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John Doe

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SONOMA

JOHN DOE¹, on behalf of himself, the
General Public, and all others similarly
situated,

Plaintiff and Petitioner,

v.

ARLENE JUNIOR, as Court Executive
Officer; THE SUPERIOR COURT FOR THE
STATE OF CALIFORNIA COUNTY OF
SONOMA; and DOES 1 through 20,

Defendants and Respondents.

Case No.:
CLASS ACTION

**COMPLAINT AND PETITION FOR
WRIT OF MANDATE:**

- 1. VIOLATION OF INFORMATION PRACTICES ACT OF 1977 [CIV. CODE § 1798 ET SEQ.]**
 - 2. VIOLATION OF CALIFORNIA RULES OF COURT, RULE 2.507**
 - 3. VIOLATION OF HEALTH AND SAFETY CODE SECTION 11361.5**
 - 4. VIOLATION OF GOVERNMENT CODE SECTION 68152**
 - 5. VIOLATION OF CALIFORNIA CONSTITUTIONAL RIGHT OF PRIVACY [CONST. ART. I, § 1]**
- DECLARATORY RELIEF [CODE CIV. PROC. § 1060]**
- PETITION FOR WRIT OF MANDATE [CODE CIV. PROC. § 1085]**

¹ Because of the nature of the allegations herein, plaintiff is identified by a pseudonym in order to preserve his confidentiality and to avoid any potential opprobrium, pursuant to applicable law, including *Starbucks Corp. v. Superior Ct.* (2008) 168 Cal.App.4th 1436.

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff and Petitioner, John Doe, on behalf of himself, the General Public, and all
3 others similarly situated, complain and allege upon information and belief, as follows:

4 **PRELIMINARY STATEMENT**

5 1. This action for declaratory and injunctive relief and a writ of mandate is brought
6 against the Superior Court of California, County of Sonoma (“Sonoma Superior Court” or
7 “SSC”) and the Court Executive Officer of the Sonoma Superior Court. The action challenges
8 the policies and practices of the Sonoma Superior Court and the Court Executive Officer in (1)
9 maintaining and displaying Personal Identification Information in both remote and online
10 records maintained by the Court; and (2) maintaining and displaying physical and electronic
11 criminal records of minor marijuana offenses and operating CMS containing such criminal
12 records on the Court’s website.

13 **A. Defendants’ Disclosure of Personal Identification Information**

14 2. Courts and government agencies at all levels of government - local, state, and
15 federal - are increasingly making public records available on web sites. Some jurisdictions are
16 just beginning, while others have done so since the mid-1990s.
17 (<<https://privacyrights.org/resources/public-records-internet-privacy-dilemma>>)

18 3. Sonoma Superior Court is one such Court that has transitioned into such a web-
19 based Case Management System (CMS). As stated on its website, “Sonoma Superior Court has
20 moved into the 21st century with a new web-based case management system that transitions the
21 court off a decades-old database and ensures improved access to justice for the citizens of
22 Sonoma County over the years to come. ¶ Odyssey provides court staff with a more intuitive,
23 modernized data entry format, offers a specialized edition tailored for use by judicial officers,
24 strengthens the court's data reporting requirements, and over the long-term will support a
25 completely paperless, electronic filing system that reduces waste and eliminates the need to
26 track and move physical files.” (<http://sonoma.courts.ca.gov/online-services/portal>.)

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1 4. On Defendants’ website, the general public is allowed unfettered access to the
2 court's electronic calendar, index, and register of actions, including the records of criminal
3 defendants through the Court’s Odyssey Portal. (<<https://cmsportal.sonomacourt.org/iportal>>).

4 5. Personal Identification Information disclosed to the general public on
5 Defendants’ website include criminal defendants’ names and **dates of birth**.

6 6. Like thousands of other individuals, Plaintiff’s name and his date of birth are
7 displayed to the general public on the Sonoma Superior Court’s website.

8 7. The California Rules of Court address public access to electronic court records.
9 Rules 2.500 through 2.507 set forth exactly which court records may be disclosed at the
10 courthouse, and which records may not be available to the public over the internet, *i.e.*, remote
11 electronic access.

12 8. Rule of Court 2.503(e) specifically addresses remote electronic access to
13 criminal records, such as those of the Plaintiff in this action. Rule 2.503(e) states that remote
14 electronic access to criminal records is allowed only in **extraordinary** criminal cases.

15 9. Further, Rule 2.507 of the California Rules of Court, specifically states:

16 “The following information **must be excluded** from a court's electronic calendar, index, and
17 register of actions: ... [A party’s] **date of birth**.”

18
19 (*Cal.R.Ct.*, Rule 2.507(c)(12).)

20 10. Privacy rights advocates repeatedly warn against the public disclosure of a
21 person’s date of birth to anyone unless needed to verify identity, because an individual’s date
22 of birth can be used to commit identity theft and fraud. See,
23 <<https://privacyrights.org/resources/public-records-internet-privacy-dilemma>> [“Court records
24 often contain [personal identification information]. But when account numbers, personal
25 identifiers, and dates of birth are accessible on the Internet, they could be used to commit
26 financial fraud. The crime of identity theft is at epidemic proportions today ...”]

