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GOSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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18 Grant Park Neighborhood Association Advocates,
19 Melissa Freebairn, Johnny Font,
20 Kevin Vogel, and Renee Golder

21 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 IN AND FOR THE COUNTY OF SACRAMENTO

23 UNLIMITED JURISDICTION

24 GRANT PARK NEIGHBORHOOD
25 ASSOCIATION ADVOCATES, an
26 unincorporated association, MELISSA
27 FREEBAIRN, JOHNNY FONT, KEVIN
28 VOGEL; and RENEE GOLDER

Petitioners/Plaintiffs,

vs.

CALIFORNIA DEPARTMENT OF PUBLIC
HEALTH; SANDRA SHEWRY, in her
official capacity as Interim Director STATE
PUBLIC HEALTH; DR. ERICA PAN, in her
official capacity as Acting State Public
Health Officer; HARM REDUCTION

CASE NO.

VERIFIED PETITION AND
COMPLAINT

1. Petition for Violation of the California Environmental Quality Act ("CEQA" - Public Resources Code §2100 et Seq.) And Injunctive Relief Re: Unlawful Approval of Syringe Exchange Program ("SEP") (Code Civ. Proc. 1094.5)
2. Complaint for Public Nuisance (Code Civ. Proc. §§ 3479 and 3480.)

1 COALITION OF SANTA CRUZ COUNTY
2 (an entity of form unknown); DENISE
3 ELERICK, and DOES 1 to 50, inclusive

4 Respondents/Defendants

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8
9
10 HARM REDUCTION COALITION OF
11 SANTA CRUZ COUNTY (an entity of form
12 unknown); DENISE ELERICK, and DOES
13 51 to 100, inclusive

14 Real Parties In Interest

3. Petition for Writ of Mandate to
Correct Abuse of Discretion and Set
Aside Unlawful Approval of SEP
Certification in Violation of Local
Ordinances (Code Civ. Proc. Code Civ.
Proc. §1085).

4. Petition for Writ of Mandate to
Correct Abuse of Discretion and to Set
Aside Unlawful Approval of SEP
Certification to a Non-"Entity"/non-
"Organization" (Code Civ. Proc. §1085;
Health & Safety §121349; 17 CCR
§7002)

5. Petition for Writ of Mandate to
Compel Rejection of SEP Application
(Code Civ. Proc. §1085; Health &
Safety §121349; 17 CCR §7004)

6. Complaint for Declaratory and
Injunctive Relief

15
16 Petitioners/Plaintiffs Grant Park Neighborhood Association Advocates, Melissa
17 Freebairn, Johnny Font, Kevin Vogel and Renee Golder (hereinafter "Petitioners")
18 allege as follows:

19 **INTRODUCTION**

20 1. Petitioners bring this action seeking to obtain court orders preventing
21 Respondents/defendants, California Department of Public Health, Sandra Shewry, Dr.
22 Erica Pan, the Harm Reduction Coalition of Santa Cruz County, and Denise Elerick
23 (hereinafter collectively "Respondents") from instituting, maintaining and approving a
24 needle exchange program that does not comport with the legal requirements necessary
25 to ensure the health and safety of the public at large. Indeed, the needle exchange
26 program, which was authorized to commence on or about August 7, 2020, poses a
27 serious threat to the health and safety of the citizens of Santa Cruz County. Finally, this
28 action challenges the violation of the California Environmental Quality Act ("CEQA") by

1 Respondents, California Department of Public Health, Sandra Shewry, and Dr. Erica Pan
2 (hereinafter "State Respondents") because they have entirely failed to perform the
3 required environmental review needed for the distribution, collection and disposal of used
4 needles.

5 2. Petitioners are also bringing this action because the state authorized
6 needle exchange program does not comport with local legal requirements or local
7 ordinances. The County of Santa Cruz already operates a locally authorized Syringe
8 Exchange Program (SEP) under the oversight of the Santa Cruz County Health Services
9 Agency ("HSA"). The HSA operations, under the oversight of the Santa Cruz County
10 Board of Supervisors, engage in public outreach and the development of local policy to
11 address the needs of Santa Cruz County Residents. The HSA's SEP program is
12 accountable to residents of each of the four (4) incorporated Cities of Santa Cruz County
13 (Capitola, Santa Cruz, Scotts Valley, and Watsonville) and residents of the
14 unincorporated County.

15 3. In contrast, the Harm Reduction Coalition of Santa Cruz County
16 (hereinafter "HRCSCC") has undermined the local health and safety of Santa Cruz
17 County residents and is in direct conflict with local policy actions and land use
18 ordinances. HRCSCC operates through a random collection of "volunteers" who have
19 no responsibility to abide by State regulations much less the norms of community safety
20 and local rules and regulations. HRCSCC's operations have led to a documented
21 increase in discarded needles in Santa Cruz County, including more than 2,000 dirty
22 needles collected from one distribution site alone. Furthermore, HRCSCC operations
23 have resulted in a drastic decrease in the number of clients seen at the HSA, thereby
24 reducing their opportunity for medical care, HIV/Hepatitis testing, and rehabilitation
25 referrals.

26
27 4. The HRCSCC and the California Department of Public Health have
28 created a public nuisance that is injurious and offensive to the senses and public welfare,

1 have caused economic blight, environmental and public safety impacts, and economic
2 harm to Santa Cruz County residents. The HRCSCC has undermined and is in direct
3 conflict with professionally trained and managed local health and human services
4 programs operated through the HSA. The HRCSCC undermines professionally trained
5 staff by providing services and activities that are operated by an ad-hoc unaccountable
6 collection of volunteers who distribute tens of thousands of hypodermic needles which
7 "litter" parks, residential neighborhoods, beaches, rivers, public places, and the business
8 districts of the City of Santa Cruz and throughout Santa Cruz County.

9 **PARTIES**

10 5. Petitioner/Plaintiff Grant Park Neighborhood Association Advocates,
11 Melissa Freebairn, Johnny Font, Kevin Vogel, and Renee Golder are a broad and diverse
12 group of individual people and Plaintiffs: The Grant Park Neighborhood Association
13 Advocates are founders of a neighborhood association materially affected by the public
14 consumption of illegal drugs and the needle distribution program authorized and
15 operated by the Respondents, and located adjacent to the operations of the Santa Cruz
16 County Health Services Agency; Melissa Freebairn is a nurse who is a resident of the
17 City of Santa Cruz; Johnny Font is a resident of the City of Santa Cruz, who stepped on a
18 dirty needle at a beach in the City of Santa Cruz; Kevin Vogel is a resident of the City of
19 Santa Cruz and the former Chief of the Santa Cruz City Police Department; and Renee
20 Golder is a resident of the City of Santa Cruz and although she asserts the action
21 individually, she is a current member of the Santa Cruz City Council and former member
22 of the Citizens Public Safety Taskforce of the City of Santa Cruz. What each of the
23 Petitioners share in common is that they have been egregiously harmed by an unlawful
24 hypodermic needle distribution program, erroneously approved by the California
25 Department of Public Health and the State Health Officer without any environmental
26 review, without any outreach to long-standing neighborhood associations, that is
27 operated by an ad hoc unaccountable collection of volunteers, and who spread tens of
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1 thousands of used and unused hypodermic needle "litter" throughout the parks, beaches,
2 residential landscape, public places, and the business environment of the City of Santa
3 Cruz and Santa Cruz County. The needle exchange distribution program has created a
4 serious threat to health and safety not just for the people of Santa Cruz, but also ranging
5 throughout Santa Cruz County and beyond due to the high number of visitors who travel
6 to Santa Cruz County. It was approved by the State Respondents in violation of the law
7 and is being operated in violation of the law.

8 6. Petitioner/Plaintiff Melissa Freebairn has been a resident of the County of
9 Santa Cruz for over 30 years. For the past eleven (11) years she has been a registered
10 nurse. As a parent of a young daughter, she constantly fears that she or her daughter
11 will be injured from needle litter. She and her daughter regularly find and dispose of dirty
12 needles around their neighborhood. She consistently finds needles especially during the
13 winter months on the beach at Seabright and Rivermouth, near the Lost Boys Bridge and
14 down in the beach flats area along the San Lorenzo River Mouth (a City designated
15 park). Needle litter from the needle distribution program specially and directly threatens
16 the health and safety of Petitioner and her family, who encounter needle litter in their
17 neighborhood and in the course of their visits to local parks and beaches.

18 7. Petitioner/Plaintiff Johnny Font has been a resident of the City of Santa
19 Cruz for over thirty (30) years. He is a retired contractor and current health coach. Mr.
20 Font suffered injury to his foot when he stepped on a used drug needle, while with his
21 daughters, on Cowell Beach on Father's Day in 2012. Mr. Font continues to find and
22 dispose of dirty needles at Cowell Beach on the shoreline and on various locations along
23 the beach. During his visits to the beach, Mr. Font has frequently seen young children
24 and their parents pick up needles at the beach and walk them over to the lifeguards. The
25 ongoing needle litter has made Mr. Font more vigilant when visiting the beach which he
26 does regularly. Needle litter from the needle distribution program specially and directly
27 threatens the health and safety of Petitioner, who encounters needle litter in his
28 neighborhood and in the course of his visits to local parks and beaches.

1 8. Petitioner/Plaintiff Kevin Vogel has been a resident of the City/County of
2 Santa Cruz for 31.5 years. He was a member of the Santa Cruz City Police Department
3 for 30 years, from February 9, 1987 until he retired on June 1, 2017. He served as Santa
4 Cruz City Chief of Police for nearly seven (7) years from December 9, 2010 through June
5 1, 2017. As a consequence of the needle distribution program he is specifically and
6 directly negatively impacted by the negative health and safety impacts of an all-volunteer
7 needle distribution program. As a former Police Chief and safety-conscious city resident,
8 he constantly fears that he or his family members will be injured from needle litter.

9 9. Petitioner/Plaintiff Renee Golder has been a resident of the City/County of
10 Santa Cruz for over 40 years. She served on the City's Public Safety Task force in
11 2012/2013. For the past 20 years, she has worked as a bilingual elementary school
12 teacher. She also spends her personal time enjoying the outdoors, biking, running and
13 hiking at local beaches and parks. Although she asserts this matter individually, she is
14 also a current Santa Cruz City Councilmember. As a parent of two teenage kids, who
15 also spend their free time at beaches and parks, she constantly fears that she or her
16 family members will be injured from needle litter. Needle litter from the needle distribution
17 program specially and directly threatens the health and safety of Petitioner and her
18 family, who encounter needle litter in their neighborhood and in the course of their visits
19 to local parks and beaches on a weekly basis.

20 10. Grant Park Neighborhood Association Advocates are representative core
21 members of Grant Park Neighbors, a special project of Ante Meridiam, Inc., a 501(c)3
22 California Corporation Nonprofit. In December 2018, neighbors in the immediate
23 proximity of the City of Santa Cruz's Grant Park gathered as stakeholder advocates for
24 the public space located at 150 Grant Street, Santa Cruz, CA 95060. Currently with over
25 120 self-identified volunteers, Grant Park Neighbors has a mission to advocate for a
26 beautiful, clean, and safe neighborhood on behalf of local residents and to promote the
27 health and safety of Grant Park. Brad Angell, as a founding member and director of
28

1 Grant Park Neighbors, asserts this petition/complaint on behalf of the representative core
2 members defined as the Grant Park Neighborhood Association Advocates.

