

United States District Court
Northern District of California

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

CORRINE MORGAN THOMAS and DOUG
THOMAS, a married couple; BLU GRAHAM;
and RHONDA OLSON, 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; VIRGINIA BASS, MIKE
WILSON, REX BOHN, MICHELLE
BUSHNELL, and STEVE MADRONE, 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

**CLASS ACTION
COMPLAINT**

INTRODUCTION

1
2 1. Humboldt County fines landowners hundreds of thousands of dollars for things they
3 never did because it doesn't investigate the charges it files. The accused then rarely ever get the
4 chance to defend themselves because the County withholds hearings from those who fight the
5 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 to develop their property.
8 The only way out is to pay the County, one way or another.

9 3. The County's code enforcement policy is designed to squeeze every dollar it can
10 from legalized marijuana, often at the expense of innocent people.

11 4. After California legalized recreational marijuana, Humboldt County created an
12 "abatement" program, under which it alleges that landowners have committed traditional nuisances
13 and permitting violations in order to cultivate marijuana without a permit.

14 5. By alleging that code violations relate to illegal cannabis cultivation, the County
15 exponentially increases the fines for those violations, regardless of whether the violation poses any
16 harm to the community. Minor violations like building a temporary greenhouse without a permit
17 suddenly carry a daily fine between \$6,000 and \$10,000.

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

25 7. The County's dragnet approach to code enforcement catches plenty of harmless
26 conduct and innocent landowners, including people growing their own food and people who just
27 purchased their property and have done nothing wrong.

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8. Even when the alleged code violations simply reflect the failure to obtain a permit before developing property, the County will not issue the landowner the permit that would cure the violation. Nor will it drop its fines when an accused offers proof that there is no marijuana growing on their property.

9. The County makes accused landowners wait *years* and pay up to \$4,500 for a hearing at which they can finally defend themselves against the County’s accusations. As the County delays the hearing, it refuses to issue other permits for the property and pressures the landowner to settle.

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

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

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

JURISDICTION AND VENUE

13. 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.

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

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

1 annual taxes up to \$3 per square foot of a cultivation area, which the County charged regardless of
2 whether marijuana is actually grown on such property.

3 55. These laws created a massive financial incentive for the County to push landowners
4 into commercial growth.

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

6 57. The Board of Supervisors also passed several other ordinances in 2017 to impose
7 massive fines and fees on anyone who grows marijuana in Humboldt without obtaining a permit
8 from the County.

9 58. Growing cannabis without a permit now qualifies as a “Category 4 violation” of the
10 county code—the code’s most severe offense, which carries a daily fine of \$6,000 to \$10,000.

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

14 60. As a result of these changes, minor code violations like the failure to obtain a building
15 permit now also become Category 4 violations subject to \$10,000 in daily fines automatically
16 whenever the County alleges that a landowner violated the code in order to facilitate the unpermitted
17 growth of marijuana.

18 61. Violations that would typically carry fines between \$1 to \$1,000 multiply by a factor
19 of 10 or more based solely on an alleged nexus between the alleged violation and marijuana.

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

22 63. The 2017 code changes also replaced the County’s complaint-based enforcement
23 system and authorized the Code Enforcement Unit to proactively enforce state and local laws
24 regarding marijuana cultivation.

25 64. The County’s proactive, cannabis-focused enforcement mandate extended the
26 purview of the Planning and Building Department and its Code Enforcement Unit beyond the
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1 traditional role of processing permit applications and abating nuisances that pose a danger to the
2 public welfare.

3 65. The Board of Supervisors directed the Planning and Building Department to
4 implement all these changes by January 1, 2018, when legalization would take full effect in
5 California.

6 66. As a result, once marijuana became legal, a newly constituted Code Enforcement
7 Unit was in place to aggressively enforce code violations in Humboldt County.

8 67. Coming as they did after legalization, the County’s code and enforcement policy
9 changes appear calculated to boost county revenue by extracting fines and fees from residents who
10 don’t pay for costly commercial permits and increased property taxes for commercial growth.

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

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

15 69. By indiscriminately charging cannabis-related code violations, the County’s policy
16 has punished innocent people throughout the County.

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

20 71. To increase enforcement so rapidly, the County adopted a policy and practice of
21 charging Category 4 violations without regard for probable cause.

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

25 73. The County’s policy and practice, however, is to charge cannabis-related Category 4
26 violations without any proof that landowners violated the county code intentionally or through
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1 inexcusable neglect to grow cannabis illegally and without regard for whether a cannabis-related
2 code violation has a significant or substantial impact on health, safety, comfort, or general welfare.

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

5 75. Using satellite imaging, County officials identify properties that may have a
6 greenhouse, building, a graded flat of land, an access road, or trees removed without a permit on
7 record.