27 11. By simply finding a person’s name and date of birth on the Sonoma Superior
28 Court’s website, identity thieves can call victims and pose as court personnel by identifying the

1 victim and his or her date of birth. Thieves then may gain the confidence of the victim by
2 supplying the victim's personal information such as names and dates of birth, and then ask for
3 additional information such as social security numbers and addresses under the guise of
4 "completing court records" or "clearing warrants" due to missed jury duty service.

5 **B. Defendants' Disclosure of Marijuana Arrests and Convictions**

6 12. During the first administration of Governor Edmund G. Brown, Jr., in the mid-
7 1970s, the California Legislature reformed the state's marijuana laws to require the
8 "destruction" by "permanent obliteration" of all records of minor marijuana convictions that
9 were more than two years old.

10 13. These laws were enacted as part of comprehensive reform legislation which was
11 designed to distinguish minor marijuana offenses from more serious felony drug offenses and
12 to "minimize or eliminate the lingering social stigma flowing from what is now perceived to be
13 a relatively minor form of criminal activity." (*Younger v. Superior Court* (1978) 21 Cal.3d 102,
14 113.)

15 14. It is well established in California that publicly disclosing marijuana-related
16 offenses covered by the marijuana reform legislation violates the individual offender's right of
17 privacy. (See, *Starbucks Corp. v. Superior Court* (2011) 194 Cal.App.4th 820, 828; *Hooper v.*
18 *Deukmejian* (1981) 122 Cal.App.3d 987, 1015; *Central Valley Chap. 7th Step Foundation v.*
19 *Younger* (1979) 95 Cal.App.3d 212, 231.)

20 15. This complaint and petition alleges the CMS contains thousands of criminal
21 records pertaining to minor marijuana offenses that Defendants were required to completely
22 destroy, but Defendants have failed to do so as required by law and in violation of the
23 California constitutional right of privacy.

24 16. Prior to bringing this action, Plaintiff and Petitioner contacted the Court
25 Executive Officer and requested that his records containing his Personal Identification
26 Information as well as records pertaining to the unlawful possession of marijuana pursuant to
27 Health and Safety Code section 11357 be removed from the CMS, and requested that the
28 records be removed within 10 days or a provide a response to the request to remove the records

1 within 10 days. Despite this notice and request for compliance with the laws of this State,
2 Defendants failed to respond to the request and failed to inform Plaintiff that all of his Personal
3 Identification Information and marijuana-related information concerning Health and Safety
4 Code section 11357 violations would be removed from the Court's website.

5 17. Plaintiff and Petitioner brings this action and brings the writ of mandate as a
6 citizen concerned for the proper performance of a public duty in an area of general public
7 interest. Specifically, Plaintiff and Petitioner seeks to require Defendants to perform their
8 duties in accordance with the California Rules of Court, as well as statutory and constitutional
9 provisions relied on in this complaint and petition.

10 18. Plaintiff and Petitioner files this action under an anonymous name to preserve
11 his right to privacy and to protect him from the public being able to identify him with his and
12 date of birth, as disclosed on online records maintained and displayed by the Defendants, and
13 protect him from embarrassment and prejudice from disclosure of his arrest and/or conviction
14 for offenses covered by Health and Safety Code sections 11357 (marijuana offenses).

15 **JURISDICTION**

16 19. This Court has jurisdiction over Defendant, SSC, because the SSC is located in
17 the County of Sonoma, State of California.

18 20. This Court has jurisdiction over Defendant, Arlene Junior, because upon
19 information and belief, Arlene Junior resides in the County of Sonoma, State of California.

20 21. Further, Plaintiff and Petitioner seek equitable relief and the Superior Court has
21 equity jurisdiction to issue permanent injunctions.

22 22. This action is not subject to the provisions of the Government Claims Act and
23 Plaintiff and Petitioner has not complied with the Government Claims Act. The primary
24 purpose of this action is to obtain injunctive and declaratory relief, not the recovery money or
25 property.

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1 **PARTIES**

2 23. Plaintiff John Doe is an individual and over the age of eighteen (18), who was
3 arrested in Sonoma County for a violation of Health & Safety Code section 11357, and whose
4 Personal Identification Information, including date of birth, is accessible to the public.

5 24. Defendant SSC is a trial court of general jurisdiction established and organized
6 under the laws of the State of California and pursuant to Article VI, § 4 of the California
7 Constitution. Defendant SSC is not an agency established under article VI § 4 of the California
8 Constitution, but is an independent branch of government.

9 25. Defendant Arlene Junior is the Court Executive Officer of the Sonoma Superior
10 Court. Defendant Junior is an employee, agent, and/or representative of Defendant, SSC, and
11 was and is acting within the course and scope of her agency and or employment as Court
12 Executive Officer of the SSC.

13 26. Defendants, and each of them, are responsible for, *inter alia*, keeping the
14 records and minutes of SSC and insuring that said records and the CMS is maintained in
15 compliance with state and federal law.

16 27. Plaintiff and Petitioner is ignorant of the true names and capacities of
17 Defendants sued herein as Does and therefore sue these Defendants by such names. Plaintiff
18 and Petitioner will amend the complaint to allege their true names and capacities when
19 ascertained. Plaintiff and Petitioner is informed and believe and thereon allege that each of
20 these named Defendants is responsible in some manner for the actions herein alleged.

