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IN THE UNITED STATES DISTRICT COURT  
IN THE DISTRICT OF OREGON  
MEDFORD DIVISION

**JOSEPHINE COUNTY,**

Plaintiff,

vs.

**STATE OF OREGON;** and **ELLEN F. ROSENBLUM,** Attorney General for the State of Oregon

Defendants,

Case No. 1:18-cv-566

**ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

**COMPLAINT**

Plaintiff alleges as follows:

**JURSDICTION AND VENUE**

1.

The court has Federal Question jurisdiction over this action pursuant to 28 U.S.C. §1331, specifically as an issue arising under the Controlled Substances Act (“CSA”), 21 U.S.C. §801, supplemental jurisdiction pursuant to 28 U.S.C §1367, and jurisdiction based on 28 U.S.C §2201 (declaratory relief) and 28 U.S.C §2202 (injunctive relief).

2.

This court has personal jurisdiction over Defendant ELLEN F. ROSENBLUM because

1 Defendant resides, conducts business and practices law in the State of Oregon and within this district as  
2 a public official operating under the laws of the State of Oregon.

3 3.

4 Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1391(c).

5 4.

6 An actual controversy has arisen between the parties. Defendants are requiring Plaintiff to allow,  
7 facilitate and accommodate the production of marijuana. This action threatens and causes injury to  
8 JOSEPHINE COUNTY and its ability to regulate lawful uses of land within its jurisdiction.

9  
10 **PARTIES**

11 5.

12 Plaintiff JOSEPHINE COUNTY (“the county”) is a home-rule local government entity  
13 organized and existing under the constitution and laws of the State of Oregon.

14 6.

15 Defendant STATE OF OREGON is a state organized and existing under the Oregon and United  
16 States’ Constitutions.

17 7.

18 Defendant ELLEN F. ROSENBLUM is the Attorney General for the State of Oregon and has the  
19 duty of enforcing state law.

20  
21 **STATEMENT OF THE FACTS ESTABLISHING ENTITLEMENT TO RELIEF**

22 8.

23 On November 3, 1998 Oregon voters approved Ballot Measure 67 which purported to  
24 decriminalize the use, possession and cultivation of medical marijuana. The Oregon Medical Marijuana  
25 Program is administered and regulated by the Oregon Health Authority, which is a division of Defendant  
26

1 STATE OF OREGON.

2 9.

3 On November 4, 2014, Oregon voters approved Ballot Measure 91 which purported to  
4 decriminalize the use, possession and cultivation of recreational marijuana. The recreational marijuana  
5 program is administered and regulated by the Oregon Liquor Control Commission (OLCC) which is a  
6 division of Defendant STATE OF OREGON.

7 10.

8 On June 30, 2015, Defendant STATE OF OREGON's Governor signed HB 3400 into law,  
9 giving local governments the authority to adopt reasonable "time, place, and manner" regulations for the  
10 production, cultivation and use of recreational and medical marijuana. The "time, place, and manner"  
11 regulations are codified as ORS 475B.486 and ORS 475B.928 for recreational and medical marijuana,  
12 respectively.  
13

14 11.

15 Defendant STATE OF OREGON requires Plaintiff's public officials to provide Defendant with a  
16 completed Land Use Compatibility Statement for every application to produce recreational marijuana  
17 within Plaintiff's jurisdiction.  
18

19 12.

20 18 U.S.C §371 states in part: "If two or more persons conspire to commit any offense against the  
21 United States...in any manner or for any purpose, and one or more of such persons do any act to effect  
22 the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years,  
23 or both."  
24

25 13.

26 Defendant ELLEN F. ROSENBLUM is charged with enforcing ORS 162.405 which requires:

1 “A public servant commits the crime of official misconduct in the second degree if the person  
2 knowingly violates any statute relating to the office of the person.”

3 14.

4 Plaintiff sent to the May 16, 2017 election ballot the following non-binding question: “In your  
5 opinion, should Josephine County prohibit the production of commercial, recreational marijuana in all  
6 Rural Residential zones?” Out of 28,262 returned ballots 17,240 (63.85%) were marked: “Yes”.

7 15.

