Peter W. McGaw (Bar No. 104691)
pmcgaw@archernorris.com
Edward L. Shaffer (Bar No. 124943)
eshaffer@archernorris.com
Jasun C. Molinelli (Bar No. 204456)
jmolinelli@archernorris.com
Adrian T. Lambie (Bar No. 268247)
alambie@archernorris.com
ARCHER NORRIS
A Professional Law Corporation
2033 North Main Street, Suite 800
Walnut Creek, California 94596-3759
Telephone: 925.930.6600
Facsimile: 925.930.6620

Attorneys for Petitioners and Plaintiffs
CALAVERAS CANNABIS LEGAL DEFENSE FUND, BETH WITTKE, and THOMAS GRIFFING

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CALAVERAS

CALAVERAS CANNABIS LEGAL DEFENSE FUND, a California Nonprofit Mutual Benefit Corporation; BETH WITTKE; and THOMAS GRIFFING,

Petitioners and Plaintiffs,

v.

COUNTY OF CALAVERAS; CALAVERAS COUNTY BOARD OF SUPERVISORS; CALAVERAS COUNTY PLANNING DEPARTMENT; and DOES 1-10, inclusive,

Respondents and Defendants.

Case No. 18CV43043

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

[*Cal. Code Civ. Proc. §§ 257, 1060, 1085 et seq., 1094.5; Cal. Pub. Res. Code §§ 21000 et seq.; Cal. Code Regs. Tit. 14 §§ 15000 et seq.; Cal. Cal. Gov't. Code §§ 25124, 65857, 65090*]

Petitioners and Plaintiffs CALAVERAS CANNABIS LEGAL DEFENSE FUND ("CCLDF"), BETH WITTKE, and THOMAS GRIFFING (collectively, "Petitioners") seek mandamus, declaratory, and injunctive relief to redress violations of Sections 21000 *et seq.* of the Public Resource Code ("CEQA"), Sections 15000 *et seq.* of Title 14 of the California Code of Regulations (the "CEQA Guidelines"), Sections 25124, 65857, and 65090 of the Government

By Fax

Code, the Calaveras County Code, and the Calaveras County General Plan by Respondents and Defendants the COUNTY OF CALAVERAS (the "County"), the CALAVERAS COUNTY BOARD OF SUPERVISORS (the "Board"), and the CALAVERAS COUNTY PLANNING DEPARTMENT (the "Planning Department;" together with the County, and the Board, "Respondents"). In support of their Petition and Complaint, Petitioners aver and allege as follows:

INTRODUCTION

1. Cannabis cultivation has occurred in Calaveras County for many years. Historically, the County has lacked the resources to enforce its land use, zoning, and nuisance laws with respect to most cultivation sites, resulting in substantial environmental harm. The problem was exacerbated by the catastrophic Butte Fire in September, 2015, which produced large quantities of inexpensive burned land and, in turn, increased levels of cannabis cultivation.

2. In early 2016, the Board moved to address these issues by approving a draft Regulatory Ordinance (the "Regulatory Ordinance") to allow and regulate cannabis cultivation, while raising funds for oversight and enforcement through registration fees. The Planning Department commissioned an environmental impact report ("EIR") to study and support adoption of the Regulatory Ordinance. In the interim, the Board adopted an urgency ordinance (the "Urgency Ordinance"), substantially similar to the Regulatory Ordinance, which was intended to freeze cannabis cultivation at its then-existing levels pending completion of the EIR. Additionally, the Board drafted and the County's citizens voted to approve a canopy tax measure to raise money for the County's general fund.

3. In reliance on the County's repeated assurances that the Urgency Ordinance was a "stepping stone" on the path to a permanent regulatory scheme and participation in the state's emerging commercial cannabis program, approximately 900 cultivators, including medical cannabis patients, authorized caregivers, and commercial growers, registered their sites. The County has collected more than $3.8 million in fees and $12.3 million in canopy tax revenue from these cultivators.

///

4. However, beginning in January, 2017, newly-elected members of the Board undertook a dramatic bait-and-switch. Instead of adopting the Regulatory Ordinance, the Board directed County staff to prepare an ordinance banning all commercial cultivation and placing onerous restrictions on personal and caregiver grows. The County also directed its environmental consultant to alter the EIR, which, by then, was nearly complete, to support its newfound ambitions to ban cannabis (the "Ban Ordinance"). As a result of this last-minute change of course, as well as basic methodological errors by the County's consultant, the EIR is deeply flawed and inadequate under CEQA. On January 10, 2018, despite widespread outcry and hundreds of public comments pointing out serious defects in the EIR, the Board voted to adopt the Ban Ordinance and certify the EIR.

5. This Petition and Complaint challenges Respondents' actions, as summarized above, which, if implemented, will have disastrous environmental and economic consequences for the County and its residents, including Petitioners. Specifically, Petitioners have pleaded and will prove that Respondents violated CEQA by failing to adequately remedy the EIR's numerous deficiencies prior to certification. The shortcomings of the EIR are not mere technicalities - Respondents have fundamentally failed to recognize the many real-world consequences of adopting and attempting to enforce the Ban Ordinance, instead of continuing to carefully regulate the cannabis industry. Moreover, the Ban Ordinance directly contravenes the express goals of the County's General Plan, and was adopted using procedures that repeatedly violated the Government Code's provisions concerning zoning ordinances and amendments. In the face of such unlawful and gravely misguided policymaking, it is now in the hands of this Court to safeguard the rule of law and protect the natural beauty and resources of Calaveras County.

PARTIES

6. CCLDF is, and at all times herein was, a community-based organization of citizens, incorporated as a California nonprofit mutual benefit corporation, and dedicated to protecting the natural resources and economic well-being of Calaveras County. It was formed to educate, organize, and empower the County's residents so that they can participate effectively in local planning and land-use processes. Members and supporters of CCLDF use and enjoy the

unique scenic and natural resources of the County, and include cannabis cultivators, medical cannabis patients, and taxpayers. Further, CCLDF, together with its members and supporters, has a beneficial interest in Respondents' compliance with CEQA, the CEQA Guidelines, the Government Code, the Calaveras County Code, and the Calaveras County General Plan. These interests would be directly and adversely impacted by the Ban Ordinance, which violates the law, as set forth herein, which would cause substantial and irreversible harm to the County's environment and economy. The maintenance and prosecution of this action are consistent with the purposes and goals of CCLDF and will confer a substantial benefit on its members, its supporters, and the public at large.

7. Beth Wittke is, and at all times herein was, an individual, residing in Calaveras County. She holds a valid physician's recommendation for medical cannabis, and operates a medical cannabis cultivation site, in good standing, and duly licensed by the County and the State of California.

8. Thomas Griffing is, and at all times herein was, an individual, residing in Calaveras County. He holds a valid physician's recommendation for medical cannabis, and operates a medical cannabis cultivation site, in good standing, and duly licensed by the County and the State of California.

9. The County, a political subdivision of the State of California, is, and at all times herein was, a general law county of the State of California, formed pursuant to Article XI, Section 1 of the California Constitution and organized pursuant to Sections 23000 *et seq.* of the Government Code. The County is responsible for regulating and controlling planning and land use in the unincorporated territory of Calaveras County in accordance with the law.

10. The Board is, and at all times herein was, the elected legislative body of the County. The official duties of Board include, but are not limited to, enacting zoning ordinances, and implementing and complying with CEQA, the CEQA Guidelines, the Government Code, the Calaveras County Code, and the Calaveras County General Plan.

11. The Planning Department is, and at all times herein was, a department of the County. The official duties of the Planning Department include, but are not limited to guiding the

County's planning and land-use processes, and making recommendations to the Board to assist its enactment of zoning ordinances, and its implementation and compliance with CEQA, the CEQA Guidelines, the Government Code, Calaveras County Code, and the Calaveras County General Plan. The Planning Department is the "lead agency," as defined in Section 21067 of the Public Resources Code, for purposes of the EIR.

12. The true names and capacities of Respondents and Defendants sued herein as Does 1-10, inclusive, are presently unknown to Petitioners, who therefor sue these parties by their fictitious names. Petitioners will amend this Petition and Complaint to allege the true names and capacities of Does 1-10, inclusive, after the same have been ascertained. Petitioners are informed and believe that each of these fictitiously-named Respondents and Defendants is responsible in some manner for the acts and omissions upon which this action is based.

JURISDICTION AND VENUE

13. The Court has jurisdiction over this action pursuant to Sections 21167, 21168, and 21168.5 of the Public Resources Code, and Sections 527, 1085 *et seq.*, and 1094.5 of the Code of Civil Procedure.

14. Venue is proper in Calaveras County, because it is where the Ban Ordinance was adopted, where the EIR was approved, and where the environmental and economic impacts of said ordinance will primarily occur.

15. Petitioners have complied with the requirements of Section 21167.5 of the Public Resources Code by serving a written notice of their intention to commence this action on the County on or before February 13, 2018. A copy of said written notice and a proof of service are attached hereto as Exhibit A.

16. Petitioners will comply with the requirements of Section 21167.6 of the Public Resources Code by concurrently filing and serving a request that Respondents prepare the record of administrative proceedings relating to this action.

17. Petitioners will comply with the requirements of Section 21167.7 of the Public Resources Code by providing written notice of this Petition and Complaint to the California Attorney General in a timely manner.

18. Petitioners have performed any and all conditions precedent to filing this instant action and have exhausted any and all available administrative remedies to the extent required by law. CCLDF, through its members, supporters, and counsel, together with Ms. Wittke and Mr. Griffing, actively participated in the CEQA review process, submitted written and/or oral comments regarding the EIR and the various cannabis ordinances considered by Respondents, and objected to the Ban Ordinance. Each of the legal deficiencies asserted in this Petition was timely raised by Petitioners or others.

19. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law unless this Court grants the remedies requested herein. In the absence of such remedies, Respondents' certification of the EIR and adoption of the Ban Ordinance will remain in effect in violation of the law.

STATEMENT OF FACTS

A. California, Along with 29 Other States, Legalizes and Regulates Cannabis with the Tacit Approval of the Federal Government

20. On November 5, 1996, California voters passed Proposition 215, titled "The Compassionate Use Act" ("CUA"), which legalized the cultivation, possession, and use of cannabis by medical patients. The CUA also provided legal protection for authorized caregivers, who cultivate and possess cannabis on behalf of said patients. *See Cal. Health & Safety Code § 11362.5*.

21. To expand and clarify the CUA's implementation, the California Legislature enacted the Medical Marijuana Program Act ("MMPA"), which took effect on January 1, 2004 and established an I.D. system for medical cannabis. The MMPA also recognized the right of patients and caregivers to associate collectively or cooperatively to cultivate medical cannabis. *See Cal. Health & Safety Code § 11362.7, et seq.*

22. On October 19, 2009, United States Attorney General David Ogden issued a memorandum, directing federal prosecutors in states with medical cannabis regulations to deprioritize the prosecution of compliant businesses and individuals. Substantially similar memoranda were subsequently issued by United States Deputy Attorney General James Cole.

