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7 Attorneys for Petitioners
8 FREE SPIRIT ORGANICS; AMERICAN STATES UNIVERSITY;
9 CANNABIS SCIENCE, INC.; HRM FARMS; S.G. FARMS; WILLIAM BILLS; GLEN
10 BURGIN; GERARD GALVEZ; SCOTT RAYBORN; JUSTIN GRANADOS; GIL
11 GRANADOS JR.; GIL GRANADOS; BRUCE GRANADOS; and DOREEN MORALES

12 IN THE UNITED STATES DISTRICT COURT
13 IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

14 FREE SPIRIT ORGANICS, NAC;
15 AMERICAN STATES UNIVERSITY;
16 CANNABIS SCIENCE, INC.; HRM
17 FARMS; S.G. FARMS; WILLIAM
18 BILLS; GLEN BURGIN; GERARD
19 GALVEZ; SCOTT RAYBORN; JUSTIN
20 GRANADOS; GIL GRANADOS JR.;
21 GIL GRANADOS; BRUCE
22 GRANADOS; and DOREEN MORALES;

23 Plaintiffs,

24 v.

25 SAN JOAQUIN COUNTY BOARD OF
26 SUPERVISORS; SAN JOAQUIN
27 COUNTY COUNSEL; ERIN HIROKO
SAKATA; MIGUEL VILLAPUDUA;
KATHERINE MILLER; TOM PATTI;
BOB ELLIOTT; CHUCK WINN; SAN
JOAQUIN COUNTY DISTRICT
ATTORNEY; SAN JOAQUIN COUNTY
SHERIFF; DOES 1-50, INCLUSIVE,

Defendants

Case No. 2:17-CV-02271-KJM-EFB

SECOND AMENDED COMPLAINT FOR:

- I. Violation of Supremacy Clause/Preemption [U.S. Const. art. VI, cl. 2]
- II. Unconstitutional Vagueness [U.S. Const. am. 5, 14]
- III. Unlawful Bill of Attainder/*Ex Post Facto* [U.S. Const. art. I, § 9, cl. 3]
- IV. Violation of Fifth Amendment - Procedural Due Process
- V. Violation of Fourth Amendment - Unlawful Seizure [42 U.S.C. §1983]

REQUEST FOR

- Return of Property Seized;
- Preliminary Injunction;
- Permanent Injunction;
- Declaration re Ordinance Is Void;
- Declaration re Search Warrant Is Void;
- Declaration re Seizure Was Unlawful;
- Punitive Damages;

DEMAND FOR JURY TRIAL

GENERAL ALLEGATIONS

1
2 1. This Court has subject matter over this action pursuant to Title 28 of the United
3 States Code, sections 1331, 1343, and 1367 as well as pursuant to Title 42 of the United States
4 Code, sections 1983 and 1988.

5 2. All the events described herein occurred in San Joaquin County, California.
6 Pursuant to Title 28 of the United States Code section 1931, venue is therefore appropriate here
7 in the Eastern District Federal Court of California.

8 3. Plaintiff Free Spirit Organics, NAC, is a wholly tribal-owned Native American
9 company organized under the laws of the State of Nevada, a real party in interest with standing
10 pursuant to FRCP 17(b), and is and at all time herein relevant was the manager and operator of a
11 250 acre plot located at 11700 West Lower Jones Road in Stockton California on which 26.19
12 acres were allocated exclusively to the growing of industrial hemp [“hemp”; “subject grow”].

13 4. Plaintiff American States University [“ASU”] is a California institution of higher
14 education as defined under sections 81000 et. seq. of the California Food & Agricultural Code.
15 ASU is a real party in interest, headquartered in Orange County California, a partner of FSO,
16 and has standing as an unincorporated association pursuant to FRCP 17(b). ASU’s executive
17 staff includes Raymond C. Dabney President, CEO, and Co-Founder as well as Allen A.
18 Herman, M.D., Ch.B., Ph.D., Chief Medical Officer, both of whom have been published, *inter*
19 *alia*, in the medical journal *Frontiers in Oncology*. American States University has
20 revolutionized higher education by creating a new vertically integrated model of operations to
21 provide jobs throughout the community, full scholarships, and further-subsidized education
22 packages to members of the Native American community and any other economically
23 challenged individuals with the desire to improve their job skills based on ASU’s curricula.