3 11. As a consequence of the needle distribution program Mr. Angell is
4 specially and directly negatively impacted and receives constant neighborhood
5 comments from members of his group that they will not utilize the neighborhood park due
6 to the fear of needle litter and drug users. The park is located in a residential
7 neighborhood and features a basketball court, bocce ball court, bicycle pump track,
8 playground, youth ball fields, fenced dog area, picnic table, and barbecue pits. The park
9 is located adjacent to the needle exchange distribution site and therefore provides a
10 location for open drug use. Unfortunately, the public restrooms at that park are often
11 closed due to misuse, including the deposit of drug needles in the toilets that have
12 regularly clogged the toilets. Grant Park itself has been closed on multiple times in the
13 past three years due to needle debris and other, typically drug-based, nuisance activities.
14 This belief of health and safety risks at public spaces negatively impacts the desirability
15 to visit local parks and the general quality of life in the City of Santa Cruz. Mr. Angell
16 regularly communicates with GPN members, local elected officials, and local government
17 staff on behalf of the park and the neighborhood to increase the health and safety of his
18 neighborhood and city.

19 12. Respondent and Defendant California Department of Public Health
20 ("CDPH") is, and at all times herein mentioned was, a state department within the
21 California Health and Human Services Agency and was created under the laws and
22 regulations of the State of California. (Health & Safety Code, § 131000.) CDPH is
23 charged with implementing Health and Safety Code section 121349, et seq. On or about
24 Friday, August 7, 2020, Respondent CDPH acted to authorize HRCSCC to begin needle
25 distribution operations in the City and County of Santa Cruz. Just two (2) days later, on
26 or about late Sunday, August 9, 2020, State Public Health Officer and Director Sonia
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1 Angell, MD, MPH resigned her position. Sonia Angell was succeeded by Respondent
2 Sandra Shewry and Respondent Dr. Erica Pan.

3 13. Respondent Sandra Shewry ("Shewry") is, and at all times since about
4 August 10, 2020, has been, the Interim Director of CDPH. Shewry is sued in her official
5 capacity. As the Interim Director of CDPH, she has the legal duty to ensure that CDPH
6 complies with Health & Safety Code § 121349 et seq. and/or other applicable laws which
7 may include, but are not limited to, the California Environmental Quality Act.

8 14. Respondent Dr. Erica Pan ("Pan") is, and at all times since about August
9 10, 2020 has been, the Acting State Public Health Officer. Pan is sued in her official
10 capacity. As the Acting State Public Health Officer, Dr. Pan has the legal duty to ensure
11 that CDPH complies with Health & Safety Code § 121349 et seq. and/or other applicable
12 laws which may include, but are not limited to, the California Environmental Quality Act.

13 15. Petitioners are informed and believe and thereon allege that Respondent/
14 Defendant and Real Party In Interest HRCSCC is an ad-hoc, volunteer-run organization
15 with an unknown legal status that has twice applied to CDPH, most recently on
16 November 20, 2019, seeking authority to distribute syringes to intravenous drug users in
17 the City and the County of Santa Cruz, California.

18 16. Respondent/Defendant and Real Party In Interest Denise Elerick is
19 believed to be a resident of Aptos, California, an unincorporated town in the County of
20 Santa Cruz. She is believed to be the founder of the HRCSCC and according to
21 HRCSCC's CDPH SEP Application self-identified as HRCSCC's applicant and as its
22 "Coordinator." On or about March 2019, Respondent Denise Elerick submitted
23 HRCSCC's first CDPH SEP application. According to an April 18, 2019 Santa Cruz
24 Sentinel News Article, the HRCSCC program was described to operate separate from
25 existing Santa Cruz County-led needle exchange efforts. On or about November 20,
26 2019, Respondent Denise Elerick submitted HRCSCC's second CDPH SEP application.
27 According to HRCSCC's second application, Respondent Denise Elerick described the
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1 HRCSCC as "a volunteer-run community organization serving people who use drugs in
2 Santa Cruz County and thereby improving the health of the entire community." Further,
3 Respondent Denise Elerick signed in her individual capacity an acknowledgement and
4 attestation that upon HRCSCC certification that she and her organization "will comply
5 with state laws, regulations, and local ordinances."

6 17. Respondents/Defendants Does I through 50 and Real Parties In Interest
7 51 through 100 are the agents, employees, contractors, alter egos, and/or entities acting
8 under the authority of each other respondent and defendant or real party in interest, and
9 each performed and participated in the acts upon which this action is based. Each of
10 such Doe respondents/defendants acted within the cause and scope of such agency
11 and/or employment. Petitioners do not know the true names and capacities, whether
12 individual, corporate, or otherwise, of Does 1 through 100, inclusive, and therefore sue
13 said respondents and defendants under fictitious names. Petitioners will amend this
14 Complaint and Petition to show their true names and capacities when they have been
15 ascertained.

16 **JURISDICTION AND VENUE**

17 18. This court has jurisdiction pursuant to section 10 of article VI of the
18 California Constitution and Code of Civil Procedure.

19 19. Venue is proper with this court as Petitioners have asserted
20 claims against a department of the State of California and an officer/s of the State in
21 their official capacity and this action has been filed in a county in which the Attorney
22 General maintains offices pursuant to Code of Civil Procedure section 401.2.

23 **BACKGROUND OF ACTION** 24 **STATUTORY & REGULATORY BACKGROUND**

25 **Clean Needle and Syringe Exchange Programs.**

26
27 20. Health and Safety Code § 121349(c) provides that upon application by
28 qualified parties, CDPH may authorize said applicant to provide hypodermic needle and

1 syringe exchange services consistent with state standards in certain locations as
2 determined by CDPH. This is commonly known as a "Clean Needle and Syringe
3 Exchange Program."

4 21. Under applicable law, the CDPH is required to consult with the local
5 health officer and local law enforcement leadership prior to authorizing a hypodermic
6 needle and syringe exchange program. Only after consulting with the local health officer
7 and local law enforcement leadership and balancing their concerns can any such
8 authorization be approved or granted. (Health & Saf. Code, § 121349(c).)

9 22. Health and Safety Code § 121349(d) requires that, in order for CDPH to
10 issue the authorization, the applicant must demonstrate that it is qualified as provided by
11 law and that it can and will comply with certain minimum standards. These minimum
12 standards include establishing that the entity can provide certain services, including drug
13 abuse treatment, HIV/hepatitis screening, Hepatitis A and B vaccination, screening for
14 sexually transmitted infections, etc.; that the entity has the capacity to commence needle
15 and syringe exchange services within three months of authorization; that the entity has
16 adequate funding to provide needle and syringe exchange services for all of its
17 participants, to provide HIV and viral hepatitis prevention education service for all of its
18 participants and to provide for the safe recovery and disposal of used syringes and
19 sharps waste from all of its participants; and that the entity has the capacity, and
20 established plan, to collect evaluative data in order to assess program impact, including
21 total number of persons served, total number of syringes and needles distributed,
22 recovered and disposed of, and total numbers and types of referrals to drug treatment
23 and other services. (Health & Saf. Code, § 121349(d).)

24 23. CDPH has also issued rules and regulations regarding the authorization
25 of the hypodermic needle and syringe exchange services. (See, Cal. Code Regs., tit. 17,
26 § 7000 et seq.) As it relates to the application, title 17, § 7002(a), of the Code of
27 Regulations sets forth the requirements for the application, which include, but are not
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1 limited to, a description of services, anticipated number of participants to be served each
2 year, estimated number of syringes to be dispensed and collected each year, a copy of
3 various plans that must meet certain regulatory criteria and that guide the operation of
4 the Clean Needle and Syringe Exchange Program as well as collection and dispensing of
5 needles, and a signed statement attesting to various criteria, including compliance with
6 law and capacity to begin syringe exchange services within 90 days.

7 24. In addition, title 17, section 7004, of the Code of Regulations imposes a
8 mandatory and non-discretionary duty upon CDPH, requiring it to reject an application if
9 any of the following deficiencies exist:

10 (a) Information submitted in the application is incorrect or incomplete;

11 (b) The applicant does not meet all the requirements listed in Health
12 and Safety Code § 121349;

13 (c) Evidence of project harm to public safety, presented by local law
14 enforcement official(s), is, in the department's judgment, greater than evidence of
15 projected benefits to public health.

16 25. In addition, title 17, section 7002 (a)(5)(c) of the Code of Regulations
17 also imposes a mandatory and non-discretionary duty upon CDPH, requiring it to reject
18 an application unless it, among other requirements, "[p]rovides for the safe recovery and
19 disposal of used syringes and sharps waste from all its participants."

20 26. Finally, title 17, section 7002 (a) also imposes a time period by which
21 to issue a final decision within 30 days of after the close of the 90-day public comment
22 period requiring that, "Pursuant to Health and Safety Code Section 121349, the
23 department, after consultation with the local health officer and local law enforcement
24 leadership, shall issue a final decision to certify or not to certify within 30 days after the
25 close of the 90-day public comment period."
26

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1 **Legislative Findings on Public Health Risks of Discarded Needles**

2 27. The California State Legislature has made express findings as to the
3 public health risks posed by improperly discarded needles. In enacting the Safe Needle
4 Disposal Act of 2004, the Legislature found the following: (1) Every year, more than 2
5 billion needles and syringes are used outside of healthcare settings; (2) Most of these
6 needles are improperly stored and then are placed in either municipal trash or recycling
7 containers, thereby posing serious health risks to children, workers and the general
8 public. (Stats. 2004, c. 157 (S.B. 1362, §1)).

9 28. Similarly, in amending the Medical Waste Management Act, the
10 Legislature found that improperly discarded needles present “substantial risks to children,
11 workers and the general public.” Improperly discarded needles pose a “serious health
12 threat” to workers who sort and collect waste because they are “exposed to the danger of
13 being stabbed by needles that poke through clothing, including heavy gloves and boots.
14 This could result in serious injury, including infection by pathogens either from the needle
15 user or by pathogens that adhere to a needle.” (Assem. Com., Off. of Assem. Floor
16 Analysis, Rep. on Senate Bill No. 1305 (2005-2006 Reg. Sess.) June 16, 2006.)

17 **THE NEEDLE EXCHANGE PROGRAM IN THE COUNTY OF SANTA CRUZ**
18 **STATEMENT OF FACTS**

19 **Epidemic of Discarded Needles in Santa Cruz**

20
21 29. The City and County of Santa Cruz have been battling an epidemic of
22 discarded needles for many years. Tens of thousands of dirty syringes have been found
23 littering Santa Cruz’s streets, parks, public spaces, and beaches.

24 30. Discarded needles have impacted the water infrastructure in Santa Cruz
25 in that public restrooms have had to be shut down due to needles clogging the toilets.
26 Needles have also made their ways down storm drains and gotten stuck in drainage
27 systems. There have been numerous needle stick injuries, including needle stick injuries
28 to children and residents utilizing municipal public spaces such as beaches and parks.

1 The testing and prophylactic treatment after a needle stick injury is anxiety provoking,
2 constitutes a financial burden for many individuals, is not without side effects, and is not
3 always effective.