23. On December 16, 2014, President Barack Obama signed the Consolidated and Further Continuing Appropriations Act of 2015, containing language known as the Rohrabacher–Farr Amendment, which prohibits the expenditure of federal funds to prosecute cases against medical cannabis patients and providers, including businesses, in states where medical cannabis use is legal. The substance of the Rohrabacher–Farr Amendment has been repeatedly extended under various other names, including under the administration of President Donald Trump, and remains in effect until at least March 23, 2018. *See H.R. 195 (2018).*

24. On September 11, 2015, the California legislature enacted the Medical Marijuana Regulation and Safety Act ("MMRSA"), instituting a comprehensive licensure and regulatory scheme for the commercial cultivation, manufacturing, distribution, transportation, laboratory testing, and dispensing of medical cannabis through numerous changes and additions to the Business and Professions Code and the Health and Safety Code. MMRSA also legalized and regulated for-profit commercial activity related to medical cannabis in California. Additionally, MMRSA initially directed counties to establish their own regulations or prohibitions by March 1, 2016, absent which state-level regulations would control. That provision was ultimately repealed by the legislature before it could take effect. MMRSA has been subsequently amended and renamed the Medical Cannabis Regulation and Safety Act ("MCRSA").

25. On November 8, 2016, California voters passed Proposition 64, titled "The Control, Regulate and Tax Adult Use of Marijuana Act" ("AUMA"), which legalizes, regulates, and taxes the adult use of cannabis for recreational purposes. Drawing on MCRSA, AUMA provides an extensive regulatory framework for the commercial cultivation, manufacturing, distribution, transportation, laboratory testing, and dispensing of adult-use recreational cannabis. The law also ensures the right of all adults over the age of 21 to cultivate up to six plants for personal use, subject only to "reasonable regulations" by local authorities.

26. To date 29 other states have joined California in legalizing cannabis for medical purposes, and 8 other states have legalized it for adult-use recreational purposes.

27. On June 27, 2017, the California legislature enacted the Medical and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") in order to create a unified regulatory

scheme for medical and adult-use recreational cannabis. MAUCRSA directs the California Bureau of Cannabis Control ("BCC"), the California Department of Public Health ("CDPH"), and the California Department of Food and Agriculture ("CDFA") to issue regulations for the licensure oversight of all commercial cannabis in the state.

28. On November 17, 2017, the BCC, the CDPH, and the CDFA issued emergency licensing regulations (the "State Licensing Regulations"), pursuant to their authority under MAUCRSA. The State Licensing Regulations provide, *inter alia*, for the issuance of temporary and annual licenses to commercial cannabis cultivators that are in good standing with their local jurisdiction.

29. Like many cannabis cultivators in Calaveras County, including members of CCLDF, Ms. Wittke and Mr. Griffing have applied for and obtained valid and current cultivation licenses from the CDFA.

B. The County Approves a Regulatory Ordinance, Adopts an Urgency Ordinance, and Collects Millions of Dollars in Fees and Taxes while an EIR for the Regulatory Ordinance is Being Prepared

30. On February 14, 2005, the Board adopted Ordinance No 2830, adding Chapter 17.91 to the Calaveras County Code, which authorizes and regulates medical cannabis dispensaries in unincorporated areas of the County. Under the provisions of this ordinance, three licensed medical cannabis dispensaries have been established and are currently operating.

31. On February 16, 2016, the Board held a study session concerning the cultivation of medical cannabis in Calaveras County, and approved a draft ordinance authorizing and regulating said cultivation in unincorporated areas of the County (the "Regulatory Ordinance"). The Board directed County staff to take the necessary steps for final adoption and implementation of the Regulatory Ordinance.

32. At a subsequent meeting of the Board on March 29, 2016, County Counsel, Megan Stedtfeld, read an announcement into the record, stating, in relevant part, that:

> While evaluating the policy direction and language of the permanent ordinance, staff determined that the County will need to prepare a programmatic EIR in compliance with CEQA. Planning intends to issue a Notice of Preparation within the next week. That is the first step for preparation of an EIR. We realize the EIR will delay the adoption of a permanent ordinance by potentially up to 12 months,

> but is necessary to protect the County from a legal challenge that would cause even greater delays.
>
> The EIR would be programmatic, looking at the general scope of the ordinance and how ***permitting a broad range of cannabis-related activities*** would impact the environment. Mitigation measures would then be developed to reduce those impacts. This will also hopefully eliminate the need to prepare environmental documents for each permit the County ultimately issues.
>
> Finally, because many other jurisdictions put bans in place prior to the March 1 deadline [originally imposed by MMRSA] being lifted with the passage of AB21, the County has seen a flooding of the real estate market, as well as other issues where cannabis-related activities are being established or applied for in zones that the Board has already directed staff to not allow the use in. To address these immediate issues, as well as the length of time it will take to fully study the environmental effects of a permanent ordinance, an urgency ordinance will be presented to the Board for adoption. ***The intent is to allow and regulate cultivation that was here and in the zones the Board wants them in as of the date of the last study session***, freezing it there until a permanent ordinance can be completed and passed. It is essentially ***a stepping stone in the process*** and an effort to curb unmitigated growth until after the environmental effects of this future growth can be studied.

(Emphasis supplied.)

33. On April 4, 2016, the Planning Department issued a Notice of Preparation of an Environmental Impact Report for the Medical Cannabis Cultivation and Commerce Ordinance (the "Notice of Preparation"). The Notice of Preparation, provides, in relevant part that:

> On February 16, 2016 the Calaveras County Board of Supervisors provided direction to County staff regarding preparation of an ordinance regulating the cultivation and commerce associated with medical cannabis, consistent with the provisions of [MMRSA]. Calaveras County has an existing ordinance regulating medical cannabis dispensaries, but does not have a regulatory framework for cultivation or other cannabis-related activities. The Board of Supervisors ***recognized that there are numerous growers currently operating in the County and that there would be a benefit to permitting and regulating this industry***, especially given the new state laws legalizing commercial cultivation and commerce of medical cannabis. In addition, ***the County plans to permit and regulate other commercial cannabis activities*** associated with medical cannabis, including distributing, manufacturing and transporting.

(Emphasis supplied.)

34. In accordance with the Notice of Preparation, Respondents engaged Ascent Environmental (the "Consultant") to prepare the EIR, assessing the environmental impacts of the Regulatory Ordinance. Respondents allocated $172,127 for the cost of the EIR, to be initially

///

paid out of the County's general fund, which would then be reimbursed using fees collected from cannabis cultivators.

35. On May 10, 2016, the Board considered and adopted Ordinance No. 3069, titled "An Urgency Ordinance Adding Chapter 17.95 to the Calaveras County Code Regulating Medical Cannabis Cultivation and Commercial Uses Involving Medical Cannabis Pending Environmental Review and Adoption of a Permanent Ordinance" (the "Urgency Ordinance"). As indicated by its title, the Urgency Ordinance added Chapter 17.95 to the Calaveras County Code, which authorizes and regulates the operation of medical cannabis cultivation sites in unincorporated areas of the County, provided said sites were in operation or preparing to operate by May 10, 2016. The Urgency Ordinance has been extended twice and will expire on February 14, 2018.

36. The legislative intent of the Urgency Ordinance was set forth in the agenda packet for the May 10, 2016 Board meeting, and provides, in relevant part:

> On February 16, 2016, the Board of Supervisors directed staff to draft an ordinance ***allowing but regulating medical cannabis cultivation and medical cannabis commercial uses within the County of Calaveras***. This ordinance will require the preparation of a programmatic environmental impact report before it can be adopted, and this process has the potential to take twelve months to complete.
>
> […]
>
> The benefit of taking [immediate] action to affirmatively regulate medical cannabis cultivation is that the County will gain a registry of growers who have been previously hidden and who will now be far more easily inspected and regulated, and the County will gain a much-needed funding source to enforce its own rules and to root out the growers who remain noncompliant.

(Emphasis supplied.)

37. Consistent with this legislative intent, the Urgency Ordinance required cultivators to, *inter alia*: (1) register their sites with the County; (2) consent to rigorous inspections; (3) submit to comprehensive background checks; (4) demonstrate compliance with all regulations of the Central Valley Water Quality Control Board; (5) obtain a business license from the County; and (6) and obtain a seller's permit from the state Board of Equalization (now the California Department of Taxes and Fees Administration). The Urgency Ordinance further established

annual registration fees for cultivators in the amounts of $100 for personal use growers, $200 for caregivers, and $5,000 for commercial cultivators.

38. As required by the Urgency Ordinance, approximately 900 cannabis cultivators in the unincorporated areas of Calaveras County, including members and supporters of CCLDF, Ms. Wittke, and Mr. Griffing, registered their cultivation sites, collectively paying in excess of $3.8 million in registration fees to the County. On November 29, 2017, the Chairwoman of the Calaveras County Planning Commission (the "Planning Commission"), Lisa Muetterties, announced that approximately 503 registrants continued to cultivate and remained in good standing, with their registrations classified as either "pending" or "approved."

39. Seeking to derive additional revenue from the cannabis industry, the Board also directed County staff to prepare a commercial cannabis tax measure. On June 21, 2016, the Board approved the measure for submittal to the County's voters, and it was placed on the November, 8, 2016, ballot as "Measure C." Measure C passed by a significant margin, with widespread backing from registered cannabis cultivators.

40. Measure C, codified as Chapter 3.56 of the Calaveras County Code, imposes a tax of $2.00 per square foot of canopy on outdoor cultivation and $5.00 per square foot of cannabis cultivation on indoor cultivation (the "Measure C Tax"). The Measure C Tax is collected twice per year, with proceeds going directly to the County's general fund. Petitioners are informed and believe that the County has collected approximately $12.3 million in Measure C Tax revenue to date. Members and supporters of CCLDF, Ms. Wittke, and Mr. Griffing have paid all taxes due under Measure C.

C. Abruptly Reversing Course, the Board Tries to Repurpose the EIR at the Last Minute to Support a Ban Instead of Regulation

41. In January, 2017, following the election of four new Supervisors, the Board suddenly changed course on cannabis policy in the County.

42. On January 31, 2017, in direct contravention of the County's numerous assurances that the Urgency Ordinance was a "stepping stone" towards the establishment of a permanent

///

regulatory ordinance, the Board instructed County staff to draft an ordinance banning all commercial cannabis cultivation in the County.

