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8 LOS ANGELES COUNTY SUPERIOR COURT  
9 STATE OF CALIFORNIA

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11 ATTORNEYS FOR ARTS DISTRICT Case No.:  
PATIENT’S COLLECTIVE, INC., dba, COMPLAINT FOR DECLARATORY  
12 ARTS DISTRICT HEALING CENTER, RELIEF  
JAMES SHAW  
13 LIMITED JURISDICTION  
14 Plaintiff,  
15 vs.  
16 LA CITIPROPERTIES LLC, Does 1-5  
Defendants.

17 \_\_\_\_\_)  
18 I. INTRODUCTION

19 It has been almost 12 years since California Voters overwhelmingly approved of  
20 Proposition 215, commonly known as the Medical Marijuana Act. Also in 1996, our  
21 state legislature codified the proposition in our Health and Safety Code § 11362 et seq.  
22 and commonly referred to it as the Compassionate Use Act (“CUA,” or “the Act”). In  
23 addition, the Act has called upon the state and the federal government to develop a plan  
24 for the safe and affordable distribution of marijuana to all patients in medical need  
25 thereof.

26 Our legislature, on January 1, 2004, approved SB 420, which further codified and  
Complaint for Declaratory Relief

1 clarified the Compassionate Use Act (also referred to as CUA), and established additional  
2 guidelines. The language of the statutory authority establishes that the intent of the  
3 legislature in enacting this bill is to “enhance the access of patients and caregivers to  
4 medical marijuana.” (California Health and Safety Code, Division 10, Chapter 6, Article  
5 2.5 (commencing with § 11362.7)).  
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7           It has been estimated by reliable sources that the current qualified patient  
8 population in California is between 200,000 and 300,000. Most of those qualified  
9 patients are, for a variety of reasons, unable to cultivate their own medicine.  
10 Consequently, this large group of qualified patients must rely on the various co-ops,  
11 collectives and care giving entities, whose purpose is to make the legally authorized  
12 medicine accessible to these qualified patients. In order to provide such services, most of  
13 these co-ops, collectives and care giving entities require a physical location to do so. The  
14 vast majority of the co-ops, collectives and care giving entities rent commercial property  
15 from California commercial property owners.  
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18           As a result of the growth of the number of qualified patients and the co-ops,  
19 collectives and care giving entities that have been created to service this patient  
20 population, many cities and counties have passed laws and or ordinances that regulate  
21 and permit their activities under certain terms and conditions. In other words, all forms  
22 of California’s governmental entities, the judicial, legislative and executive, have  
23 recognized the legality of the CUA. Unfortunately, the Federal Drug Enforcement  
24 Agency (“DEA”) -- the Los Angeles office in particular -- has continued to view  
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1 California's CUA as another front in their long and costly "War On Drugs."

2 While it is undisputed that the DEA is authorized to enforce the Controlled  
3 Substance Act, its authority is not without limit. The DEA is a police agency and is  
4 required to act within the scope of its legislative and executive authority. It does not have  
5 the authority to file criminal complaints or issue opinions of law.  
6

7 As the facts and circumstance of this case will demonstrate, the DEA has  
8 embarked upon a campaign to create the impression that it is illegal in California for a  
9 commercial property owner to lease his/her property to a commercial tenant for a purpose  
10 that is authorized by California law.  
11

12 Specifically, the DEA has implicitly asserted in letters it has systematically sent to  
13 commercial property owners in the Los Angeles area, that a lease of California  
14 commercial property for a point of access for qualified patients pursuant to California's  
15 CUA, is invalid. It is clearly their intent to cause the recipients of these letters, such as  
16 defendant LA Citiproperties, to seek to evict their tenants or otherwise terminate the lease  
17 between themselves and their tenants. That is precisely what has occurred in this case  
18 and that is why this action has been filed.  
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## 21 II. Parties

22 (1) Plaintiff Arts District Patient's Collective, Inc., dba Arts District Healing  
23 Center ("The Center"), has been legally incorporated pursuant the applicable laws of  
24 California. It has been and continues to operate as a collective pursuant to California  
25 Health and Safety Code §11627.77 at all times relevant to this action. All of its members  
26

1 are qualified patients pursuant to California Health and Safety Code §11621. The Center  
2 is the intended beneficiary of the lease for the property located at 620 East 1<sup>st</sup> Street, Los  
3 Angeles, California, (the “subject property”) and has in fact paid the rent for the  
4 premises.

