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August 16, 2010

The Honorable Howard H. Shore
Los Angeles Superior Court
Department 15
San Diego Courthouse
220 W. Broadway
San Diego, CA 92101

Re: *People of the State of California v. Jovan Jackson*, No. FCD222793

**REQUEST BY AMERICANS FOR SAFE ACCESS TO FILE *AMICUS CURIAE*
LETTER-BRIEF IN SUPPORT OF DEFENDANT**

To the Honorable Howard H. Shore:

I am Chief Counsel with Americans for Safe Access (“ASA”), which is the nation’s largest organization of patients, medical professionals, scientists and concerned citizens seeking to promote safe and legal access to marijuana for therapeutic use and research. I write to request this Court’s permission to file the enclosed *amicus curiae* letter-brief in support of defendant Jovan Jackson (“Jackson”).

STATEMENT OF INTEREST

ASA works to overcome political and legal barriers to the provision of medical marijuana to the seriously ill through legislation, education, litigation, grassroots actions, advocacy, and services for patients and their providers. ASA has over 30,000 active members with chapters and affiliates in more than 40 states.

To this end, ASA has litigated many significant medical marijuana cases, which have resulted in published decisions. In particular, ASA represented Real Party in Interest Felix Kha in *City of Garden Grove v. Superior Court (Kha)*, 157 Cal.App.4th 355 (2007); ASA represented patient-intervenors in *County of San Diego v. San Diego NORML*, 165 Cal.App.4th 798 (2007); ASA represented the Petitioner in *Ross v. RagingWire Telecommunications, Inc.*, 42 Cal.4th 920 (2008); and ASA represented Real

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Advancing Legal Medical Marijuana Therapeutics and Research

Party in Interest David Williams in *County of Butte v. Superior Court* (2009) 175 Cal.App.4th 729. In addition, ASA filed an *Amicus Curiae* Brief in support of Appellants in *Qualified Patients Association v. City of Anaheim*, No. D040077, in a medical marijuana case pending before the Fourth Appellate District, Division Three.

The outcome of this case is of great importance to ASA because it involves plaintiff's contention that medical marijuana sales are not permitted by patient collectives under California law. A determination in plaintiff's favor will undermine the Medical Marijuana Program Act and frustrate the intent of the California voters and Legislature, which sought to ensure that qualified patients would have access to medical marijuana when deemed appropriate by a physician.

ARGUMENT

SALES OF MARIJUANA BY MEDICAL MARIJUANA DISPENSARIES ARE LEGAL UNDER STATE LAW

The starting place for determining whether marijuana sales to qualified patients are legal under state law is the Compassionate Use Act (Cal. Health & Safety Code § 11362.5) [hereinafter "the CUA"], which was approved by the California electorate on November 4, 1996, "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief." (Cal. Health & Safety Code § 11362.5, subd. (b)(1)(A).) Although the CUA did not expressly provide a mechanism to provide access to marijuana for the seriously ill, it sought "[t]o encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (Cal. Health & Safety Code § 11362.5, subd. (b)(1)(C).) To meet the voters' challenge, on September 10, 2003, the California Legislature passed SB 420, also known as the "Medical Marijuana Program Act" or "the MMP." (Cal. Health & Saf. Code § 11362.7 *et seq.*; *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 785.) This legislation provides that "Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570." (Cal. Health & Safety Code § 11362.775). It was designed to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." (Stats. 2003, C. 875, Section 1, subd. (b)(3).)

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Based on this provision of the MMP, the court recognized in *Urziceanu, supra*:

The Legislature . . . exempted those qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes from criminal sanctions for possession for sale, transportation or furnishing marijuana, maintaining a location for unlawfully selling, giving away, or using controlled substances, managing a location for the storage, distribution of any controlled substance for sale, and the laws declaring the use of property for these purposes a nuisance. . . . [The MMP’s] *specific itemization of the marijuana sales law indicates it contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana.*

(*Urziceanu, supra*, 132 Cal.App.4th at p. 785 [Italics added].)

Approximately three years later, the Attorney General, in turn, issued his Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use [hereinafter “AG Guidelines”], which provide that collectives and cooperatives may “[a]llocate[] [marijuana] based on fees that are reasonably calculated to cover overhead costs and operating expenses.” (AG Guidelines at p. 10.) These Guidelines recognize that the State Board of Equalization requires that sales tax be paid on such transactions. (AG Guidelines at p. 9.) In sum, under California law, medical marijuana dispensaries, which engage in sales of marijuana to their membership on a not-for-profit basis are legal.

Nor does the Court’s decision in *People v. Mentch* (2008) 45 Cal.4th 274, alter this conclusion. *Mentch* did not address the operative provision of the MMP at issue here, Health & Safety Code, § 11362.775, but, instead, it addressed (1) whether one could qualify as a primary caregiver solely by providing marijuana under the CUA, and (2) whether one could qualify for protection under Health & Safety Code, § 11362.765, subd. (a) for assisting in the administration of medical marijuana. Not only are neither of these issues present here, but the *Mentch* Court cited *Urziceanu, supra*, with approval (see *Mentch, supra*, 45 Cal.4th at pp. 283, 285, 289) and stated that the Attorney General Guidelines “are wholly consistent with case law and the statutory text. . . .” (*id.* at p. 285 fn. 6.) These Guidelines allow for the sales of marijuana by collectives, which advances the legislative intent in enacting the MMP to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” (Stats, 2003, C. 875 (S.B. 420), Section 1, subd. (b)(3).)

Indeed, further support for the proposition that marijuana sales by collectives are legal can be found in the Corporations Code’s description of “cooperatives.” The reason

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the Legislature provided for “collectives,” in addition to cooperatives, in the MMP is that an entity cannot call itself a “cooperative,” unless it incorporated as such under the laws of the state. (See Corp. Code § 12311, subd. (b).) Notwithstanding this technical difference, the law relating to cooperatives provides guidance in ascertaining the Legislature’s intent in authorizing patient collectives. This law authorizes cooperatives that do not require every member to participate in the actual manufacture of the goods that are distributed to the members, or “patrons.” For instance, consumer cooperatives, which are described by Corporations Code Sections 12200-12203, are defined by the Legislature as follows:

Subject to any other provision of law of this state applying to the particular class of corporation or line of activity, a corporation may be formed under this part for any lawful purpose provided that it shall be organized and shall conduct its business primarily for the mutual benefit of its members as patrons of the corporation. The earnings, savings, or benefits of the corporation shall be used for the general welfare of the members or shall be proportionately and equitably distributed to some or all of its members or its patrons, *based upon their patronage (Section 12243) of the corporation, in the form of cash, property, evidences of indebtedness, capital credits, memberships, or services.*

(Corp. Code § 12201 [Italics added]; see also Corp. Code § 12243 [“If the corporation is organized to provide goods or services to its members, the corporation’s ‘patrons’ are those who purchase those types of goods from, or use those types of service of, the corporation.”].) The law regarding cooperatives, therefore, envisions members making contributions other than services, such as money or property, in exchange for the goods distributed. (See also, e.g., <http://www.daviscoop.com/members.htm> [describing membership of Davis Food Co-Op based on economic contribution].) Medical marijuana patients who are too sick or, otherwise, unable to cultivate their own medicine rely on these collectives to sell it to them.

Respectfully Submitted,,

/S/ Joseph D. Elford
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Cc: Chris Lindberg

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