8 76. Prior to the County's access to satellite imagery and data, it issued far less than 100
9 citations per year.

10 77. In the roughly four years since the County began using satellite imagery and data, it
11 has issued cannabis-related citations to over 1,200 properties.

12 78. The crude satellite images that the County relies on reveal plenty of activity wholly
13 unrelated to cannabis growth—let alone *illegal* growth in a state that allows residents to grow
14 cannabis for medical and recreational use.

15 79. Many people in rural Humboldt grow their own food, often out of necessity.

16 80. The crude satellite images that the County relies on cannot distinguish between a
17 greenhouse growing food and one growing cannabis commercially.

18 81. Indeed, the images do not reveal anything about the contents of a greenhouse or other
19 structure.

20 82. The County's policy and practice is to charge a landowner with unpermitted
21 commercial cannabis cultivation based merely on a satellite image that shows a hoop house (a
22 temporary greenhouse built from PVC pipes and a plastic covering), a larger greenhouse, or some
23 other accessory structure.

24 83. A greenhouse in a crude satellite image is not probable cause that a landowner is
25 growing marijuana in the greenhouse.

26 84. Many people in Humboldt live on property once owned by logging companies that
27 graded the land to help clear timber up through the 1980s.

1 107. The 10-day clock, therefore, begins to run before a landowner receives actual notice
2 of an alleged violation in the mail.

3 108. The County often obscures when the clock starts by dating notices before the date it
4 actually effects service.

5 109. The County also typically posts the notice on a Friday to create the false impression
6 that four of the 10 days fall on a weekend, leaving landowners with the mistaken belief that they
7 have just one full week to weigh the risks of costs of incurring fines, fees, and the other costs
8 associated with abating or opposing any alleged cannabis-related violations.

9 110. Additionally, the County posts notice in the newspaper to publicly accuse
10 landowners of growing cannabis illegally.

11 111. The County makes these public accusations against landowners regardless of
12 whether it has probable cause that they have grown marijuana illegally.

13 112. Once served with an abatement order, the accused faces immense pressure to settle
14 due to the County’s issuance of ruinous fines unsupported by any legitimate governmental interest,
15 its refusal to drop baseless charges, its delay in providing hearings, its denial of permits while
16 abatements are pending, and the cost the County imposes to prove one’s innocence.

17 **1. Humboldt County Issues Ruinous Fines and Fees Unsupported by Any**
18 **Governmental Interest**

19 113. The County imposes cannabis-related Category 4 penalties without any regard for
20 whether the penalty amount serves a valid governmental interest.

21 114. Indeed, when assessing fines for cannabis-related code violations, the County’s
22 policy and practice is to ignore the county code’s mitigating factors such as the owner’s culpability,
23 history of similar offenses, and the severity of the impact on public health and safety.

24 115. The County’s policy and practice is to issue the maximum \$10,000 daily fines
25 regardless of whether there aren’t any health and safety concerns, complaints, prior violations, or
26 culpability, and regardless of whether the County’s entire investigation consisted of viewing a
27 satellite image.

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1 116. Indeed, County officials have insisted that a violation does not need to cause *any*
2 actual harm to justify a maximum daily fine of \$10,000.

3 117. While one daily fine of \$10,000 would be unconstitutionally excessive for the
4 innocent and harmless conduct and paperwork violations for which the County imposes Category 4
5 violations, the County multiplies pressure on landowners exponentially through a policy and
6 practice of charging duplicative violations.

7 118. On average, the County charges about three Category 4 violations per property. For
8 instance, an unpermitted hoop house could result in three separate violations: (1) building a hoop
9 house without a permit; (2) grading the land without a permit to build the hoophouse; and (3)
10 growing marijuana illegally in the hoophouse.

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

15 120. A single day's worth of \$30,000 daily fines already exceeds the average yearly
16 income for Humboldt residents.

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

19 122. If the condition still exists after the 90 days of fines, the County can re-notice the
20 violation and impose another set of daily fines for 90 more days.

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

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

24 124. Even though the County often charges Category 4 violations for things like the failure
25 to obtain a permit (which can cost just \$6 for every \$1,000 in construction value), the County does
26 not allow an accused landowner to obtain the permit that would resolve the abatement order.

1 125. Without regard for public safety, the environmental impact, or the cost to the owner,
2 an abatement notice will order landowners to destroy unpermitted structures and re-grade land solely
3 because there was marijuana grown on the property at one point.

4 126. The County requires landowners to demolish structures that would qualify for
5 permits if it alleges the structure has a nexus to illegal cultivation.

6 127. For those structures not currently up to code, it is often still cheaper for the landowner
7 to bring the structure into compliance than to demolish it.