24 5. Plaintiff HRM Farms, Inc. [“HRM”] is a California corporation with a principal
25 place of business in Holt, California at the site of the subject grow, and is a partner of FSO, and
26 ASU; a real party in interest; and has standing pursuant to FRCP 17(b).

1 6. Plaintiff Cannabis Science Inc. [“CSI”] is and at all times herein relevant a
2 publicly traded corporation organized under the laws of the State of Nevada with a principal
3 place of business in Orange County, California. CSI is comprised of a team of public health
4 experts who have ongoing research with leading experts in cancer and public health research.
5 Their initial research has been published in the peer-reviewed medical journal *Frontiers in*
6 *Oncology* with further credits to Raymond C. Dabney, President and CEO of Cannabis Science
7 Inc., and Dr. Allen A. Herman, Cannabis Science Inc., Chief Medical Officer. Other key
8 management heads include the President of the Cannabis Science Scientific Advisory Board,
9 retired United States Assistant Surgeon General Roscoe M. Moore, Jr., D.V.M., Ph.D., D.Sc.
10 and the President of the Cannabis Science International Government Affairs Board, former
11 United States House Representative Honorable Ronald V. Dellums (1971-1998). See attached
12 Exhibit A. CSI has received U.S. Federal Government clearance, Commercial and Government
13 Entity (CAGE) Code from the Defense Logistics Agency's CAGE Program Office at the U.S.
14 Department of Defense, to receive U.S. Federal Government contracts. CSI works with leading
15 experts in drug development and clinical research to develop, produce, and commercialize
16 groundbreaking drugs using cannabinoids extracted and formulated from the hemp or cannabis
17 plant as treatments for: Cancer, HIV/AIDS, Alzheimer’s, arthritis, asthma, autism, nearly all of
18 the autoimmune diseases, brain trauma, diabetes, various digestive disorders, glaucoma,
19 epilepsy, Parkinson’s disease, hypertension, influenza, pain management, Post-Traumatic Stress
20 Disorder, Tourette’s Syndrome, infections, and several other neurobehavioral disorders and
21 degenerative neurological conditions. CSI is researching and developing its proprietary
22 cannabinoid-based solutions to optimize treatments with an overall emphasis on accessibility to
23 those most in need.

24 7. Plaintiff S.G. Farms is a private California agricultural research organization
25 headquartered in Marin County California and an industry-leading grow consultant and
26 recognized hemp expert headquartered in Marin County, California. At all times relevant
27

1 hereto, FSO contracted with S.G. Farms to assist with the subject grow and to conduct research
2 in connection with the subject grow.

3 8. Plaintiffs William Bills [“Chief Bills”], Glen Burgin, Gerard Galvez, and Scott
4 Rayborn are individuals and members of the Native American tribe of Winnemucca Shoshoni
5 MBS. At all times herein relevant: Bills and Burgin were residents of San Joaquin County,
6 California; Galvez was a resident of Sacramento County, California; Rayborn was a resident of
7 Riverside County, California.

8 9. Plaintiffs Justin Granados, Gil Granados, Jr., Gil Granados, Phil Hansen and
9 Doreen Morales are individuals and members of the Native American tribe of Washoe of
10 Nevada. At all times herein relevant: the Granados and Morales were residents of San Joaquin
11 County, California and Hansen was a resident of Douglas County, Nevada.

12 10. Defendants San Joaquin County Board of Supervisors, Miguel Villapudua,
13 Katherine Miller, Tom Patti, Bob Elliott, and Chuck Winn [collectively “Board”] are and at all
14 times herein relevant were public servants and trustees entrusted with the duty of representing
15 the residents of San Joaquin County, and at all times herein were acting, or purporting to act,
16 within their official capacities with respect to the events described below.