5 (2) Plaintiff JAMES SHAW is the individual who, for and on behalf of The  
6 Center, entered into a lease for the subject property from Defendant LA  
7 CITIPROPERTIES, LLC. The parties to the lease agreed that the use of the premises  
8 would be for a “medical marijuana dispensary pursuant to law of Los Angeles and the  
9 State of California.”

10 (2) Defendant LA CITIPROPERTIES, LLC has been duly incorporated as a  
11 limited liability corporation within the State of California and is the owner of the subject  
12 premises.

### 14 III. FACTS

15 (3) The People of the State of California passed the Compassionate Use Act  
16 (“CUA”) (Health & Safety Code § 11362.5) in 1996, which provides for the legal use of  
17 marijuana for medical purposes, upon certain conditions. The CUA exempts a qualified  
18 patient, a patient's primary caregiver, as well as the members of a Co-Operative or  
19 Collective who possesses or cultivates marijuana for the personal medical purposes of the  
20 patient upon the written or oral recommendation or approval of a physician, from  
21 prosecution under California law.

22 (4) Pursuant to the CUA, Plaintiff Arts District Healing Center (“The Center”)  
23 operates a medical marijuana collective in a lawful manner pursuant to the CUA, in a  
24 leased premise at 620 E. 1<sup>st</sup> Street, Los Angeles, California.

25 (5) On or about November 22, 2005, Plaintiff Shaw, on behalf of The Center,  
26 entered into a fixed-term commercial lease with Defendant LA CITIPROPERTIES, LLC.

1 The lease specifically states that the Plaintiff will be operating a medical marijuana  
2 dispensary pursuant to the CUA as well as all applicable laws and ordinances  
3 promulgated by the city of Los Angeles. The lease further specifies that in all regards it  
4 shall be governed by California law. (*See Exhibit 1 attached hereto*).

5 (6) On or about July 6, 2007, the Los Angeles field division of the DEA office sent  
6 a letter by certified mail to Defendant LA CITIPROPERTIES, LLC, as well as to about  
7 150 other similarly-situated California commercial property owners, which states that the  
8 DEA has determined that LA CITIPROPERTIES, LLC owns a building in which a  
9 marijuana dispensary is operating. (*See Exhibit 2 attached hereto*) The letter threatens the  
10 recipient with up to 20 years imprisonment and forfeiture of property for leasing the  
11 property for such purposes. The letter states in part:

12 "Federal law takes precedence over state law. It is not a defense to this crime or to  
13 the seizure of the property that the facility operating on the property is providing  
14 'medical marijuana' under California law including the provisions of California  
15 Prop. 215."

16 (7) The Plaintiffs are entitled, pursuant to California Health and Safety Code  
17 § 11362 et seq., to possess and make available to its members, a legal medical product,  
18 dispensed only upon the recommendation of a certified physician. This activity is not in  
19 positive conflict with the Controlled Substances Act.

20 (8) The threats in the DEA letter are not supported by law. The provisions of the  
21 Controlled Substances Act do not preempt California law except in the event of a positive  
22 conflict, which does not exist in this case.

23 (9) The DEA is engaged in an official campaign to undermine the California  
24 Compassionate Use Act, and to intimidate those who work within the Act. As such, it is  
25 clear that the Los Angeles DEA's letter was intended to thwart the CUA by chilling the  
26 property rights of California commercial property owners to rent their premises for a

1 purpose specifically authorized by the CUA. Clearly the DEA’s plan is that legally  
2 compliant co-ops, collectives and caregivers will, as a result of their “letter campaign,”  
3 not be able to serve the legitimate needs of their qualified patient memberships by not  
4 being able to lease property to do so.

5 (10) The statement made in the DEA's letter, that federal law takes precedence  
6 over state law, is only correct in the event of a positive conflict, which does not exist  
7 here. It seems evident that the Los Angeles office of the DEA does not recognize the  
8 structure and limitations of federalism. (*See Gonzales v. Oregon*, (2006) 546 U.S. 243.)

9 (11) Sometime prior to August 3, 2007, Defendant CITIPROPERTIES received  
10 the DEA letter and in direct response to such letter, sent a letter to Plaintiffs, which  
11 purported to be a 30-day notice. The so-called 30-day notice states in relevant part that, “  
12 “Federal law preempts state and local law. In light of the notice from the Justice  
13 Department the Landlord has no choice but to rescind the lease for the Premises”  
14 (*See Exhibit 3 attached to this pleading*).