8 128. But the County will rarely allow landowners to bring a structure up to code because
9 its policy and practice of ordering the destruction of buildings with an alleged nexus to cannabis is
10 a major part of the leverage it creates for its fine-driven enforcement scheme.

11 129. Some structures under abatement orders are large, permanent structures that require
12 an engineer, demolition permits, high labor costs, and even an environmental impact study before
13 the owner can tear down the structure.

14 130. As a result, an abatement order can cost a landowner over \$100,000 to demolish
15 harmless and stable structures and land simply because cannabis may have once been cultivated on
16 the land—even when the guilty party is a prior owner or trespasser.

17 131. Even if a landowner destroys a structure within 10 days, it’s often still not enough to
18 get the County to dismiss a violation.

19 132. Dozens of landowners in Humboldt have sent the County pictures during the 10-day
20 abatement period to show that they destroyed an unpermitted hoop house and there is no cannabis,
21 and the County still refused to drop the charges.

22 133. Neither proof of innocence nor proof that the alleged nuisance is abated is enough to
23 escape.

24 134. The County’s policy and practice is to keep landowners trapped in its abatement
25 process until they pay the County.

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1 the County can still “prevail” at the hearing by proving that the accused committed the underlying
2 code violation.

3 146. In other words, by delaying hearings and refusing to stay the accrual of fines, the
4 County ensures that a landowner subjects themselves to 90 days’ worth of *some* fines—even when
5 the County can’t prove the alleged nexus to cannabis that led the landowner to appeal.

6 147. So, when the County can’t prove its allegations of cannabis cultivation, it can still
7 demand that landowners pay \$90,000 per violation—instead of \$900,000—for exercising their right
8 to a hearing instead of “abating” the issue within 10 days.

9 148. Often, the County wouldn’t have issued the permit needed to abate those violations
10 before the landowner incurs daily fines because of the baseless accusation of cannabis cultivation.

11 149. The County’s refusal to schedule a timely administrative hearing forces an accused
12 landowner to endure years under the threat of fines, fees, and abatement costs, and leaves the
13 landowner unable to develop their land with no guarantee that the County will ever schedule their
14 hearing.

15 150. Fully aware of the financial and psychological costs brought to bear by its abatement
16 regime, the County routinely checks in with landowners to pressure them into waiving their right to
17 a hearing and settling their case instead.

18 151. In more than one instance, Code Enforcement officials warned landowners that an
19 appeal is not in their personal interest because the County does not lose before its own hearing
20 officer.

21 152. Code Enforcement officials will even contact landowners without their lawyers to
22 pressure them to settle, even when they know that landowner has retained counsel to challenge the
23 abatement order.

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

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1 175. The County’s system for adjudicating cannabis-related code violations is designed
2 to pressure landowners into settlements.

3 176. If the hearing does go forward, any party aggrieved by a hearing officer’s decision
4 may then file a request for judicial review in the county superior court within 20 days.

5 177. The appeal to the superior court is a limited civil case for which the record from the
6 administrative hearing is admitted as prima face evidence of the County’s claims.

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

9 179. As a result, the County can collect the ruinous fines it brought without probable cause
10 before an accused landowner can ever step foot in a real court.

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

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

15 181. Once a landowner receives an NOV, they are trapped unless they pay the County to
16 let them out.

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

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

23 184. The fees also include the cost of the County publishing its accusations against the
24 landowner in the newspaper.

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

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1 186. The County has offered to drop cannabis-related abatement orders for landowners
2 who have agreed to enter the costly process to grow commercially.

3 187. The County has even offered to dismiss a cannabis-related abatement order in
4 exchange for a landowner transferring to the County the title to the very unpermitted building at
5 issue.

6 188. Those landowners who don't respond to an NOV get a \$900,000 lien put on their
7 property.

8 189. As of August 2022, the County had placed a \$900,000 lien on 24 properties, plus a
9 \$150,000 lien on a 25th.

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

13 191. Once the County does schedule a hearing, it can increase the pressure to settle yet
14 again by finally dropping any pretext of its baseless cannabis allegations and instead seeking 90
15 days' worth of fines for the underlying code violations that the landowner might not have ever
16 contested if not for the cannabis charges, plus \$4,500 in administrative fees.

17 192. For many landowners, the cheapest way out of a cannabis-related abatement order—
18 whether brought based on probable cause or not—is to settle before the fines and fees accumulate.

19 193. About one-third of landowners facing abatement orders have agreed to settle their
20 case and waive their right to a hearing, generating millions in fines and fees for the County.