4 31. The issue of discarded needles has reached such a volume in Santa Cruz
5 that it significantly impacts community access to parks and beaches and local recreation
6 programs such as the City of Santa Cruz Parks and Recreation Junior and Little Guards
7 Program (a City of Santa Cruz ocean and beach youth program that provides quality
8 water safety education, physical conditioning, and understanding and respect for the
9 environment). Many parents of youth participants do not feel safe bringing their children
10 to City parks and beaches. These fears are well-founded, given the sheer number of
11 dirty needles being found at public spaces, and the number of reported needle stick
12 injuries.

13 32. Discarded needles also cause significant and substantial economic blight,
14 as needles are frequently found at or near businesses. Customers and potential
15 customers are understandably turned off by the sight of biohazardous waste at business
16 establishments. Furthermore, with its many beaches and Santa Cruz Beach Boardwalk
17 amusement park, the City and County of Santa Cruz heavily relies upon the tourism
18 industry for tax revenue to support city programs and services. Used, discarded needles
19 tarnish the reputation of Santa Cruz as a clean and safe place to visit. This belief of
20 health and safety risks at public spaces negatively impacts the desirability to visit local
21 parks and the general quality of life in the City of Santa Cruz.

22 33. As a result of public outcry regarding discarded needles, there is an
23 extensive recent history of public policy that has formed around syringe programs in the
24 City of Santa Cruz and County of Santa Cruz. This history includes the coordinated
25 transition away from non-medical volunteer, privately-run programs, to a County-run SEP
26 Syringe Services Program ("SSP"). The HRCSCC project is an attempt to undermine
27

28

1 and undercut local policies and regulations which manage Santa Cruz County Health and
2 Human Services.

4 **Syringe Outreach Supporters**

5 34. In or about 2012, a group of volunteers called Syringe Outreach
6 Supporters ("SOS") was distributing needles out of a van in a residential neighborhood in
7 a parking lot located on Bixby Street in the City of Santa Cruz, near the Santa Cruz
8 Beach Boardwalk. Neighbors were negatively impacted by dirty needles littering their
9 streets, as well as by increased drug activity and crime in the area. SOS did not offer
10 any client support services or otherwise attempt to get clients medical care or treatment.
11 The all-volunteer operations of the SOS were believed to be one of the major sources of
12 needle litter in the City of Santa Cruz.

13 35. In or about December 2012, community opposition to the proliferation of
14 dirty needles being found in public spaces was heightened and extensively debated by a
15 cross-section of the community. As a result of public input and associated policy actions,
16 the City of Santa Cruz formed a Public Safety Citizen Task Force, which investigated and
17 issued a report on its findings. The task force met over the course of nearly one year
18 and the task force work was informed by a variety of County executive Staff and key
19 community stakeholder presentations from health service providers and service
20 recipients.
21

22 **Santa Cruz County HSA Takes Over** 23 **Countywide Needle Exchange Program**

24 36. On or about April 2013, concurrent with the implementation of local policy
25 actions between the City of Santa Cruz and County of Santa Cruz, the County SSP was
26 formed and assumed the oversight of the programs formally operated by the all-volunteer
27 SOS, which eventually dissolved. The County SSP established two fixed locations in the
28 County – one at the County's medical clinic located at 1070 Emeline Street within the
jurisdiction of the City of Santa Cruz, and one located at 9 Crestview Terrace within the

1 jurisdiction of the City of Watsonville. The County SSP has a "1:1 exchange" policy,
2 which means that program participants are required to bring back dirty needles in order
3 to obtain new ones. This policy is intended to reduce the number of dirty needles
4 improperly discarded in the County of Santa Cruz.

5 37. The City of Santa Cruz's Public Safety Citizen Task Force issued its final
6 report in December 2013. The Santa Cruz City Council and Santa Cruz County Board of
7 Supervisors unanimously accepted the report. With regard to the proliferation of needles
8 in public spaces and the County's Syringe Exchange Program, the Task Force
9 recommended that City staff and the City Council work with the County HSA and the
10 3rd/5th District Supervisors' Offices to ensure the public safety efficacy (harm reduction
11 of users and community affected by discarded syringes) of the County's Syringe Services
12 Program. The Task Force considered the highest priorities for further policy actions to
13 include: (a) Insist that the County Board of Supervisors address the community-wide
14 impacts of SEP on their work plan/agenda; (b) Ensure best practices are in place for SEP
15 to mitigate impacts to the City's public spaces and neighborhoods with the following
16 actions: (1) Relocate the SEP to County-owned property located in a nonresidential area;
17 (2) Implement a syringe identification tagging program (e.g., color coding or serial
18 number); (3) SSP Exchange to be on a true one-for-one basis with an actual physical
19 count of syringes being exchanged with no estimations allowed; and (4) It was
20 established that the City should prevent additional syringe exchange programs from
21 operating or opening within the City limits through ongoing policy actions in collaboration
22 with the County of Santa Cruz. As a result of this policy deliberation and public process,
23 the County Health Services Agency assumed responsibility for syringe distribution in
24 Santa Cruz County. A true and correct copy of the December 2013 Public Safety Citizen
25 Task Force report is attached as **Exhibit "A."**

27 38. There is no shortage of clean syringes in Santa Cruz County. The
28 County SSP has continuously distributed significantly more syringes per capita than any

1 nearby County. According to the 2019 County SSP 2019 Biennial Report, Santa Cruz
2 County's SSP distributed more than 593,000 syringes during the period of March 2018
3 through February 2019. According to the U.S. Census, Santa Cruz County's Population
4 is 273,213. As a comparison, Santa Clara County, with a County population of
5 1,927,852 (approximately seven times more populous than Santa Cruz County)
6 dispensed 438,783 needles during the period of July 1, 2018 through June 30, 2019.
7 Monterey County, with a population of 434,061 County residents, distributes
8 appropriately 113,847 needles per year. Santa Cruz County's authorized SEP distributes
9 more needles per capita, than that of the combined programs which exist in Santa Clara
10 and Monterey Counties. True and correct copies of the SEP needle exchange statistics
11 for the above referenced counties are attached as **Exhibit "B"**

12 39. On June 27, 2017, the Santa Cruz County Grand Jury issued a report
13 about the County HSA SEP program entitled, "Sharper Solutions: A Sticky Situation That
14 Won't Go Away." On or about August 22, 2017, the County Board of Supervisors and
15 the County HSA provided their responses to the Grand Jury Report. A true and correct
16 copy of the Grand Jury report and the required agency responses is attached as **Exhibit**
17 **"C"**. The Grand Jury found, among other things, that a significant problem with used,
18 discarded needles continues to exist across Santa Cruz.
19

20 **Unauthorized Activities of the**
21 **Harm Reduction Coalition of Santa Cruz County (HRCSCC)**

22 40. On or about March of 2018, the Harm Reduction Coalition of Santa Cruz
23 County ("HRCSCC") was formed. An April 5, 2018 Santa Cruz Sentinel article, reported
24 that, "(T)he group, forged during a March 19 community meeting, aims to bring together
25 health service providers, elected officials, law enforcement and community members to
26 advocate for continuing and improved public health policies and programs." Instead of
27 bringing together health service providers, elected officials, law enforcement and
28 community members, HRCSCC "volunteers" began exploiting a loophole in the County

1 SSP's policies and procedures to obtain syringes from the County and pass them out as
2 a "secondary" needle exchange program without any oversight or authorization.
3 Petitioners and Plaintiffs are informed and believe that HRCSCC volunteers enrolled as
4 "clients" of the Santa Cruz County HSA SSP to obtain needles and supplies for use by
5 their organization. Petitioners and Plaintiffs are informed and believe that the HRCSCC
6 refused to undertake the advocacy and effort required to obtain local authorization and
7 therefore operated without authorization.

8 41. On or about November 2018 through April 2019, the HRCSCC continued
9 to operate without authorization, through their volunteers, and offer unauthorized
10 services within the City of Santa Cruz and the County of Santa Cruz. As an example, the
11 HRCSCC distributed up to 600 needles per day at a homeless encampment which was
12 established adjacent to the San Lorenzo River in the City of Santa Cruz. The
13 unsanctioned encampment was located behind a private shopping center ("Gateway
14 Plaza") and located on land adjacent to a state highway. The HRCSCC's operations
15 resulted in a dramatic increase in used, discarded needles where they operated. As a
16 result of the increase of unauthorized services, the encampment grew in size and
17 became a public and private nuisance with significant health and human safety concerns.

18 42. In order to manage the encampment and proliferation of needle litter
19 therein, the County HSA, in collaboration with local officials, installed a large red sharps
20 needle disposal kiosk mere steps away from camp residents. The HRCSCC's
21 unauthorized daily distribution of needles resulted in a significant amount of needle waste
22 at the site despite the presence of the needle disposal kiosk. News stories featured
23 photos of the improperly discarded needles in the encampment. Furthermore, business
24 owners and employees at Gateway Plaza businesses regularly found dirty needles in
25 and around their establishments.

26 43. During the time period of the HRCSCC's distribution of needles at the
27 Gateway Encampment, unexpectedly large amounts of needles began washing up on
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1 Santa Cruz beaches from the San Lorenzo River. The Director of an environmental
2 group, Save Our Shores, noted "the exceptionally high number of needles we have found
3 on our local beaches this winter season." She further explained, "While the largest
4 volume of needles we've found have been in locations adjacent to the outflow of rivers
5 and creeks, we have also been finding needles on beaches where we have not typically
6 found them in past years. This suggests, in addition to the increased numbers we are
7 finding on beaches like Seabright where the San Lorenzo joins the Monterey Bay, some
8 needles are being swept out into the open Bay before we are able to collect them and
9 then washing back ashore in another location." A true and correct copy of a
10 correspondence from Save Our Shores that was submitted to the CDPH in opposition to
11 the HRCSCC's first application is attached as **Exhibit "D"**.

12 44. On or about March 2019, the City of Santa Cruz attempted to vacate the
13 unsanctioned encampment and participated in a legal action in a case entitled 19-
14 081898-EJD. In that case, a variety of City Public Safety Staff and property owners
15 provided declarations that described the impact of the unsanctioned activities. Both
16 Santa Cruz City Police Department Chief Andy Mills and Santa Cruz City Fire
17 Department Chief Jason Hajduk noted the widespread presence of used needles at the
18 encampment. Chief Hajduk specifically found that there were many needles underneath
19 debris and junk, and that many needles had further migrated just below the surface of the
20 dirt. HRCSCC directly distributed needles to the unsanctioned encampment without
21 authorization. To mitigate the damage from discarded needles and other contaminants,
22 the top layer of soil had to be scraped, removed and graded with heavy equipment.
23 When the unsanctioned encampment was finally abated, on or about May 2019, City
24 workers retrieved more than 2,000 dirty needles that had been improperly discarded
25 adjacently to local waterways and a public park.
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HRCSCC'S First Application for CDPH Certification and Continued Unauthorized Operations

45. On or about March 11, 2019, the HRCSCC submitted its first application to request authorization by Respondent/Defendant CDPH to operate a state certified syringe exchange program. In its first application, the HRCSCC requested to operate a fixed and mobile service delivery operation that was estimated to annually serve 150 individuals and distribute approximately 100,000 to 150,000 needles. A true and correct copy of the HRCSCC's March 11, 2019 Application ("The March 11, 2019 Application") is attached as **Exhibit "E"**.

