

1 BINGHAM McCUTCHEN LLP
FRANK KENNAMER (SBN 157844)
2 NEHA NISSEN (SBN 190848)
LAURI SCHUMACHER (SBN 217506)
3 TROY SAURO (SBN 224097)
Three Embarcadero Center
4 San Francisco, California 94111-4067
Telephone: 415.393.2000
5 Facsimile: 415.393.2286

6 Attorneys for WAMM Plaintiffs

7 GERALD UELMEN (SBN 39909)
Santa Clara University School of Law
8 500 El Camino Real
Santa Clara, California 95053
9 Telephone: 408.554.5729
Facsimile: 408.554.4426

10 Attorney for County of Santa Cruz
11 and WAMM Plaintiffs

12 Additional Counsel Listed on Signature Page

13

14

UNITED STATES DISTRICT COURT

15

NORTHERN DISTRICT OF CALIFORNIA

16

SAN JOSE DIVISION

17

COUNTY OF SANTA CRUZ, CALIFORNIA
18 CITY OF SANTA CRUZ, CALIFORNIA;
VALERIE CORRAL; ELADIO V. ACOSTA;
19 JAMES DANIEL BAEHR; MICHAEL
CHESLOSKEY; JENNIFER LEE HENTZ;
20 DOROTHY GIBBS; HAROLD F. MARGOLIN;
and WO/MEN'S ALLIANCE FOR MEDICAL
21 MARIJUANA

21

22

Plaintiffs,

23

JOHN ASHCROFT, Attorney General of the
24 United States; JOHN B. BROWN III, Acting
Administrator of the Drug Enforcement
25 Administration; JOHN P. WALTERS, Director of
the Office of National Drug Control Policy; and
26 30 UNKNOWN DRUG ENFORCEMENT
ADMINISTRATION AGENTS,

27

Defendants.

28

Case No. 2018-0002

**DECLARATION OF ELADIO V.
ACOSTA IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date:
Time:
Place:
Judge:

DECLARATION OF ELADIO V. ACOSTA

1 I, Eladio V. Acosta, declare as follows:

2 1. I was born on May 27, 1949 in the Phillipines, and I currently reside in
3 Watsonville, California. I arrived in the United States in 1984 and proudly became a citizen in
4 1996. For nineteen years, I worked as a chef at the Chamanade Restaurant in Santa Cruz,
5 California. I am not currently able to work because of my illness. I live with two of my sons,
6 aged nineteen and twenty-two, who oversee my care. I also have a primary caregiver named Greg
7 Nysnelski.

8 2. Sometime in 1999, I visited Dr. Jeffrey Solinas, who is my primary care
9 physician, for a regular check-up. The check-up revealed a lump in my throat that was restricting
10 my ability to breath. Following the examination, Dr. Solinas sent me to Dominican Hospital in
11 Santa Cruz County for a biopsy and a Magnetic Resonance Imagry (MRI) to determine the nature
12 of the lump. Approximately two weeks later, I was diagnosed with throat cancer. The formal
13 diagnosis of my condition is Stage III nasopharyngeal cancer with bilateral cervical lymph node
14 metastases.

15 3. My throat cancer has had a devastating impact on my life. I have already
16 had to undergo radiation, two rounds of chemotherapy through two different injection ports
17 being implanted into my chest. The cancer and my treatments have caused me severe pain,
18 swelling of my throat and tongue making it difficult to eat or to speak clearly, numbness in my
19 face, and a loss of energy. Not to mention the economic hardship that has resulted in my oldest
20 son being forced to hold down two jobs to support myself any my youngest son.

21 4. While at Dominican Hospital, I began to be treated by oncologist Dr.
22 Michael Alexander, who remains my doctor to this day. Dr. Alexander recommended I undergo
23 radiation and chemotherapy treatments to combat the cancer. I made the decision at that time to
24 begin with radiation treatments only, because of my understanding of the severe side-effects of
25 chemotherapy. The radiation treatments began in late 1999 and lasted approximately six months.
26 The radiation caused numbness in my feet, hands and face. It caused dryness and bleeding in my
27 lips. For almost a year, I was unable to taste my food and swallowing solid food was extremely
28 difficult. I could not even eat rice, which has always been a steady and important part of my

DECLARATION OF ELADIO V. ACOSTA

1 diet. Consequently, I was forced to go on a liquid diet. Sometime in or around April of 2000,
2 my radiation was completed and the cancer appeared to be gone. Soon thereafter I was able to
3 return to work for approximately one year.