21 **STATEMENT OF FACTS**

22 28. After 1976, Plaintiff and Petitioner was arrested for a violation of Health and
23 Safety Code section 11357 (possession of marijuana) in the County of Sonoma.

24 29. Following the arrest, SSC included the charge in its CMS, as SSC was generally
25 allowed to do *for two years*.

26 30. However, Defendants failed to destroy the records of that violation after the
27 time for maintaining such records had expired, and to this day, Defendants disclose this
28 conviction to the general public.

1 31. In addition, Defendants have disclosed and continue to disclose on the CMS
2 Doe's date of birth.

3 32. Any employer, family member, friend, or foe can go online and search for Doe's
4 criminal records via the SSC online services case index search
5 (<https://jpportal.mercedcourt.org/mercedprod>).

6 33. By typing in Plaintiff's real name, the viewer will see that Plaintiff Doe was
7 arrested and charged for violating Health and Safety Code section 11357, and will see his date
8 of birth.

9 34. Upon information and belief, Defendant's CMS displays records of other
10 individuals who were arrested and/or convicted for violations of Health and Safety Code
11 section 11357 more than two years ago, which can be accessed through the online CMS search
12 maintained by Defendants.

13 35. Upon information and belief, Defendant's CMS displays records other
14 individuals' dates of birth, which can be accessed through the CMS maintained by Defendants.

15 36. Defendants provide free, 24-hour remote electronic access to the CMS (except
16 for certain times due to maintenance) to anyone with an internet connection.

17 37. Defendants do not provide notice to the subject that his or her name has been
18 searched in the CMS or that information regarding the subject has been disseminated pursuant
19 to a CMS search.

20
21 **DEFENDANTS FAILED TO TIMELY DESTROY RECORDS PERTAINING TO**
22 **CERTAIN MARIJUANA OFFENSES**

23 38. Defendants knew, or should have reasonably known, that the CMS contains
24 hundreds, if not thousands, of records which should have been destroyed by Defendants.

25 39. Pursuant to Health and Safety Code section 11361.5(a), "[r]ecords of any court
26 of this state, ... pertaining to the arrest or conviction of any person for a violation of Section
27 11357 ... shall not be kept beyond two years from the date of the conviction, or from the date
28 of the arrest if there was no conviction ...," with limited exceptions not applicable to his action.

1 40. Indeed, the California Legislature was so concerned that no such records
2 showing a minor marijuana offense be available to view, the Legislature spelled out exactly
3 how the Courts and their Clerks/Executive Officers should accomplish this goal. (See, Health
4 & Safety Code section 11361.5(c) [“Destruction of records of arrest or conviction pursuant to
5 subdivision (a) or (b) shall be accomplished by *permanent obliteration* of all *entries or*
6 *notations* upon the records pertaining to the arrest or conviction, *and the record shall be*
7 *prepared again so that it appears that the arrest or conviction never occurred*”], emphasis
8 added.)

9 41. In addition, pursuant to Government Code section 68152, Defendants are
10 prohibited from maintaining – and *shall destroy* – records pertaining to charges and
11 dispositions pertaining to marijuana possession under subdivisions (a), (b), or (c) of Section
12 11357 of the Health and Safety Code two years from the date of conviction, or from the date of
13 arrest if no conviction, if the case is no longer subject to review on appeal, all applicable fines
14 and fees have been paid, and the defendant has complied with all terms and conditions of the
15 sentence or grant of probation. (*Gov.Code*, § 68152 subdivisions (c)(8) and (c)(10).)

16 42. Plaintiff and Petitioner is informed and believes and based on such information
17 and belief alleges that Defendants have failed to insure the timely destruction of information in
18 individual court files pertaining to such marijuana offenses.

19 43. Plaintiff and Petitioner is informed and believes and based on such information
20 and belief alleges that Defendants maintain a substantial number of individual court files that
21 pertain marijuana offenses and Defendants provide information regarding said offenses in
22 response to inquiries from the public, including prospective employers.

23 44. Defendants’ actions and policies challenged in this complaint and petition are
24 not supported by a legitimate or compelling state interest. No provision of law authorizes or
25 requires Defendants to maintain and report information pertaining to marijuana offenses under
26 Health & Safety Code section 11357 after the statutory period of time.

27 45. If any provision of California law is determined to authorize or require
28 Defendants actions and policies it is, to that extent, unlawful under the California Constitution.

1 46. No legitimate burden would be imposed on Defendants by (1) requiring the
2 timely destruction of records showing such marijuana offenses, and (2) the omission of dates of
3 births from criminal defendants' CMS records.

4
5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF THE INFORMATIONAL PRIVACY ACT OF 1977**

7 **(As Against ARLENE JUNIOR as Court Executive Officer, only)**

8 47. Plaintiff refers to and incorporates by reference each and every paragraph above
9 as though set forth fully herein.

10 48. The term "agency," as defined in the California Informational Privacy Act of
11 1977 (the Act), means every state office and *every state officer*. (*Civ.Code*, § 1798.3(b).)