46. The HRCSCC's March 11, 2019 Application provided inaccurate and inconsistent information. These inconsistencies and inaccuracies included the following:

(a) Answering "no" to the question "Is there a neighborhood association affiliated with the location(s) of your proposed SEP site(s)?" In fact, there are numerous neighborhood associations for the Coral Street fixed location and across the County.

(b) Claiming that the Harm Reduction Coalition had a fiscal sponsor, when in fact there was no such agreement.

(c) Claiming that "Watsonville saw a significant overdose increase in 2018" in order to justify increased syringe distribution in that City. This claim was later confirmed to be false by Watsonville Chief of Police David Honda.

(d) Including the Salvation Army's 214 Union Street, Watsonville CA location as a distribution site. The Salvation Army never agreed to allow syringe distribution at this site, nor would it ever allow syringe distribution at any of its sites.

(e) Including a location in Pajaro, Monterey County without first informing law enforcement and the health officer of that jurisdiction, in violation of Health & Safety Code Section 121349.14. When Monterey County's First District

1 Supervisor belatedly learned of the site inclusion, his staff attempted to contact the
2 HRCSCC's founder, but was unsuccessful.

3 47. News articles which appeared in the Santa Cruz Sentinel on May 18, 19,
4 21, 2019, reported the lack of public review in the processing of the application. It was
5 reported at the time that then Scotts Valley Mayor Dilles "looked at the rules online, and
6 this could be a local decision. This group (HRCSCC) has the option of applying either
7 through local jurisdictions, city councils or supervisors or to the state," Dilles said. "And
8 they chose to go to the state. And I think this should be more of a local discussion and
9 decision, so we have more local control." Rev. Herb Schmidt noted in one of the articles
10 that "(w)e do not have any way of knowing if what (she's) doing is helpful or not helpful....
11 but more important is that we get people into treatment. And that seems to me the big
12 problem here in our county." A true and correct copy of the May 18 and 19, 2019 Santa
13 Cruz Sentinel Articles is attached as **Exhibit "F"**.

14 48. On or about May 22, 2019, The HRCSCC withdrew its first application for
15 CDPH authorization amid widespread community opposition and due to the inaccuracies
16 on their application.

17 49. Despite HRCSCC's application withdrawal, without local or state
18 authorization, the HRCSCC continued to distribute needles on Coral Street, located in
19 the Harvey West neighborhood of Santa Cruz. This continued unauthorized distribution
20 of syringes at this location has resulted in a significant rise in the number of needles
21 cleaned up by City workers in adjacent parks and open spaces. An open space known
22 as the "Pogonip" adjoins the Harvey West area. As an example, more than 1,200
23 needles were found in the Pogonip in the month of March 2020. Furthermore,
24 needles were found by City staff at Grant Street Park, along the River Levee, at Cowell
25 Beach and in Sycamore Grove. Petitioners/Plaintiffs are informed and believe that the
26 HRCSCC is doing needle "drops," as hundreds of unopened boxes and bags of
27 syringes have also been found at the Coral Street location. HRCSCC clients are also
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1 thereby able to transport and utilize syringes they receive in other locations such as at
2 adjacent parks, neighborhoods, beaches and open space without any contact with any
3 local health professional. True and accurate copies of Santa Cruz City worker Needle
4 Logs for the months of March, June, July, and August 2020, obtained via Public
5 Records Act Request, are attached as **Exhibit "G"**.

6 50. On or about October 2, 2019, Santa Cruz City Mayor Martine Watkins
7 sent a letter to the County Board of Supervisors regarding the County's evaluation of
8 harm reduction programs, syringe exchange sites or the consideration of secondary
9 syringe exchanges. Mayor Watkins stated that the City "would expect the County to
10 have prior City approval before any such programs and/or services are located within the
11 City of Santa Cruz' jurisdiction." A true and accurate copy of the aforementioned
12 correspondence is attached as **Exhibit "H"**.

13 51. On or about October 2019, without local or state authorization, the
14 HRCSCC also began distributing syringes on Felker Street, a mixed-residential street,
15 located in the City of Santa Cruz. As a result of the HRCSCC's unauthorized operations,
16 City staff were forced to increase maintenance of the area in the interest of the public's
17 health and safety. City worker logs reflect that in the months prior to the HRCSCC's
18 needle distribution at Felker Street, no needles were found at that location. As soon as
19 the HRCSCC began distribution at that location, City workers began finding needles. A
20 City park known as the Grant Street Park adjoins the Ocean Street corridor and is within
21 walking distance of the Harvey West and Felker Street neighborhoods. A group known
22 as the Grant Park Neighbors Association has had long-standing communications with
23 Santa Cruz County and Santa Cruz City Officials regarding the environmental and social
24 impacts of the needle exchange program. A true and correct copy of correspondence
25 from the Grant Park Neighbors Association is attached as **Exhibit "I"**.
26 Petitioner/Plaintiff Grant Park Neighborhood Association Advocates are the founders of
27 the group and issued said correspondence.
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1 52. On or about November 14, 2019, the County HSA held a public meeting
2 to solicit public opinion about the County's SSP and to make recommendations for the
3 County Board of Supervisors to make improvements to the County SSP at a scheduled
4 December 10, 2019 meeting. The purpose of this meeting was to guide further
5 improvements to the County's SSP program.

6 **HRCSCC'S Second Application for CDPH Certification and Continued**
7 **Unauthorized Operations**

8 53. Petitioners and Plaintiffs are informed and believe that the HRCSCC has
9 never requested nor applied for a local permit from the County of Santa Cruz.

10 54. On or about November 20, 2019, the HRCSCC submitted a second
11 application to the CDPH requesting state certification to operate an authorized state
12 certified clean needle and syringe exchange program and services for a fixed location on
13 Coral Street in the City of Santa Cruz, and "mobile" services anywhere and anyplace in
14 the County of Santa Cruz. In their second application, the HRCSCC requested to
15 operate a mobile site operation that was estimated to serve 200 individuals and distribute
16 150,000 and 160,000 needles annually. A true and correct copy of HRCSCC's
17 November 20, 2019 application (the "November 20, 2019 Application") is attached hereto
18 as **Exhibit "J"** and incorporated herein by reference as if set forth fully herein.

19 55. Needle distribution programs may be established pursuant to Health &
20 Safety Code Section 121349 and state regulations found at 17 CCR Section 7000 et seq.
21 Such programs may be initiated by the local government of a City or a County, and
22 approved by the CDPH and State Public Health Officer for a local agency to administer
23 (see H&S Section 121349(b)); in this matter neither the City of Santa Cruz nor the
24 County of Santa Cruz sought out or endorsed a local needle distribution program.
25 However, the CDPH may authorize a needle distribution program independently of local
26 control, through approval of an application by an "entity" that meets standards listed in
27 H&S Section 121349 and 17 CCR Section 7000.
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1 56. The HRCSCC's November 20, 2019 Application also provided inaccurate
2 and inconsistent information. These inconsistencies and inaccuracies included the
3 following:

4 (a) Claiming again that there are no neighborhood associations
5 affiliated with the Proposed SEP sites, when in fact, there are numerous neighborhood
6 associations in each of the incorporated Cities of Santa Cruz County and in the
7 Unincorporated County;

8 (b) Claiming again that "Watsonville saw a significant overdose increase
9 in 2018" in order to justify increased syringe distribution in that City. This claim was
10 again confirmed to be inaccurate by Watsonville Police Chief Honda;

11 (c) Claiming that the southern portion of the county receives fewer
12 services than the rest of the county due to limited hours at the Watsonville campus of
13 the County Syringe Services Program (SSP). However, in November 2019, the County
14 Board of Supervisors authorized an increase in the hours of operation at the County
15 SSP Watsonville Campus as well as the Santa Cruz campus;

16 (d) Claiming that it had worked "in collaboration" with the County SSP,
17 which the County has since denied.

18 57. HRCSCC's November 20, 2019 Application requests to operate a needle
19 and syringe distribution program sanctioned for "mobile" outreach and delivery. Mobile
20 outreach services were requested for a site on Coral Street, located between Limekiln
21 Street and River Street, in the City of Santa Cruz. This is essentially a fixed location
22 within the City of Santa Cruz located on public property and public right of way. Mobile
23 delivery services were also requested to be available anywhere throughout the entire
24 County. Petitioners/Plaintiffs are informed and believed that the CDPH has never
25 previously authorized any group to have such broad geographical authorization for
26 needle distribution. The mobile delivery locations are anticipated to include repeated
27 locations that do not comport with local planning regulations. Petitioner/Plaintiff is
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1 informed and believes that the November 20, 2019 Application will provide fixed services
2 at distribution locations throughout the incorporated cities and unincorporated County of
3 Santa Cruz.

4 58. The short summary of the HRCSCC's November 20, 2019 Application
5 acknowledges that it seeks to operate a Syringe Exchange Program (SEP), and that the
6 program will largely be a mobile delivery service with regularly occurring operations in the
7 City of Santa Cruz and a mobile service within the incorporated Cities and
8 Unincorporated County of Santa Cruz. However, Petitioners/ Plaintiffs are informed and
9 believe that HRCSCC's mobile delivery services will largely take place at the same
10 location/s. Petitioners/Plaintiffs are further informed and believe that the November 20,
11 2019 Application was drafted with CDPH guidance to attempt to avoid required
12 environmental review of its desired operations.

13 59. Petitioners/Plaintiffs are informed and believe and thereon allege that the
14 HRCSCC's mobile outreach operations in the City of Santa Cruz will for all intents and
15 purposes be at a fixed location near or adjacent to a "recreational" park. Furthermore,
16 Petitioners/Plaintiffs are informed and believe and thereon allege that the mobile delivery
17 services will occur anywhere throughout the entire County of Santa Cruz, except within
18 any "recreational" park. The authorization does not prohibit distribution of needles next
19 to, or directly outside of parks, nor does it prohibit distribution near schools or in open
20 spaces. The County of Santa Cruz has more than fourteen (14) state parks and
21 beaches. The City of Santa Cruz has more than twenty-five (25) parks. The City of
22 Watsonville has more than twenty-five (25) parks. Our parks are critical environmental
23 and cultural resources to our community. HRCSCC's all-volunteer operations pose
24 significant harm to the health and safety of Santa Cruz County residents. The
25 HRCSCC's November 20, 2019 Application, and as later CDPH authorized, was and is
26 physically, logistically and practically incapable of satisfying the requirements for
27 recovery of all of the anticipated 160,000 needles that HRCSCC requests to annually
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1 distribute, leaving only the inevitable consequence of thousands of used needles littered
2 across the incorporated Cities and the unincorporated neighborhoods of Santa Cruz
3 County.