43. Petitioners are informed and believe that, during the same period, Respondents instructed the Consultant to abruptly refocus the EIR, which was nearing completion, from consideration of the Regulatory Ordinance to consideration of a hypothetical ban. (Nonetheless, Respondents reimbursed the County's general fund for the Cost of the EIR - effectively forcing cultivators to pay for an ordinance that would eliminate their own livelihoods.)

44. The draft ban ordinance was posted on the County's website on or about April 27, 2017.

45. On May 1, 2017 - only four days after posting of the draft ban ordinance - the Planning Department released Respondents' Draft Environmental Impact Report (the "Draft EIR") and issued a Notice of Availability, triggering a 45-day public comment period under CEQA.

46. Tellingly, the Regulatory Ordinance remained the principle "project" for purposes of the EIR, garnering 184 pages of purported analysis in the "project" evaluation section of the Draft EIR entitled "Environmental Setting, Impacts and Mitigation Measures." Although a brief description of a hypothetical ban ordinance was inserted at the end of the Draft EIR's "Project Description" section, the hypothetical ban ordinance "project" was not included in the Draft EIR's 184 pages of "project" evaluation. Instead, the Draft EIR's cursory discussion of the hypothetical ban ordinance was relegated to just four pages near the end, in which it was denoted simply as "Alternative 2."

47. Petitioners, together with dozens of other interested parties, submitted comments that identified and detailed numerous flaws in the Draft EIR, including, without limitation: (1) the Draft EIR used the wrong "baseline" facts about existing conditions, distorting its study of future effects; (2) the Draft EIR treated all cannabis farms that will be permitted as new, grossly exaggerating the impacts of regulation; (3) the Draft EIR did not study the Ban Ordinance that was ultimately adopted, but rather a hypothetical and substantially different ban, identified as "Alternative 2;" (4) information and explanations were missing to support the Consultant's claims

about impacts or the lack thereof; (5) many serious impacts of Alternative 2 were ignored or glossed over; (6) the weighing of impacts was heavily biased to make the Regulatory Ordinance look worse and make Alternative 2 look better than is reasonable; and (7) after the Draft EIR was revised in response to public comments, Respondents failed to recirculate it as required by CEQA.

48. On September 5, 2017, the Final Environmental Impact Report (the "Final EIR"), dated September, 2017, was posted on the County's website. (For purposes of this Petition, the Draft EIR and the Final EIR are referred to together as the "EIR.") The Final EIR restated public comments received during the public comment period, along with the County's responses to those comments.

49. The Final EIR fails to adequately address or cure the flaws of the Draft EIR and does not comply with CEQA. As set forth in detail below, problems with the Final EIR and the County's responses to public comments include, but are not limited to: (1) the Final EIR ignored, misinterpreted or glossed over many critical comments; (2) the County refused to conduct additional studies or supply missing technical information needed to explain and support analyses and conclusions in the Draft EIR; (3) the Final EIR continued to base its study of Alternative 2 on generalized and misleading "cannabis ban" descriptions rather than specific and contrary terms in the Ban Ordinance; (4) the County refused to recognize potential significant impacts of the Ban Ordinance, even though the Final EIR admitted that impacts might occur because "***it is impossible to speculate on all possible responses to a ban***"; (5) the Final EIR wrongly claimed that it did not have to study environmental impacts of indoor residential cultivation because state law prevented its regulation by the County; (6) the Final EIR continued to use overly conservative assumptions about impacts under the Regulatory Ordinance while assuming the best under the Ban Ordinance; (7) the County refused to consider the overall effect of its regulations on availability of medical cannabis to residents in need; (8) the Final EIR ignored reality and continued to treat all farms approved under the Regulatory Ordinance as newly created with all-new impacts; and (9) the County refused to recirculate a revised Draft EIR for public review.

///

D. The Board Ignores Serious Defects in the EIR and Commits Multiple Procedural Violations on the Way to Adopting a Ban

50. On September 28, 2017, the Planning Commission held a hearing on adoption of the EIR, as well as the draft ban ordinance that County staff had previously prepared at the direction of the Board. After a lengthy debate, the Planning Commission recommended that the Board adopt the EIR. With respect to cannabis policy, the Commission forwarded two "equally-weighted" alternatives to the Board: (1) a regulatory ordinance, based on the Regulatory Ordinance, but revised by the Commission (the "Planning Commission Regulatory Ordinance"); or (2) the previously prepared draft ban ordinance, also revised by the Commission (the "Planning Commission Ban")

51. The Board took up the Planning Commission's recommendations at a two-day special meeting that spanned October 17 and 18, 2017. During the public comments, Supervisors Dennis Mills and Clyde Clap walked off the dais while a resident was making comments in favor of regulation. The meeting ultimately ended in chaos after Supervisor Mills abruptly produced an anti-cannabis manifesto, titled "Cultivating Disaster," which he had secretly prepared using County resources without any authorization. The ostensible purpose of the adjournment was to allow the Supervisors and Consultant to review and consider "Cultivating Disaster," even though the CEQA comment period on the Draft EIR had ended and the Final EIR had already been posted.

52. On October 24, 2017, the Board reconvened to discuss the Planning Commission's recommendations. However, the Supervisors were unable to reach a consensus on either ordinance recommended by the Planning Commission. Instead, the Board directed County staff to further revise the Planning Commission Regulatory Ordinance to include a series of highly-restrictive provisions sought by Supervisor Gary Tofanelli (the "First Tofanelli Ordinance").

53. On November 29, 2017, although revisions to the Planning Commission Regulatory Ordinance were not yet complete, the Planning Commission held another hearing on the EIR and the County's cannabis policy. The haphazard nature of the County's process is evidenced in the agenda packet for the meeting, which states, relevant part:

> It is also important to note that this is still a work in progress. With the deadline of the hearing on November 29 looming, staff is still working with various state agencies and with departments within the County to finalize some of the provisions.

Despite the evolving and uncertain nature of the project, which by this time had changed dramatically from the Regulatory Ordinance considered by the Consultant, the Planning Commission again recommended adoption of the EIR. As before, the recommendation to adopt the EIR was accompanied by two divergent but nonetheless "equally-weighted" recommendations regarding cannabis policy: (1) a further revised version of the Planning Commission Regulatory Ordinance that, despite the Board's direction, incorporated only some of the First Tofanelli Ordinance's provisions and omitted or watered down others; or (2) the Planning Commission Ban, as previously recommended on September 28, 2017.

54. The Board held another special meeting on cannabis policy on December 19, 2017. Following the conclusion of public comments, and before any other Supervisor had even spoken, Supervisor Mills moved to adopt the Planning Commission Ban. Supervisor Clapp provided a second and joined Supervisor Mills in voting for the motion, but it was defeated with all other Supervisors voting against. However, because three votes could not be found for any alternative, the item was continued until another special meeting on December 21, 2017.

55. At the December 21, 2017 meeting, Supervisor Tofanelli requested that staff make more changes to the First Tofanelli Ordinance, and despite having just voted against the Planning Commission Ban, also moved to reconsider it. After an audience member called a point of order on Supervisor Tofanelli's motion, County Counsel informed the Board that, per the Board's Rule of Procedure No. 31, the motion to reconsider would only be proper if: (1) it was agendized for a future meeting; or (2) every member of the public who was present when the underlying motion was originally voted down on December 19, 2017 was returned to the chamber. Rule of Procedure No. 31 provides, in relevant part:

> A motion to reconsider shall be in order during the meeting at which the action to be reconsidered took place provided members of the public in attendance during the original action are still present in the Board chamber. In all other cases, motions for reconsideration must be placed on a future agenda for action.

Notwithstanding counsel's advice, and the Supervisors' acknowledgement that it would be impracticable to bring back every member of the public who had been in the packed chamber two days earlier, the Board proceeded to a vote on Supervisor Tofanelli's motion to reconsider the Planning Commission Ban. Prior to voting, Supervisor Jack Garamendi stated from the dais:

> We have really created a Frankenstein here guys, and just because you put a tutu on it isn't going to make it a ballerina this is not going … this not a functional ordinance that we're going to be reconsidering, but now I'm ready for the roll call [vote].

The motion carried nonetheless, and staff was directed to bring back the Planning Commission Ban with further modifications, together with a revised version of the First Tofanelli Ordinance, at a special meeting on January 10, 2018.

56. County staff implemented the Board's instructions, creating two new ordinances, consisting of heavily-modified versions of the Planning Commission Ban and the Tofanelli Ordinance. (These new ordinances are hereinafter referred to as the "Ban Ordinance" and the "Second Tofanelli Ordinance," respectively.) The Board did not refer either of the new ordinances back to the Planning Commission, thereby violating Section 65857 of the Government Code, which provides, with respect to proposed zoning ordinances:

> The legislative body may approve, modify or disapprove the recommendation of the planning commission; provided that any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for report and recommendation, but the planning commission shall not be required to hold a public hearing thereon.

57. Consequently, when notice of the January 10, 2018 special meeting was published in the County's newspaper of record, the Valley Springs News, on December 28, 2017, it did not include any recommendations from the Planning Commission. Indeed, no such recommendations existed because the Commission never reviewed the Ban Ordinance or the Second Tofanelli Ordinance. This omission rendered the notice defective under Section 65090 of the Government Code. *Environmental Defense Project of Sierra County v. County of Sierra*, 158 Cal.App.4th 877, 880 (Section 65090 requires notice of a legislative hearing on a zoning ordinance to include planning commission recommendations).

58. At the January 10, 2018 special meeting, the Board again held a hearing on the matters of cannabis policy and adoption of the EIR. The two alternatives before the Supervisors, the Ban Ordinance and the Second Tofanelli Ordinance, bore virtually no resemblance to the Regulatory Ordinance that served as the "project description" for the EIR or even to the hypothetical ban ("Alternative 2") that was shoehorned into the Draft EIR shortly before its completion. Notwithstanding this fundamental procedural flaw in the environmental review process, as well as the numerous substantive deficiencies of the EIR identified in public comment, and with thousands of livelihoods hanging in the balance, Supervisor Tofanelli joined Supervisors Mills and Clapp and voted to enact the Ban Ordinance and adopt the EIR.

FIRST CAUSE OF ACTION

(Violation of CEQA – Inadequate Notice of Preparation)

59. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

60. CEQA requires the agency controlling the preparation of an EIR (the "Lead Agency") to issue a Notice of Preparation in order to solicit guidance on the scope of the EIR. The Notice of Preparation must provide enough information to allow recipients to make a "meaningful response" suggesting environmental issues, alternatives and mitigation measures that the EIR should analyze. The information must include an accurate description of the project and its probable environmental effects. *Cal. Pub. Res. Code §§ 21080.4(a), 21092.3; CEQA Guidelines §15082.*

61. If two proposals are being considered for approval, both must be treated as "projects" and the Notice of Preparation must identify and describe both projects. When a project being studied by an EIR changes in a material way a new Notice of Preparation must be prepared.