4 5. Following the completion of my radiation therapy, I attended regular
5 medical examinations to check on the status of my cancer and underwent periodic tests. Many of
6 these exams were conducted by Dr. Jay Meisel, a colleague of Dr. Alexander. I felt much better
7 for a short time and I received positive reports from the doctors. However, by August, 2001, my
8 face began to swell and the left side of my face felt numb. During my regular visit in August
9 2001, Dr. Meisel was concerned about a growth in my neck and the numbness I was
10 experiencing. As a result, the doctors conducted an MRI and a biopsy revealing that the
11 malignant cancer – a metastatic carcinoma -- had returned.

12 6. Dr. Alexander recommended I undergo chemotherapy to shrink the tumor in
13 my throat. Chemotherapy treatments began in October, 2001 and lasted until January 12, 2002. A
14 port for insertion of chemotherapeutic chemicals was placed in the right side of my chest to
15 facilitate the administration of chemotherapy treatments. I responded well to the first round of
16 chemotherapy and my tumor resided dramatically. After completion of four cycles of
17 chemotherapy, the doctors allowed me to take a break from treatments, and I was even able to
18 return to work for several months. For quite some time, my cancer was in remission and progress
19 had been made.

20 7. In October, 2002, approximately ten months after the completion of my
21 previous round of chemotherapy, my cancer returned and I began my second round of
22 chemotherapy. My chemotherapy treatments are scheduled for three times a month, and my
23 chemotherapy treatments, utilize a carboplatinum, Taxotere program.

24 8. Prior to my diagnosis and treatments, my neck never caused much pain
25 and I was generally healthy. Now, I have extreme pain in the area of my neck. I also have a
26 second port in the left side of my chest that is uncomfortable and painful.

27 9. Chemotherapy has been very, very difficult for me. I have always enjoyed
28 being able to work as a chef, and I am no longer able to work. On the day before my

DECLARATION OF ELADIO V. ACOSTA

1 chemotherapy treatment, I must take two tablets of Dexamethasone and I cannot eat. My typical
2 day of chemotherapy begins with treatment at Dominican Hospital at noon. After my treatments,
3 I come home and experience dizziness and have to lie down. I have to sleep for long periods to
4 keep warm and counteract my low temperature and chills throughout my body. When I wake up,
5 I usually vomit violently for at least two or three days, and I always experience nausea. It is also
6 very hard to eat, because the chemotherapy causes complete loss of appetite. I struggle to stay
7 nourished and can hardly avoid losing weight. The drugs also cause my mouth and lips to be
8 extremely dry, resulting in severe distortion of my speech.

9 10. I currently take four prescription medications to counteract the symptoms
10 from my throat cancer and chemotherapy. On the days before and after I go in for chemotherapy
11 treatments, I have to take tablets of Dexamethasone. I also take Hydrocodone/APAP, as needed
12 for pain, Prochlorperazine for vomiting and stomach pains, Ambien to help me sleep and
13 Lovoxyl to regulate my TSH (thyroid) levels. The prescription drugs I take are very harsh and
14 extreme. In fact, the first time I took my sleeping pills, I thought I would never wake up, and
15 feared for my safety. Other than the thyroid medication I began to take in 1998, I had never
16 taken drugs other than aspirin or basic cold medicine before. The strong prescription
17 medications that I am forced to take, together with my chemotherapy treatments, make me
18 depressed and tired, and make it difficult to go about my everyday life.

19 11. Sometime in 2000, a co-worker at Chamanade Restaurant told me about
20 something he had read recommending marijuana to counteract the side-effects of chemotherapy
21 and other forms of cancer treatment. He also told me the article mentioned a support group for
22 chronically and terminally ill patients in Santa Cruz that provided medicinal marijuana for
23 patients with a physicians' recommendation. After our conversation, I contacted the Wo/Men's
24 Alliance for Medicinal Marijuana ("WAMM"), and spoke with my family doctor about
25 recommending medical marijuana. Dr. Solinas gave me a recommendation for medicinal
26 marijuana and I joined WAMM in 2000 during my first round of chemotherapy.