12 49. Defendant, Arlene Junior, is the Court Executive Officer of the Sonoma
13 Superior Court and is a state officer, and is therefore an "agency" pursuant to the Act.

14 50. Arlene Junior has a statutory duty to maintain in Court records only personal
15 information which is relevant and necessary *to accomplish a purpose of the agency* required or
16 authorized by the California Constitution or statute. (*Civ.Code*, § 1798.14.)

17 51. The term "record" means any file or grouping of information about an
18 individual that is maintained by an agency by references to an identifying particular such as the
19 individual's name (*Civ.Code*, § 1798.3(g)); and "personal information" means any information
20 that identifies or describes an individual. (*Civ.Code*, § 1798.3(a).)

21 52. Arlene Junior has a statutory duty to maintain in its records only personal
22 information which is relevant and necessary to accomplish a purpose of the agency required or
23 authorized by the California Constitution or statute or mandated by the federal government.
24 (*Civ.Code*, § 1798.14.)

25 53. Arlene Junior has a statutory duty *not to disclose* any personal information in a
26 manner which would link the information disclosed to the individual to whom it pertains unless
27 the information is disclosed under certain limited circumstances not relevant to this matter.
28 (*Civ.Code*, § 1798.24.)

1 54. Arlene Junior maintains records identifying Plaintiff (and all others similarly
2 situated) and disclosing his date of birth, and identifying Plaintiff as an individual charged of a
3 crime, and such records are maintained on Defendants' website.

4 55. Arlene Junior has allowed, and continues to allow the disclosure of Plaintiff's
5 personal information to members of the public not authorized by law to receive such
6 information and continues to allow the public to have unencumbered access to certain criminal
7 defendants' dates of birth, by and through the website of the Sonoma Superior Court.

8 56. Pursuant to Civil Code section 1798.45(b), an individual may bring a civil
9 action against an agency whenever such agency fails to maintain any record concerning any
10 individual with such accuracy, relevancy, timeliness, and completeness as is necessary to
11 assure fairness in any determination relating to the qualifications, character, rights,
12 opportunities of, or benefits to the individual that may be made on the basis of such record, if,
13 as a proximate result of such failure, a determination is made which is adverse to the
14 individual.

15 57. Additionally, pursuant to Civil Code section 1798.45(c), an individual may
16 bring a civil action against an agency whenever such agency fails to comply with any other
17 provision of the Act, in such a way as to have an adverse effect on the individual.

18 58. As more thoroughly set forth herein, the disclosure of the personal information
19 electronically over the internet of Plaintiff and all others similarly situated, by Defendant had
20 and continues to have an adverse effect on these individuals by impinging upon their
21 Constitutional and statutory rights of privacy.

22 59. Any agency that fails to comply with any provision of the Act may be enjoined
23 by any court of competent jurisdiction. The court may make any order or judgment as may be
24 necessary to prevent the use or employment by an agency of any practices which violate this
25 chapter. (*Civ.Code*, § 1798.47.)

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SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA RULES OF COURT, RULE 2.507

(FAILURE TO EXCLUDE INFORMATION FROM ELECTRONIC ACCESS)

60. Plaintiff and Petitioner refers to and incorporates by reference each and every paragraph above as though set forth fully herein.

61. Defendants allow unfettered electronic access to the general public of the dates of birth of individuals.

62. Doe’s date of birth is viewable to the general public through the Court’s website.

63. California Rules of Court, rule 2.507 prohibits Defendants from displaying an individual’s date of birth through electronic means.

64. Defendants’ actions in allowing electronic remote access to dates of birth violates California Rules of Court, rule 2.507 and the California constitutional right to privacy.

THIRD CAUSE OF ACTION

VIOLATION OF HEALTH AND SAFETY CODE SECTION 11361.5

(FAILURE TO DESTROY MARIJUANA OFFENSE RECORDS)

(As Against All Defendants)

65. Plaintiff and Petitioner refers to and incorporates by reference each and every paragraph above as though set forth fully herein.

66. Health and Safety Code section 11361.5(a) states in relevant part: Records of any court of this state ... pertaining to the arrest or conviction of any person for a violation of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction.

67. At present, the data base of CMS records maintained by Defendants contains hundreds, if not thousands of cases pertaining to the arrest or conviction of any person for a violation of Section 11357 or subdivision (b) of Section 11360. Many of these records have been kept by Defendants after their destruction was required by Health and Safety Code section

1 11361.5 subdivision (a).

2 68. Defendants have a statutory duty and obligation pursuant to Health and Safety
3 Code section 11361.5 to destroy the physical and CMS records pertaining to Section 11357
4 marijuana offenses, but Defendants have failed to comply with their statutory duty and
5 obligation assuring the timely destruction of such records, in violation of Health and Safety
6 Code section 11361.5.

7 69. Defendants actions in failing to timely destroy records pertaining to Section
8 11357 marijuana offenses and continuing to maintain such records is unauthorized and violates
9 Health and Safety Code section 11361.5 and the California constitutional right to privacy.

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11 **FOURTH CAUSE OF ACTION**

12 **VIOLATION OF GOVERNMENT CODE SECTION 68152**

13 **[As Against All Defendants]**

14 70. Plaintiff and Petitioner refers to and incorporates by reference each and every
15 paragraph above as though set forth fully herein.