8 In July, 2017 Plaintiff began the process of regulating marijuana production in rural residential  
9 zones. At a public hearing on July 19, 2017 Plaintiff outlined and adopted Order No. 2017-034 which  
10 authorized the Community Development Director to initiate the process for regulating the production of  
11 marijuana in rural residential zones. Ordinance 2017-002 ultimately resulted from that Order.  
12

13 16.

14 Ordinance 2017-002 was subject to four public hearings: September 20, 2017; November 1,  
15 2017; November 29, 2017; and December 6, 2017. Public comments supporting and opposing the  
16 Ordinance were entered at all hearings.  
17

18 17.

19 Plaintiff’s Board of County Commissioners adopted Ordinance 2017-002 on December 6, 2017.  
20 The ordinance would have allowed for continued marijuana production throughout Josephine County,  
21 but would have limited the amount of marijuana that could be produced upon properties located in Rural  
22 Residential zones.

23 18.

24 Pursuant to the Josephine County Home Rule Charter the Ordinance was to go into effect on  
25 March 6, 2018. On December 7, 2017 a group of petitioners filed, through counsel, a Notice of Intent to  
26

1 Appeal with the Oregon Land Use Board of Appeals (“LUBA”), which is a division of Defendant  
2 STATE OF OREGON, alleging that the Ordinance eviscerated “nonconforming use rights” under ORS  
3 215.130, that the County did not provide the proper notice of a land use change under ORS 215.503, and  
4 that the Ordinance was an unreasonable exercise of Plaintiff’s authority to impose reasonable “time,  
5 place and manner” regulations on marijuana production under ORS 475B.486 and ORS 475B.928.

6 19.

7 On January 24, 2018 the LUBA petitioners submitted a motion to stay Ordinance 2017-002  
8 pending their appeal. Plaintiff timely responded to the Motion for Stay on January 31, 2018. The LUBA  
9 petitioners submitted a Supplemental Memorandum in Support of their Motion for Stay on the afternoon  
10 of Friday, February 2, 2018 to which Plaintiff was provided less than a full business day to respond.  
11 Based the petitioners’ Supplemental Memorandum LUBA ordered the stay of Ordinance 2017-002 on  
12 the following Monday, February 5, 2018. Plaintiff moved for Reconsideration of the Stay, but LUBA  
13 ultimately decided the case without ruling on that motion.  
14

15 20.

16 The LUBA petitioners timely filed their Petition for Review on February 7, 2018. Plaintiff timely  
17 filed its Response Brief on February 28, 2018. Oral argument occurred on March 8, 2018.  
18

19 21.

20 LUBA issued its final order and opinion on March 14, 2018. LUBA remanded Ordinance 2017-  
21 002 to Plaintiff, ruling that the county had not substantially complied with the requirements of ORS  
22 215.503 regarding notice of a potential land use change. The county has petitioned the Oregon Court of  
23 Appeals for judicial review of LUBA’s final order.  
24

25 22.

26 The Controlled Substances Act comprehensively regulates the manufacture, distribution,

1 dispensing and possession of controlled substances. *See* 21 U.S.C. §841(a)(1) and 844(a).

2 23.

3 Congress has classified marijuana as a Schedule I controlled substance and has thereby  
4 prohibited its manufacture, transfer, dispensing, and possession. 21 USC §§812(c) and 841(a)(1).

5 24.

6 As a schedule I controlled substance, marijuana does not have any federally authorized or  
7 recognized acceptable use other than as part of a Food and Drug Administration pre-approved  
8 research project. 21 USC §823(f). Despite efforts to reclassify marijuana, it has remained a  
9 Schedule I drug since the enactment of the CSA. *See Gonzales v. Raich*, 545 US 1, 14-15 and n. 23  
10 (summarizing "considerable efforts," ultimately unsuccessful, to reschedule marijuana).  
11

12 25.

13 The CSA addresses its own relationship with state law. Pursuant to the CSA's express terms,  
14 states are free to pass laws "on the same subject matter" as the CSA unless there is a "positive conflict"  
15 between state and federal law "so that the two cannot consistently stand together." 21 USC §903.  
16

17 **FIRST CLAIM FOR RELIEF**

18 **(Declaratory Relief – The recognition of a “lawful nonconforming use” is inapplicable to**  
19 **marijuana production under the CSA)**

20 26.

21 Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

22 27.

23 ORS 215.130(5) states in part: “The lawful use of any building, structure or land at the time of  
24 the enactment or amendment of any zoning ordinance or regulation may be continued.”