62. The Notice of Preparation prepared by Respondents describes the project as the "***Medical*** Cannabis Cultivation and Commerce Ordinance." (Emphasis supplied). It describes a proposal by the Board to regulate cultivation and related commercial ***medical*** cannabis activities such as distribution, manufacture and transportation, and specifically states that "there would be a benefit in ***permitting*** and ***regulating*** this industry." (Emphasis supplied).

63. Respondent's Notice of Preparation does not describe a project to permit and regulate ***recreational*** cannabis, nor does it identify a project ***completely banning all cannabis activity*** and intrusively regulating personal indoor cultivation.

64. Nonetheless, the EIR's "project description" expressly includes a "total ban" ordinance. No Notice of Preparation for any "total ban" project was ever prepared or circulated, depriving the public and other public agencies of the opportunity to know and understand from the outset the project being studied by the EIR and have input at scoping meetings. When the project changed from the ***regulation*** of ***medical*** cannabis to ***banning both medical and recreational*** cannabis, a new or revised Notice of Preparation was required.

65. The Notice of Preparation was deficient, inadequate, and failed to meet the requirements of CEQA in that it did not accurately identify the "project" that was to be evaluated by the EIR. As a result, the environmental review process was tainted from the start, rendering the EIR defective, and requiring invalidation of the Board's certification of the EIR and adoption of the Ban Ordinance.

66. Respondents' actions as described herein, individually and collectively, constitute a prejudicial abuse of discretion in that they reflect a failure to proceed in the manner required by law, and in that they reflect actions that are not supported by findings, and Respondents' findings are not supported by substantial evidence. Respondents' certification of the EIR and adoption of the Ban Ordinance must be declared void and set aside and the matter remanded to Respondents for proper consideration.

WHEREFORE, Petitioners pray for relief as set forth below.

SECOND CAUSE OF ACTION

(Violation of CEQA – Improper and Inconsistent Baseline for Impact Study)

67. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

68. CEQA defines "baseline" as the "physical environmental conditions ... as they existed at the time ... the notice of preparation is published." *CEQA Guidelines § 15125(a).* The baseline includes all existing conditions, including those may be illegal or unpermitted. Failing to

consider the appropriate baseline can result in either an understatement or an overstatement of the environmental impacts of projects or their alternatives. Moreover, relying on one set of baseline conditions when considering a project and a different set of baseline conditions when considering an alternative project can result in erroneous, misleading and deceptive conclusions about the relative impacts, and the relative merits, of projects and their alternatives.

69. The EIR fails to establish the appropriate baseline for multiple reasons. For example, the EIR acknowledges there are as many as 1500 cannabis farms operating in Calaveras County. Hundreds of those have been permitted under the Urgency Ordinance; however, hundreds of others have submitted permit applications under the Urgency Ordinance that remain unprocessed by the County or have recognized the futility of doing so in light of the County's permit-processing backlog. Many other cannabis farms continue to operate outside the regulatory framework of the Urgency Ordinance. The EIR acknowledges that the locations of over 500 unregistered cannabis farms were readily identified simply by evaluation of aerial images.

70. Nonetheless, the EIR's baseline for its evaluation of the impacts of the Regulatory Ordinance ignores the existing cannabis farms. The EIR makes the unsupported and clearly erroneous assumption that all farms that would be permitted under the Regulatory Ordinance would be ***new*** operations and thus will generate impacts that are not part of the existing baseline: "[F]or the purposes of this analysis, the EIR generally assesses the reasonably foreseeable compliance responses identified in Chapter 2 (Project Description) as ***new*** development under the proposed ordinance …" *Draft EIR § 3.1, p. 2* (emphasis supplied). The EIR's assessment of impacts ignored that most, if not all, of the activity that was anticipated to occur under the Regulatory Ordinance already existed and, therefore, should have been treated as baseline conditions, not as new impacts.

71. Going astray even further, the EIR establishes a contradictory and inconsistent baseline for the hypothetical "ban ordinance" project. While the baseline for the Regulatory Ordinance ***excludes*** existing farms, treating all future permitted cultivation activity under the Regulatory Ordinance as "new" activity, the EIR, and Respondents' findings, declare that the baseline for the hypothetical "ban ordinance" project, and for the Ban Ordinance, ***includes*** all

existing farms, concluding there will be no increase in cannabis farming activity and hence no impact. *Findings of Fact § VIII, p. 8*.

72. The EIR also fails to identify the proper baseline with regard to socioeconomic impacts that may affect the physical environment. *CEQA Guidelines § 15131*. No information is provided regarding local businesses serving existing cannabis farms (i.e., their number, location, clustering, the types of businesses, or their reliance on income derived from supporting cannabis-related operations). Shutting down an entire cannabis industry that provides millions of dollars in revenue to the County and to local communities threatens to shutter business that support and rely directly and indirectly on income from the cannabis industry, including agricultural supply businesses, local hardware stores, local restaurants, and others. The EIR also fails to acknowledge the impact on public services such as libraries, community organizations, public health and human services, first responders, law enforcement, public safety and other County-provided services that will sharply feel the loss of current, cannabis-industry-related tax revenue. Without a proper socioeconomic baseline, the potential for blight and decay that may arise from closure of cannabis-industry-supporting businesses goes unevaluated, as does the impact on public services and facilities.

73. The EIR is deficient, inadequate, and fails to meet the requirements of CEQA in that it does not establish an appropriate and consistent baseline against which to evaluate and compare potential environmental impacts of the Regulatory Ordinance, a hypothetical "ban" of all commercial cannabis activity, and the Ban Ordinance ultimately adopted.

74. Respondents' actions as described herein, individually and collectively, constitute a prejudicial abuse of discretion in that they reflect a failure to proceed in the manner required by law, and in that they reflect actions that are not supported by findings, and Respondents' findings are not supported by substantial evidence. Respondents' certification of the EIR and adoption of the Ban Ordinance must be declared void and set aside and the matter remanded to Respondents for proper consideration.

WHEREFORE, Petitioners pray for relief as set forth below.

///

THIRD CAUSE OF ACTION

(Violation of CEQA – Inaccurate and Deceptive Project Description)

75. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

76. CEQA requires that an EIR include an accurate project description, and that the nature and objective of the project or projects, and any alternatives, be fully and accurately disclosed and fairly evaluated.

77. The Draft EIR variously describes the "ban alternative" project as a ban on "cultivation and commercial activities associated with ***medical*** cannabis" or, elsewhere, as "a countywide ban on commercial cannabis operations." These two contradictory descriptions of the "ban alternative" are inconsistent and misleading.

78. Furthermore, the description of the "ban alternative," which was described only in general terms in the Draft EIR, is inaccurate, misleading, and does not match the adopted Ban Ordinance. As just one example, the Draft EIR claims that the ban alternative would "require the restoration of existing sites to pre-existing conditions" and that sites would "return to a more natural condition." *Draft EIR § 6.3.2, pp. 6-7*. However, the actual adopted Ban Ordinance expressly states that its provisions "do ***not*** require restoration of the site to its pre-cannabis cultivation condition but require the site to be reclaimed … to a condition that allows for suitable subsequent use of the property." *Ban Ordinance § 17.95.050.C* (emphasis supplied). Thus, the actual Ban Ordinance will result in future development of former cannabis sites, not their return to "natural conditions," a result not evaluated by the EIR.

79. Additionally, the Draft EIR claimed that the ban alternative will allow residents to grow six cannabis plants indoors subject to "reasonable regulations." *Draft EIR § 6.3.2, pp. 6-5*. There is no other information about the nature of those regulations. However, the adopted Ban Ordinance in fact imposes substantial burdensome and intrusive requirements on residents and caregivers. Under the Ban Ordinance, every resident wanting to grow cannabis must register with the County, must declare whether the cannabis will be used for medical or recreational use –an unnecessary invasion of privacy and a violation medical information privacy laws, and must

agree to indemnify the County. The registration must be renewed annually with yet-to-be determined yearly fees. Any violation is subject to code enforcement, fines of $1,000 per day, and civil or criminal prosecution. Absentee owners are liable for violations by their tenants – a substantial burden and risk to owners. By failing to accurately describe the burden and severe intrusion of personal privacy required to grow cannabis for personal medical or recreational use, the Draft EIR deprived the public of an opportunity to evaluate and comment on these issues.

80. Respondents' actions, individually and collectively, including, without limitation, their certification of the EIR and adoption of the Ban Ordinance, constitute a prejudicial abuse of discretion and reflect a failure to proceed in the manner required by law. Respondents' actions are not supported by Respondents' findings, and Respondents' findings are not supported by substantial evidence. Respondents' certification of the EIR and approval of the Ban Ordinance are void and must set aside and the matter remanded to Respondent for proper consideration.

WHEREFORE, Petitioners pray for relief as set forth below.

FOURTH CAUSE OF ACTION

(Violation of CEQA - Failure to Provide Information upon which EIR Conclusions and Ban Ordinance Approval Findings are Based)

81. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

82. To achieve CEQA's broad informational purpose, all documents and data relied upon in reaching an EIR's conclusions must be available for public review. *Cal. Public Res. Code § 21092(b)(1).* Without access to the data and methodologies relied upon by an EIR, the public cannot reasonably assess or informedly comment upon the validity of the EIR's conclusions and thus, the advisability of approving a project or any alternatives.

83. The EIR fails to comply with CEQA in that it fails to provide information, analysis, and supporting data for a number of topics, including but not limited to:

a. The number of employees assumed to be at cannabis farms during an entire harvest season;

///

b. The directions and times of employee commuting that affect traffic during peak time and in peak directions;

c. The amount of emissions from employee vehicles and farm operations;

d. The acreage of land that will be used for farms;

e. The acreage of native vegetation that will be removed;

f. The number of permits expected to be approved;

g. The number of existing cannabis farms that were registered under the Urgency Ordinance but are not expected to receive permits under the Regulatory Ordinance;

h. The conclusions that, under a ban alternative or the Ban Ordinance, all – or any – existing cannabis farms will cease operation under the "ban alternative;"

i. The conclusions that, under a ban alternative or the Ban Ordinance, all - or any - existing cannabis farm sites will be "cleaned up;"

j. Its conclusions that, under a ban alternative or the Ban Ordinance, all - or any - existing cannabis farm sites will revert to natural conditions; and

k. Its conclusions that all potentially-adverse environmental impacts of a ban alternative or the Ban Ordinance will be inconsequential and need not be mitigated.