15 (12) On September 5, 2007, LA CITIPROPERTIES filed a complaint for unlawful  
16 detainer against Plaintiff JAMES SHAW in Los Angeles Superior Court downtown  
17 division. The complaint was based on the rationale supplied by the DEA in its letter, that  
18 the lease between LA CITIPROPERTIES and The Center was voidable because it was  
19 for an illegal purpose. (*See Exhibit 4 attached to this pleading*).

20 (13) Defendant did not allege in its unlawful detainer that The Center breached  
21 any terms of the lease. Nor did Defendant contend that The Center violated any terms of  
22 either Los Angeles or California’s medicinal marijuana laws. Instead, Defendant  
23 candidly admitted that the sole reason for bringing this eviction proceeding against the  
24 Center was the result of the letter received from the DEA.

25 (14) Rather than focusing on issues regarding alleged breaches of the lease, the  
26 unlawful detainer was framed in a manner that required resolution of a much broader

1 issue. That issue is whether the DEA was correct in its implied assertion that the  
2 California Compassionate Use Act is preempted by the Federal Controlled Substances  
3 Act and as such would render any lease involving the CUA void.  
4

5 (15) The parties to the unlawful detainer, the Plaintiffs and Defendants in this  
6 action, have briefed this issue as well as other procedural issues. After conferring with  
7 each other, the parties agreed that no factual issues needed determination, as the sole  
8 substantive legal question revolved around whether the lease should be rescinded based  
9 on the DEA's letter. A trial was scheduled for October 15, 2007 before the Honorable  
10 Carol Boas Goodson.  
11

12 (16) On the day of the trial Judge Goodson, after reading the pleadings and briefs  
13 filed in the action and affording the parties an opportunity to make further verbal  
14 arguments, stated her ruling in the matter. The order was as follows:  
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16 "The court ordered the case dismissed pursuant to Code of Civil Procedure  
17 section 187 in that this court lacks jurisdiction. The matter was incorrectly  
18 filed as an unlawful detainer, however due to the unique situation, no costs  
19 are awarded to either side.

20 The matter should be litigated in a general jurisdiction courtroom. In that  
21 form there can be a full judicial determination of the issues which may  
22 include declaratory relief. Unlawful detainer actions are summary  
23 proceedings and are limited to the issues of possession. This action  
24 includes more issues than mere possession and the defendant has a right to  
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1 a full hearing on all issues. The court sees no damage or potential injury to  
2 the landlord that cannot be addressed in the appropriate court as a stay or  
3 however the plaintiff seeks to proceed. The attorney fees may and should  
4 be determined by a courtroom with jurisdiction. (See Exhibit 5 attached to  
5 this pleading).  
6

7 (17) Plaintiffs still remain in possession of the premises pursuant to the terms of  
8 the lease and the Defendant still and rightfully so is concerned about the implicit threats  
9 and ramifications of the letter they received from the DEA. As such and as noted by  
10 Judge Goodson, a controversy exists between these parties and this action for declaratory  
11 relief and this is the proper judicial forum to provide legal guidance on this very  
12 important issue.  
13

14 **A. Declaratory Judgment – Contract is Governed Entirely by California Law, and**  
15 **is Not "Illegal"**  
16

17 (18) Under the California choice-of-law rule, recognized in both California courts  
18 and the Ninth Circuit, a choice-of-law provision in a commercial contract is enforced if  
19 the chosen state has a substantial relationship to the parties or their transaction unless the  
20 chosen state's law is contrary to a fundamental California policy. *Nedlloyd Lines B.V. v.*  
21 *Superior Court* (1992) 3 Cal.4th 459, 464-465, *Ford Motor Credit Co. v. Segal* (9th Cir  
22 2004) 97 Fed.Appx. 166, 168.

23 (19) Obviously, the contract in this case is not contrary to a fundamental  
24 California policy. The contract in this case is based on a fundamental California policy,  
25 enacted by the voters. The DEA has issued an extrajudicial declaration of *its* policy,  
26 contained in a threatening letter, but the law is clear – the contract is governed by

1 California law, and it is entirely legal under that law.

2 (20) Therefore, **the plaintiff prays for a declaratory judgment** against defendant  
3 LA CITIPROPERTIES, LLC, establishing that leases such as his are governed entirely  
4 by California real estate law, including applicable provisions of the Compassionate Use  
5 Act, are not illegal contracts, and not subject to termination on that ground.

