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Jane Doe

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF MERCED

JANE DOE<sup>1</sup>, on behalf of herself, the General  
Public, and all others similarly situated,

Plaintiff and Petitioner,

v.

AMANDA TOSTE, as Court Executive  
Officer; THE SUPERIOR COURT FOR THE  
STATE OF CALIFORNIA COUNTY OF  
MERCED; and DOES 1 through 20,

Defendants and Respondents.

ELECTRONICALLY FILED  
Merced Superior Court  
9/24/2021 12:17 PM  
Amanda Toste  
Clerk of the Superior Court  
By: Nengsy Moua, Deputy

Case No.: 21CV-03311

CLASS ACTION

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

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

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

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

Plaintiff and Petitioner, Jane Doe, on behalf of herself, the General Public, and all others similarly situated, complain and allege upon information and belief, as follows:

**PRELIMINARY STATEMENT**

1. This action for declaratory and injunctive relief and a writ of mandate is brought against the Superior Court of California, County of Merced (“Merced Superior Court” or “MSC”) and the Court Executive Officer of the Merced Superior Court. The action challenges the policies and practices of the Merced Superior Court and the Court Executive Officer in (1) maintaining and displaying Personal Identification Information in both remote and online records maintained by the Court; and (2) maintaining and displaying criminal records of minor marijuana offenses and operating an Index of Criminal Defendants (hereafter “Index”) containing such criminal records on the Court’s website.

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

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

3. Defendants in this action administer and maintain the Merced Superior Court website. (<<https://www.mercedcourt.org/>>).

4. On Defendants’ website, the general public is allowed unfettered access to the court's electronic calendar, index, and register of actions, including the records of criminal defendants. (<<https://jportal.mercedcourt.org/mercedprod>>).

3. Personal Identification Information disclosed to the general public on Defendants’ website include, criminal defendants’ names, **addresses, telephone numbers, and dates of birth.**

4. Like thousands of other individuals, Plaintiff’s name, address, criminal record, and her date of birth are displayed to the general public on the Merced Superior Court’s website.

1           5.       The California Rules of Court address public access to electronic court records.  
2 Rules 2.500 through 2.507 set forth exactly which court records may be disclosed at the  
3 courthouse, and which records may not be available to the public over the internet, *i.e.*, remote  
4 electronic access.

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

8           7.       Further, Rule 2.507 of the California Rules of Court, specifically states:

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

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

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

19           9.       Indeed, even Defendants' *own website* warns people of “Jury Scams” whereby  
20 “scammers call individuals and identify themselves as an officer or employee of the court and  
21 notify the victim, that he/she has failed to report for jury duty, and a bench warrant was issued  
22 against them for their arrest. The scammer then obtains names, social security numbers, **dates**  
23 **of birth**, and will solicit credit card or bank account numbers claiming these will be used by  
24 their credit bureau to ‘verify’ the victim's identity.”  
25 (<https://www.mercedcourt.org/faqs.shtml#fragment-2> .) The Court's website warns: “Never  
26 give any personal information to anyone via telephone unless you know for a fact, they are who  
27 they say they are.” (*Id.*) Yet the Court itself provides much of the very same personal  
28 identification information to the public through the Court's website.

1           10. By simply finding a person's name and date of birth on the Merced Superior  
2 Court's website, identity thieves can call victims and pose as court personnel by identifying the  
3 victim and his or her date of birth. Thieves then may gain the confidence of the victim by  
4 supplying the victim's personal information, and then ask for additional information such as  
5 social security numbers and addresses under the guise of "completing court records."

6           11. The threat of consumer fraud is heightened by the Defendants' Court records  
7 that disclose home addresses and telephone numbers, such as in the case of Plaintiff and  
8 Petitioner.

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

10           12. During the first administration of Governor Edmund G. Brown, Jr., in the mid-  
11 1970s, the California Legislature reformed the state's marijuana laws to require the  
12 "destruction" by "permanent obliteration" of all records of minor marijuana convictions that  
13 were more than two years old.