25 ////  
26

28.

1  
2 Defendant STATE OF OREGON asserts that established marijuana producers possess a right to  
3 continue growing marijuana up to limits determined by the state in rural residential zones, despite any  
4 regulations and limitations of Josephine County.

29.

5  
6 The CSA expressly prohibits the manufacture, transfer, dispensing and possession of marijuana.

30.

7  
8 Any person in any state who possesses, distributes, or manufactures marijuana for medical or  
9 recreational purposes, or attempts or conspires to do so, is committing a federal crime.  
10

31.

11  
12 The Supremacy Clause of the United States Constitution states: "This Constitution, and the Laws  
13 of the United States, which shall be made in Pursuance thereof; and all Treaties made, or which shall be  
14 made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in  
15 every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary  
16 notwithstanding." U.S. Const., Art. VI, Cl. 2.  
17

32.

18  
19 The recognition of marijuana production as a "lawful nonconforming use" under ORS 215.130 is  
20 inapplicable to Oregon's system of land use regulation under the Supremacy Clause and the CSA  
21 because the manufacture, transfer, dispensing and possession of marijuana are unlawful.  
22

33.

23  
24 A justiciable controversy exists between the parties inasmuch as defendant STATE OF  
25 OREGON purports to require Plaintiff to authorize, allow for and accommodate marijuana production  
26 on rural residential land within Josephine County in direct conflict with federal law.

34.

1  
2 A justiciable controversy exists between the parties inasmuch as the state law is in conflict with  
3 the CSA to the extent the state law purports to require what the CSA prohibits. Plaintiff contends that it  
4 does not have to allow marijuana production as a “lawful nonconforming use” because such use is  
5 illegal under federal law.

6 **SECOND CLAIM FOR RELIEF**

7 **(Declaratory Judgment - Ballot Measure 67, Ballot Measure 91, and HB 3400 preempted by CSA)**

8  
9 35.

10 Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

11 36.

12 Ballot Measure 67 authorizes the use, possession and cultivation of medical marijuana to be  
13 administered and regulated by defendant STATE OF OREGON in direct contradiction of the CSA.

14 37.

15 Ballot Measure 91 authorizes the use, possession and cultivation of recreational marijuana to be  
16 administered and regulated by defendant STATE OF OREGON in direct contradiction of the CSA.

17 38.

18 HB 3400 assigns to local governments authority to adopt reasonable “time, place, and manner”  
19 regulations for the cultivation of recreational and medical marijuana.

20 39.

21 By enacting the CSA, Congress legislated within a particular field. When Congress legislates  
22 comprehensively, and within the scope of its constitutional authority, its enactments control. See  
23 *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986).

24  
25 ////



40.

Ballot Measure 67, Ballot Measure 91, HB 3400 and other relevant legislation attempt to defy the CSA by legalizing the production, use, and regulation of recreational and medical marijuana.

41.

Plaintiff could not propose a full ban on marijuana production within all or part of its jurisdiction because defendant STATE OF OREGON, by employing Ballot Measures 67 & 91, HB 3400 and other relevant legislation, prevents Plaintiff from implementing the will of 63.85% of the voters who responded to the May 16, 2017 non-binding ballot question.

42.

A justiciable controversy exists inasmuch as Ballot Measure 67, Ballot Measure 91, HB 3400 and other relevant legislation authorize what federal law expressly prohibits, and purportedly preempt the authority of Plaintiff to place restrictions on federally illegal activities in rural residential zones within its jurisdiction.

**THIRD CLAIM FOR RELIEF**

**(Declaratory Judgment – Police Powers authorize a local government to take measures to regulate or prohibit federally prohibited activities under the CSA)**

43.

Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

44.

The police power, delegated to the states through the Tenth Amendment, authorizes a state or local government to enact measures to preserve and protect the safety, health, welfare, and morals of the community, and extends to all appropriate ordinances for the protection of the same.

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45.

Because Congress legislated regarding the manufacture, transfer, dispensing and possession of marijuana through the CSA, the police power does not enable a state government to enact measures that are inconsistent with the CSA.

46.

