuing citations and imposing enhanced penalties for cannabis-related violations without adequate investigation or regard for probable cause violate the Due Process Clause?
 - iii. Does the Due Process Clause prohibit the government from punishing harmless conduct?
 - iv. Does the Due Process Clause prohibit the government from punishing an innocent person for someone else’s conduct?

- 1 v. Does the County impose unconstitutional conditions on the issuance of
2 permits for properties facing cannabis-related abatement orders?
- 3 vi. Does the Excessive Fines Clause prohibit the government from charging up
4 to \$10,000 in daily fines without regard for culpability or whether a violation
5 poses harm to public safety?
- 6 vii. Does the Preservation Clause require the County to provide a jury when it
7 imposes civil penalties for code violations?

8 489. **Typicality:** Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and
9 Cyro Glad’s claims are typical of the claims of the proposed Class. Plaintiffs Corrine Morgan
10 Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad’s claims, as well as those of the proposed
11 Class, arise out of the same policy, practice, and custom of the County; are based on the same legal
12 theories; and involve the same harms. Additionally, Plaintiffs Corrine Morgan Thomas, Doug
13 Thomas, Rhonda Olson, and Cyro Glad seek the same relief for themselves and members of the
14 proposed Class in the form of declaratory and injunctive relief.

15 490. **Adequacy:** Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and
16 Cyro Glad will fairly and adequately protect the interests of the class they seek to represent because
17 their interests are aligned and there are no conflicts between them and the members of the putative
18 class. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad, and
19 members of the putative class, have suffered the same injuries at the hands of the same defendants,
20 and all are entitled to the same relief in the form of declaratory and injunctive relief. All members
21 share the same interest in ensuring that the County’s code-enforcement procedures respect the
22 constitutional rights of landowners and in securing relief for those constitutional rights the County
23 has already violated.

24 491. Plaintiffs are represented by counsel who will fairly and adequately represent the
25 class. Plaintiffs are represented *pro bono* by the Institute for Justice (“IJ”). IJ is a nonprofit, public-
26 interest law firm that, since its founding in 1991, has successfully litigated constitutional issues
27 nationwide, including challenges to inadequate procedure in criminal and civil enforcement

1 proceedings. IJ has also litigated several federal class actions and putative class actions involving
2 property rights, including against the following municipalities: Philadelphia (*Sourovelis v. City of*
3 *Philadelphia*, No. 14-cv-4687, 2021 WL 244598, at *1 (E.D. Pa. Jan. 28, 2021) (appointing firm as
4 class counsel and approving federal consent decree in challenge to civil forfeiture proceedings));
5 New York City (*Cho v. City of New York*, No. 16-cv-7961 (S.D.N.Y. Oct. 2, 2020) (ECF 111)
6 (approving settlement of putative class action under which New York City agreed not to enforce
7 agreements extracted through coercive property seizures)); and Pagedale, Missouri (*Whitner v. City*
8 *of Pagedale*, No. 15-cv-1655 (E.D. Mo. May 21, 2018) (ECF 116) (appointing firm class counsel
9 and approving federal consent decree prohibiting abusive ticketing practices)). IJ also litigated a
10 significant Second Circuit case about due process, notice, and the opportunity to be heard in *Brody*
11 *v. Village of Port Chester*, 434 F.3d 121 (2d Cir. 2005).

12 492. Local counsel Pillsbury Winthrop Shaw Pittman LLP is an international law firm
13 whose predecessor was founded in San Francisco in 1874. They are now headquartered in New
14 York, and their practice focuses on real estate, construction, energy, finance, and technology &
15 media. Pillsbury has approximately 700 lawyers in 20 offices worldwide. It has a large,
16 sophisticated, and effective California litigation practice—both in state and federal courts.

17 493. The putative class also meets the requirements of Rule 23(b)(2) of the Federal Rules
18 of Civil Procedure.

19 494. The County has acted, or refused to act, on grounds generally applicable to the
20 putative class. Declaratory and injunctive relief is appropriate with respect to all members of the
21 class pursuant to Fed. R. Civ. P. 23(b)(2).