14           13. These laws were enacted as part of comprehensive reform legislation which was  
15 designed to distinguish minor marijuana offenses from more serious felony drug offenses and  
16 to "minimize or eliminate the lingering social stigma flowing from what is now perceived to be  
17 a relatively minor form of criminal activity." (*Younger v. Superior Court* (1978) 21 Cal.3d 102,  
18 113.)

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

24           15. This complaint and petition alleges the electronic Index contains thousands of  
25 criminal records pertaining to minor marijuana offenses that Defendants were required to  
26 completely destroy, but Defendants have failed to do so as required by law and in violation of  
27 the California constitutional right of privacy.

28           16. Prior to bringing this action, Plaintiff and Petitioner contacted the Court

1 Executive Officer and requested that her records containing her Personal Identification  
2 Information as well as records pertaining to the unlawful possession of marijuana pursuant to  
3 Health and Safety Code section 11357 be removed from the Index, and requested that the  
4 records be removed within 20 days or a provide a response to the request to remove the records  
5 within 20 days. Despite this notice and request for compliance with the laws of this State,  
6 Defendants failed to completely respond to the request and failed to inform Plaintiff that all of  
7 her Personal Identification Information and marijuana-related information concerning Health  
8 and Safety Code section 11357 violations would be removed from the Court's website.

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

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

## 20 JURISDICTION

21 19. This Court has jurisdiction over Defendant, MSC, because the MSC is located in  
22 the County of Merced, State of California.

23 20. This Court has jurisdiction over Defendant, Amanda Toste, because upon  
24 information and belief, Amanda Toste resides in the County of Merced, State of California.

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

27 22. This action is not subject to the provisions of the Government Claims Act and  
28 Plaintiff and Petitioner has not complied with the Government Claims Act. The primary

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1 purpose of this action is to obtain injunctive and declaratory relief, not the recovery money or  
2 property.

3 **PARTIES**

4 23. Plaintiff Jane Doe is an individual and over the age of eighteen (18), who was  
5 arrested in Merced County for a violation of Health & Safety Code section 11357, and whose  
6 Personal Identification Information is accessible to the public.

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

11 25. Defendant Amanda Toste is the Court Executive Officer of the Merced Superior  
12 Court. Defendant Toste is an employee, agent, and/or representative of Defendant, MSC, and  
13 was and is acting within the course and scope of her agency and or employment as Court  
14 Executive Officer of the MSC.

15 26. Defendants, and each of them, are responsible for, *inter alia*, keeping the  
16 records and minutes of MSC and insuring that said records and the Index is maintained in  
17 compliance with state and federal law.

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

23 **STATEMENT OF FACTS**

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

26 29. Following the arrest, MSC included the charge in an Index, as MSC was  
27 generally allowed to do *for two years*.

28 30. However, Defendants failed to destroy the records of that violation after the

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1 time for maintaining such records had expired, and to this day, Defendants disclose this  
2 conviction to the general public.

3 31. In addition, Defendants have disclosed and continue to disclose on the Index  
4 Doe’s home address, telephone number, and date of birth.

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

8 33. By typing in Plaintiff’s real name, the viewer will see that Plaintiff Doe was  
9 arrested and charged for violating Health and Safety Code section 11357, and will see her  
10 address, telephone number, and date of birth.

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

15 35. Upon information and belief, Defendant’s Index displays records other  
16 individuals’ addresses, telephone numbers, and dates of birth, which can be accessed through  
17 the online case Index search maintained by Defendants.

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

20 37. Defendants do not provide notice to the subject that his or her name has been  
21 searched in the Index or that information regarding the subject has been disseminated pursuant  
22 to an Index search.

23 **DEFENDANTS FAILED TO TIMELY DESTROY RECORDS PERTAINING**  
24 **TO CERTAIN MARIJUANA OFFENSES**

25 38. Defendants knew, or should have reasonably known, that the Index contains  
26 hundreds, if not thousands, of records which should have been destroyed by Defendants.