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

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

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

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

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

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

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

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

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

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

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

203. Behind the home, there is a detached garage alongside a three-story building.

204. When the Thomases purchased the property, the building was empty and the electrical wiring inside had all been cut.

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

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

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

208. The notice said the owner faced a daily administrative penalty of \$12,000 for 90 days unless they (1) ceased all commercial cannabis cultivation operations and removed all cannabis and infrastructure supporting commercial cannabis including water infrastructure and power sources; and (2) removed all structures with a nexus to cannabis cultivation and constructed in violation of

1 the Humboldt County Code, including applying for and obtaining a demolition permit when
2 applicable.

3 209. The Thomases filled out the Attachment C to their NOV and submitted their request
4 for a hearing on September 2, 2021, stating that they were the landowners as of 12 days prior and
5 that there was no cannabis operation on the property.

6 210. The Thomases have never grown cannabis.

7 211. The Thomases certainly did not set up an illegal grow operation in Humboldt within
8 days of moving into their new home.

9 212. It should have come as no surprise to the County that there was no cannabis operation
10 on the Thomases' property given that the County had raided the property and shut down the cannabis
11 operation at issue in 2019, over two years before the Thomases bought the property.

12 213. During a 2019 raid, the County had already cleared out all the remnants of the prior
13 owner's growing operation and cut the electric to the three-story workshop, leaving no illegal
14 cannabis growth for the Thomases to abate.

15 214. The County would have also known that the property changed hands before it issued
16 the NOV, as the Thomases had already recorded their deed with the County.

17 215. Despite having raided the property over two years prior, the County waited until after
18 the Thomases purchased the property to serve the Thomases with a NOV for the prior owner's
19 wrongdoing.

20 216. After receiving the NOV, the Thomases informed the County of their new ownership
21 of the property, but that did not deter the County for pursuing its abatement order against them.

22 217. Despite the fact that the Thomases did nothing wrong, the County still insisted that
23 they must destroy the three-story building solely because the prior owners used it to cultivate
24 cannabis.

25 218. The three-story building that the County wants to demolish is situated behind the
26 family's home, surrounded by old-growth trees.

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

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

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

8 222. The Thomases also cannot afford the cost of removing the building.

9 223. After losing everything in the Woolsey Fire, the Thomases invested their insurance
10 money into their new home.

11 224. They cannot afford nearly \$200,000 in abatement costs designed to punish someone
12 else's wrongdoing.

13 225. The threat of over a million dollars in fines, plus nearly \$200,000 in abatement costs
14 has caused the Thomases an incredible amount of emotional distress.

15 226. On October 7, 2021, the County offered the Thomases a settlement agreement under
16 which they would be required to admit to the County's cannabis-related accusations, remove the
17 unpermitted structure from their property, and pay administrative fees.

18 227. The settlement offer stated that Code Enforcement opened the case against the
19 Thomases on July 12, 2019, more than two years before they purchased the property.

20 228. By October 7, 2021, the Thomases had already accrued \$468,000 in fines for the
21 outstanding abatement order.

22 229. The Thomases decided not to destroy their building and instead wait for their
23 administrative hearing.

24 230. On August 16, 2022, the County offered the Thomases a new settlement agreement.

25 231. Like the prior year's offer, the August 2022 agreement acknowledged that the
26 abatement case pre-dated the Thomases' ownership but still required them to falsely admit that they
27 committed the prior owner's cannabis-related offenses.

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1 244. Blu constructed greenhouses on his property to grow fresh produce for his family’s
2 restaurant.

3 245. Blu’s property also contains a fire road and rainwater-catchment pond for fire
4 control.

5 246. Back in May 2018, Blu was in the second group of Humboldt residents to receive an
6 NOV from the County.

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

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

12 249. To abate the issues, the notice required Blu to implement a restoration plan for all
13 three violations, cease all cannabis cultivation, and remove all supporting infrastructure.

14 250. Blu was not cultivating cannabis on his property and no infrastructure on his property
15 supported cannabis cultivation.

16 251. Along with the NOV, the County included a cover letter, also dated May 10. The
17 letter informed Blu that Code Enforcement “recently inspected” his property and “observed
18 violations of County Code.” It warned that “these recorded Notices may hinder the landowner’s
19 ability to sell or refinance the property.”

20 252. On or about May 12, 2018, the County published in a local newspaper that Blu’s
21 property was under an abatement order relating to illegal cultivation.

22 253. The publication of allegations that Blu was growing marijuana illegally caused him
23 stress and embarrassment, as he had recently opened Mi Mochima and was trying to get the business
24 off the ground with his wife. He had to explain his innocence to inquiring customers.

25 254. Blu went to Eureka on or around May 14, 2018, to speak with Code Enforcement
26 about his NOV.

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1 278. In September 2018, the County offered to settle Blu’s case for \$10,000 if Blu signed
2 a settlement agreement pursuant to which he admitted that he graded land without a permit for the
3 purpose of cultivating cannabis.

4 279. Blu once again rejected the offer because the development of his property had
5 nothing to do with marijuana.