6  
7 **B. Declaratory Judgment – A Landlord Has No Private Right of Action Under the**  
8 **Controlled Substances Act**

9 (21) Under the rule set out in *Peretz v. Legal Aid Foundation of Los Angeles*  
10 (2004) 122 Cal.App.4th Supp. 1, 18 Cal.Rptr.3d 863, a private litigant acquires no rights  
11 under a federal statute, unless those rights are set out in the statute. The Controlled  
12 Substances Act shows no intent to permit private enforcement by affirmative claim or  
13 defense. Thus, defendant LA CITIPROPERTIES, LLC, may not rely on the Controlled  
14 Substances Act, or on "landlord letter," as grounds to terminate its lease with the plaintiff.

15 (22) Therefore, **the plaintiff prays for a declaratory judgment** against defendant  
16 LA CITIPROPERTIES, LLC, establishing that it has no right to terminate or otherwise  
17 interfere with the plaintiff's lease by virtue of the Controlled Substances Act or DEA  
18 regulations.

19 **C. Declaratory Judgment – The Compassionate Use Act is Not Preempted by**  
20 **Federal Law**

21 (23) The Controlled Substances Act provides that it does not preempt state law on  
22 the same subject matter which would otherwise be within the authority of the State,  
23 unless there is a positive conflict between federal and state law. (21 USC 903.)  
24 Everything about the lease in this case is ordinarily within the authority of the State of  
25 California, and the parties specifically chose to be governed by that law. No positive  
26 conflict exists between federal law and California law in regard to these leases, and the

1 DEA has exceeded its legal authority by asserting, without authority, that federal law  
2 "takes precedence" over California law.

3 (24) Therefore, the **plaintiff prays for a declaratory judgment** against  
4 defendant, establishing that, as to commercial leases for medical marijuana dispensaries,  
5 federal law does not preempt, or "take precedence" over the CUA. Leases such as the  
6 one in this case, are legal under California law, enacted by the People, intended to  
7 provide a medical benefit to the People. Plaintiff asks for a judgment establishing that, as  
8 to leases such as the one in this case, California law is not in positive conflict with federal  
9 law, and is not preempted by any provision of federal law.

10 **WHEREFORE, Plaintiffs request a judgment be entered against Defendant**  
11 **as follows:**

12 1) A declaratory judgment against defendant LA CITIPROPERTIES, LLC,  
13 establishing that leases such as his are governed entirely by California real estate  
14 law, including applicable provisions of the Compassionate Use Act, are not illegal  
15 contracts, and not subject to termination on that ground.

16 2) A declaratory judgment against defendant LA CITIPROPERTIES, LLC,  
17 establishing that it has no right to terminate or otherwise interfere with the  
18 plaintiff's lease by virtue of the Controlled Substances Act or DEA regulations.

19 3) A declaratory judgment against Defendant LA CITIPROPERTIES, LLC,  
20 declaring that leases that openly state that the property shall be used for dispensing  
21 medical marijuana, and which agree that California law shall govern, are not  
22 illegal contracts, notwithstanding the opinion of the DEA.

23 4) A declaratory judgment, establishing that, as to commercial leases for legally  
24 compliant medical marijuana co-ops, collectives and or caregivers, federal law  
25 does not preempt, or "take precedence" over the CUA. Leases such as the one in  
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this case, are legal under a California law, enacted by the people, intended to provide a medical benefit to the people. Plaintiff asks for a judgment establishing that, as to leases such as the one in this case, California law is not in positive conflict with federal law, and is not preempted by any provision of federal law.

5) For costs of suit herein.

6) For reasonable attorney’s fees pursuant to the underlying contract and Pursuant to California Code of Civil Procedure §1021.5 as this action is to enforce an important right affecting the public. This is particularly true given that the State Attorney General has consistently failed to take any action to protect the rights of our citizens as established by the CUA

7) For such other relief that is in the interest of justice.

Dated: November 27, 2007

\_\_\_\_\_  
Steven Schectman  
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Inc., Dba, Arts District Healing Center, James  
Shaw