27 12. Prior to joining WAMM, I knew nothing about the benefits or even
28 existence of medicinal marijuana. I knew that recreational use of marijuana was illegal, and

DECLARATION OF ELADIO V. ACOSTA

1 never used marijuana recreationally. I have never used illegal drugs recreationally, because I
2 know it is against the law and fear arrest. But, once I learned about benefits of medicinal
3 marijuana and that it is legal to use for medicinal purposes in California with a doctor's
4 recommendation, I considered the possibility of medicinal use of marijuana. After learning that
5 it could help ease the pain associated with my cancer treatments and had done the same for other
6 patients, I decided to try medical marijuana as part of my treatment.

7 13. I get all of my medical marijuana from WAMM. I have no other sources for
8 marijuana. I would never purchase marijuana, and would not use it unless provided by WAMM. I
9 am very afraid of getting arrested, so I would never buy marijuana on the streets. I do not want to
10 get in trouble, and even if I felt I could take the risk, I do not have the money to spend on medical
11 marijuana. WAMM provides me with a safe, legal and free supply of medicine.

12 14. I attend WAMM meetings as often as I can and my son occasionally
13 accompanies me. If I am too sick to attend, my caregiver attends for me. My son, my caregiver
14 and myself do what we can to participate in the collective. WAMM is a very supportive group,
15 and any time I have the energy, or I am feeling stable enough, I help with anything that is
16 needed. Either my son or myself are always willing to give rides to people who need them. I
17 always feel welcome at WAMM, and my fellow members make me feel like a part of their
18 family.

19 15. When I first used medical marijuana, I was very surprised at how much it
20 helped me. For the first time since starting chemotherapy, I had an appetite, I did not feel
21 depressed and I felt a renewed sense of power and energy to fight my cancer. I immediately felt
22 more physical and emotional strength because I was not focusing so much of my energy on the
23 side effects of my chemotherapy and cancer treatments anymore. Before beginning to use
24 medical marijuana, the cancer treatments and the drugs were wearing me down as much as my
25 cancer. I use medicinal marijuana to stimulate my appetite and force myself to eat, since my
26 cancer treatments leave me without an appetite. This stimulus of my appetite, alone, has helped
27 keep me alive. It is really the medicinal marijuana that allows me to be able to withstand the
28 extreme treatments that I need to fight this cancer.

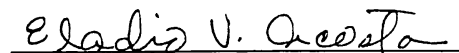
DECLARATION OF ELADIO V. ACOSTA

16. I take my medicinal marijuana by smoking marijuana cigarettes. I only take 1-2 puffs at a time. I take 1-2 puffs in the morning to help gain enough of an appetite to eat breakfast. I usually take 1-2 puffs in the afternoon to help regain an appetite to eat lunch. Then I typically take 1-2 puffs at night to help alleviate pain and aid in sleeping. However, I do not smoke marijuana immediately following chemotherapy, because at those times I am very sensitive to the smell of the smoke. Immediately following chemotherapy, I will sometimes take a marijuana gel tab to help me with my nausea and to help me to sleep.

17. I first heard about the DEA's raid on WAMM at a Tuesday WAMM meeting. At first, I feared that I might be sent to jail. I also feared that I would lose my allotment of medicinal marijuana because of the raid. I became very nervous and anxious because I do not think I would be able to survive without medicinal marijuana.

18. As a member of WAMM, I have support from many people and access to medicinal marijuana to help me live in less pain. Fellow WAMM patient-members are always willing to give me a ride to my doctor's office, take me to WAMM for meetings and help with anything else I need. Without WAMM, I would still have to cope with the debilitating symptoms of chemotherapy including severe nausea, dryness in my lips and mouth, constant lethargy and no appetite. Without WAMM, I do not think I would be alive today.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on the Seventeenth day of February, 2003 in Watsonville, California.


Eladio V. Acosta