6 280. The County still refused to provide Blu an administrative hearing.

7 281. Blu hired a register engineer to inspect the grade of his pond.

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

12 283. The letter concluded that the grading did not create a geologic or erosion hazard and
13 that the rainwater-catchment pond is stable and does not require corrective action to protect against
14 erosion and sediment runoff.

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

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

25 286. The County offered Blu another settlement agreement on August 5, 2021. He again
26 refused to sign because the offer required him to accept responsibility for the County’s baseless
27 claim that he was cultivating cannabis.

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

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

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

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

291. Mr. Black encouraged Blu to submit public-records requests to see the County's perfect win-rate in administrative hearings.

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

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

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

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

1 308. The County sent Blu a letter dated September 28, 2022, stating that it was processing
2 a refund for him to return \$2,951.18 he paid in administrative fees as a reduction for costs associated
3 with preparing for his administrative hearing.

4 309. Blu completed the permitting process for his pond on Monday, October 3, 2022, and
5 the County closed its abatement case against him.

6 **3. Rhonda Olson**

7 310. Rhonda Olson is a longtime resident of Orleans, California, an unincorporated area
8 of Humboldt County more than two hours northeast of the county seat in Eureka.

9 311. On September 10, 2020, Rhonda closed escrow on the purchase of three adjacent
10 parcels of land near her house in Orleans for \$60,000.

11 312. She planned to use the property to provide housing for her family and close friends
12 in the properties' existing homes and to build affordable housing that she could sell on the
13 undeveloped parcel.

14 313. The property came with scattered junk and needed renovations that Rhonda planned
15 to undertake to improve the property.

16 314. The first parcel is on the top of a large hill. It has a modular home and the remnants
17 of several hoop houses; it also has an industrial garage and a logging flat atop a steep driveway, all
18 of which dates back to a logging operation on the property until the 1980s.

19 315. The second parcel is below the first and leads to the street; it has a home and a
20 spacious yard.

21 316. The third parcel is a naturally sloped field across the street; it is empty aside from
22 some grapevines and the remnants of a hoop house.

23 317. At the time of purchase, Rhonda knew that the prior owners had been raided by law
24 enforcement and that law enforcement had cleared an illegal growing operation from the property.

25 318. Because she was aware of the raid, she conditioned her purchase on the property
26 having a clean title.

27 319. The title search showed no outstanding violations or liens on the property.

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

3 330. As with the other two parcels, there was no cannabis while Rhonda owned it; the
4 police had cleared it all out during their raid of the prior owner, before the County issued NOVs.

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

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

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

10 334. 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.

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

17 336. 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.

20 337. 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.

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

24 339. Rhonda also hired an engineer to test the soil and water on the vacant parcel with the
25 vineyard in preparation for installing sewage and building a home.

26 340. She emailed the County to let them know she conducted the testing and to request
27 the necessary permits to begin building.

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- c. Refusing to allow landowners to abate permitting violations by obtaining the permit at issue;
- d. Refusing to dismiss citations for enhanced cannabis-related violations based on photographic proof that cannabis is not on the property;
- e. Refusing to provide a timely administrative hearing;
- f. Refusing to issue unrelated permits to landowners while abatement orders are pending;
- g. Imposing unconstitutional conditions on the issuance of permits for landowners facing abatement orders;
- h. Obscuring the time landowners have to comply with an abatement order;
- i. Failing to toll the accrual of fines before an accused can receive an administrative hearing;
- j. Charging up to \$4,500 for an administrative hearing or a settlement agreement;
- k. Failing to provide a jury at the administrative hearing.

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

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

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

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

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- 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 before it provides an accused landowner with an 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?

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

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

23 362. Plaintiffs are represented by counsel who will fairly and adequately represent the
24 class. Plaintiffs are represented *pro bono* by the Institute for Justice (“IJ”). IJ is a nonprofit, public-
25 interest law firm that, since its founding in 1991, has successfully litigated constitutional issues
26 nationwide, including challenges to inadequate procedure in criminal and civil enforcement
27 proceedings. IJ has also litigated several federal class actions and putative class actions involving
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1 property rights, including against the following municipalities: Philadelphia (*Sourovelis v. City of*
2 *Philadelphia*, No. 14-cv-4687, 2021 WL 244598, at *1 (E.D. Pa. Jan. 28, 2021) (appointing firm as
3 class counsel and approving federal consent decree in challenge to civil forfeiture proceedings));
4 New York City (*Cho v. City of New York*, No. 16-cv-7961 (S.D.N.Y. Oct. 2, 2020) (ECF 111)
5 (approving settlement of putative class action under which New York City agreed not to enforce
6 agreements extracted through coercive property seizures)); and Pagedale, Missouri (*Whitner v. City*
7 *of Pagedale*, No. 15-cv-1655 (E.D. Mo. May 21, 2018) (ECF 116) (appointing firm class counsel
8 and approving federal consent decree prohibiting abusive ticketing practices)). IJ also litigated a
9 significant Second Circuit case about due process, notice, and the opportunity to be heard in *Brody*
10 *v. Village of Port Chester*, 434 F.3d 121 (2d Cir. 2005).