84. Respondents' actions, individually and collectively, including, without limitation, their certification of the EIR and adoption of the Ban Ordinance, constitute a prejudicial abuse of discretion and reflect a failure to proceed in the manner required by law. Respondents' actions are not supported by Respondents' findings, and Respondents' findings are not supported by substantial evidence. Respondents' certification of the EIR and approval of the Ban Ordinance are void and must set aside and the matter remanded to Respondent for proper consideration.

WHEREFORE, Petitioners pray for relief as set forth below.

///

///

FIFTH CAUSE OF ACTION

(Violation of CEQA - Failure to Identify and Evaluate the Ban Ordinance's Significant Environmental Effects)

85. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

86. CEQA requires that an EIR reveal and fully analyze a proposed project's significant environmental effects, giving due consideration to both short- and long-term effects. *Cal. Pub. Res. Code §§ 21000(b), 21002.1; CEQA Guidelines § 15126.2(a).*

87. Although the Regulatory Ordinance and the "ban alternative" or Ban Ordinance were both included in the EIR's "project description" and should have received the same detailed analysis, the EIR includes 184 pages discussing the supposed impacts of the Regulatory Ordinance but just a scant four pages of "analysis" of the "ban alternative" and the Ban Ordinance.

88. As is clear from the short shrift given the "ban alternative" and the Ban Ordinance, the EIR fails to adequately identify and evaluate a number of significant environmental effects of a complete ban, and the Ban Ordinance, related to outdoor cannabis farming including, but not limited to, the following:

a. Impacts resulting from increased, unregulated cannabis farming in remote and environmentally sensitive areas, particularly in light of reduced enforcement funding and to avoid enforcement efforts. The Draft EIR acknowledges several times that under the ban alternative illegal cannabis activity "would likely be located in remote areas of the County" *Draft EIR § 6.3.2, pp. 6-7.* In fact, it recognizes that this might involve "less disturbed (i.e., natural) areas … [where there] could be a potential for disturbance of sensitive habitat and direct and indirect impacts to special-status species" as well as water diversions harming wetlands and riparian areas, all without permitting or mitigation required by the Clean Water Act and California Fish and Game Code. *Draft EIR § 6.3.2, pp. 6-7.*

Nonetheless, the EIR fails to identify and evaluate the potential for environmental harm such as:

i. Unregulated use of pesticides, herbicides, rodenticides, fertilizers and other hazardous materials;

ii. Unregulated diversion of water sources;

iii. Unregulated grading;

iv. Unregulated removal of vegetation;

v. Harm to sensitive habitats and species;

vi. Lack of regulations requiring minimum setbacks, screening or other measures to avoid aesthetic, odor, noise and other proximity-related impacts on neighbors;

vii. Increased wildfire risk, especially from new illegal sites in more remote areas; and

viii. Increased greenhouse gas and other pollutant emissions from fossil fueled generators, equipment and vehicles.

b. Environmental harm from abandoned cannabis farms that do not undergo remediation as the site improvements deteriorate, including, but not limited to the following:

i. Aesthetic impacts on views and visibility affecting neighbors and passersby;

ii. Water quality impacts from erosion and release of hazardous materials left in the soil;

iii. Erosion impacts from poorly graded and denuded farm sites; and

iv. Biological impacts to flora and fauna, both directly and as a result of water quality and erosion impacts.

c. Continued and increased public safety impacts from:

i. Unregulated use of dangerous security measures by still-operating cannabis farms, endangering innocent passersby;

ii. Equipment, dangerous security measures, and other hazards left on property by abandoned cannabis farms, endangering innocent passersby; and

iii. Reduced police availability and longer response times countywide as limited Sheriff's Department staff resources are diverted to attempt enforcement of the Ban Ordinance and closure of cannabis farms.

d. Urban decay and blight from support businesses closing and commercial properties remaining vacant and deteriorating, impacting nearby businesses and surrounding neighborhoods and reducing the viability of the County's small communities.

e. Public service impacts as reduced business activity reduces tax revenues, causing the County and other public agencies to reduce or cancel services, reduce maintenance of roads and public facilities, and close public facilities.

f. Impacts from coercive removal of former cannabis farms, either by owners or County staff, which will be different than the types of impacts that may occur from continued cannabis farming under the Regulatory Ordinance, including, but not limited to, the following:

i. Large-scale collection and disposal of equipment and soil contaminated by pesticide and herbicide residue from the many farms to be closed, which may require special hazardous materials handling;

ii. Large-scale collection and disposal of confiscated cannabis plants, requiring special handling and potentially creating concentrated odor, smoke and other impacts;

///

///

iii. Wide-spread grading and revegetation activity by owners or the County to remediate former cannabis farm sites, causing a variety of potential impacts; and

iv. Wide-spread construction activity as owners develop the former cannabis farms for other agricultural or business uses, followed by long-term operation of those uses, each with their attendant direct and indirect impacts.

89. In addition, the EIR fails to adequately evaluate a number of significant environmental effects of the Ban Ordinance arising from increased indoor cannabis cultivation for personal use by residents and caregivers unable to obtain cannabis products from local regulated commercial sources, concentrating cultivation in the county's established residential areas, including, but not limited to, the following:

a. Electricity for lighting and heating, resulting in consumption of fossil fuels and greenhouse gas emissions, and added strain to neighborhood transformers and the regional electrical grid.

b. Risk of fires due to increased burden on electrical systems not designed or maintained for high-wattage lighting and heating needs in homes not equipped with commercial-grade fire safety systems, and due to efforts by residents to connect illegally to power lines to avoid the expense of electricity.

c. Pesticides, herbicides, rodenticides and fertilizer used in the cultivation process in private residences by unprofessional growers, in close proximity to residents and neighbors, risking direct contact, buildup of dangerous fumes and other effects, which may especially endanger children.

d. Chemicals, heat or other processes used to process cannabis and convert it into consumables inside private residences by unprofessional processors, in close proximity to residents and neighbors, risking direct contact, buildup

///

of dangerous fumes, fire and other effects, which may especially endanger children.

e. Risk of direct contact with cannabis plants with attendant health and safety effects, especially to children living and playing in the same residence, and risk of children obtaining and using cannabis products produced by their families.

f. Odors affecting residents and neighbors.

g. Increased risk of home burglaries attracted by the many sources of poorly protected cannabis, endangering residents and neighbors and leading to increased emergency calls for police, overtaxing the limited manpower resources of the Sheriff's Department and causing delayed response times to other calls for help and resulting in public safety impacts throughout the County.

h. While the Ban Ordinance calls for child-proof locks and safe storage of hazardous materials, there are no similar provisions regarding processing and handling of cannabis materials and products in the house to mitigate the risk of harm to children and others. There is nothing to prevent these materials being left unmonitored on the kitchen counter, easily accessible to young children.

i. While the Ban Ordinance allows enforcement of its conditions for indoor cultivation – which provisions read like those of a police-state, requiring individual registration and allowing the police to enter and search homes without the occupants' consent and without a search warrant – the likely increase in the number of residences that will be used for personal and caregiver cultivation and the lack of visibility of indoor activity make it questionable that the County actually can monitor them to spot and correct potential health and safety violations. The EIR asserts, and the County admits in in its findings, that existing cannabis farms cannot be assumed to

follow the law to close and remediate their sites, and the same skepticism should apply to residents growing and handling plants indoors.

90. The EIR avoids studying environmental effects of indoor personal-use and caregiver cultivation by claiming that the County is preempted by state law from regulating those activities. *Final EIR § 2.3, Response 123-13*. However, it simultaneously describes the "ban alternative" as including "reasonable restrictions" as allowed by Senate Bill 94 and Section §11362.2(b) of the Health and Safety Code. (Notably, the EIR does not disclose or discuss the intrusive and onerous "restrictions" ultimately included in the Ban Ordinance.) These impacts of the Ban Ordinance could and should have been studied in the EIR.

91. Furthermore, CEQA prohibits segmenting or "piecemealing" environmental review so that the cumulative impacts of an ***entire*** project will be included in the studies of impacts and disclosed to the public. The EIR ignored the cumulative effects of a "ban," generally, and of the Ban Ordinance in particular, together with an ordinance being considered to regulate ***medical*** cannabis dispensaries.

a. Currently there are three medical cannabis dispensaries in Calaveras County. The proposed ordinance will restrict the location of dispensaries. Restrictions include a maximum of five, allowing location only in a CP (Professional Office) zoning district, and prohibiting location within 1,000 feet of a "sensitive use" (broadly defined to include school bus stops, public parks and other sites that may be frequented by children).

b. The practical effect of the second ordinance may be to prevent any increase in dispensaries, and perhaps even force one or more of the three current dispensaries to close. Until maps are produced showing what areas are available for dispensaries given the restrictions, this question cannot be answered.

c. Preventing new dispensaries and perhaps closing existing ones will further reduce access to medical cannabis for residents beyond the effect of the

///

Ban Ordinance. The consequence will be a surge in residential cultivation – with increases in related impacts.

d. A second consequence of the two combined ordinances is increasing total mileage driven by residents to reach the limited number of available dispensaries within or outside Calaveras County. CEQA recently was amended to require basing traffic and emission impacts on how many vehicle miles a project will generate, rather than congestion effects.

e. CEQA requires studying cumulative impacts of the project plus other activity that may be reasonably foreseeable. In this case the County's drafting and consideration of the dispensary ordinance fits within the parameters of reasonable foreseeability. The effects on increasing numbers of residents within and near houses with indoor cultivation must be recognized and quantified before the Ban Ordinance may be adopted.

f. The two ordinances can be seen as part of a coordinated program to regulate cannabis, which should be studied together in the current Program EIR. Failing to do so makes both approvals subject to piecemealing challenges: that the County is attempting separate CEQA review to avoid recognizing the full impacts of the overall program.

92. Failure to include the impacts of the regulation of medical cannabis dispensaries along with the Ban Ordinance is a violation of CEQA's cumulative impact study requirement and violates CEQA's prohibition against segmenting or "piecemealing" environmental review.

93. The EIR claims there will be no significant impacts from the ban alternative, so no mitigation measures are needed. However, the findings made when adopting the Ban Ordinance reach a different conclusion. The findings recognize there may be impacts from illegal activity and non-compliance, but declare that it is too speculative to evaluate if those impacts might be significant. The findings claim there are no feasible mitigation measures for such impacts and drops the topic. *Findings of Fact § VIII p. 8.* These inconsistent findings confirm both the EIR and the findings are deficient and must be revisited.