4 60. The HRCSCC's November 20, 2019 Application indicates a single contact
5 person identified as Denise Elerick, who is also identified as the SEP Administrator, with
6 the Title of Coordinator. The "Applicant Organization Description" is referenced in
7 Attachment I of the Application and simply described as follows: "The Harm Reduction
8 Coalition of Santa Cruz County (HRCSCC) is a volunteer-run community organization
9 serving people who use drugs in Santa Cruz County and thereby improving the health of
10 the entire community." Simply, "HRCSCC" or "Harm Reduction Coalition of Santa Cruz
11 County" is a name to describe a collection of individuals who volunteer their time, as
12 each individual may choose, who collectively have no "membership" and may change
13 depending on who shows up to volunteer, with no organization or formal legal entity
14 separate and apart from the actions by the individuals themselves on their own.

15 61. Health and Safety Code Section 121349 states that authorization to
16 conduct a program is to be given to an "entity." It is the "entity" that is responsible for
17 compliance with statutory and regulatory requirements. Merriam Webster dictionary
18 defines "entity" as "an organization that has an identity separate from those of its
19 members." HRCSCC does not have such an identity separate from those of its
20 members. Notwithstanding its seeming good intentions, HRCSCC was not statutorily
21 authorized to receive approval from CDPH for a needle distribution program.

22 62. Although the purported mobile needle and syringe exchange program will
23 physically occur within the boundaries of County of Santa Cruz, the HRCSCC's "mobile"
24 outreach program in the City of Santa Cruz will regularly operate in the Harvey West
25 Neighborhood, and thus that neighborhood and adjacent neighborhoods will be
26 disproportionately impacted by the program. The mobile outreach services will operate
27 in close proximity to the City of Santa Cruz's Harvey West Park, a park which serves
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1 numerous youth recreational organizations, Santa Cruz's Pogonip Park Open Space and
2 Grant Street Park, a neighborhood City park that is adjacent to the Ocean Street corridor
3 in the City of Santa Cruz.

4 63. As a practical matter, there are no boundaries restricting HRCSCC's
5 mobile outreach or home delivery operations. There is nothing preventing individuals
6 from securing new needles at Coral Street and continuing down Coral Street or Limekiln
7 Street down to Harvey West Blvd. toward Harvey West Park to use those needles to
8 inject drugs. There, educational facilities, serving elementary, middle school, and high
9 school aged children, are located adjacent to the park. There are also no boundaries
10 restricting HRCSCC home delivery operations which are intended to provide services
11 county wide; anywhere, anyplace, except in a "recreational" park. There is nothing
12 preventing individuals from securing hundreds of new needles countywide, at a delivery
13 location, which can occur anywhere, at or adjacent to a "recreational park" or other
14 environmentally sensitive property or neighborhood.

15 64. The Coral Street fixed location is immediately adjacent to the only family
16 homeless shelter in the County of Santa Cruz, The Rebele Family Homeless Service
17 Center. The Coral Street location is also near City and County youth recreational and
18 educational serving facilities. The Coral Street fixed location is also less than a 10-minute
19 walk to "The Cottage," an afternoon County high school educational program, and "Kirby
20 School," an independent school serving sixth through twelfth grade students. The City of
21 Santa Cruz Parks and Recreation Department operates Harvey West Park, which is
22 open to the public daily from 7:00 a.m. - Sunset and provides adult and youth serving
23 recreation classes and serves countless countywide nonprofit youth sports organizations,
24 including Little League baseball.

25 65. The location of the mobile delivery services is approved to operate
26 anywhere, anyplace county-wide except in a "recreational park." There is no local
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1 project. These letters listed and highlighted certain facts and numerous concerns
2 regarding the potential public safety, environmental impacts and health effects of the
3 applicant's project operation. These concerns were informed by HRCSCC's ongoing
4 operation of an unsanctioned needle and syringe exchange program in the County of
5 Santa Cruz. These concerns were also directly related to the very operation and design
6 of the HRCSCC's requested needle and syringe exchange program and in relation to the
7 statutory and regulatory scheme for CDPH authorization. In light of the existing Santa
8 Cruz County SEP, the available administrative record does not contain any
9 counterbalancing evidence of benefits to public health from a needle distribution program
10 which would allow the CDPH and the Public Health Officer to approve the HRCSCC
11 application without a clear and substantial abuse of their discretion.

12 70. Emails to and from the CDPH obtained through Public Records Act
13 requests make it clear that approval was a foregone conclusion and there was no
14 weighing of public opinion or that of law enforcement. Apparently, the CDPH did not
15 want to encourage public comment or review of the application. The CDPH only
16 discussed and pushed for positive news stories, with no discussion of negative media
17 coverage, including news footage showing the numerous discarded needles left behind
18 at the Gateway Encampment. The HSA invited the CDPH to a public meeting to hear
19 about needle distribution in Santa Cruz County, but the CDPH refused to attend, citing
20 "the intensity" of opposition to the HRCSCC application. The County HSA and law
21 enforcement heads emailed the CDPH regarding their concerns about the drastic
22 reduction of clients seen at the HSA by medical professionals. The CDPH failed to
23 respond to these concerns. True and correct copies of the aforementioned emails are
24 attached as **Exhibit "K"**.

25
26 71. On or about December 10, 2019, the County of Santa Cruz received an
27 agenda report (Agenda Item #17) from the County HSA with recommendations for a
28 policy that provided direction to manage secondary exchanges effective January 2020.

1 A true and copy of the December 10, 2019 Board Agenda is attached hereto as **Exhibit**
2 **“L”** and incorporated by reference as if set forth fully herein.

3 72. The County of Santa Cruz participated in the administrative process
4 offered by State Respondents in response to the November 20, 2019 HRCSCC
5 Application by submission of a letter written by the Chairperson of the Board of
6 Supervisors, on behalf of a unanimous Board. This correspondence was emailed by the
7 Clerk of the Board of Supervisors to the State Department of Public Health on January
8 17, 2020. A true and correct copy of the Board Agenda Item and the associated
9 opposition correspondence and is attached hereto as **Exhibit “M”** and incorporated
10 herein by reference as if set forth fully herein.

11 73. Santa Cruz County Sheriff/Coroner Jim Hart participated in the
12 administrative review of the HRCSCC November 20, 2019 application, and submitted a
13 correspondence dated January 7, 2020, on behalf of the County of Santa Cruz, and the
14 County’s approximately 273,000 residents of the unincorporated county, and the
15 approximately 131,567 residents of the incorporated Cities of the County (Capitola,
16 Scotts Valley, Watsonville and Santa Cruz). The letter raised several specific concerns
17 regarding a “‘secondary program,’ with little to no oversight and no services other than
18 handing out syringes.” He stated, “Approving the HRC’s application will negatively impact
19 public safety by putting our community members at risk from exposure to even more
20 syringe litter.” A true and correct copy of the January 7, 2020 correspondence is
21 attached hereto as **Exhibit “N”** and incorporated herein by reference as if set forth fully
22 herein.

23 74. The City of Scotts Valley participated in the administrative process by
24 submission of a letter of opposition dated January 17, 2020, by its then Mayor Randy
25 Johnson, and the full City Council. A true and correct copy of that correspondence is
26 attached hereto as **Exhibit “O”** and incorporated herein by reference as if set forth fully
27 herein.
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1 75. Watsonville Police Chief David Honda participated in the administrative
2 process by submitting a January 14, 2020 correspondence, on behalf of the City of
3 Watsonville. The letter raised several specific concerns about the HRCSCC application
4 and the impact of the mobile delivery services throughout the entire County. Chief Honda
5 noted that the "applicant indicates that there are no neighborhood associations affiliated
6 with the proposed SEP sites. However, the SEP proposed home delivery services
7 throughout the entire county. In Watsonville there are countless neighborhood
8 associations (Bay Village, Pajaro Village, Portola Heights and Pajaro Vista to name a
9 few) which should be consulted. The applicant's proposal is open ended and seeks to
10 operate an all-volunteer mobile exchange purportedly anywhere, any place without any
11 support or outreach by local neighborhood associations." A true and correct copy of that
12 January 14, 2020 correspondence is attached hereto as **Exhibit "P"** and incorporated
13 herein by reference as if set forth fully herein.

14 76. City of Capitola Police Chief Terry McManus participated in the
15 administrative review process with his email correspondence dated December 23, 2019.
16 The communication raised several concerns regarding the HRCSCC's operations and
17 stated "(d)espite the lack of proper certification and huge opposition, the operators of the
18 Harm Reduction Coalition of Santa Cruz County deliberately obtained thousands of
19 syringes from the County and distributed them at various locations in the City of Santa
20 Cruz and perhaps other municipalities without authorization. This group's operation has
21 resulted in a drastic decrease of clients utilizing the County's Syringe Services Program,
22 meaning that there are fewer addicts receiving medical attention and exposure to critical
23 rehabilitation opportunities." A true and correct copy of the December 23, 2019
24 communication is attached hereto as **Exhibit "Q"** and incorporated herein by reference
25 as if set forth fully herein.

26 77. The City of Santa Cruz Police Chief Andy Mills participated in the
27 administrative process with his email dated December 11, 2019. The email also raised
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1 and believe that no actual review under the California Environmental Quality Act ever
2 took place. Instead, Respondents summarily checked off boxes on the aforementioned
3 "Environmental Checklist Form" and falsely described the surrounding area around the
4 HRCSCC's Coral Street location as only "dedicated to industry with some businesses"
5 and having "no parks or residential properties present." In fact, there are multiple
6 businesses open to the public, numerous residential properties, a vast City park, Little
7 League fields, a school, a historically and culturally significant cemetery, and dedicated
8 open spaces, all of which have been impacted by improperly discarded drug needles.
9 Most important, the needle distribution takes place just outside the County's only family
10 shelter, where children and their families make their home. A true and correct copy of
11 the CDPH's "Environmental Checklist Form" is attached as **Exhibit "S"**.

12 82. On the "Environmental Checklist Form," Respondents did not check off a
13 single box under "Environmental Factors Potentially Affected." This includes "Aesthetics"
14 and "Hazards or Hazardous Materials." Dirty needles are obviously hazardous, and
15 obviously unsightly.

16 83. On the "Environmental Checklist Form" Respondents answered no, when
17 asked if there would be a "direct or reasonably foreseeable indirect physical change in
18 the environment." This is despite the HRCSCC's documented track record of leaving
19 significant amounts of needle waste behind wherever they operate. On the
20 "Environmental Checklist Form" Respondents further characterized the needle
21 distribution as a "temporary land use" while simultaneously stating that the HRCSCC had
22 been operating at the location on a permanent basis for eighteen (18) months as part of
23 the HRCSCC's work with the Santa Cruz County Health Services Agency's Syringe
24 Services program.
25

26 84. On the "Environmental Checklist Form" Respondents failed to make
27 "Mandatory Findings of Significance." Included in this category are environmental
28 impacts that are individually limited but "cumulatively considerable." The incremental

1 effects of a project are "considerable when reviewed in connection with the effects of
2 past projects, the effects of other current projects, and the effects of probable future
3 projects." Respondents checked the "no" box, despite the serious environmental effects
4 that the HRCSCC caused to the soil at the Gateway encampment location, at the San
5 Lorenzo River, and at local beaches.

6 85. On the "Environmental Checklist Form" Respondents denied that the
7 HRCSCC's project will have any "substantial adverse effects on human beings - either
8 directly or indirectly." On the "Environmental Checklist Form" Respondents also denied
9 that the HRCSCC project would impact fire protection, police protection, parks, or other
10 public facilities. Public facilities include Santa Cruz City sidewalks and streets.