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

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

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

21 366. The class is entitled to the requested relief.
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CLAIMS FOR RELIEF

COUNT 1

Denial of Procedural Due Process

In Violation of the Fourteenth Amendment

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

367. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 366.

368. On behalf of the named Plaintiffs and the Class, Plaintiffs bring this count against the County based on its policy and practice of issuing notices of Category 4 violations without regard for probable cause, refusing to drop baseless charges in the face of exonerating evidence, refusing to issue permits to properties facing abatement orders, allowing daily fines to accrue before the County can or will provide an opportunity for a hearing, and failing to schedule an administrative hearing indefinitely, and charging up to \$4,500 in fees to resolve abatement orders.

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

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

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

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

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

1 374. The County has a duty under the Fourteenth Amendment to provide the named
2 Plaintiffs and the Class with notice and an opportunity to be heard at a meaningful time and in a
3 meaningful manner.

4 375. The County deprived the named Plaintiffs and the Class of due process by denying
5 them adequate notice and a fair or meaningful opportunity to be heard. It did so by:

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

22 376. The County's procedurally deficient system creates an unreasonable risk of
23 erroneous deprivation of property.

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

1 378. The County has interfered with these 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.

11 379. When the County's cannabis-related code enforcement works as designed, a
12 landowner is compelled to pay fines and fees without any hearing and without any county employee
13 or hearing officer ever investigating whether probable cause supported the charges.

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

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

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

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

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

25 385. The named Plaintiffs are also entitled to nominal damages.

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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, and Rhonda Olson on Behalf of the Class**

386. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 366.

387. 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.

388. 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.

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

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

391. 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 individuals to settle their case and the fines and fees the County charges to hold an administrative hearing or settle, and the additional landowners whom the policy may drive into seeking permits to grow cannabis commercially.

392. 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.

393. 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.

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394. The County’s policy and practice is to charge Category 4 violations and impose fines and fees on landowners without ensuring it has probable cause to believe those landowners have violated the code for the purpose of cultivating cannabis without a permit.

395. Relying on satellite images alone, the County charges Category 4 violations for activity unrelated to cannabis like having a greenhouse or a water-catchment unit.

396. The presence of an unpermitted greenhouse or water-catchment unit is not probable cause that a landowner is cultivating cannabis without a permit.

397. Despite lacking probable cause that a landowner is growing cannabis without a permit, the County’s policy and practice is to allege that landowners violated the code for the purpose of cultivating cannabis.

398. The County publishes notice of the abatement orders in the newspaper to publicly accuse the landowners of growing cannabis illegally.

399. Daily fines and administrative fees accrue against accused landowners before the County can or will schedule an administrative hearing.

400. Charges brought without probable cause prevent a landowner from developing their property while they wait indefinitely for the County to schedule an administrative hearing.

401. The County charges up to \$4,500 in administrative fees to hold an administrative hearing or settle cannabis-related Category 4 violations that it brought without probable cause.

402. The County’s policy and practice of charging Category 4 violations without probable cause imposes a significant financial, reputational, and psychological cost on the named Plaintiffs and the Class as soon as they receive an NOV.

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

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

1 405. The County also violates substantive due process by charging cannabis-related
2 Category 4 violations unsupported by any legitimate governmental interest.

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

5 407. The County has no interest in punishing conduct that does not harm the public.

6 408. Nor does the County have an interest in issuing fines and denying permits for land,
7 structures, or other property based on a prior owner's misconduct.

8 409. No process could justify the government's deprivation of an innocent person's life,
9 liberty, or property based on someone else's conduct.

10 410. The prior presence of marijuana on a property is not a continuing nuisance once the
11 property is no longer used for illegal purposes.

12 411. No process could justify the County ordering a new owner to destroy their property
13 because the prior owner had previously used the property for an illegal purpose.

14 412. The County has no legitimate governmental interest in depriving the named Plaintiffs
15 and the Class of their property because a prior owner cultivated marijuana on the property without
16 a commercial permit.

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

21 414. The named Plaintiffs and the Class are entitled to declaratory relief and an injunction
22 barring the County from issuing cannabis-related Category 4 violations (a) without probable cause
23 and (b) unsupported by any valid governmental interest.

24 415. The named Plaintiffs are also entitled to nominal damages.

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COUNT 3

Unconstitutional Exactions

In Violation of the Fifth and Fourteenth Amendments

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

416. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 366.