27 39. Pursuant to Health and Safety Code section 11361.5(a), “[r]ecords of any court  
28 of this state, ... pertaining to the arrest or conviction of any person for a violation of Section

1 11357 ... shall not be kept beyond two years from the date of the conviction, or from the date  
2 of the arrest if there was no conviction ...,” with limited exceptions not applicable to her  
3 action.

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

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

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

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

26 44. Defendants’ actions and policies challenged in this complaint and petition are  
27 not supported by a legitimate or compelling state interest. No provision of law authorizes or  
28 requires Defendants to maintain and report Index information pertaining to marijuana offenses



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1 under Health & Safety Code section 11357 after the statutory period of time.

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

4 46. No legitimate burden would be imposed on Defendants by requiring the timely  
5 destruction of records showing such marijuana offenses and the redaction of records disclosing  
6 home addresses, telephone numbers, and dates of birth.

7 **FIRST CAUSE OF ACTION**

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

9 **(As Against AMANDA TOSTE only)**

10 26. Plaintiff refers to and incorporates by reference each and every paragraph above  
11 as though set forth fully herein.

12 27. The term “agency,” as defined in the California Informational Privacy Act of  
13 1977 (the Act), means every state office and *every state officer*. (*Civ.Code*, § 1798.3(b).)

14 28. Defendant, Amanda Toste, is the Court Executive Officer of the Merced  
15 Superior Court and is a state officer, and is therefore an “agency” pursuant to the Act.

16 29. Amanda Toste has a statutory duty to maintain in Court records only personal  
17 information which is relevant and necessary *to accomplish a purpose of the agency* required or  
18 authorized by the California Constitution or statute. (*Civ.Code*, § 1798.14.)

19 30. The term “record” means any file or grouping of information about an  
20 individual that is maintained by an agency by references to an identifying particular such as the  
21 individual’s name (*Civ.Code*, § 1798.3(g)); and “personal information” means any information  
22 that identifies or describes an individual, including but not limited to his or her name, *home*  
23 *address, home telephone number, etc.* (*Civ.Code*, § 1798.3(a).)

24 31. Amanda Toste has a statutory duty to maintain in its records only personal  
25 information which is relevant and necessary to accomplish a purpose of the agency required or  
26 authorized by the California Constitution or statute or mandated by the federal government.  
27 (*Civ.Code*, § 1798.14.)

28 32. Amanda Toste has a statutory duty *not to disclose* any personal information in a

1 manner which would link the information disclosed to the individual to whom it pertains,  
2 unless the information is disclosed under certain limited circumstances not relevant to this  
3 matter. (*Civ.Code*, § 1798.24.)

4 33. Amanda Toste maintains records identifying Plaintiff (and all others similarly  
5 situated) and disclosing her home address, telephone number, and date of birth, and identifying  
6 Plaintiff as an individual charged of a crime, and such records are maintained on Defendants'  
7 website.

8 34. Amanda Toste has allowed, and continues to allow the disclosure of Plaintiff's  
9 personal information to members of the public not authorized by law to receive such  
10 information and continues to allow the public to have unencumbered access to certain criminal  
11 defendants' home addresses, telephone numbers, and dates of birth, by and through the website  
12 of the Merced Superior Court.

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

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

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

27 38. Any agency that fails to comply with any provision of the Act may be enjoined  
28 by any court of competent jurisdiction. The court may make any order or judgment as may be

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1 necessary to prevent the use or employment by an agency of any practices which violate this  
2 chapter. (*Civ.Code*, § 1798.47.)

3  
4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF CALIFORNIA RULES OF COURT, RULE 2.507**

6 **(FAILURE TO EXCLUDE INFORMATION FROM ELECTRONIC ACCESS )**

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

9 40. Defendants allow unfettered electronic access to the general public of the dates  
10 of birth of individuals.

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

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

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

17  
18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF HEALTH AND SAFETY CODE SECTION 11361.5**

20 **(FAILURE TO DESTROY MARIJUANA OFFENSE RECORDS)**

21 **(As Against All Defendants)**

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

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

28 49. At present, the data base of Index records maintained by Defendants contains

1 hundreds, if not thousands of cases pertaining to the arrest or conviction of any person for a  
2 violation of Section 11357 or subdivision (b) of Section 11360. Many of these records have  
3 been kept by Defendants after their destruction was required by Health and Safety Code section  
4 11361.5 subdivision (a).