11 86. Public comment was received on the application, and Respondents
12 were obliged to consider the voluminous quantity of letters, emails, and comments in
13 opposition to the application and environmental impacts. Attached as **Exhibit "T"** are
14 copies of 19 of the public comment letters as a random sampling of the many concerns
15 expressed. Recurring themes in the public comments were: the danger to the
16 environment, the danger to young children, the danger to public safety by permitting a
17 needle distribution program without any local accountability, the proximity of the
18 proposed location adjacent to the County's only family shelter; the proximity of the
19 needle distribution program to parks, schools and locations frequented by children and
20 the incompatibility of the program with the residential neighborhoods and environment;
21 the lack of coordination with trained medical providers which has led to a reduction in
22 services administered by the County HSA; the pollution of our rivers, streams, beaches,
23 and other public spaces. In addition, letters from over a thousand residents were
24 submitted in opposition to the program.

25
26 87. Notwithstanding the opposition to the application, and the application's
27 failure to meet statutory and regulatory requirements, on August 7, 2020 (nearly 200
28 days after the close of the public comment period and 170 days beyond the 30-day

1 deadline), less than 48 hours before the former CDPH Director resigned, Respondents
2 CDPH and the Public Health Officer approved the application by the HRCSCC with minor
3 revisions which purportedly restrict the HRCSCC's volunteers geographical limits from
4 operating in a "recreational park." Otherwise, the scope of its services includes the
5 entirety of the County of Santa Cruz with no other restrictions.

6
7 **The HRCSCC's Competing Operations Undermine the County's Existing**
8 **Program**

9 88. The HRCSCC's competing program is inferior to and undermines the
10 County's existing Syringe Services Program. The HRCSCC is not made up of medical
11 professionals, nor does it provide essential wraparound services to its clients; the
12 HRCSCC is essentially an amorphous assemblage of unnamed individual volunteers
13 with an unspecified structure. In contrast, the County's Syringe Services Program falls
14 under the auspices of the County's Public Health Division of the County Health Services
15 Agency. It is housed in the County's medical clinic located on Emeline Street in the City
16 of Santa Cruz, as well as another location in the City of Watsonville. The SSP is run with
17 the oversight of the Santa Cruz County's Director of Nursing, with the help of public
18 health nurses. The County has designed and implemented a Drug Medi-Cal Organized
19 Delivery System which has significantly expanded treatment capacity in the County. The
20 County's Syringe Program, not the HRCSCC, is in the best position to be able to connect
21 injection drug users with treatment, including the County's Medication Assisted
22 Treatment Program ("MAT").

23 89. Unfortunately, the HRCSCC's operations have resulted in a *drastic*
24 transition of SSP clientele away from the county-administered SSP program, thereby
25 depriving addicts of the opportunity to receive medical treatment, HIV/Hepatitis testing,
26 and rehabilitation referrals from trained professionals and under the oversight of the
27 County Health and Human Services Agency. For comparison, there were 387 unique
28 ID's (clients) at the County SSP in September 2017, 157 in September 2018 (after the

1 HRCSCC began its operations), 148 in September 2019 and just 104 in September
2 2020. Indeed, a unanimous Board of Supervisors wrote in its opposition to the
3 HRCSCC's application (Exhibit "M" to this Petition and Complaint): "If the State approves
4 the Harm Reduction Coalition's application, there will likely be worse outcomes for
5 injection drug users as they are directed away from the County SSP (as has been
6 documented) and toward an entity that doesn't have strong treatment connections, and
7 isn't run by professionals. If the application is approved, it will harm our community, and
8 would further jeopardize the effectiveness of the County's SSP. What would be best for
9 injection drug users and best for the larger community (not to mention the environment)
10 would be to support the County's professionally-run SSP which has the ability to change
11 lives for the better and to deny HRCSCC's application which would draw clients to an
12 inferior service, potentially putting them in danger. Injection drug users and our larger
13 community deserve better." (Emphasis added.). True and correct copies of the Santa
14 Cruz County Syringe Services Characteristics of Clients data sheets for September
15 2017, 2018, 2019 and 2020 are attached as **Exhibit "U"**.

16
17 90. The HRCSCC's operations also make it more difficult for the County of
18 Santa Cruz to expand and improve upon the County program. On or about May 2019,
19 the Santa Cruz County Second District Supervisor, wrote an email opposing the
20 HRCSCC's application to establish an SEP in Santa Cruz County. The Supervisor
21 wrote: "(I)n this climate the County is unable to engage in any sort of dialogue regarding
22 ways in which the current program can be improved while this application is being
23 considered for approval. Additionally, should the program be approved, it's clear that the
24 current County program will be difficult to separate from this independent program by the
25 greater community. Any resultant lack of transparency, increase in needle waste, public
26 health impacts or other impacts will reflect back upon the County program. I have
27 concerns that any attempts to improve upon the current County program will be nearly
28 impossible to implement in that context - and understandably so." A true and accurate

1 copy of Santa Cruz County's Second District Supervisor's May 23, 2019 email is
2 attached as **Exhibit "V"**.

3 91. The County has also recently formed a new SSP Advisory Committee,
4 which meets monthly and makes recommendations regarding the County syringe
5 program. The HRCSCC has no such transparency or local oversight.

6 **HRCSCC'S "Secondary" Distribution Practices and Lack of Data Collection**

7 92. While the number of clients seen at the SSP decreased with the
8 HRCSCC's inception, the number of syringes dispensed by the SSP actually increased.
9 This is because the HRCSCC was obtaining syringes from the SSP for "secondary"
10 distribution. "Primary" visits are those in which a client is seen at the clinic and obtains
11 syringes only for him or herself. At a primary visit to the SSP, the client can be directly
12 assessed by medical professionals. "Secondary" visits are those in which syringes are
13 obtained for others who are not present at the visit. Because these secondary users are
14 not present at the "secondary" visit, they cannot be directly assessed, nor can data be
15 collected regarding them. Primary visits at the SSP have dropped dramatically since the
16 HRCSCC began its operations. There were 196 primary visits at the County Syringe
17 Services Program in September 2017. In September 2018 (after the HRCSCC began its
18 unauthorized operations) that number went down to 103. In September 2019 there were
19 just 47 primary visits, and only 39 in September 2020.

20 93. The County Board of Supervisors has since placed a cap on the number
21 of syringes that can be distributed for secondary exchange from the SSP. The HRCSCC
22 has no such limit on secondary distribution, and secondary distribution is a major part of
23 their program. Because secondary users are not seen by the HRCSCC, it is impossible
24 for the HRCSCC to obtain any data on these users.

25 **Public Benefit - Attorneys Fees & Costs**

26 94. This action is brought by Petitioners not just in their private capacities but
27 also in the public interest, to vindicate important public rights. The relief sought by
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1 Petitioners would be impossible to measure fully in money damages such that there is no
2 economic benefit to Petitioners to justify the cost of litigation for purely economic return.
3 This litigation will confer a significant benefit on the general public and a large class of
4 persons who otherwise would suffer the ill effects from the environmental degradation
5 and nuisance impacts of the actions of Respondents/Real Parties/Defendants. Upon
6 successful conclusion of this legal proceeding, Petitioners will request a full award of
7 attorneys' fees and costs on the "private attorney general statute" of CCP §1021.5, or
8 any other such grounds as the law supports and the court deems appropriate.
9

10
11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF CEQA**

13 **(Against All Respondents and against HRCSCC and Denise Elerick as Real
14 Parties in Interest)**

15 95. Petitioners incorporate by reference all the allegations contained in the
16 preceding paragraphs as though fully set forth herein.

17 96. Under the California Environmental Quality Act ("CEQA" - Public
18 Resources Code §§ 21000, et seq.), the State Respondents CDPH and Acting Public
19 Health Officer (State Respondents) functioned as the Lead Agency in decision-making as
20 to prescribed environmental review of the approval of the needle distribution program
21 memorialized by the August 7, 2020 Authorization letter. The applicant HRCSCC and
22 Denise Elerick stand in the position of a Real Party in Interest in respect to this challenge
23 based on CEQA. A true and correct copy of the August 7, 2020, Authorization Letter is
24 attached hereto as **Exhibit "W"**.

25 97. Petitioners are informed and believe that State Respondents have
26 violated CEQA and have failed to proceed in the manner as required by law, committed a
27 prejudicial abuse of discretion and acted arbitrarily and capriciously in authorizing the
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1 HRCSCC application because the discretionary approval by CDPH of the application was
2 not subjected to any environmental review as required by CEQA.

3 98. The Authorization Letter from the California Department of Public Health
4 dated August 7, 2020 was approved despite extensive evidence in the record and
5 otherwise put before the State Respondents of significant and substantial adverse
6 impacts to the environment that would and later did result from approval of the needle
7 distribution program, but those potential foreseeable and actual impacts were not
8 addressed by CEQA environmental review. Such reviews are in order to address the
9 concerns conveyed during the CDPH/OA consultation with local law enforcement and
10 received during the public comment period regarding litter. Although CDPH/OA did not
11 authorize syringe services to operate within any recreational parks located in the City of
12 Santa Cruz or Santa Cruz County, there has been no analysis of the impacts of services
13 adjacent to parks where HRCSCC's operations occur. Additionally, CDPH states it will
14 provide HRCSCC with a grant to address syringe litter in Santa Cruz County and will
15 require the HRCSCC to conduct syringe litter clean up, among other activities, at a
16 minimum weekly. However, there is no analysis as to the extent of the financial and
17 environmental cost to support the authorized program and to prevent syringe litter.

18 99. The HRCSCC operations have resulted in syringe litter, which creates
19 environmental impacts to public health and safety that have not been addressed through
20 CEQA environmental review. Such impacts include, but are not limited to, used syringes
21 being littered near schools where children walk, along recreational trails utilized by
22 families, in parks utilized by families, in libraries frequented by children, in restrooms, in
23 parking lots and garages, and in other public buildings and public places, along public
24 rights-of-way, loose in trash, and within conduits of waste which result in syringes being
25 found in creeks, streams, rivers, and outlets to the ocean, including beaches near those
26 outlets. These impacts result in exposure of innocent persons, including children, to
27 experiencing a needle stick which could result in the contracting of communicable
28

1 diseases such as Hepatitis B, Hepatitis C, or HIV. The syringe litter also results in
2 potential adverse impacts to the water quality in the creeks, streams, rivers and beaches
3 of the County of Santa Cruz, City of Santa Cruz, City of Capitola, City of Scotts Valley
4 and the City of Watsonville.

5 100. Furthermore, needle litter results in adverse impacts to the recreational
6 use and environmental degradation of the creeks, streams, rivers and beaches of Santa
7 Cruz and Santa Cruz County. The needle litter in commercial and business areas of
8 Santa Cruz results in economic "blight" because patrons and customers of businesses
9 will avoid unhealthy, unsafe business areas where needle litter is present.

10 101. Within the City of Santa Cruz there are special planning zones subject to
11 detailed local planning and land use ordinances. The CDPH authorization of the
12 HRCSCC to operate a needle exchange program, is in conflict with local land use
13 ordinances, with actual adverse impacts due to the hindrance in implementing those
14 ordinances and plans. All these impacts have not been analyzed or considered by
15 Respondents for their effects on the environment as required by CEQA.