417. On behalf of the named Plaintiffs individually and the Class, Plaintiffs bring this Count based on the County’s policy and practice of denying permits to landowners who face cannabis-related Category 4 violations brought without regard for probable cause unless the landowner will agree to (a) pay a sum of money the County has proposed in an unrelated settlement agreement and (b) waive their due-process right to a hearing at which they can contest unrelated code violations.

418. The unconstitutional-conditions doctrine vindicates constitutional rights by prohibiting the government from coercing people into giving them up in exchange for a discretionary benefit such as a building or grading permit.

419. The government cannot coercively withhold a land-use permit from someone for exercising their constitutional rights.

420. The unconstitutional-conditions doctrine prevents the government from demanding property, a monetary exaction, or the waiver of some other enumerated constitutional right in exchange for a land-use permit.

421. The Constitution forbids such extortionate demands regardless of whether the government approves a permit due to a landowner’s willingness to give up their rights or denies a permit based on a landowner’s refusal to do so.

422. The County has a policy and practice of denying land-use permits to landowners with outstanding abatement orders, even when the permits have no nexus to the abatement order.

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423. The County’s policy and practice is to grant land-use permits only if the landowner facing an abatement order will pay the County a sum to settle an unrelated abatement case and waive their right to a hearing in that unrelated case.

424. The County imposes two unconstitutional conditions on permit applicants who have outstanding cannabis-related abatement orders: The landowner must agree (1) pay the sum the County has proposed in a settlement offer for an unrelated abatement case and (2) give up their right to an administrative hearing.

425. The sum that the County proposes in settlement offers, including fines and/or fees, is not roughly proportionate to the social costs associated with the landowner’s permit application.

426. This monetary exaction in exchange for a permit is an unconstitutional condition.

427. The demand that landowners give up their constitutionally guaranteed right to a hearing on the County’s unrelated claims against them in exchange for a permit is also an unconstitutional condition.

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

429. The named Plaintiffs and the Class are entitled to declaratory relief an injunction barring the County from denying permits to landowners facing abatement orders unless they pay a settlement and waive their right to an administrative hearing.

430. Plaintiff Blu Graham is entitled to a declaration that the County’s exaction of \$3,747.29 in administrative fees in exchange for a grading permit for his rainwater-catchment pond violated the doctrine against unconstitutional conditions.

431. The named Plaintiffs are entitled to nominal damages. Plaintiff Blu Graham is also entitled to damages or restitution in the amount of \$832.11 in addition to nominal damages.

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COUNT 4

Excessive Fines and Fees

In Violation of the Eighth and Fourteenth Amendments

On Behalf of Plaintiffs Corrine Morgan Thomas, Doug Thomas, and Rhonda Olson

Individually and on Behalf of the Class

432. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 366.

433. On behalf of themselves individually and the Class, Plaintiffs Corrine Morgan Thomas, Doug Thomas, and Rhonda Olson 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.

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

435. 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.

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

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

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

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

440. Contrary to the county code, the County's policy and practice does not consider the actual harm caused by a violation, whether there is any risk to public health or safety, a landowner's

1 culpability or ability to pay, alternative remedies available, or additional penalties that a landowner
2 already faces.

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

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

7 443. The penalties for cannabis-related code violations are also duplicative, as the County
8 already imposes Category 4 penalties for unpermitted cultivation.

9 444. The County’s demands that landowners return property to its “pre-cannabis state”
10 are also punitive fines within the meaning of the Eighth Amendment.

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

13 446. The penalties for cannabis-related Category 4 violations that the County imposes on
14 new purchasers of property based on the prior owner’s misconduct are also unconstitutionally
15 excessive.

16 447. Any penalty for innocent conduct is unconstitutionally excessive.

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

21 449. On its face and as applied to Plaintiffs Corrine Morgan Thomas, Doug Thomas,
22 Rhonda Olson and the Class, the County’s policy and practice of ordering landowners to destroy
23 structures and re-grade land with a nexus to cannabis violates the Excessive Fines Clause of the
24 Eighth Amendment.

25 450. On its face and as applied to Plaintiffs Corrine Morgan Thomas, Doug Thomas,
26 Rhonda Olson, and the Class, the County’s policy and practice of ordering landowners pay up to
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1 \$4,500 in administrative fees for Category 4 violations violates the Excessive Fines Clause of the
2 Eighth Amendment.

3 451. As a direct and proximate result of the County’s policy and practice of levying
4 Category 4 penalties for code violations with a nexus to cannabis, Plaintiffs Corrine Morgan
5 Thomas, Doug Thomas, Rhonda Olson, and the Class have suffered and will continue to suffer
6 irreparable injury to their constitutional rights.