The STATE OF OREGON's imposition and enforcement of Measures 67 & 91, HB 3400 and other relevant legislation relating to the production and regulation of marijuana restricts Plaintiff and its officials from adopting measures regarding the manufacture, transfer, dispensing and possession of marijuana that would be consistent with the CSA.

47.

A justiciable controversy exists between the parties inasmuch the STATE OF OREGON's imposition of conflicting laws materially and unreasonably restricts a local government or jurisdiction from exercising its police powers in a manner consistent with federal law regarding the production, use, and regulation of marijuana.

48.

A justiciable controversy exists between the parties inasmuch as the STATE OF OREGON limits the exercise of Plaintiff's police power to regulate the use of land in a manner that is consistent with federal law.

**FOURTH CLAIM FOR RELIEF**

**(Injunctive Relief – Preemption of ORS 162.405 by the CSA)**

49.

Defendant STATE OF OREGON, through Defendant ELLEN F. ROSENBLUM and the District Attorneys, is charged with enforcing ORS 162.405 which is the crime of Official Misconduct in the

Second Degree.

50.

Measures 67 & 91, HB 3400, ORS 215.130(5) and other relevant state legislation are preempted by federal law. Therefore abiding the CSA, 18 U.S.C §371 (conspiracy) and other relevant federal laws cannot constitute Official Misconduct.

WHEREFORE, Plaintiff prays for a judgment as follows:

1. Declaring the inapplicability of ORS 215.130(5) to the production and processing of recreational or medical marijuana;
2. Declaring that Ballot Measure 67, Ballot Measure 91, HB 3400 and other relevant legislation are preempted by the CSA pursuant to the Supremacy Clause of the United States Constitution;
3. Declaring that a local government's police powers authorize the limitation and outright prohibition of activities prohibited under the CSA irrespective of conflicting state law;
4. Enjoining the STATE OF OREGON and ELLEN F. ROSENBLUM from charging violations of ORS 162.405 and similar statutes based on actions by public servants that are consistent with this judgment; and
5. Grant Plaintiff such further relief as may be just, proper and equitable.

DATED this 3 day of April, 2018

M. Wally Hicks, OSB#: 08080  
Josephine County Legal Counsel  
500 NW 6<sup>th</sup> St, Dept. 13  
Grants Pass, OR 97524  
T: (541) 474-5226  
F: (541) 474-5223  
[whicks@co.josephine.or.us](mailto:whicks@co.josephine.or.us)  
Attorney for Plaintiff

JS 44 (Rev. 06/17)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I (a) PLAINTIFFS</b> Josephine County</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Josephine</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number) M. Wally Hicks, Josephine County Legal Counsel 500 NW Sixth St. Dept 13 Grants Pass, OR 97526</p>	<p><b>DEFENDANTS</b> State of Oregon Ellen F. Rosenblum</p> <p>County of Residence of First Listed Defendant <u>Marion</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) Frederick M. Boss, DOJ Attorney General's Office 1162 Court St NE Salem, OR 97301</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**Controlled Substances Act ("CSA") 21 U.S.C. §801**

Brief description of cause:  
**Federal law preempts the state from interfering with Josephine County's authority to regulate land use.**

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint:  
**JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 04/03/2018    SIGNATURE OF ATTORNEY OF RECORD *M. Wally Hicks*

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

UNITED STATES DISTRICT COURT

for the  
District of Oregon

Josephine County	)	
Plaintiff	)	
v.	)	Civil Action No. 1:18-cv-566
Ellen F. Rosenblum	)	
Defendant	)	

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: Frederick M. Boss

*(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)*

**Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

**What happens next?**

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 04/03/2018



*Signature of the attorney or unrepresented party*

M. Wally Hicks

*Printed name*

500 NW Sixth St. Dept 13  
Grants Pass, OR. 97526

*Address*

whicks@co.josephine.or.us

*E-mail address*

541-474-5226

*Telephone number*

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

UNITED STATES DISTRICT COURT

for the  
District of Oregon

Josephine County	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No. 1:18-cv-566
State of Oregon	)	
<i>Defendant</i>	)	

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This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

**What happens next?**

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 04/03/2018

*Signature of the attorney or unrepresented party*

M. Wally Hicks

*Printed name*

500 NW Sixth St. Dept 13  
Grants Pass, OR. 97526

*Address*

whicks@co.josephine.or.us

*E-mail address*

541-474-5226

*Telephone number*