16 102. Petitioners/Plaintiffs are informed and believe, and thereon allege, as
17 follows: That at the time Respondent CDPH authorized the HRCSCC's needle
18 distribution program on August 7, 2020, it was the policy and practice of CDPH to ignore
19 or decline to engage in any kind of CEQA review for approval of SEP programs such as
20 this one. That CDPH admits that it did not begin to consider CEQA review of SEP
21 approvals until November of 2019 - before the approval of the HRCSCC program. On or
22 about November 2019, the CDPH began the process of preparing a "preliminary
23 checklist." CDPH provided an email response to an inquiry from municipal law attorney
24 Conor Harkins (no connection to this matter) as to whether CDPH has evaluated the
25 applicability of CEQA to SEP Approvals, with the reply that:
26

27 "For SEPs approved by the California Department of Public Health
28 since November 2019, the Department does a preliminary checklist to
assess whether CEQA applies and also if any CEQA exemptions

1 apply. The Department does not publish a notice of exemption or
2 notice of determination.”

3 A true and correct copy of the aforementioned email is attached and a copy of the
4 standard “preliminary checklist” that CDPH began to use in November 2019 is attached
5 hereto as hereto as **Exhibit “X”**.

6 103. Said “preliminary checklist” was never used for the review of the earlier
7 March 11, 2019 HRCSCC application. The commencement of CEQA preliminary review
8 in November 2019 was not coincidental but rather was a protective administrative policy
9 decision in reaction to an October 28, 2019 court ruling adverse to CDPH in County of
10 Orange v. California Department of Public Health, No. 37-2019-00039176-CU-MC-CTL-
11 Superior Court for the County of San Diego. In that case, the CDPH lost a motion for
12 summary adjudication requiring CDPH to engage in CEQA review for a SEP program
13 (based on the environmental impacts of needle litter) in Orange County, CA. A true and
14 correct copy of the aforementioned “Notice of Ruling” on Motion for Summary
15 Adjudication hereto attached as **Exhibit “Y”**. The CDPH “ENVIRONMENTAL
16 CHECKLIST” (**Exhibit “S”** attached hereto) prepared in this matter and obtained from
17 the files of CDPH, was formulated in bad faith without any factual or legal support, and
18 calculated to provide a predetermined but false “excuse” for CDPH to refuse to engage in
19 any actual CEQA review whatsoever.

20 104. The purported “ENVIRONMENTAL CHECKLIST” prepared in this matter
21 lists the name of the Syringe Services Program as “Right on Point.” To
22 Plaintiffs/Petitioners knowledge there is no such thing as “Right on Point” and HRSCC
23 does not have any legally registered use of that fictitious name, much less use of that
24 name by common usage; the name “Right on Point” does not appear in the CDPH SEP
25 application by HRCSCC, or anywhere else. The “ENVIRONMENTAL CHECKLIST”
26 prepared in this matter next lists the “Lead Agency” as HRCSCC. Plaintiffs are informed
27 and believe that “Right on Point” was inserted in the “ENVIRONMENTAL CHECKLIST”
28 as part of the improper document, so that it would not be obvious that ostensible CEQA

1 review by the "Lead Agency" (HRCSCC) is not a review of a different or separate
2 organization, but rather a false review of itself under an illusory/false name. The improper
3 "ENVIRONMENTAL CHECKLIST" is false, a fraud on the public, and the document
4 together with any and all of its findings, determinations, and conclusions has no legal
5 force or effect under CEQA.

6 105. The entry of "Harm Reduction Coalition of Santa Cruz County
7 (HRCSCC)" on the "ENVIRONMENTAL CHECKLIST" prepared in this matter as the
8 "Lead Agency" (followed by the HRCSCC contact information for the Lead Agency) is
9 false and unlawful in violation of Public Resources Code §21067, which states in its
10 entirety:

11 "Lead agency" means the public agency which has the principal responsibility for
12 carrying out or approving a project which may have a significant effect upon the
13 environment.

14 HRCSCC is not now and never has been a "public agency." And the public agency
15 with responsibility for approving the SEP program was and is CDPH. By law CDPH
16 would be the "Lead Agency" responsible for filling out the "ENVIRONMENTAL
17 CHECKLIST" prepared in this action (see CEQA Guidelines 14 CCR §15000 et seq.,
18 Appendix G) – which is the critical first step in determining whether any further CEQA
19 review will occur. As shown on the face of this document, HRCSCC unlawfully acted as
20 the Lead Agency to review itself and its own project, then made a fallacious
21 determination that the discretionary decision on its own SEP program is not a "project"
22 under CEQA due to false findings of "no impact," and a groundless assertion that it
23 came under an inapplicable exemption, so that no environmental review would be
24 required.
25

26 106. The "ENVIRONMENTAL CHECKLIST" prepared in this action is signed
27 (digitally) on p.2 by Alessandra Ross, a CDPH official working in the State's SEP
28 oversight program. Plaintiffs/Petitioners are informed and believe, and thereon allege,

1 that: Following the CEQA litigation loss in the Orange County matter CDPH adopted an
2 internal policy that new SEP program files must be documented with at least the
3 appearance of CEQA initial review. To satisfy this internal policy the CDPH official signed
4 the unlawful and defective false "ENVIRONMENTAL CHECKLIST", and placed it in the
5 CDPH file on the HRCSCC program. The execution and placement in government files of
6 the false "ENVIRONMENTAL CHECKLIST" was done without regard to the illegality of
7 the public document, or the false information in the public document, or the harm that
8 might be caused to members of the public that might be misled to believe that
9 environmental review had been initiated by CDPH.

10 107. Respondent/Defendant CDPH is vested with discretion in its approval of
11 the HRCSCC needle distribution program, and the CDPH decision to approve this
12 program was a "project" under CEQA as an activity which may cause either a direct
13 physical change in the environment, or a reasonably foreseeable indirect change in the
14 environment. Petitioners/Plaintiffs further allege that had Respondent CDPH conducted
15 CEQA review it would have found substantial evidence and more than a fair argument of
16 significant environmental impacts as a consequence of the HRCSCC project.
17 Respondent CDPH would therefore require an environmental impact report before going
18 forward with approval of the needle distribution program. Respondents' failure to engage
19 in environmental review under CEQA was unlawful, arbitrary, capricious, and an abuse of
20 discretion, which should be corrected by a judgement and writ of mandate as prayed for
21 herein.
22

23 108. Notice of the Petitioners intention to file this Petition and Complaint will be
24 served on the State Respondents on December 7, 2020. A true and correct copy of the
25 notice is attached hereto as **Exhibit "Z"**. A copy of this pleading shall be furnished to the
26 Attorney General of the State of California in accordance with Public Resources Code §
27 21167.7.
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SECOND CAUSE OF ACTION
PUBLIC NUISANCE
(Against All Defendants and Respondents)

109. Petitioners incorporate by reference all the allegations contained in the preceding paragraphs as though fully set forth herein.

110. The operation and design of a needle distribution program that creates the injurious, hazardous, noxious, and harmful impacts as described at lengthy herein is in violation of Civil Code § 3479 and §3480.

111. Petitioners have, as alleged herein, suffered special injury as a consequence of the public nuisance, and have exhausted their administrative remedies where required to do so.

112. The injurious actions of Respondents which create the nuisance complained of herein are not authorized by statute but rather are in violation of a statute or in excess of any authorization by statute, such as Respondents' failure to provide for the safe recovery and disposal of used syringes and sharps waste from all program participants – in violation of Health and Safety Code § 121349(d)(3).

113. Unless and until the nuisance created by Defendants and Respondents is enjoined, the safety, health and well-being of the public, as well as the special and direct injury to Petitioners, will suffer irreparable damage for which money damages would be an inadequate remedy.

114. Defendants and Respondents must be compelled to perform the acts and refrain from the acts requested in the prayer for relief below and incorporated by reference, as Petitioners have no other adequate remedy at law.

THIRD CAUSE OF ACTION
WRIT OF MANDATE:
VIOLATION OF LOCAL ORDINANCES (CCP § 1085)
(Against All Defendants and Respondents)

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4 115. Petitioners incorporate by reference all the allegations contained in the
5 preceding paragraphs as though fully set forth herein.

6 116. 17 CCR Section 70004 of the Code of Regulations requires that CDPH to
7 reject an application if, among other things, information submitted in the application is
8 incorrect or incomplete. 17 CCR Section 7002 requires a signed statement that the
9 applicant will comply with local ordinances, but to Petitioner's knowledge no such
10 statement is in the record and the application was fatally incomplete.

11 117. 17 CCR Section 7014 explicitly requires that the program shall be
12 operated in compliance with local ordinances. The program as submitted for
13 consideration in the application could not be operated in compliance with the local land
14 use ordinances that make up the Local Coastal Land Use Plan, San Lorenzo Urban
15 River Plan, the Local Coastal Implementation Program, the Pogonip Master Plan, and
16 City's General Plan. In fact, following the approval of the needle distribution program the
17 program was and is operated in conflict with the local ordinances creating those Plans
18 which do not permit, either as a use by right or by discretionary permit, the operation of a
19 needle distribution program.

20 118. In regards to the HRCSCC November 20, 2019 application, the needle
21 distribution service area is designated as the entire City of Santa Cruz, and the entire
22 Santa Cruz County, where there currently is no general plan designation or land use
23 zone where needle distribution would be permissible as a use by right or by grant of a
24 discretionary permit. Pursuant to 17 CCR Section 7014 neither the City of Santa Cruz or
25 the County of Santa Cruz is legally required to accommodate needle distribution as a
26 land use that is in conflict with the ordinances establishing the general plan and land use
27 zoning laws of the City.
28

1 119. Further in regard to the HRCSCC November 20, 2019 application, the
2 needle distribution program which purports to distribute needles throughout the entire
3 City of Santa Cruz is in direct violation of Santa Cruz Municipal Code Section: 24.08.10
4 and 24.08.200.

5 120. The HRCSCC's operations conflict with state and federal Clean Water
6 Acts because they cause dirty needles to end up in our waterways. They also interfere
7 with coastal access rights under the California Coastal Act of 1976 because citizens are
8 unable to fully utilize the beaches due to dirty needles on the beaches.

9 121. The actions and decisions of Defendants/Respondents to approve the
10 HRCSCC application were arbitrary, capricious, an abuse of discretion and contrary to
11 law. Further, the continued operation of the HRCSCC needle distribution program by
12 Defendants is in conflict with local ordinances and is an ongoing and continuing violation
13 of law.

14 122. Petitioners/Plaintiffs have exhausted their administrative remedies where
15 required to do so.

16 123. Unless and until the Defendants/Respondents are enjoined, the safety,
17 health and well-being of Plaintiffs/Petitioners and the public will suffer irreparable
18 damage for which money damages would be an inadequate remedy.

19 124. Defendants and Respondents must be compelled to perform the acts and
20 refrain from the acts requested in the prayer for relief below and incorporated by
21 reference, as Petitioners have no other adequate remedy at law.
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24 **FOURTH CAUSE OF ACTION**
25 **WRIT OF MANDATE**
26 **VIOLATION - PROGRAM APPROVAL FOR NON-"ENTITY"**
27 **(Against All Defendants/Respondents)**

28 125. Petitioners/Plaintiffs incorporate by reference all the allegations contained
in the preceding paragraphs as though fully set forth herein.