17 11. Defendant Erin Hiroko Sakata [“Sakata”] is and at all times herein relevant was a
18 California licensed attorney and employee of County, working in the San Joaquin County
19 Counsel’s office [County Counsel”]. Plaintiffs are informed and believe and thereon allege that
20 Sakata bought this matter to the Board and presented her alleged evidence at the September 26,
21 2017 board meeting in support of passage of Ordinance 4479 [“offending ordinance”].
22 Plaintiffs are informed and believe and thereon allege that Sakata coordinated and conspired
23 with County Sheriff and other County officials to intentionally orchestrate the events described
24 below with the specific intent to interfere with (a) the ability of plaintiffs to extract the
25 cannabidiol cannabinoid [“CBD”] from their hemp and (b) the ability of plaintiffs to complete
26 their agricultural research and their ability to provide CBD to patients in need of care.
27

1 12. Defendant San Joaquin County District Attorney [“District Attorney”] are public
2 employees and attorneys charged with prosecuting crimes on behalf of San Joaquin County.
3 Plaintiffs are informed and believe and thereon allege that members from the District Attorney’s
4 office conspired with County Counsel and/or the Sheriff to deliver false information to the
5 Board, whether knowingly, recklessly, or otherwise, at the public meeting on September 26,
6 2017.

7 13. Defendant San Joaquin County Sheriff [“Sheriff”] is a group of public employees
8 charged with enforcement of actions in the unincorporated parts of San Joaquin County.
9 Plaintiffs are informed and believe and thereon allege that members of the Sheriff’s office
10 conspired with County Counsel and the District Attorney’s office to deliver false information to
11 the Board, whether knowingly, recklessly, or otherwise, at the public meeting on September 26,
12 2017.

13 14. Defendants Does 1-50 are sued in both their personal and official capacities as
14 employees and/or officials of County and/or the United States Department of Justice [“DOJ”].
15 Plaintiffs are informed and believe and thereon allege that all defendants and Does 1-50 are, and
16 each of them is, responsible for the acts alleged herein as the agents and employees of County
17 and/or DOJ. Plaintiffs are informed and believe and thereon allege that all defendants were, and
18 each was, when doing the acts herein alleged, acting within the scope of their office, authority,
19 agency and/or employment, under color of law, in representative capacity on behalf of County
20 and/or DOJ, and are therefore individually and collectively responsible for the acts complained
21 of herein. County and/or DOJ defendants acting separately and in unison, directly and through
22 their agents and subordinates, infringed on the rights of each of plaintiffs are responsible for
23 drafting, maintaining, and/or administering the policies, procedures and/or practices and/or were
24 responsible for execution, enforcement, and application of the aforementioned policies,
25 procedures and/or practices and were each co-participants in the actions and inactions with the
26 other named defendants herein which constitute violations of Constitutional law, federal law,
27

1 and/or California law - most notably the passage, approval, and enforcement of the offending
2 ordinance.

3 15. This action is brought without prejudice to plaintiffs' rights to seek monetary
4 compensatory damages in a subsequent action or Amendment to this Complaint once their right
5 to sue has been perfected under the California Government Tort Claims Act. Plaintiffs herein
6 specifically and explicitly reserve that right.

7 16. This action is, at present, brought for injunctive relief, punitive damages, and
8 fees with respect to the 1983 claims, and for return of the unlawfully seized property, not
9 directly for compensatory damages, and therefore the individual defendants are proper
10 defendants, and none of the defendants are protected by the Eleventh Amendment.
11 Furthermore, there is no immunity, qualified or otherwise, where there is bad faith. *Armstrong v.*
12 *Wilson* (9th Cir.1997) 124 F.3d 1019, 1026; *Pulliam v. Allen* (1984) 466 U.S. 522, 523; *Vidmar*
13 *v. Williams* (N.D. Cal. 2005) 367 F.Supp.2d 1265. Defendants are hereby put on notice that any
14 arguments which unsuccessfully raise these issues - such as in a 12(b)(6) motion - which are
15 decided based on the aforementioned cases and their precedent/progeny - will be commented on
16 at trial as further evidence of bad faith in support of plaintiffs' punitive damages requests.

17 17. This pleading joins with the 2014 Farm Bill and the California Industrial Hemp
18 Farming Act in defining the distinction between hemp and marijuana as turning on the percent
19 of the tetrahydrocannabinol cannabinoid ["THC"] present in the plant. A plant within the genus
20 "Cannabis" and species "Sativa L." possessing 0.3% or lower concentration of THC is defined
21 as industrial hemp ["hemp"]. A plant within the genus "Cannabis" and species "Sativa L."
22 possessing greater than 0.3% concentration of THC is defined as marijuana. This definition
23 assures that "hemp" refers to a non-psychoactive plant from which it is impossible to suffer
24 deleterious effects. At no time herein was marijuana involved. The term "cannabis" strictly
25 speaking refers to both hemp and marijuana because they are both "Cannabis Sativa L." Usage
26 of the term "cannabis" is accordingly nonspecific and fails to distinguish between hemp and
27 marijuana.