94. Additional issues the EIR failed to consider and evaluate include:

a. As the EIR admits, CEQA requires a conservative approach to considering impacts. In this situation CEQA requires the County to assume that Ban Ordinance impacts will be significant, and then either adopt mitigations or declare the impacts significant and unavoidable – thus requiring sufficient overriding considerations to justify the impacts.

b. One reason there are no feasible mitigations for likely continued and new illegal activity under the Ban Ordinance is that the County will lack the manpower and other resources needed to enforce the ban. The County will suffer substantial lost tax and fee revenues from closing existing cannabis operations, increasing local unemployment, and reducing the tax revenues generated by local support businesses.

c. The EIR claims that lost income and County revenues are not required topics for study under CEQA. However, when these financial consequences directly prevent mitigation of cognizable impacts, the situation must be recognized, evaluated and remedied. If the solution is to adopt new county-wide fees and taxes to fund enforcement, the County must include that mitigation measure. Otherwise the findings must recognize there are unavoidable significant impacts of the Ban Ordinance that warrant denial unless sufficient overriding considerations are identified.

95. Respondents' actions as described herein, individually and collectively, constitute a prejudicial abuse of discretion in that they reflect a failure to proceed in the manner required by law, and in that they reflect actions that are not supported by findings, and Respondents' findings are not supported by substantial evidence. Respondents' certification of the EIR and adoption of the Ban Ordinance must be declared void and set aside and the matter remanded to Respondents for proper consideration.

WHEREFORE, Petitioners pray for relief as set forth below.

SIXTH CAUSE OF ACTION

(Violation of CEQA - Failure to Properly Compare the Ban Ordinance to the Regulatory Ordinance)

96. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

97. CEQA requires that an approved project be compared with alternatives that might reduce the project's potential significant environmental impacts. By electing to approve the Ban Ordinance, this requires the County to compare its impacts with those of the original proposed project – the Regulatory Ordinance – as well as other alternatives in the EIR.

98. The EIR makes a number of inadequate, unsupported and inconsistent assumptions, and reaches a number of a number of inadequate, unsupported and inconsistent conclusions regarding potential effects of the Regulatory Ordinance and he "ban alternative" and the Ban Ordinance, which causes the EIR to arrive at incorrect and indefensible claims that the Regulatory Ordinance would cause significant environmental effects, and that the Ban Ordinance would not cause significant environmental effects, which in turn leads the conclusion that the Ban Ordinance is environmentally superior to the Regulatory Ordinance. These inadequate, unsupported and inconsistent assumptions and conclusions include, but are not limited to:

a. Assumptions that there will be 750 outdoor cannabis farms permitted under the Regulatory Ordinance for purposes of evaluating impacts. However, senior County staff is on record as stating that they anticipate only about 250 permits ultimately would be approved given the proposed standards, and the EIR itself admits that "it is anticipated that approximately half of [the 750 number] would actually occur." *Draft EIR § 2.5.2, p. 9.* Thus it is reasonable to assume a lower number for CEQA analysis, and insisting on studying the effects of 750 all-new farms is an unreasonable abuse of discretion.

b. Excessive assumptions regarding traffic effects under the Regulatory Ordinance, but without providing data or technical analyses to support – or

even explain – the assumptions. Besides misstating impacts of the Regulatory Ordinance, this deprives the public of the ability to verify or critique the validity of the assumptions. This includes but is not limited to assuming too many workers: at each farm; at each farm for the entire harvest season; driving in peak directions; and driving during peak hours.

c. Grossly overestimating the amount of vegetation and habitat that would be removed under the Regulatory Ordinance. The EIR assumes that each permitted farm will require 22,000 square feet of land clearance – and even claims that 15 indoor cultivation sites will require land clearance, despite information to the contrary regarding the many existing farms. *Draft EIR § 3.2 p. 32.*

d. Assumptions regarding the likelihood that land in other types of agricultural use (e.g., vineyards) will be converted as owners seek more profitable use, causing no additional clearance.

e. Failing to compare potential odor and hazardous material exposure under the Ban Ordinance versus the Regulatory Ordinance, with attendant health and safety impacts. Expanded indoor cultivation of cannabis in private residences within established residential communities might expose more people to odors, pesticides, herbicides, rodenticides and fertilizer, compared with outdoor cannabis farms. This might have especially harmful effects on children living and playing in the same residence or nearby.

f. Failing to acknowledge that State law applies standards and limits on chemicals and processes that may be used by commercial operators, with rigorous testing of cannabis products before they may be offered for sale. No such effective controls will apply to residents growing, processing and consuming cannabis in their homes, or disposing of waste and by-products with their residential trash or in the surrounding environment. Without

controls, it is likely that residents will be motivated to use hazardous chemicals and processes to stimulate cannabis growth. This represents a potentially more serious risk to public health and safety that must be studied.

g. Failing to compare the risk of children being exposed to cannabis under the Ban Ordinance versus the Regulatory Ordinance, with attendant health and safety impacts. With increased indoor personal cultivation, children living in the same residences or nearby may have greater risk of coming into direct contact with cannabis plants, and more opportunities to consume cannabis products produced by their families.

h. Ignoring the fact that the Regulatory Ordinance will produce substantial tax revenues to fund County and Sheriff Department staffing, which will not be the case under the Ban Ordinance, enforcement may be more effective under the Regulatory Ordinance than under the Ban Ordinance in closing existing unpermitted farms and preventing creation of new illegal farms in remote sensitive areas.

i. Refusing to accept that the Regulatory Ordinance actually might reduce impacts from baseline conditions for purposes of project analysis and comparison with the alternatives, based on the dubious argument that it is too difficult to quantify and therefore too speculative to require consideration under CEQA. *See Final EIR Responses 01-6 and 01-11*. Yet the EIR and Board's findings approving the Ban Ordinance assume enforcement action will be successful to a large degree. The same standards must apply to both.

99. The County does not identify and makes no attempt to quantify and evaluate potential impacts of the Ban Ordinance, claims it would be too speculative to do so, and then dismisses the impacts as insignificant. However, at the same time the EIR makes highly speculative and unsupported assumptions about the level of activity and nature and extent of

impacts under the Regulatory Ordinance, including but not limited to the effects on biological resources and water quality, and then states that because they cannot be quantified they must be deemed significant and require mitigation.

100. The EIR continuously relies on excessively conservative worst-case assumptions in its evaluation of the Regulatory Ordinance. Conversely, the EIR's analysis of the ban alternative, and the Board's findings approving the Ban Ordinance, downplay the risks and potential impacts. Despite CEQA's emphasis on being conservative when faced with uncertainly, the EIR blithely states that "it is impossible to speculate on all possible responses to a ban" (*Final EIR Response 147-14*) - which is precisely the situation that calls for conservative assumptions and estimated impacts. Respondents stacked the deck in preparing the EIR by systematically exaggerating impacts and understating benefits of the Regulatory Ordinance while understating or ignoring impacts and exaggerating benefits of the Ban Ordinance.

101. Respondents' actions as described herein, individually and collectively, constitute a prejudicial abuse of discretion in that they reflect a failure to proceed in the manner required by law, and in that they reflect actions that are not supported by findings, and Respondents' findings are not supported by substantial evidence. Respondents' certification of the EIR and adoption of the Ban Ordinance must be declared void and set aside and the matter remanded to Respondents for proper consideration.

WHEREFORE, Petitioners pray for relief as set forth below.

SEVENTH CAUSE OF ACTION

(Violation of CEQA - Failure to Provide Good Faith Responses to Comments)

102. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

103. CEQA requires Respondents to consider every substantive public comment regarding the Draft EIR, and to provide a good faith, reasoned response to each.

104. The Final EIR ignores, downplays or misinterprets numerous comments pointing out errors and omissions in the analysis of the Regulatory Ordinance and the Ban Ordinance and calling for additional data collection and studies, including, but not limited to, the following:

a. At least one comment specifically raises the question whether the Ban Ordinance might cause blight and decay because businesses that serve cannabis farms and their workers will close. The County's response ignores the topic and only addresses an entirely different question: whether closed cannabis farms will cause blight in their neighborhood. *See Comments and Responses 143-12, 147-16*.

b. Comments criticize the lack of technical data to support the assumptions used in finding traffic impacts from the Regulatory Ordinance. The County dismisses the issue and incorrectly claims that the Draft EIR provides all the information needed.

c. Comments specifically question assumptions about how many workers will commute between housing and cannabis farms during peak commute times and in the peak commute direction, to support conclusions of traffic congestion impacts.

i. Regarding travel directions, at least one comment points to the fact that most housing is in the western part of the county (at lower elevations) while most farms are toward the east (in higher elevations), which will result in worker trips that are in the opposite direction from county residents traveling between homes and jobs to the west in the Valley. The County fails to acknowledge or respond to these factual discrepancies. *See Final EIR Comment and Response 147-9*. The County's insistence on claiming peak direction commute travel by cannabis workers defies common sense.

ii. Comments document that work hours at existing cannabis farms do not tend to follow the typical work day so employees will be less likely to drive during peak traffic hours. The County unreasonably claims that it is justified to apply the conservative assumption that

100 percent of worker trips will be during peak commute times. The County also refuses to conduct monitoring or surveys of existing farms to document actual travel times that can be used in the EIR, despite knowing the location of farms that applied for registration under the Urgency Ordinance. *See Final EIR Comment and Response 1-24*.

105. The EIR ignores comments alleging inadequate studies and level of detail and erroneously claims that the requested information and analysis is not required because the County chose to prepare a "program" EIR. *Final EIR § 2.2.1, Master Response 1*. CEQA does not give the County carte blanche to avoid collecting data, performing analyses, considering potential impacts, identifying needed mitigations, or providing good faith responses to comments raising these deficiencies, merely by using the "program" EIR label.

106. Respondents' actions as described herein, individually and collectively, constitute a prejudicial abuse of discretion in that they reflect a failure to proceed in the manner required by law, and in that they reflect actions that are not supported by findings, and Respondents' findings are not supported by substantial evidence. Respondents' certification of the EIR and adoption of the Ban Ordinance must be declared void and set aside and the matter remanded to Respondents for proper consideration.

WHEREFORE, Petitioners pray for relief as set forth below.

EIGHTH CAUSE OF ACTION

(Violation of CEQA - Failure to Recirculate EIR)

107. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

108. CEQA requires that an EIR be recirculated when, after the Draft EIR had been released for public comment, but before the EIR is certified: (1) significant new information is added; (2) new information is received showing that impacts of a project would be new or more severe than described in the EIR; new information is received showing the need for such studies to correct omissions and errors in the Draft EIR. *See Cal. Pub. Res. Code § 21092.1; CEQA*

Guidelines § 15088.5. Under these circumstances, the public must be given the opportunity to review the new information provided by comments to the Draft EIR and by new studies that are warranted when information regarding new or more severe impacts is received.

109. As described above, CEQA required that the EIR be recirculated because Respondents added significant new information; received new information showing that impacts of a project would be new or more severe than described in the EIR; and received new information showing the need for additional studies to correct omissions and errors in the Draft EIR. Nonetheless Respondents failed to recirculate the EIR.