1 126. 17 CCR Section 7004 of the Code of Regulations requires CDPH to reject
2 an application if, among other things, information submitted in the application is incorrect
3 or incomplete or contrary to the requirements of H&S Section 121349.

4 127. H&S Section 121349 unequivocally requires that approval of an
5 application and program authorization is available only to an "entity." HRCSCC is merely
6 a shape shifting collection of volunteers, with no separate and distinct status as an
7 "entity" from its volunteers.

8 128. The application, pursuant to 17 CCR Section 7004, failed as incomplete,
9 because there is no indication of any "entity" status other than its desire to operate as a
10 "volunteer-run community organization." A group of volunteers does not establish
11 "entity" status pursuant to relevant Health and Safety regulations.

12 129. The application violated H&S Section 121349 for failing to provide an
13 "entity" as the legally required application and operator of a program.

14 130. The actions and decisions of Respondents to approve the HRCSCC
15 application were arbitrary, capricious, an abuse of discretion and contrary to law.
16 Further, the continued operation of the HRCSCC needle distribution program is an
17 ongoing and continuing violation of law.

18 131. Petitioners/Plaintiffs have exhausted their administrative remedies where
19 required to do so.

20 132. Unless and until the Defendants and Respondents are enjoined, the
21 safety, health and well-being of the public will suffer irreparable damage for which money
22 damages would be an inadequate remedy.

23 133. Defendants and Respondents must be compelled to perform the acts and
24 refrain from the acts requested in the prayer for relief below and incorporated by
25 reference, as Petitioners have no other adequate remedy at law.
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1 **FIFTH CAUSE OF ACTION**
2 **WRIT OF MANDATE:**
3 **DUTY TO REJECT APPLICATION DUE TO INCORRECT INFORMATION AND**
4 **FAILURE TO MEET H&S CODE REQUIREMENTS**
5 **(Against All Defendants/Respondents)**

6 134. Petitioners/Plaintiffs incorporate by reference all the allegations contained
7 in the preceding paragraphs as though fully set forth herein.

8 135. Title 17, section 7004, of the Code of Regulations requires CDPH to
9 reject an application if, among other things, information submitted in the application is
10 incorrect or incomplete, or if the applicant does not meet the requirements listed in
11 Health and Safety Code section 121349.

12 136. The HRCSCC's application to CDPH contained incorrect and incomplete
13 information in several areas, including but not limited to: a false claim that no
14 neighborhood associations exist for the areas of distribution, a false claim of
15 "collaboration" with the County Syringe Services Program, and a false claim about
16 increased overdoses in Watsonville.

17 137. Moreover, the HRCSCC's application failed to meet requirements set
18 forth in Health and Safety Code section 121349 et seq. Specifically, HRCSCC's
19 application was entirely devoid of any evidence or information as to how it would improve
20 its operation and eliminate any concern that the threats to public health and safety that
21 occurred at the Gateway Encampment, Coral Street site, and Felker Street site would not
22 occur with the new certification to operate the mobile program all across the County.

23 138. The HRCCC's program also conflicts with and undermines the existing
24 County Syringe Services Program, with the potential to cause the SSP to fail completely.
25 Health and Safety Code Section 121349 authorizes a city OR a county OR a city and
26 county, OR the state to authorize a syringe program. The Health and Safety Code does
27 not allow for competing programs to be authorized by two different governmental entities
28 in the same jurisdiction.

1 139. The HRCSCC's application is devoid of any evidence or information as to
2 how it will actually provide the wraparound services enumerated in Health and Safety
3 Code section 121349 et seq., including Drug abuse treatment services, HIV or hepatitis
4 screening, Hepatitis A and hepatitis B vaccination, Screening for sexually transmitted
5 infections, Housing services for the homeless, for victims of domestic violence, or other
6 similar housing services, and Services related to provision of education and materials for
7 the reduction of sexual risk behaviors, including, but not limited to, the distribution of
8 condoms.

9 140. Furthermore, the HRCSCC's broad "secondary distribution" practices
10 completely bypass the reporting requirements in Health and Safety Code Section
11 121349(d)(4), which requires that it prove that the entity has the capacity, and an
12 established plan, to collect evaluative data in order to assess program impact, including,
13 but not limited to, all of the following: The total number of persons served, and the total
14 number of syringes and needles distributed, recovered, and disposed of, and the total
15 numbers and types of referrals to drug treatment and other services. Because the
16 HRCSCC is not interacting with these "secondary" recipients directly, it is in fact
17 impossible for it to obtain the required data.

18 141. Further, title 17, section 7002(c) of the Code of Regulations also imposes
19 a mandatory and non-discretionary duty upon CDPH, requiring it to reject an application
20 unless it, among other requirements, requirements, "[p]rovides for the safe recovery and
21 disposal of used syringes and sharps waste from all its participants." HRCSCC's
22 application failed to outline how it would avoid another repeat of the soil destruction and
23 thousands of dirty needles recovered at the Gateway Encampment.

24 142. State Respondents therefore had a non-discretionary and mandatory duty
25 to reject HRCSCC's application, and their failure to comply with their duties under the law
26 has resulted in the unlawful authorization of the HRCSCC's operation of the needle
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1 exchange program, posing an immediate threat to the public health and safety of the
2 citizens of the City and County of Santa Cruz.

3 143. Finally, authorization of a syringe exchange program can only be made
4 after consultation with local law enforcement leadership. (Health & Saf. Code, §
5 121349(c).) All of the evidence submitted to CDPH relating to public health and safety
6 concerns about the HRCSCC's operations in the City and County of Santa Cruz
7 demonstrate that the harm to public safety exceeds any public health benefit of the
8 HRCSCC's operation across the County. The CDPH has refused and/or failed to
9 adequately consult with the law enforcement of Santa Cruz County, instead summarily
10 dismissing law enforcement's concerns and opposition.

11 144. Petitioners have no plain, speedy and adequate remedy in the ordinary
12 course of law.

13 **SIXTH CAUSE OF ACTION**
14 **DECLARATORY RELIEF AND INJUNCTION**
15 **(Against all Defendants/Respondents)**

16 145. Petitioners/Plaintiffs incorporate by reference all the allegations contained
17 in the preceding paragraphs as though fully set forth herein.

18 146. An actual controversy exists between the parties. Petitioners contend that
19 State Respondents have authorized HRCSCC to operate a needle exchange program
20 without meeting the necessary legal requirements of CEQA and the fundamental
21 requirement of H&S 121349 and 17 CRC 7000 et seq.: that the operation of the needle
22 distribution program is a public nuisance; that the operation of the needle program
23 violates local ordinances and therefore violates 17 CRC 7014; that the approval and
24 continuing operation of the needle distribution program by an amorphous collection of
25 individual volunteers does not meet the legal requirements for a responsible "entity" and
26 therefore is invalid; that the CDPH has a ministerial duty to reject the HRCSCC's
27 erroneous application; and that the invalid approval of the needle distribution program
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1 and its continuing operation causes ongoing irreparable harm to Petitioners that must be
2 enjoined. Respondents and Defendants dispute these contentions.

3 147. Based upon the foregoing, a clear, actual and present controversy has
4 arisen between Petitioners/Plaintiffs, State Respondents, Respondent HRCSCC and
5 Respondent HRCSCC Applicant and Coordinator Denise Elerick, which controversy
6 cannot be resolved without a judicial determination.

7 148. Accordingly, Petitioners/Plaintiffs seek a judicial determination of the
8 respective rights, duties and obligations of the parties.

9 **WHEREFORE Petitioners/Plaintiffs pray for judgment against Defendants**
10 **and Respondents as follows:**

11 1. That this court issue alternative and peremptory writs of mandate
12 commanding State Respondents to reject the application of HRCSCC to operate a
13 mobile needle exchange outreach program in the City of Santa Cruz;

14 2. That this court issue alternative and peremptory writs of mandate
15 commanding State Respondents to reject, rescind, invalidate and to set aside the
16 authorization and approval given to the HRCSCC to operate a needle distribution
17 program in the County of Santa Cruz;

18 3. That this court issue alternative and peremptory writs of mandate
19 commanding State Respondents to reject the application of HRCSCC to operate a
20 mobile delivery program in the incorporated Cities of Scotts Valley, Capitola, Santa
21 Cruz and Watsonville.

22 4. That this court issue alternative and peremptory writs of mandate
23 commanding State Respondents to prepare, circulate and consider appropriate
24 environmental documentation to comply with CEQA;

25 5. That this court issue a preliminary and permanent injunction enjoining all
26 Respondents and Defendants, their agents, servants, employees, and representatives
27 and all persons acting under the control, in concert with, or participating with
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1 Respondents and Defendants, from operating any needle exchange program within
2 any jurisdiction in the County of Santa Cruz;

3 6. That this court issue a preliminary and permanent injunction enjoining all
4 Respondents and Defendants, their agents, servants, employees and representatives
5 and all persons action under the control, in concert with, volunteering to act, or
6 participating with Respondents and Defendants, from taking any action in furtherance
7 of the disputed needle distribution program that could result in a change or alteration of
8 the physical environment until Respondents and Defendants have taken actions that
9 are necessary to bring the needle distribution program into compliance with CEQA;

10 7. That this court issue an order declaring that the approval and subsequent
11 operation of the needle distribution program by Respondents and Defendants
12 constitutes a public nuisance and a threat to public safety because there is inadequate
13 control and recovery of the discarded hypodermic needle litter resulting from the
14 program:

15 8. That this Court issue an Order declaring that the State Defendants'
16 authorization of HRCSCC to operate a needle distribution program in the County of
17 Santa Cruz constitutes a public nuisance and a threat to public safety because there is
18 inadequate control and recovery of contaminated medical waste;

19 9. That this court issue an Order declaring that the State Defendants'
20 authorization of HRCSCC to operate a needle distribution program in the City of Santa
21 Cruz and mobile delivery needle exchange program in the County of Santa Cruz is
22 void;

23 10. That this court issue an Order declaring that CDPH and HRCSCC and
24 Denise Elerick must comply with CEQA;

25 11. That this court issue an Order declaring that HRCSCC, and HRCSCC
26 Applicant and Coordinator Denise Elerick's operation of a needle distribution program
27 without the proper registration, fees, approvals and documents is a violation of the law,
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- 12. Attorneys' fees and costs;
- 13. For all such other and further relief, the court deems just and proper.

Respectfully submitted,



Dated: December 7, 2020

David J. Terrazas

Gabrielle J. Korte
Aaron J. Mohamed

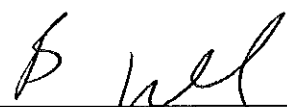
Attorney(s) for Plaintiff/Petitioner(s)

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VERIFICATION

I, Brad Angell, am a member of Petitioner/Plaintiff GRANT PARK NEIGHBORHOOD ASSOCIATION ADVOCATES in the above-entitled action, and am authorized to execute this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration is executed on December 3, 2020, in Santa Cruz, Santa Cruz, County, California.



Brad Angell, PhD
Grant Park Neighborhood
Association Advocates
Plaintiff/Petitioner