7 452. On its face and as applied to Plaintiffs Corrine Morgan Thomas, Doug Thomas,
8 Rhonda Olson, and the Class are entitled to declaratory relief and an injunction barring the County
9 from enforcing its policy and practice of imposing Category 4 fines and fees for code violations
10 committed to facilitate cannabis cultivation.

11 453. On its face and as applied to Plaintiffs Corrine Morgan Thomas, Doug Thomas,
12 Rhonda Olson, and the Class are entitled to declaratory relief an injunction barring the County from
13 enforcing its policy and practice of ordering landowners to return land to its pre-cannabis state.

14
15 **COUNT 5**

16 **Denial of the Right to a Jury**

17 **In Violation of the Seventh and Fourteenth Amendments**

18 **On Behalf of Plaintiffs Corrine Morgan Thomas, Doug Thomas, and Rhonda Olson**

19 **Individually and on Behalf of the Class**

20 454. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 366.

21 455. On behalf of themselves individually and the Class, Plaintiffs Corrine Morgan
22 Thomas, Doug Thomas, and Rhonda Olson bring this Count against the County based on its policy,
23 practice, and custom of imposing Category 4 penalties and ordering the destruction of property for
24 violations of the county code without providing accused landowners the right to a jury.

25 456. The Fourteenth Amendment to the United States Constitution incorporated against
26 the states all rights that are fundamental to our scheme of ordered liberty and deeply rooted in this
27 Nation’s history and tradition.

1 457. Fundamental rights guaranteed by the Bill of Rights bind states and municipalities.

2 458. The right to a jury in civil actions is a fundamental right that is deeply rooted in
3 history and tradition.

4 459. The Preservation Clause of the Seventh Amendment protects the individual right to
5 a trial by jury in common-law actions where the value in controversy exceeds \$20.

6 460. Actions brought by the government for fines are common-law actions.

7 461. A civil penalty is historically a remedy at common law that only courts of law can
8 enforce.

9 462. The County imposes penalties through a civil-enforcement scheme to minimize the
10 expense and delay associated with pursuing remedies through the criminal justice system.

11 463. Individuals have a right to a jury in civil cases brought to punish and deprive them
12 of their protected liberty and property interests.

13 464. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and the Class
14 possess fundamental property interests protected by the Fourteenth Amendment to the United States
15 Constitution in their homes, accessory structures, possessions, earnings, income, and capital.

16 465. The County cannot deny the right to a jury by imposing penalties through
17 administrative hearings rather than in court.

18 466. The factual determination of whether a landowner violated the code in order to grow
19 marijuana without a permit can carry hundreds of thousands—if not millions—of dollars in
20 penalties.

21 467. Because the finding of such facts against the accused results in the deprivation of
22 property and liberty as punishment for the offense, the accused is entitled to have a jury of their
23 peers decide those facts.

24 468. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and the Class have
25 a right to have a jury adjudicate the facts underlying the County’s claims for Category 4 penalties.

26 469. The County’s imposition of penalties through an administrative process that does not
27 include a jury has been conducted pursuant to a policy, practice, or custom that violated the
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1 Preservation Clause of the Seventh Amendment and the Fourteenth Amendment to the United States
2 Constitution.

3 470. As a direct and proximate result of the County’s policy and practice of imposing
4 penalties through an administrative process that does not include a jury, Plaintiffs Corrine Morgan
5 Thomas, Doug Thomas, Rhonda Olson, and the Class have suffered and will continue to suffer
6 irreparable injury to their constitutional rights.

7 471. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and the Class are
8 entitled to declaratory relief and an injunction barring the County from enforcing its policy and
9 practice of imposing civil penalties through an administrative process that does not include a jury.

10
11 **PRAYER FOR RELIEF**

12 Plaintiffs respectfully request that this Court:

13 472. Certify a class under Rule 23(b)(2) consisting of: “All persons who are currently
14 facing penalties for cannabis-related Category 4 violations that were levied after January 1, 2018,
15 who filed an ‘Attachment C’ to request an administrative hearing within 10 days of the County
16 effecting service, and who have still not received a hearing for their appeal.”

17 473. Declare that the County’s cannabis-related code-enforcement policies and practices
18 violate the procedural due process guaranteed by the Fourteenth Amendment.

19 474. Declare that the County’s cannabis-related code-enforcement policies and practices
20 violate the substantive due process guaranteed by the Fourteenth Amendment.

21 475. Declare the County imposes unconstitutional conditions on landowners who seek
22 land-use permits while facing cannabis-related abatement orders.

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

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

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

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

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

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

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

483. Award the named Plaintiffs nominal damages.

484. Award Plaintiff Blu Graham \$832.11 in damages or restitution in addition to nominal damages.

485. 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.

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

United States District Court
Northern District of California

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*Application for admission
pro hac vice forthcoming

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