1 intended to target plaintiffs. Sakata, and/or one of her colleagues, interpreted the California
2 Industrial Hemp Farming Act in such a manner to reach the purposeful conclusion that plaintiffs
3 were in violation. Plaintiffs are informed and believe and thereon allege that she knowingly and
4 intentionally drafted the offending ordinance, a new “emergency” law criminalizing plaintiffs’
5 existing grow (specifically tailored to allow for its seizure), lied at a public meeting to justify
6 both the passage of the offending ordinance and the urgent need such that plaintiffs would never
7 have adequate notice or be prepared for the seizure. Once approved, Sakata used Sheriff to
8 punish plaintiffs, effectively acting as all three branches of government.

9 24. Even Christopher Columbus, whose actions directly led to the deaths of 98% of
10 the Native American race, gave the Native Americans a chance to speak before betraying them.
11 County Counsel didn’t even do that - likely because ten seconds of time to speak would have
12 been sufficient to demonstrate that County counsel’s representations to the board were fiction.
13 The County’s actions resembled the fliegendes Sonder-Standgericht drumhead trials Adolf
14 Hitler authorized in 1945, where the factfinder, judge, jury, and executioner were all the same
15 party.

16 25. As if this weren’t enough, plaintiffs specifically asked for an opportunity to be
17 heard after learning about the offending ordinance just before noon on Thursday, October 5,
18 2017. Within the hour, they were invited to come and share their side of the story at the next
19 public meeting on November 7, 2017. In the meantime two business days later, on October 10,
20 2017, before the sun had arisen, in violation of the terms on the face of the warrant, the Sheriff
21 personnel were at the grow, “eradicating” the “dangerous” grow they had just criminalized two
22 weeks prior. The most creative among us would be hard pressed to imagine a better set of facts
23 to demonstrate bad faith then telling a party it will be given due process, and purposefully
24 acting before any process was afforded.

25 26. This is the United States of America rather than Hitler-controlled Germany, and
26 the year is 2017 and not 1863. Accordingly, plaintiffs have brought the instant action to hold
27 defendants accountable for their despicable actions/inactions, to recover what is rightfully

1 theirs, and to salvage what they can in order to get thousands of patients back to receiving the
2 cannabidiol cannabinoid [“CBD”] which had finally gave thousands of them hope of one day
3 living asymptotically. Plaintiffs want the right to grow hemp on their land, consistent with
4 the laws of the United States and the glorious State of California.

5
6 **FACTUAL ALLEGATIONS**

7 27. Plaintiffs leased a wholly tribal owned 250 acre parcel of land in San Joaquin
8 County. On a 26.19 acre portion of that land, plaintiffs planned to sow hemp. The cultivation
9 of industrial hemp is legal in California, as it is in many other states, as it is on a federal level.
10 The DEA has announced that hemp falls under the purview of the U.S. Department of
11 Agriculture. Plaintiffs moved forward with their plans and applied for any and all paperwork
12 necessary to be permitted to conduct such a grow.

13 28. On March 21, 2016 the Nevada Department of Agriculture approved FSO as an
14 industrial hemp cultivar. A Declaration of Certification of Industrial Hemp Production pursuant
15 to that approval was issued to FSO on June 20, 2016.

16 29 On July 31, 2017, despite technically being exempt from registration, in an effort
17 to be both transparent to and cooperate with San Joaquin County, plaintiffs registered HRM as a
18 grower of hemp with the San Joaquin County Agricultural Commission.

19 30. Prior to planting the seed, concerned about maximizing yields, about ensuring
20 the plants thrived without pesticides, herbicides, or fungicides¹ and about the many other
21 challenges involved, plaintiffs, experts in growing (the Winnemucca plaintiffs are descendants
22 of the Shoshoni - a name which comes from “sosoni” and means “high growing grass”),
23 contacted S.G. Farms, a private industry-leading grow consultant and recognized hemp
24 growmaster, headquartered in Marin County, California.

25 31. S.G. Farms has - over the last five years - created cutting edge methods of water
26 conservation wicking (ironically implanting a technique Leonardo da Vinci developed but

27 ¹ Both marijuana and hemp are accumulator crops, and it would be dangerous to use chemicals when cultivating them because the concentrated derivatives would be quite toxic if consumed in plant form.