22 495. The class is entitled to the requested relief.
23
24
25
26
27

1 **CLAIMS FOR RELIEF**

2 **COUNT 1**

3 **Denial of Procedural Due Process**

4 **In Violation of the Fourteenth Amendment**

5 **On Behalf of the Named Plaintiffs Individually and Plaintiffs Corrine Morgan Thomas,**

6 **Doug Thomas, Rhonda Olson, and Cyro Glad on Behalf of the Class**

7 496. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 495.

8 497. On behalf of the named Plaintiffs and the Class, Plaintiffs bring this count against
9 the County based on its policy and practices that, taken together, deprive owners facing cannabis-
10 abatement orders of a meaningful opportunity to be heard.

11 498. The Due Process Clause of the Fourteenth Amendment to the United States
12 Constitution provides that “[n]o State shall make or enforce any law which shall ... deprive any
13 person of life, liberty, or property, without due process of law.”

14 499. The Due Process Clause guarantees a fair legal process in adjudicative and quasi-
15 adjudicative proceedings, including code-enforcement actions.

16 500. Among other things, the Due Process Clause requires that the government provide
17 the accused with notice and an opportunity to be heard at a meaningful time and in a meaningful
18 manner.

19 501. Additionally, the Due Process Clause prohibits the government from imposing
20 penalties—including fines and fees—or adjudicating guilt or innocence before providing
21 appropriate notice and a meaningful opportunity to be heard.

22 502. The County, acting under color of law, deprived the named Plaintiffs and the Class
23 of the due process of law in violation of the Fourteenth Amendment to the United States
24 Constitution.

25 503. The County has a duty under the Fourteenth Amendment to provide the named
26 Plaintiffs and the Class with notice and an opportunity to be heard at a meaningful time and in a
27 meaningful manner.

1 504. The County deprived the named Plaintiffs and the Class of due process. The
2 following policies, individually and in conjunction, deny them adequate notice and a fair or
3 meaningful opportunity to be heard:

- 4 a. Issuing cannabis-related code violations without adequate investigation or regard for
5 probable cause;
- 6 b. Issuing cannabis-related code violations based on satellite images that predate the
7 passage of the cannabis-related code at issue;
- 8 c. Refusing to dismiss citations for cannabis-related Category 4 violations based on
9 photographic proof that there is no cannabis on the property;
- 10 d. Refusing to allow landowners to abate permitting violations by obtaining the permit
11 at issue;
- 12 e. Refusing to issue permits to landowners with pending abatement orders;
- 13 f. Conditioning the issuance of permits on a landowner's payment of unrelated fines
14 and fees;
- 15 g. Obscuring the time landowners have to comply with an abatement order;
- 16 h. Refusing to provide an administrative hearing indefinitely;
- 17 i. Failing to toll the accrual of fines before an accused can receive an administrative
18 hearing; and
- 19 j. Charging up to \$4,500 for an administrative hearing or a compliance agreement.

20 505. The County's procedurally deficient system creates an unreasonable risk of
21 erroneous deprivation of property.

22 506. Named Plaintiffs and the Class possess fundamental property interests protected by
23 the Fourteenth Amendment to the United States Constitution in their homes, accessory structures,
24 possessions, earnings, income, and capital.

25 507. Due to the procedural defects in the County's administrative processes, it is
26 substantially likely that the County's cannabis-abatement program is baselessly depriving the
27 Named Plaintiffs and the Class of their property interests.

1 508. The County has interfered with property interests by, among other things, (a) issuing
2 violations without adequate investigation or regard for probable cause; (b) relying on evidence that
3 predates the code violations at issue; (c) refusing to allow landowners to abate permitting violations
4 by obtaining the permit at issue; (d) refusing to dismiss violations in the face of evidence that the
5 violation is unfounded; (e) refusing to schedule a timely hearing at which an accused can
6 meaningfully contest the allegations; (f) refusing to toll the accrual of fines while an accused awaits
7 a hearing; (g) refusing to issue permits to an accused while they await a hearing; (h) conditioning
8 the issuance of permits on a landowner's payment of unrelated fines and fees; (i) obscuring the time
9 landowners have to respond to an abatement order; and (j) charging up to \$4,500 for a hearing at
10 which an accused can finally contest the accusations.