16 71. Government Code section 68152(c)(8) states in relevant part: Misdemeanor
17 alleging a marijuana violation under subdivision (b) or (c) of Section 11357 of the Health and
18 Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code: records shall
19 be destroyed, or redacted in accordance with subdivision (c) of Section 11361.5 of the Health
20 and Safety Code, two years from the date of conviction, or from the date of arrest if no
21 conviction, if the case is no longer subject to review on appeal, all applicable fines and fees
22 have been paid, and the defendant has complied with all terms and conditions of the sentence
23 or grant of probation.

24 72. Government Code section 68152(c)(10) states in relevant part: Infraction
25 alleging a marijuana violation under subdivision (a) of Section 11357 of the Health and Safety
26 Code: if records are retained past the one-year minimum retention period, the records shall be
27 destroyed or redacted in accordance with subdivision (c) of Section 11361.5 of the Health and
28 Safety Code two years from the date of conviction, or from the date of arrest if no conviction, if

1 the case is no longer subject to review on appeal, all applicable fines and fees have been paid,
2 and the defendant has complied with all terms and conditions of the sentence or grant of
3 probation.

4 73. Defendants have a statutory duty and obligation pursuant to Government Code
5 section 68152, subdivisions (c)(8) and (c)(10), to destroy the physical and CMS records
6 pertaining to Section 11357 marijuana offenses two years from the date of conviction or from
7 the date of arrest if no conviction, but Defendants have failed to comply with their statutory
8 duty and obligation assuring the timely destruction of such records, in violation of Government
9 Code section 68152.

10 74. Defendants actions in failing to timely destroy records pertaining to Section
11 11357 marijuana offenses and continuing to maintain such records is unauthorized and violates
12 Government Code section 68152 and the California constitutional right to privacy.

13
14 **FIFTH CAUSE OF ACTION**
15 **VIOLATION OF CONSTITUTIONAL RIGHT OF PRIVACY**
16 **[AS AGAINST ALL DEFENDANTS]**

17 75. Plaintiff and Petitioner refers to and incorporate by reference each and every
18 paragraph above as though set forth fully herein.

19 76. Defendants actions described in this complaint and their policy and practice of
20 making the physical and electronic records available to the public pertaining to Section 11357
21 offenses is not authorized by statutory law, and violates the right of privacy protected by the
22 California and federal Constitutions and the equal protection and due process guarantees of the
23 California and federal Constitutions. To the extent that any statutory provision or rule purports
24 to authorize or require Defendants' policy described in this complaint, said provision is
25 unconstitutional and void under the constitutional provisions listed above.

26 77. The state constitutional right of privacy and due process extends to protect
27 criminal defendants from unauthorized disclosure of certain criminal records and the right to be
28 protected from the disclosure of incomplete and inaccurate information.

1 B. The legality of Defendants' maintenance of the physical and electronic records
2 containing thousands of cases pertaining to the arrest or conviction of any person for a
3 violation of Health and Safety Code section 11357 or subdivision (b) of Section 11360. Many
4 of these records have been kept by Defendants for more than a decade after their destruction
5 was required by Health and Safety Code section 11361.5 subdivision (a).

6 C. The legality of Defendants' actions in failing to timely destroy records pertaining to
7 Section 11357 marijuana offenses and continuing to maintain such records is unauthorized and
8 violates Government Code section 68152 and the California constitutional right to privacy.

9 84. The correct interpretation of the statutes and Court rules cited herein is that
10 Defendants' actions unlawfully interfere with the privacy rights of Plaintiff and Petitioner and
11 all others similarly situated.

12 85. Unless Defendants are restrained by a permanent injunction, Plaintiff and
13 Petitioner and all others similarly situated will suffer great and irreparable injury in that their
14 Constitutional and statutory rights of privacy will continue to be violated by Defendants and
15 the criminal history of Plaintiff and Petitioner, and all others similarly situated, will be
16 accessible and disclosed to the general public without any statutory safeguards limiting such
17 disclosure. Plaintiff and Petitioner have no adequate remedy at law because pecuniary damages
18 would not afford adequate relief.

19 86. It is therefore necessary that the Court declare the rights and duties of the parties
20 hereto. Such a declaration is necessary and appropriate because Defendants threatens to
21 continues to enforce their policy and practices against Plaintiff and Petitioner and other persons
22 thereby hindering their ability to obtain and maintain employment, housing, and other benefits
23 and subjecting them to the other injuries described in this complaint and petition.

24
25 **PETITION FOR WRITE OF MANDAMUS**

26 **(CODE CIV. PROC., § 1085)**

27 87. Plaintiff and Petitioner and Petitioners refers to and incorporates by reference
28 each and every paragraph above as though set forth fully herein.

1 88. Defendants and Respondents, maintain, operate, update, and administer on their
2 Superior Court website an accessible, countywide CMS containing personal identification
3 information of Plaintiff and Petitioner, and all others similarly situated, including but not
4 limited to dates of birth.

5 89. Defendants and Respondents, maintain, operate, update, and administer on their
6 Superior Court website an accessible, countywide CMS containing criminal records for
7 violations of Section 11357 marijuana offenses by Plaintiff and Petitioner and all others
8 similarly situated.