110. The EIR should be recirculated (after being revised to provide accurate and adequate identification and analysis of impacts) to provide the public and decision-makers the basis for adequate comparison of the relative impacts and benefits of the Regulatory Ordinance and the Ban Ordinance.

111. Respondents' findings that recirculation of the EIR for additional public review is not required are the result of ignoring substantive significant new information provided by public comments and refusing to conduct new studies regarding the many impacts of the Ban Ordinance that are ignored by the EIR.

112. Respondents' actions as described herein, individually and collectively, constitute a prejudicial abuse of discretion in that they reflect a failure to proceed in the manner required by law, and in that they reflect actions that are not supported by findings, and Respondents' findings are not supported by substantial evidence. Respondents' certification of the EIR and adoption of the Ban Ordinance must be declared void and set aside and the matter remanded to Respondents for proper consideration.

WHEREFORE, Petitioners pray for relief as set forth below.

NINTH CAUSE OF ACTION

(Violation of CEQA – Findings to Approve Ban Ordinance Not Supported by Substantial Evidence)

113. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

114. CEQA requires that findings for the approval of a project be supported by substantial evidence in the administrative record. CEQA further requires that an agency provide an explanation of how evidence in the record supports the conclusions it has reached.

115. The County violates CEQA by adopting findings that are inadequate as a matter of law in that they are not supported by substantial evidence in the record.

116. The EIR fails to provide adequate and accurate information about the impacts of the Ban Ordinance so as to support the County's findings, in that:

a. The County fails to recognize and accept potential impacts that are identified by comments to the Draft EIR.

b. The County fails to conduct additional studies or collect additional information that is identified by comments as essential for an accurate and adequate study.

c. The EIR fails to determine if new or more severe impacts are potentially significant, and fails to support conclusions that impacts are not significant.

d. The EIR fails to recommend mitigation measures for new significant impacts, or else conclude that such significant impacts are unavoidable.

e. The County fails to consider the new information and impact conclusions that the EIR should have provided, in order to first determine if there are significant unavoidable impacts and then identify sufficient overriding considerations to justify approval.

117. The County fails to provide sufficient credible evidence in the record to support its findings approving the Ban Ordinance.

118. The County prejudicially abused its discretion and failed to proceed in the manner required by law by making determinations and adopting findings that do not comply with the requirements of CEQA and are not supported by substantial evidence in the record. Accordingly, the County's approval of the Ban Ordinance must be set aside.

119. Respondents' actions as described herein, individually and collectively, constitute a prejudicial abuse of discretion in that they reflect a failure to proceed in the manner required by

law, and in that they reflect actions that are not supported by findings, and Respondents' findings are not supported by substantial evidence. Respondents' certification of the EIR and adoption of the Ban Ordinance must be declared void and set aside and the matter remanded to Respondents for proper consideration.

WHEREFORE, Petitioners pray for relief as set forth below.

TENTH CAUSE OF ACTION

(Violation of CEQA – Defective Posting of Notice of Determination)

120. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

121. The Notice of Determination posted by Respondents is deficient, inadequate, and fails to meet the requirements of CEQA.

122. CEQA provides a statute of limitations of 180 days after an agency decision to initiate litigation. However, CEQA allows agencies to shorten the deadline by posting a Notice of Determination ("NOD"). If the NOD is in compliance with specified procedures and contents, it serves to set a statute of limitations of 30 days after the NOD is posted. *Cal. Pub. Res. Code § 21167; CEQA Guidelines § 15112*.

123. The County posted a Notice of Determination on January 11, 2018, which if valid would shorten the litigation deadline to 30 days. However, the County's Notice of Determination is fatally defective and not in compliance with CEQA in at least three material and substantive ways, including but not limited to the following:

a. The Project Description is inaccurate and significantly misleading. It states: "An ordinance regulating the cultivation and other activities associated with medical cannabis." This description contains two material errors. First, the Ban Ordinance is not merely "regulation," but actually bans all cannabis activity except residential indoor cultivation of six plants. Second, it affects all cannabis – not just medical cannabis.

///

///

b. Determination #3 on the NOD form asks the County to mark one of two boxes to communicate whether mitigation measures were or were not made a condition of approval. However, neither box is marked.

c. Determination #6 on the NOD form asks the County to mark one of two boxes to communicate if findings were or were not made by the Board of Supervisors. The "no findings" box is marked, although the Board did adopt CEQA findings.

124. The errors regarding determinations 3 and 6 deprive the public of information that is essential to understand how the Ban Ordinance has been treated for CEQA purposes. The errors in the project description are material and could be viewed as intended to conceal and mislead the public as to the true intent and effect of the ordinance.

125. Posting an NOD forces interested parties to determine very quickly if they should commence litigation. This requires accurate information to allow an informed decision. By failing to comply with the minimum requirements of CEQA, the County's NOD deprived the public of the ability to accurately understand the nature of the County's action and decide if they should pursue litigation, and misled the public and may have dissuaded persons from exercising their rights and filing suit.

126. Respondents' actions in posting the Notice of Determination, individually and collectively, constitute a prejudicial abuse of discretion and a failure to proceed in the manner required by law. Respondents' posting the Notice of Determination must be declared void and set aside and any statute of limitations must be tolled until Respondents post a proper NOD that complies with the requirements of CEQA.

WHEREFORE, Petitioners pray for relief as set forth below.

ELEVENTH CAUSE OF ACTION

(Violations of the Government Code – General Plan Invalidity and Inconsistency Preclude Adoption of Ban Ordinance)

127. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

128. State law requires the County to adopt and maintain a general plan satisfying all applicable legal requirements. *Cal. Govt. Code § 65300 et seq.* Failure to comply with such requirements renders the general plan invalid.

129. State law requires that the separate elements of the general plan are consistent with each other.

130. State law requires all local zoning ordinances to be consistent with a legally adequate general plan. If the general plan is not legally adequate, any land use decision or ordinance will be deemed invalid and void *ab initio*.

131. It is beyond dispute that the Calaveras County General Plan, the majority of which dates back to 1996, falls short of the State's statutory requirements in a number of respects. These deficiencies have been pointed out to successive Boards of Supervisors by consultants retained to evaluate and update the General Plan, including, most notably, Mintier & Associates' lengthy analysis of the General Plan dated October 12, 2006. The many deficiencies have not been corrected, and the General Plan remains legally inadequate in ways that are relevant to the Ban Ordinance. Thus adoption of the Ban Ordinance is void and of no effect.

132. Even if the General Plan were found to be legally adequate, the Ban Ordinance is inconsistent with a number of its provisions and stated goals, including but not limited to the following, which voids approval of the Ban Ordinance.

a. General Plan Goal II-19 states: "*Appropriately provide for Rural Home Industries as accessory uses to residences*." Cannabis cultivation and processing can qualify as a Rural Home Industry under the General Plan. Growing crops around houses is common, especially in rural areas with substantial agricultural activity. Completely banning cannabis businesses is inconsistent with this General Plan Goal.

b. Goal II-21 states: "*Support economic growth and development in the County by providing for businesses in the home, in addition to regular commercial and industrial development*." Cannabis cultivation and processing can occur on a smaller scale in residences, and can qualify as a

"Rural Home Business" pursuant to Section 6.0 of the General Plan Land Use Element and Goal II-21. Implementation Measure II-21A-1 calls for using the Zoning Code to apply standards for such home businesses. By completing banning such economic options instead of adopting reasonable standards and regulations allowing cannabis business, the draconian Ban Ordinance is inconsistent with this Goal and the General Plan.

c. Goal II-22 states: "*Continue to assure that all existing legally established parcels, uses and zoning retain their legal status.*" Policy II-22A requires recognizing as legally existing uses that may not conform to current standards but were "*legally established under the regulations in effect at the time they were first commenced or created*." Finally, Implementation Measure II-22A-2 states that any such legally established land use will be allowed to continue as a legal nonconforming use under the Zoning Code. Many cannabis farms in the County began operating during the time when a series of state laws authorized cannabis cultivation and processing. In addition, County general plan and zoning regulations have historically allowed agricultural cultivation and related activity in most areas of the county. Until adoption of the Ban Ordinance, those regulations have not listed specific types of crops that are allowed versus prohibited, so there is no basis for claiming that prior County laws prohibited cannabis farms. Thus, they were "legally established." as envisioned by the General Plan. Attempting to shut them down under the Ban Ordinance is directly in conflict and inconsistent with these General Plan provisions.

133. Separately, state law prohibits internal inconsistencies within zoning regulations. The Ban Ordinance's effort to prohibit commercial cannabis cultivation is inconsistent with Section 17.02.010 of the Calaveras County Zoning Code, which states that the Zoning Code is enacted "[t]o provide a means of implementing the policies of the Calaveras County general plan," and Section 17.92.010, which provides for the continuation of existing nonconforming

uses. These conflicts render approval of the Ban Ordinance void for inconsistency with the stated purpose of the Zoning Code.

134. Respondents' actions as described herein, individually and collectively, constitute a prejudicial abuse of discretion in that they reflect a failure to proceed in the manner required by law, and in that they reflect actions that are not supported by findings, and Respondents' findings are not supported by substantial evidence. Respondents' adoption of the Ban Ordinance must be declared void and set aside and the matter remanded to Respondents for proper consideration.

WHEREFORE, Petitioners pray for relief as set forth below.

TWELFTH CAUSE OF ACTION

(Violations of the Government Code – Failure to Comply with Procedural and Substantive Requirements for Adoption of a Zoning Amendment)

135. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

136. Mandatory procedures for the adoption of local zoning regulations are set forth in Sections 65800 *et seq.* of the Government Code. Sections 65854 and 65855 require the local jurisdiction's planning commission to hold a public hearing on any proposed zoning ordinance or amendment and make a written recommendation to its board of supervisors, setting forth the commission's reasoning. The board of supervisors must then hold its own public hearing on the ordinance amendment, and include the Planning Commission's recommendations in its notice thereof. *Cal. Gov't. Code § 65090*; *Environmental Defense Project of Sierra County v. County of Sierra*, 158 Cal.App.4th 877, 880. If the board of supervisors later materially modifies the ordinance or amendment, it must refer the matter back to its planning commission for further review. *Cal. Gov't. Code § 65857.*

137. As concerns this action, the Planning Commission held a public hearing and issued recommendations to the Board on November 29, 2017. Those recommendations were to adopt either: (1) the Planning Commission Regulatory Ordinance; or (2) the Planning Commission Ban.