11 509. The County's cannabis-related abatement program is designed to—and very much
12 does—compel landowners to pay fines and fees without a timely or meaningful opportunity for a
13 hearing to determine whether the landowner actually engaged in the conduct the County has publicly
14 accused them of doing.

15 510. The policies and practices by which the County administers its cannabis-abatement
16 program for code violations have deprived the named Plaintiffs and the members of the Class of the
17 process guaranteed to them by the Fourteenth Amendment to the United States Constitution.

18 511. The County's policies and practices are arbitrary and shocking to the conscience and
19 so offensive as to not comport with traditional ideas of fair play and decency.

20 512. The County has no legitimate governmental interest in depriving the named Plaintiffs
21 and the Class of their right to due process.

22 513. As a direct and proximate result of the County's policy and practice, the named
23 Plaintiffs and the Class have suffered irreparable injuries to their constitutional rights.

24 514. The named Plaintiffs and the Class are entitled to declaratory relief and an injunction
25 barring the County from administering its abatement program in violation of due process.

26 515. The named Plaintiffs are also entitled to nominal damages.

27

28

COUNT 2

Denial of Substantive Due Process

In Violation of the Fourteenth Amendment

**On Behalf of the Named Plaintiffs Individually and Plaintiffs Corrine Morgan Thomas,
Doug Thomas, Rhonda Olson, and Cyro Glad on Behalf of the Class**

516. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 495.

517. On behalf of the named Plaintiffs and the Class, Plaintiffs bring this Count against the County based on its policy, practice, and custom of issuing citations and imposing penalties for code violations allegedly related to cannabis cultivation (a) without regard for probable cause that the accused has cultivated cannabis illegally and (b) unsupported by a valid governmental interest.

518. The Due Process Clause of the Fourteenth Amendment prohibits the government from depriving any person of life, liberty, or property, without due process of law.

519. The Due Process Clause requires that law enforcement be neutral, impartial, and objective.

520. Issuing citations and imposing fines and fees is an exercise of law-enforcement power.

521. The County has a massive financial interest in imposing Category 4 penalties for code violations allegedly related to cannabis. This financial interest includes the pressure those penalties place on landowners to settle their case, the fines and fees the County charges to hold an administrative hearing or settle, and the incentive for other landowners to seek permits to grow cannabis commercially instead of paying excessive fines and fees.

522. This financial interest has caused the County to adopt a policy and practice of abusing its prosecutorial discretion by charging Category 4 violations without regard for probable cause that a landowner has violated the county code for the purpose of cultivating cannabis without a permit.

523. This financial interest incentivizes the County to charge cannabis-related Category 4 violations without regard for the public's interest in health and safety and without regard for landowners' constitutional rights.

1 535. The County has no legitimate governmental interest in charging cannabis-related
2 Category 4 violations without regard for probable cause.

3 536. The County’s policy and practice of charging cannabis-related Category 4 violations
4 without regard for probable cause deprives the named Plaintiffs and the Class of their due-process
5 right to neutral, objective, and unbiased law enforcement.

6 537. The County also violates substantive due process by charging cannabis-related
7 Category 4 violations unsupported by any legitimate governmental interest.

8 538. No process the government can provide could justify its deprivation of life, liberty,
9 or property when there is no governmental interest in the deprivation.

10 539. The County has no interest in punishing conduct that does not harm the public.

11 540. Nor does the County have an interest in issuing fines and denying permits for land,
12 structures, or other property based on a prior owner’s misconduct.

13 541. No process could justify the government’s deprivation of an innocent person’s life,
14 liberty, or property based on someone else’s conduct.

15 542. The prior presence of marijuana on a property is not a continuing nuisance once the
16 property is no longer used for illegal purposes.

17 543. No process could justify the County ordering a new owner to destroy parts of their
18 property because the prior owner had previously used the property for an illegal purpose.