9 90. Defendants have a clear and ministerial duty to comply with the provisions set
10 forth in this complaint and petition and to maintain such records so that the CMS contains
11 complete and accurate information. Notwithstanding their duties, Defendants have refused and
12 continue to fail and refuse to perform the duties required by law.

13 91. Plaintiff and Petitioner, and all others similarly situated, has a beneficial interest
14 and a public right and public duty in ensuring that the Constitution and privacy rights statutes
15 of this State are enforced, and personal criminal information is destroyed by Defendants and
16 not disclosed to any member of the general public.

17 92. Plaintiff and Petitioner has a beneficial interest in assuring the performance of
18 Defendants' duties due to his status as a citizen enforcing a public duty.

19 93. Plaintiff and Petitioner, and all others similarly situated, has no plain, speedy,
20 and adequate remedy in the ordinary course of the law other than the issuance by this Court of
21 a writ of mandamus.

22 94. Plaintiff and Petitioner, and all others similarly situated, will continue to have
23 their Constitutional and statutory rights of privacy violated and their criminal records for
24 arrests and/or convictions for violations of Section 11357 marijuana offenses maintained and
25 disclosed by Defendants if the writ is not issued.

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1 **CLASS ACTION ALLEGATIONS**

2 95. This lawsuit is brought on behalf of two ascertainable classes consisting of:

3. The Personal Identification Information Class, defined as:

4 “All persons whose date of birth is accessible through the Sonoma Superior
5 Court website.”

6. The Records Destruction Class, defined as:

7 “All persons who were arrested and/or conviction in Sonoma County after
8 January 1, 1976, of violating Health and Safety Code section 11357, and
9 whose criminal records have been kept by Defendants beyond two years
10 from the date of the conviction, or from the date of the arrest if there was
11 no conviction.”

12 96. Plaintiff and Petitioner reserve the right under Rule 3.765 of the California
13 Rules of Court, to amend or modify the class descriptions with greater specificity or further
14 division into subclasses or limitation to particular issues.

15 97. The members of the class are so numerous that joinder of all members is
16 impracticable. While the exact number of class members is unknown to Plaintiff and Petitioner
17 at this time, such information can be ascertained through appropriate discovery of records
18 maintained by Defendants and their agents.

19 98. A class action is superior to other available methods for the fair and efficient
20 adjudication of this controversy because joinder of all members is impracticable, the likelihood
21 of individual class members prosecuting separate claims is remote, and individual class
22 members do not have a significant interest in individually controlling the prosecution of
23 separate actions. Relief concerning Plaintiff and Petitioner’s rights under the laws alleged
24 herein and with respect to the class as a whole would be appropriate. Plaintiff and Petitioner
25 knows of no difficulty to be encountered in the management of this action precluding its
26 maintenance as a class action.

27 99. There is a well-defined community of interest among the members of the class
28 because common questions of law and fact predominate, Plaintiff and Petitioner’s claims are

1 typical of the class members, and Plaintiff and Petitioner can fairly and adequately represent
2 the interests of the class.

3 100. Common questions of law and fact exist as to all members of the class and
4 predominate over any questions affecting solely individual members of the class. Among the
5 questions of law and fact common to the class are:

6 A. Whether the Defendants have a statutory duty to limit access to individuals'
7 dates of birth pursuant to the Informational Privacy Act of 1977 ;

8 B. Whether the Defendants have a statutory duty to limit electronic access to
9 individuals' dates of birth pursuant to California Rules of Court, rule 2.507;

10 C. Whether the Defendants have a statutory duty to purge and destroy criminal
11 records in accordance with Health and Safety Code section 11361.5;

12 D. Whether the Defendants have a statutory duty to purge and destroy criminal
13 records in accordance with Government Code section 68152;

14 E. Whether Defendants violated their duty to destroy certain criminal records in
15 accordance with Health and Safety Code section 11361.5 and Government Code section 68152;

16 F. Whether Defendants are violating Article I section 1 of the California
17 Constitution by disclosing individuals' dates of birth; and failing to destroy certain criminal
18 records in accordance with Health and Safety Code section 11361.5 and Government Code
19 section 68152.

20 101. Plaintiff and Petitioner's claims are typical of those of the other class members
21 because Plaintiff and Petitioner, like every other class member, were exposed to virtually
22 identical conduct and are entitled to the same equitable relief.

23 102. Plaintiff and Petitioner can fairly and adequately represent the interests of the
24 class and Plaintiff and Petitioner has no conflicts of interest with other class members, and has
25 retained counsel competent and experienced in class actions and civil litigation.

26 103. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy because joinder of all members is impracticable, the likelihood
28 of individual class members prosecuting separate claims is remote, and individual class

1 members do not have a significant interest in individually controlling the prosecution of
2 separate actions. Relief concerning Plaintiff's rights under the laws alleged herein and with
3 respect to the class as a whole would be appropriate. Plaintiff knows of no difficulty to be
4 encountered in the management of this action that would preclude its maintenance as a class
5 action.

