

1 Name _____

2 Address _____

In Pro Per

3 **Superior Court of California**

4 County of _____

5 **THE PEOPLE OF THE STATE OF**

) Case No.: No.

6 **CALIFORNIA**

) **DEMURRER, MEMORANDUM OF**
) **POINTS AND AUTHORITIES,**
) **DECLARATION**

7 Plaintiff,

8 vs.

9 Name _____

10 Defendant in Pro Per

11 **DEMURRER**

12 Defendant _____ demurs and objects to
13 the jurisdiction of this court in this matter. _____ is a qualified
14 patient under the Compassionate Use Act of 1996 ("Act"), enacted by initiative Proposition 215
15 by the electorate November 5, 1996. The only qualification required by the Act is the patient's
16 recommendation letter of his physician (see Exhibit A). A qualified patient under the Act is
17 exempt from criminal penalties and criminal prosecution regarding the cultivation and
18 possession of marijuana. Where there is no criminal penalties and prosecution is prohibited the
19 court has no jurisdiction.

20 **POINTS AND AUTHORITIES:**

21 1. Health and Safety Code §11362.5 (d) holds: " Section 11357, relating to the possession of
22 marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a
23 patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal
24 medical purposes of the patient upon the written or oral recommendation or approval of a
25 physician."

1 2. The California Supreme Court in *People v. Mower*, 28 Cal 4th 457, held in 2002:
2 Inasmuch as this statute provides that sections 11357 and 11358, which criminalize the
3 possession and cultivation of marijuana, "shall not apply to a patient, or to a patient's primary
4 caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient
5 upon the written or oral recommendation or approval of a physician" (§ 11362.5(d)), the
6 provision renders possession and cultivation of marijuana noncriminal under the conditions
7 specified. (*Mower*, *ibid.* p. 482)

8 ... in view of his or her status as a qualified patient or primary caregiver, the grand jury or the
9 magistrate should not indict or commit the defendant in the first place, but instead should bring
10 the prosecution to an end at that point. *Mower*, *ibid.* 473

11 Evidence of a defendant's status as a qualified patient or primary caregiver exculpates him or her
12 from guilt of the crimes of possession or cultivation of marijuana, because such a status renders
13 possession and cultivation of marijuana noncriminal. *Mower*, *ibid.* 485, FN5

14 As a result of the enactment of section 11362.5(d), the possession and cultivation of marijuana is
15 no more criminal-so long as its conditions are satisfied-than the possession and acquisition of
16 any prescription drug with a physician's prescription. *People v. Mower*, 28 Cal 4th 457, 482

17 ... the Court of Appeal stated that "jurisdictional issues can be raised at any time," and implied
18 that such issues include immunity from prosecution. We recognize that we sometimes have
19 spoken of immunity from prosecution as "jurisdictional."... the limited immunity from
20 prosecution granted by section 11362.5(d) implicates jurisdiction in its less fundamental sense; it
21 surely does not undermine a court's personal or subject matter jurisdiction. Hence, it is subject to
22 bars including waiver and forfeiture. *Mower*, *ibid.* 485, FN6

23
24 DECLARATION:

25 _____ is a qualified patient under the Act as evidenced by the recommendation

1 letter of his physician (see Exhibit A). As such a qualified patient, he/she committed no crime in
2 cultivating and possession of marijuana for his/her medical purposes, and criminal prosecution is
3 prohibited. §11362.5 abrogates the application of §§11357 and 11358, whose statutes begin
4 with the phrase "Unless otherwise authorized by law,..." _____ is a
5 patient who is innocent, exempt, and immune from criminal laws regarding the cultivation and
6 possession of marijuana. _____ was merely exercising legal rights pursuant to the
7 California Constitution.

8
9 Prayer:

10 _____ requests the court to dismiss with prejudice all counts without leave to
11 amend.

12 Respectfully,

13 Name _____ Date _____

14 _____
15 IN PRO PER

16 -
17 IN PRO PER