5 50. Defendants have a statutory duty and obligation pursuant to Health and Safety  
6 Code section 11361.5 to destroy the Index records pertaining to Section 11357 marijuana  
7 offenses, but Defendants have failed to comply with their statutory duty and obligation assuring  
8 the timely destruction of such records, in violation of Health and Safety Code section 11361.5.

9 51. Defendants actions in failing to timely destroy records pertaining to Section  
10 11357 marijuana offenses and continuing to maintain such records is unauthorized and violates  
11 Health and Safety Code section 11361.5 and the California constitutional right to privacy.

12  
13 **FOURTH CAUSE OF ACTION**

14 **VIOLATION OF GOVERNMENT CODE SECTION 68152**

15 **[As Against All Defendants]**

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

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

26 54. Government Code section 68152(c)(10) states in relevant part: Infraction  
27 alleging a marijuana violation under subdivision (a) of Section 11357 of the Health and Safety  
28 Code: if records are retained past the one-year minimum retention period, the records shall be

1 destroyed or redacted in accordance with subdivision (c) of Section 11361.5 of the Health and  
2 Safety Code two years from the date of conviction, or from the date of arrest if no conviction, if  
3 the case is no longer subject to review on appeal, all applicable fines and fees have been paid,  
4 and the defendant has complied with all terms and conditions of the sentence or grant of  
5 probation.

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

12 56. Defendants actions in failing to timely destroy records pertaining to Section  
13 11357 marijuana offenses and continuing to maintain such records is unauthorized and violates  
14 Government Code section 68152 and the California constitutional right to privacy.

15  
16 **FIFTH CAUSE OF ACTION**

17 **VIOLATION OF CONSTITUTIONAL RIGHT OF PRIVACY**

18 **[AS AGAINST ALL DEFENDANTS]**

19 57. Plaintiff and Petitioner refers to and incorporate by reference each and every  
20 paragraph above as though set forth fully herein.

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

28 59. The state constitutional right of privacy and due process extends to protect

1 criminal defendants from unauthorized disclosure of certain criminal records and the right to be  
2 protected from the disclosure of incomplete and inaccurate information.

3 60. Plaintiff and Petitioner, and all others similarly situated, have a reasonable  
4 expectation of privacy and accuracy as to their criminal records. These records are compiled  
5 without their consent and disseminated electronically over the internet without their knowledge  
6 and contain extremely sensitive and private information.

7 61. Plaintiff and Petitioner, and all others similarly situated, have a legally protected  
8 privacy interest in their criminal records and have an enforceable right of privacy in compelling  
9 strict compliance with statutory schemes protecting their privacy.

10 62. Defendants have a statutory and constitutional duty to not only protect and not  
11 disseminate the criminal records of Plaintiff and Petitioner and all others similarly situated  
12 electronically over the internet, but Defendants also have a mandatory duty to “resist attempts  
13 at unauthorized disclosure” of criminal records maintained by Defendants and the person who  
14 is the subject of the record is entitled to expect that her right will be asserted by Defendants.

15 63. Defendants, however, furnished local criminal information to persons  
16 electronically over the internet who are not authorized by law to receive the record or  
17 information of Plaintiff and Petitioner and all others similarly situated, by maintaining,  
18 operating, updating, and administering local criminal summary history information on the  
19 Court website, which constitutes a serious invasion of the privacy interests of Plaintiff and  
20 Petitioner and all others similarly situated.

21  
22 **DECLARATORY RELIEF**

23 **(CODE OF CIVIL PROCEDURE SECTION 1060)**

24 **[As Against All Defendants]**

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

27 65. An actual controversy exists between Plaintiff and Petitioner (and all others  
28 similarly situated) and Defendants as to:

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A. The legality of Defendants’ unfettered access to electronic records containing personal identification information, including, but not limited to, home addresses, home telephone numbers, and dates of birth.