19 544. The County has no legitimate governmental interest in depriving the named Plaintiffs
20 and the Class of their property because a prior owner cultivated marijuana on the property without
21 a commercial permit.

22 545. As a direct and proximate result of the County’s policy and practice of charging
23 Category 4 violations (a) without regard for probable cause of unpermitted cannabis cultivation and
24 (b) unsupported by any valid governmental interest, the named Plaintiffs and the Class have suffered
25 and will suffer irreparable harm to their constitutional rights.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

563. The named Plaintiffs are entitled to nominal damages. Plaintiff Blu Graham is also entitled to damages or restitution in the amount of \$795.92 in addition to nominal damages.

COUNT 4

Excessive Fines and Fees

In Violation of the Eighth and Fourteenth Amendments

**On Behalf of Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson,
and Cyro Glad Individually and on Behalf of the Class**

564. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 495.

565. On behalf of themselves individually and the Class, Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad bring this Count against the County based on its policy, practice, and custom of levying Category 4 penalties and ordering the destruction of property for violations of the county code (*e.g.*, the failure to obtain permits to build structures and grade land) that the County alleges have a nexus to the illegal cultivation of cannabis.

566. The County has acted under color of state law in violating the constitutional rights of the Plaintiffs and the Class.

567. The Excessive Fines Clause of the Eighth Amendment to the United States Constitution prohibits the government from imposing penalties that are grossly disproportionate to the offense for which they are imposed.

568. The Fourteenth Amendment to the United States Constitution incorporated the Excessive Fines Clause against the states.

569. The County is bound by the Excessive Fines Clause when is issues civil fines and fees.

570. The Category 4 penalties that the County levies for code violations related to cannabis are punitive.

1 571. The County’s policy and practice is to levy \$10,000 or more in daily penalties plus
2 up to \$4,500 in fees for minor code violations by elevating them to Category 4 violations based on
3 an alleged nexus to cannabis.

4 572. Contrary to the county code, the County’s policy and practice does not consider the
5 actual harm cause by a violation, whether there is any risk to public health or safety, a landowner’s
6 culpability or ability to pay, alternative remedies available, or additional penalties that a landowner
7 already faces.

8 573. The County’s policy and practice of elevating code violations to Category 4 offenses
9 is a method of generating revenue by pressuring landowners into settlements or commercial
10 cannabis permits.

11 574. The penalties that the County levies are grossly disproportionate to the many near-
12 harmless offenses that the County elevates to Category 4 violations based on their nexus to cannabis.

13 575. The penalties for cannabis-related code violations are also duplicative, as the County
14 already imposes Category 4 penalties for unpermitted cultivation.

15 576. The County’s policy of requiring that landowners return property to its “pre-cannabis
16 state” are also punitive fines within the meaning of the Eighth Amendment.

17 577. The ordered destruction of property is grossly disproportionate to the many near-
18 harmless offenses to which Category 4 violations apply based on their nexus to cannabis.

19 578. The penalties for cannabis-related Category 4 violations that the County imposes on
20 new purchasers of property based on the prior owner’s misconduct are also unconstitutionally
21 excessive.

22 579. Any penalty for innocent conduct is unconstitutionally excessive.

23 580. On its face and as applied to Plaintiffs Corrine Morgan Thomas, Doug Thomas,
24 Rhonda Olson, Cyro Glad, and the Class, the County’s policy and practice of fining landowners
25 \$10,000 per day for code violations based on their nexus to cannabis violates the Excessive Fines
26 Clause of the Eighth Amendment to the United States Constitution.

27

28

1 598. The factual determination of whether a landowner violated the code in order to grow
2 marijuana without a permit can carry hundreds of thousands—if not millions—of dollars in
3 penalties.

4 599. Because the finding of such facts against the accused results in the deprivation of
5 property and liberty as punishment for the offense, the accused is entitled to have a jury of their
6 peers decide those facts.

7 600. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and
8 the Class have a right to have a jury adjudicate the facts underlying the County’s claims for Category
9 4 penalties.

10 601. The County’s imposition of penalties through an administrative process that does not
11 include a jury has been conducted pursuant to a policy, practice, or custom that violated the
12 Preservation Clause of the Seventh Amendment and the Fourteenth Amendment to the United States
13 Constitution.