6
7 **PRAYER**

8 **WHEREFORE**, Plaintiff and Petitioner demand on behalf of herself, the General
9 Public, and all others similarly situated, judgment against Defendants, and each of them, for the
10 following:

11 1. That the Court determines that this action may be maintained as a class action.

12 **FIRST CAUSE OF ACTION – VIOLATION OF INFORMATION PRACTICES ACT**
13 **OF 1977 [CIVIL CODE § 1798 et seq.]**

14 1. For temporary, preliminary, and permanent injunctive relief preventing
15 Defendants from disclosing in its documents the date of birth of Plaintiff and all others
16 similarly situated to any requestor, unless and until the requestor sustains his, her, or its burden
17 of proof that the requestor is authorized by law to receive such information.

18 2. For mandatory injunction requiring Defendants to promptly submit to the court
19 for approval and adopt and implement a schedule for redacting entries in Defendants'
20 documents that disclose the date of birth of Plaintiff and all others similarly situated.

21 3. For mandatory injunction directing Defendants to submit reports to the court
22 and Plaintiff and Petitioner's counsel regarding Defendants' progress in timely redacting the
23 date of birth of Plaintiff and all others similarly situated.

24 4. For an award of attorney's fees as authorized by the provisions of Civil Code
25 section 1798.46; Code of Civil Procedure section 1021.5; as authorized under the "common
26 fund" doctrine; and as authorized by the "substantial benefit" doctrine.

27 5. For costs of the suit.

28 6. For a determination that Plaintiff is the prevailing party; and

1 7. And for such other relief as the Court may deem proper.

2

3 **SECOND CAUSE OF ACTION – VIOLATION OF CALIFORNIA RULES OF COURT,**
4 **RULE 2.507**

5 1. For temporary, preliminary, and permanent injunctive relief preventing
6 Defendants from disclosing the date of birth of Plaintiff and all others similarly situated on the
7 Sonoma Superior Court website to any requestor, unless and until the requestor sustains his,
8 her, or its burden of proof that the requestor is authorized by law to receive such information.

9 2. For mandatory injunction requiring Defendants to promptly submit to the court
10 for approval and adopt and implement a schedule for redacting entries in Defendants’
11 documents that disclose the date of birth of Plaintiff and all others similarly situated.

12 3. For mandatory injunction directing Defendants to submit reports to the court
13 and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely redacting the
14 date of birth of Plaintiff and all others similarly situated.

15 4. For an award of attorney’s fees as authorized by the provisions of Code of Civil
16 Procedure section 1021.5; as authorized under the “common fund” doctrine; and as authorized
17 by the “substantial benefit” doctrine.

18 5. For costs of the suit.

19 6. For a determination that Plaintiff is the prevailing party; and

20 7. And for such other relief as the Court may deem proper.

21

22 **THIRD, FOURTH, AND FIFTH CAUSE OF ACTION – VIOLATIONS OF**
23 **CALIFORNIA HEALTH AND SAFETY CODE SECTION 11361.5; GOVERNMENT**
24 **CODE SECTION 68152; CAL CONST. ART I § 1**

25 1. For temporary, preliminary, and permanent injunctive relief enjoining
26 Defendants from maintaining and disclosing records of Section 11357 marijuana offenses;

27 2. For mandatory injunction requiring Defendants to promptly submit to the court
28 for approval and adopt and implement a schedule for timely destruction of Section 11357

1 marijuana offenses in both the CMS and other court files;

2 3. For mandatory injunction directing Defendants to submit reports to the court
3 and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely destroying
4 records of Section 11357 marijuana offenses;

5 4. For an award of attorney’s fees as authorized by the provisions of Code of Civil
6 Procedure section 1021.5; as authorized under the “common fund” doctrine; and as authorized
7 by the “substantial benefit” doctrine;

8 5. For costs of the suit;

9 6. For a determination that Plaintiff is the prevailing party; and

10 7. For such other relief as the Court may deem proper.

11
12 **DECLARATORY RELIEF**

13 1. Declare that Defendants’ actions and policies in maintaining and disseminating
14 home addresses and home telephone numbers of individuals whose records are maintained in
15 Defendants’ Court records violates the Information Practices Act of 1977 and the California
16 constitutional right of privacy.

17 2. Declare that Defendants’ actions and policies in maintaining and electronically
18 disseminating dates of birth of individuals whose records are maintained in Defendants’ Court
19 records violates and the California constitutional right of privacy.

20 3. Declare that Defendants’ actions and policies in maintaining and disseminating
21 information pertaining to Section 11357 marijuana offenses to the public by remote electronic
22 access is unauthorized and violates Health and Safety Code section 11361.5, Government Code
23 section 69842, and the California constitutional right of privacy.

24 4. For temporary, preliminary, and permanent injunctive relief preventing
25 Defendants from disclosing the date of birth of Plaintiff and all others similarly situated on the
26 Sonoma Superior Court website to any requestor, unless and until the requestor sustains his,
27 her, or its burden of proof that the requestor is authorized by law to receive such information.

28 ///

1 5. For mandatory injunction requiring Defendants to promptly submit to the court
2 for approval and adopt and implement a schedule for redacting entries in Defendants'
3 documents that disclose the date of birth of Plaintiff and all others similarly situated.