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

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

66. The correct interpretation of the statutes and Court rules cited herein is that Defendants’ actions unlawfully interfere with the privacy rights of Plaintiff and Petitioner and all others similarly situated.

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

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

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**PETITION FOR WRIT OF MANDAMUS**  
**(CODE CIV. PROC., § 1085)**

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

70. Defendants and Respondents, maintain, operate, update, and administer on their Superior Court website an accessible, countywide automated Index containing personal identification information of Plaintiff and Petitioner, and all others similarly situated, including but not limited to home addresses, telephone numbers, and dates of birth.

71. Defendants and Respondents, maintain, operate, update, and administer on their Superior Court website an accessible, countywide automated Index containing criminal records for violations of Section 11357 marijuana offenses by Plaintiff and Petitioner and all others similarly situated.

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

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

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

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

76. Plaintiff and Petitioner, and all others similarly situated, will continue to have their Constitutional and statutory rights of privacy violated and their criminal records for arrests and/or convictions for violations of Section 11357 marijuana offenses maintained and



1 disclosed by Defendants if the writ is not issued.

2  
3 **CLASS ACTION ALLEGATIONS**

4 77. This lawsuit is brought on behalf of two ascertainable classes consisting of:

5 a. The Personal Identification Information Class, defined as:

6 “All persons whose home addresses, home telephone numbers, and/or dates of  
7 birth are accessible through the Merced Superior Court website.”

8 b. The Records Destruction Class, defined as:

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

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

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

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

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1           81.     There is a well-defined community of interest among the members of the class  
2 because common questions of law and fact predominate, Plaintiff and Petitioner’s claims are  
3 typical of the class members, and Plaintiff and Petitioner can fairly and adequately represent  
4 the interests of the class.

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

8           A.     Whether the Defendants have a statutory duty to limit access to individuals’  
9 home addresses and home telephone numbers pursuant to the Informational Privacy Act  
10 of 1977 ;

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

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

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

17          E.     Whether Defendants violated their duty to destroy certain criminal records in  
18 accordance with Health and Safety Code section 11361.5 and Government Code section  
19 68152;

20          F.     Whether Defendants are violating Article I section 1 of the California  
21 Constitution by disclosing individuals’ home addresses, home telephone numbers, and  
22 dates of birth; and failing to destroy certain criminal records in accordance with Health  
23 and Safety Code section 11361.5 and Government Code section 68152.

24           83.     Plaintiff and Petitioner’s claims are typical of those of the other class members  
25 because Plaintiff and Petitioner, like every other class member, were exposed to virtually  
26 identical conduct and are entitled to the same equitable relief.

27           84.     Plaintiff and Petitioner can fairly and adequately represent the interests of the  
28 class and Plaintiff and Petitioner has no conflicts of interest with other class members, and has

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1 retained counsel competent and experienced in class actions and civil litigation.

2 85. A class action is superior to other available methods for the fair and efficient  
3 adjudication of this controversy because joinder of all members is impracticable, the likelihood  
4 of individual class members prosecuting separate claims is remote, and individual class  
5 members do not have a significant interest in individually controlling the prosecution of  
6 separate actions. Relief concerning Plaintiff’s rights under the laws alleged herein and with  
7 respect to the class as a whole would be appropriate. Plaintiff knows of no difficulty to be  
8 encountered in the management of this action that would preclude its maintenance as a class  
9 action.

10 **PRAYER**

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

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

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

17 1. For temporary, preliminary, and permanent injunctive relief preventing  
18 Defendants from disclosing in its documents the home address and home telephone number of  
19 Plaintiff and all others similarly situated to any requestor, unless and until the requestor  
20 sustains his, her, or its burden of proof that the requestor is authorized by law to receive such  
21 information.

22 2. For mandatory injunction requiring Defendants to promptly submit to the court  
23 for approval and adopt and implement a schedule for redacting entries in Defendants’  
24 documents that disclose the home address and home telephone number of Plaintiff and all  
25 others similarly situated.

26 3. For mandatory injunction directing Defendants to submit reports to the court  
27 and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely redacting the  
28 home address and home telephone number of Plaintiff and all others similarly situated.