14 602. As a direct and proximate result of the County’s policy and practice of imposing
15 penalties through an administrative process that does not include a jury, Plaintiffs Corrine Morgan
16 Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and the Class have suffered and will continue
17 to suffer irreparable injury to their constitutional rights.

18 603. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and
19 the Class are entitled to declaratory relief and an injunction barring the County from enforcing its
20 policy and practice of imposing civil penalties through an administrative process that does not
21 include a jury.

22

23

PRAYER FOR RELIEF

24

Plaintiffs respectfully request that this Court:

25

26

604. Certify a class under Rule 23(b)(2) consisting of: “All persons who are currently
facing penalties for cannabis-related Category 4 violations that were levied after January 1, 2018,

27

28

1 who filed an ‘Attachment C’ to request an administrative hearing within 10 days of the County
2 effecting service, and who have still not received a hearing for their appeal.”

3 605. Declare that the County’s cannabis-related code-enforcement policies and practices
4 violate the procedural due process guaranteed by the Fourteenth Amendment.

5 606. Declare that the County’s cannabis-related code-enforcement policies and practices
6 violate the substantive due process guaranteed by the Fourteenth Amendment.

7 607. Declare the County imposes unconstitutional conditions on landowners who seek
8 land-use permits while facing cannabis-related abatement orders.

9 608. Declare that the County’s policy and practice of imposing Category 4 penalties based
10 on a code violation’s nexus to cannabis growth violates the Excessive Fines Clause of the Eighth
11 Amendment to the U.S. Constitution.

12 609. Declare that the County’s policy and practice of imposing cannabis-related Category
13 4 penalties without the right to a jury violates the Preservation Clause of the Seventh Amendment
14 of the United States Constitution.

15 610. Enjoin Defendants from enforcing their cannabis-related code-enforcement policies
16 and practices in violation of the procedural due process guaranteed by the Fourteenth Amendment.

17 611. Enjoin Defendants from enforcing their cannabis-related code-enforcement policies
18 and practices in violation of the substantive due process guaranteed by the Fourteenth Amendment.

19 612. Enjoin Defendants from imposing unconstitutional conditions on land-use permits
20 for landowners facing cannabis-related abatement orders.

21 613. Enjoin Defendants from issuing unconstitutionally excessive penalties for Category
22 4 violations based on a code violation’s alleged nexus to cannabis growth.

23 614. Enjoin Defendants from imposing civil penalties for cannabis-related Category 4
24 violations through an administrative process that does not include a jury.

25 615. Award the named Plaintiffs nominal damages.

26 616. Award Plaintiff Blu Graham \$795.92 in damages or restitution in addition to nominal
27 damages.

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

617. Award Plaintiffs attorneys’ fees, costs, and expenses pursuant to 42 U.S.C. § 1988 as well as any other costs and fees that are legal and equitable.

618. Award any further legal or equitable relief the Court deems just and proper.

Dated: January 20, 2023

/s/ Jared McClain
Jared McClain* (DC Bar No. 1720062)
Joshua House (CA Bar No. 284856)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Suite 900
Arlington, VA 22203
T: (703) 682-9320
F: (703) 682-9321
jhouse@ij.org
jmccain@ij.org

Robert Johnson* (OH Bar No. 0098498)
INSTITUTE FOR JUSTICE
16781 Chagrin Blvd., Suite 256
Shaker Heights, OH 44120
T: (703) 682-9320
F: (703) 682-9321
rjohnson@ij.org

PILLSBURY WINTHROP SHAW PITTMAN LLP
Thomas V. Loran III (CA Bar No. 95255)
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111
T: (415) 983-1865
F: (415) 983-1200
thomas.loran@pillsburylaw.com

Derek M. Mayor (CA Bar No. 307171)
500 Capitol Mall, Suite 1800
Sacramento, CA 95814
T: (916) 329-4703
F: (916) 441-3583
derek.mayor@pillsburylaw.com

*Application for admission
pro hac vice forthcoming

Counsel for Plaintiffs