138. The Board did neither. Instead, on January 10, 2017, it adopted its own Ban Ordinance, which differs in numerous material ways from the Planning Commission Ban. Those

differences include, without limitation: (1) introducing legislative findings that the Ban Ordinance is "necessary" to curb the effects of illegal, unregulated outdoor cannabis cultivation (in spite of the County's repeated prior admissions that the lack of a regulatory and revenue-raising scheme is exactly what allowed unregulated cultivation to proliferate in the first place); (2) imposing joint and several duties on cultivators and landowners to restore or repurpose cultivation sites; (3) restricting the number of plants grown on any one parcel to six, regardless of how many housing units exist on the parcel; (4) requiring personal and caregiver growers to register with the Planning Department, pay an unspecified "processing fee," submit annual written applications and site descriptions, provide evidence of landlord consent, and execute a written agreement to indemnify the County; and (5) prohibiting the use of generators as a primary power source for cultivation, even though many County residents live "off the grid." The Ban Ordinance was never referred back to the Planning Commission prior to adoption, in direct violation of Section 65857 of the Government Code.

139. Moreover, because the Planning Commission had never reviewed the Ban Ordinance or the Second Tofanelli Ordinance, which the Board considered simultaneously as an alternative, public notice of the January 10, 2018 Board meeting did not include any recommendations from the Commission. By noticing a legislative hearing on the adoption of a zoning ordinance without first receiving recommendations on that ordinance from the Planning Commission and including them in the notice, Respondents violated Section 65090 of the Government Code. *Environmental Defense Project of Sierra County, supra*, 158 Cal.App.4th at 880.

140. When a county passes any ordinance, the ordinance must be published in a county newspaper within 15 days of being adopted. Alternatively, the county can publish a summary and make the full ordinance available for public inspection. *Cal. Gov't Code § 25124*. Failure to publish an ordinance in this manner delays the effective date of the ordinance until 30 days after the date of actual publication. *Id.*

141. The Government Code's publication requirement is expressly incorporated into Section 5 of the Ban Ordinance, which provides:

This ordinance, or a summary thereof including the vote of each Board member, shall be published within fifteen days after the date hereof in a newspaper of general circulation printed and published in the County of Calaveras, State of California, and shall become effective thirty days after the date hereof.

142. The Board voted to adopt the Ban Ordinance on January 10, 2018. However, the text of the Ordinance was not published in the County's newspaper of record - or any other newspaper - until February 7, 2018, 28 days after adoption. Thus, as a matter of law, the Ban Ordinance cannot become effective until March 9, 2018. Nonetheless, as of the date of this Petition and Complaint, the cannabis section of the County's website still states that "[t]he [ban] ordinance will become effective on February 9, 2018." In doing these things, Respondents have violated Section 25124 of the Government Code.

WHEREFORE, Petitioners pray for relief as set forth below.

THIRTEENTH CAUSE OF ACTION

(Declaratory Relief)

143. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

144. An actual controversy has arisen and now exists between Petitioners, on the one hand, and Respondents, on the other, in that Petitioners contend, and Respondents deny: that the EIR is deficient for the reasons alleged; that the certification of the EIR is void and should be set aside; that the adoption of the Ban Ordinance is void and should be set aside; that Respondents' actions, individually and collectively, constitute a prejudicial abuse of discretion; that Respondents' actions, individually and collectively, constitute a failure to proceed in the manner required by law; that Respondents' actions, individually and collectively, are not supported by Respondents' findings; and that Respondents' actions, and Respondents' findings, individually and collectively, are not supported by substantial evidence.

145. Petitioners request a judicial determination of the rights, privileges and obligations of Petitioners and Respondents with respect to these matters and otherwise, as described above.

///

146. A judicial declaration is necessary and appropriate at this time in order that Petitioners and Respondents may ascertain their respective rights and obligations with respect to the matters described above.

147. WHEREFORE, Petitioners pray for relief as set forth below.

PRAYER FOR RELIEF

Petitioners pray for judgment as follows:

1. For a writ of mandate or peremptory writ issued under the seal of this Court and directing Respondents, and each of them, to:
    a. Void any and all certification(s) of the EIR;
    b. Set aside any and all adoption(s) or approval(s) of the Ban Ordinance;
    c. Refrain from taking any action under the Ban Ordinance unless and until Respondents:
        i. Comply fully with the requirements of CEQA, including, but not limited to, issuing a proper Notice of Preparation and correcting and recirculating the EIR;
        ii. Properly consider certification of a corrected and recirculated EIR; and
        iii. Properly consider adoption of the Ban Ordinance or take such other action as may be appropriate following completion, consideration and certification of an EIR that meets the requirements of CEQA for such action.
2. For a writ of mandate or peremptory writ issued under the seal of this Court and directing respondents, and each of them, to refrain from taking any action under the Ban Ordinance or reapproving the Ban Ordinance until the General Plan is made legally adequate, and until the Ban Ordinance is made consistent with the legally adequate General Plan.
3. For entry of preliminary and/or permanent injunctive relief prohibiting Respondents, and each of them, from carrying out, implementing, or otherwise

acting in reliance on the Ban Ordinance, until after the requirements of CEQA and General Plan law have been fulfilled and a lawful adoption of the Ban Ordinance has occurred.

4. For entry of preliminary and/or permanent injunctive relief prohibiting Respondents, and each of them, from asserting any statute of limitations defense to any challenge to the certification of the EIR and adoption of the Ban Ordinance based on the NOD posted on or about January 11, 2018.

5. For a declaration that the NOD posted on or about January 11, 2018 was not effective and was misleading and tolling any statute of limitations for challenging certification of the EIR and adoption of the Ban Ordinance until at least 30 days after Respondents post a proper NOD.

6. For a declaration that the EIR is inadequate and that the County of Calaveras' actions in preparing and certifying the EIR constituted a prejudicial abuse of discretion in that they reflect a failure to proceed in the manner required by law, and in that they reflect actions that are not supported by findings, and in that they reflect actions based on findings that are not supported by substantial evidence when it approved and certified the EIR with the errors and deficiencies described herein.

7. For a declaration that the County of Calaveras acted in a manner contrary to law and committed a prejudicial abuse of discretion in approving the Ban Ordinance before fully complying with CEQA.

8. For a declaration that the Ban Ordinance is inconsistent with the County of Calaveras General Plan and its approval violated state general plan law.

9. For a declaration stating that the County of Calaveras' approval of the Ban Ordinance, including the EIR and the Notice of Determination filed on January 11, 2018, under CEQA, are void *ab initio* or otherwise invalid and of no legal effect.

///

///

10. For a declaration that the County of Calaveras' failure to prepare, consider and certify an adequate environmental analysis under CEQA is arbitrary and capricious, an abuse of discretion and a violation of the law.

11. For a declaration stating that the County of Calaveras' failure to recirculate the EIR was arbitrary and capricious, an abuse of discretion, and a violation of the law.

12. For Petitioner's fees and costs, including reasonable attorneys' fees and expert witness costs, as authorized by Section 1021.5 of the Code of Civil Procedure, and any other applicable provisions of law on its claims regarding the unlawful certification of the EIR and unlawful approval of the Ban Ordinance.

13. For such other legal and equitable relief as this Court deems appropriate and just.

Dated: February 13, 2018

ARCHER NORRIS

Peter W. McGaw
Edward L. Shaffer
Jasun C. Molinelli
Adrian T. Lambie

Attorneys for Petitioners and Plaintiffs CALAVERAS CANNABIS LEGAL DEFENSE FUND, BETH WITTKE, and THOMAS GRIFFING

EXHIBIT A

ARCHERNORRIS
A PROFESSIONAL LAW CORPORATION

2033 North Main Street, Suite 800
Walnut Creek, CA 94596-3759
925.930.6600
925.930.6620 (Fax)
www.archernorris.com

EDWARD L. SHAFFER
eshaffer@archernorris.com
925.952.5409

February 12, 2018

BY U.S. MAIL
Board of Supervisors
County of Calaveras
c/o Diane Severud, Deputy Clerk
891 Mountain Ranch Road
San Andreas, CA 95249

Re: Notice of Intent to File CEQA Petition and Commence Litigation

Dear Ms. Turner:

PLEASE TAKE NOTICE, pursuant to Public Resources Code §21167.5, that Calaveras Cannabis Legal Defense Fund ("CCLDF"), Beth Wittke and Thomas Griffing (collectively, "Petitioners"), intend to file a verified petition and complaint under the provisions of the California Environmental Quality Act against Calaveras County, the Board of Supervisors and the Planning Department (collectively, "Respondents and Defendants"), challenging their actions certifying the Environmental Impact Report for the Medical Cannabis Cultivation and Commerce Ordinance Project and approving Ordinance No. 20180110o3094 on January 10, 2018 adopting new County Code Chapter 17.95 regulating and prohibiting cannabis cultivation and commerce.

Petitioners also are challenging adoption of Code Chapter 17.95 based on inadequacy of the County General Plan, inconsistency with the General Plan and the Zoning Code, and failure to comply with requirements of the Government Code.

Very truly yours,

ARCHER NORRIS

Edward L. Shaffer
Attorney for Petitioners

ELS
cc: Megan Stedtfeld, County Counsel
Rebecca Turner, County Clerk

PROOF OF SERVICE

I, declare that I am over the age of eighteen years and not a party to this action or proceeding. My business address is 2033 North Main Street, Suite 800, Walnut Creek, California 94596-3759. On this date, I caused the following document(s) to be served:

Notice of Intent to File CEQA Petition and Commence Litigation

☒ By placing a true copy of the document(s) listed above, enclosed in a sealed envelope, addressed as set forth below, for collection and mailing on the date and at the business address shown above following our ordinary business practices. I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that a sealed envelope is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Board of Supervisors
County of Calaveras
c/o Diane Severud, Deputy Clerk
891 Mountain Ranch Road
San Andreas, CA 95249

County Counsel
County of Calaveras
Attn: Megan Stedtfeld
891 Mountain Ranch Road
San Andreas, CA 95249

County Clerk-Recorder
County of Calaveras
c/o Rebecca Turner, County Clerk
891 Mountain Ranch Road
San Andreas, CA 95249

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 12, 2017, at Walnut Creek, California.

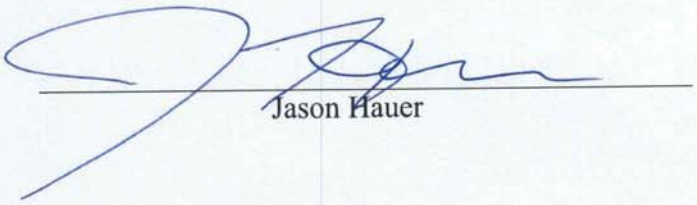
Tracy Pico

VERIFICATION

I, JASON HAUER declare that I am Executive Director of the CALAVERAS CANNABIS LEGAL DEFENSE FUND, a Petitioner and Plaintiff herein, and am duly authorized to execute this Verification on its behalf. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof. I am informed and believe, and on that ground allege, that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 13, 2018 at San Andreas, California.



Jason Hauer