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1           4.       For an award of attorney’s fees as authorized by the provisions of Civil Code  
2 section 1798.46; Code of Civil Procedure section 1021.5; as authorized under the “common  
3 fund” doctrine; and as authorized by the “substantial benefit” doctrine.

4           5.       For costs of the suit.

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

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

7 **SECOND CAUSE OF ACTION – VIOLATION OF CALIFORNIA RULES OF COURT,**  
8 **RULE 2.507**

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

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

16           3.       For mandatory injunction directing Defendants to submit reports to the court  
17 and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely redacting the  
18 home address and home telephone number of Plaintiff and all others similarly situated.

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

22           5.       For costs of the suit.

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

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

25 **THIRD AND FOURTH CAUSE OF ACTION – VIOLATIONS OF CALIFORNIA**  
26 **HEALTH AND SAFETY CODE SECTION 11361.5 AND GOVERNMENT CODE**  
27 **SECTION 68152**

28           1.       For temporary, preliminary, and permanent injunctive relief enjoining

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1 Defendants from maintaining and disclosing records of Section 11357 marijuana offenses;

2 2. For mandatory injunction requiring Defendants to promptly submit to the court  
3 for approval and adopt and implement a schedule for timely destruction of Section 11357  
4 marijuana offenses in both the Index and other court files;

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

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

11 5. For costs of the suit;

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

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

14  
15 **DECLARATORY RELIEF**

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

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

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

27 4. For temporary, preliminary, and permanent injunctive relief preventing  
28 Defendants from disclosing the date of birth of Plaintiff and all others similarly situated on the

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1 Merced Superior Court website to any requestor, unless and until the requestor sustains his,  
2 her, or its burden of proof that the requestor is authorized by law to receive such information.

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

6 6. For mandatory injunction directing Defendants to submit reports to the court  
7 and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely redacting the  
8 home address and home telephone number of Plaintiff and all others similarly situated.

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

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

16 9. For mandatory injunction directing Defendants to submit reports to the court  
17 and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely redacting the  
18 home address and home telephone number of Plaintiff and all others similarly situated.

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

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

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

27 13. For an award of attorney’s fees as authorized by the provisions of Civil Code  
28 section 1798.46; Code of Civil Procedure section 1021.5; as authorized under the “common

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1 fund” doctrine; and as authorized by the “substantial benefit” doctrine.

2 14. For costs of the suit.

3 15. For a determination that Plaintiff is the prevailing party; and

4 16. For such other relief as the Court may deem proper.

5

6 **PETITION FOR WRIT OF MANDATE**

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

8 1. Commanding Respondents to cease and desist from:

9 a. maintaining and disclosing individuals’ home addresses and home telephone  
10 numbers;

11 b. maintaining and electronically disclosing individuals’ dates of birth; and

12 c. maintaining and disclosing records of Section 11357 marijuana offenses;

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

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

20 4. For mandatory injunction directing Defendants to submit reports to the court  
21 and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely redacting the  
22 home address and home telephone number of Plaintiff and all others similarly situated.

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

27 6. For mandatory injunction requiring Defendants to promptly submit to the court  
28 for approval and adopt and implement a schedule for redacting entries in Defendants’

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documents that disclose the date of birth of Plaintiff and all others similarly situated.

7. For mandatory injunction directing Defendants to submit reports to the court and Plaintiff and Petitioner’s counsel regarding Defendants’ progress in timely redacting the home address and home telephone number of Plaintiff and all others similarly situated.

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

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

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

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

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

13. For costs of the suit.

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

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

Dated: \_\_\_\_\_

**FINEMAN ◊ POLINER LLP**

\_\_\_\_\_  
Phillip R. Poliner  
Neil B. Fineman  
Attorneys for Plaintiff,  
Jane Doe



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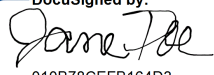
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**VERIFICATION**

I, Jane Doe, declare as follows:

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 9/10/2021, 2021.

DocuSigned by:  
  
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Jane Doe, pseudonym