4 6. For mandatory injunction directing Defendants to submit reports to the court
5 and Plaintiff and Petitioner's counsel regarding Defendants' progress in timely redacting the
6 date of birth of Plaintiff and all others similarly situated.

7 7. For temporary, preliminary, and permanent injunctive relief preventing
8 Defendants from disclosing the date of birth of Plaintiff and all others similarly situated on the
9 Sonoma Superior Court website to any requestor, unless and until the requestor sustains his,
10 her, or its burden of proof that the requestor is authorized by law to receive such information.

11 8. For mandatory injunction requiring Defendants to promptly submit to the court
12 for approval and adopt and implement a schedule for redacting entries in Defendants'
13 documents that disclose the date of birth of Plaintiff and all others similarly situated.

14 9. For mandatory injunction directing Defendants to submit reports to the court
15 and Plaintiff and Petitioner's counsel regarding Defendants' progress in timely redacting the
16 date of birth of Plaintiff and all others similarly situated.

17 10. For temporary, preliminary, and permanent injunctive relief enjoining
18 Defendants from maintaining and disclosing records of Section 11357 marijuana offenses;

19 11. For mandatory injunction requiring Defendants to promptly submit to the court
20 for approval and adopt and implement a schedule for timely destruction of Section 11357
21 marijuana offenses in both the CMS and other court files;

22 12. For mandatory injunction directing Defendants to submit reports to the court
23 and Plaintiff and Petitioner's counsel regarding Defendants' progress in timely destroying
24 records of Section 11357 marijuana offenses;

25 13. For an award of attorney's fees as authorized by the provisions of Civil Code
26 section 1798.46; Code of Civil Procedure section 1021.5; as authorized under the "common
27 fund" doctrine; and as authorized by the "substantial benefit" doctrine.

28 14. For costs of the suit.

- 1 15. For a determination that Plaintiff is the prevailing party; and
- 2 16. For such other relief as the Court may deem proper.

3

4 **PETITION FOR WRIT OF MANDATE**

5 Plaintiff and Petitioner prays that an alternative Writ of Mandate be issued:

- 6 1. Commanding Respondents to cease and desist from:
 - 7 a. maintaining and disclosing individuals’ home addresses and home telephone
 - 8 numbers;
 - 9 b. maintaining and electronically disclosing individuals’ dates of birth; and
 - 10 c. maintaining and disclosing records of Section 11357 marijuana offenses;

11 2. For temporary, preliminary, and permanent injunctive relief preventing
12 Defendants from disclosing the date of birth of Plaintiff and all others similarly situated on the
13 Sonoma Superior Court website to any requestor, unless and until the requestor sustains his,
14 her, or its burden of proof that the requestor is authorized by law to receive such information.

15 3. For mandatory injunction requiring Defendants to promptly submit to the court
16 for approval and adopt and implement a schedule for redacting entries in Defendants’
17 documents that disclose the date of birth of Plaintiff and all others similarly situated.

18 4. For mandatory injunction directing Defendants to submit reports to the court
19 and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely redacting the
20 date of birth of Plaintiff and all others similarly situated.

21 5. For temporary, preliminary, and permanent injunctive relief preventing
22 Defendants from disclosing the date of birth of Plaintiff and all others similarly situated on the
23 Sonoma Superior Court website to any requestor, unless and until the requestor sustains his,
24 her, or its burden of proof that the requestor is authorized by law to receive such information.

25 6. For mandatory injunction requiring Defendants to promptly submit to the court
26 for approval and adopt and implement a schedule for redacting entries in Defendants’
27 documents that disclose the date of birth of Plaintiff and all others similarly situated.

28 ///

1 7. For mandatory injunction directing Defendants to submit reports to the court
2 and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely redacting the
3 date of birth of Plaintiff and all others similarly situated.

4 8. For temporary, preliminary, and permanent injunctive relief enjoining
5 Defendants from maintaining and disclosing records of Section 11357 marijuana offenses;

6 9. For mandatory injunction requiring Defendants to promptly submit to the court
7 for approval and adopt and implement a schedule for timely destruction of Section 11357
8 marijuana offenses in both the CMS and other court files;

9 10. For mandatory injunction directing Defendants to submit reports to the court
10 and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely destroying
11 records of Section 11357 marijuana offenses;

12 11. To show cause before this Court at a time and place to be designated why it has
13 not done so; that thereafter this Court issue its peremptory Writ therefore;

14 12. For an award of attorney’s fees as authorized by the provisions of Civil Code
15 section 1798.46; Code of Civil Procedure section 1021.5; as authorized under the “common
16 fund” doctrine; and as authorized by the “substantial benefit” doctrine.

17 13. For costs of the suit.

18 14. For a determination that Plaintiff is the prevailing party; and

19 15. For such other relief as the Court may deem proper.

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Dated: December 8, 2021

FINEMAN ◊ POLINER LLP



Phillip R. Poliner
Neil B. Fineman
Attorneys for Plaintiff,
John Doe

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VERIFICATION

I, John Doe, declare as follows:

I am the petitioner in the above-entitled action. I have read the Complaint and Petition for Writ of Mandate, and know its contents. The facts alleged in the petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 12/7/2021, 2021.


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John Doe, pseudonym