1 which has been forgotten over time), innovative grow techniques to enable even polluted land to
2 be used to grow clean, organic, and healthy crops, and other techniques, the totality of which
3 has earned S.G. Farms the reputation of doing more for agricultural development than “ten
4 universities put together.” S.G. Farms was featured on the front page of O’Shaughnessy’s
5 Journal of Clinical Practice in the winter 2015/2016 edition in connection with the development
6 and breeding of a new hemp strain with very impressive concentrations of a relatively unheard
7 of cannabinoid known as tetrahydrocannabivarin, or THCV, the health benefits of which could
8 potentially put CBD to shame. S.G. Farms gives guided and well-narrated tours of its facility to
9 almost any interested party, although it focuses on educating law enforcement and legislative
10 personnel to help them better understand what it is they are dealing with. S.G. Farms, in
11 recognition of its beneficial agricultural research purposes and goals, is the only agricultural
12 research center in Marin given special permission from County of Marin to develop new strains
13 outdoors.

14 32. Chief Bills contacted S.G. Farms in connection with the subject grow, ultimately
15 resulting in a cooperative consulting agreement. One of the terms was confidentiality to protect
16 S.G. Farms’ proprietary techniques until they were legally protected as intellectual property, or
17 until S.G. Farms developed better ones. Given the present facts, S.G. Farms elected to come
18 forward on the matter, and can demonstrate that the particular crop seized was its unique strain.

19 33. Setting aside the numerous constitutional violations detailed below, County
20 Counsel’s allegation that plaintiffs are not within the definition of Food & Agricultural Code
21 section 81000(c)(2), even if true, would fail to justify County’s actions, because plaintiffs are
22 authorized to grow hemp pursuant to S.G. Farms’ qualifications under section 81000(c)(1). This
23 fact would never have been discovered by County Counsel because, plaintiffs are informed and
24 believe and thereon allege, it was never genuinely sought in the first place. Had County
25 Counsel afforded plaintiffs a true opportunity to be heard, or had this case been brought before
26 an independent judiciary on the legality issue, the above facts would have been disclosed - and
27 County Counsel would not have been able to punish plaintiffs. Plaintiffs are informed and

1 believe this is why there was no process afforded - because County Counsel or someone
2 influencing Sakata had malicious intent to seize the subject grow at any cost, without notice,
3 either to intentionally punish plaintiffs or to convert it to their own financial profit, but in any
4 case in reckless disregard for plaintiffs' rights and the rights of the thousands of patients
5 affected who will have no relief from their respective conditions, including each of the
6 individually named plaintiffs.

7 34. In June of 2017, plaintiffs began cultivation of hemp on the subject grow. This
8 was known - and on July 31, 2017 it was approved - by the County Agricultural Commission,
9 identifying HRM as a grower of hemp on that parcel on a maps as "IHEMP." S.G. Farms went
10 onto the parcel regularly - measuring, sampling, testing moisture, adjusting drainage, etc., then
11 would record its findings. Chief Bills, as operator of the location, was responsible to the rest of
12 plaintiffs for overseeing the grow.

13 35. On July 18, 2017, after overhearing concerns their parcel may contain an illegal
14 grow, plaintiffs retained Steep Hill Testing Labs, an industry leader, located in Oakland
15 California, to test another hemp sample. Analysis on that sample found THC at 0.21%,
16 comfortably below the 0.3% limit.

17 36. To minimize the potential for criminal activity, at S.G. Farms suggestion,
18 plaintiffs erected large, clear signage to any whom would come near the parcel making it clear
19 that there was no marijuana growing there - unmistakably identifying it as industrial hemp.

20 37. From the date the crop were first planted through August 29, 2017, plaintiffs did
21 not receive one complaint, citation, or any other indication that they were causing injury or
22 hazard to anyone, nor were they informed that there was any legal concern with the subject
23 grow. Then, on August 29, 2017, Sakata sent plaintiffs a letter referencing an August 17, 2017
24 investigation of a "cannabis grow" within the unincorporated area of County, claiming it was
25 prohibited pursuant to County law. The letter further stated that "signage alone is not sufficient
26 to establish an institution's ability to cultivate industrial hemp for agricultural or academic
27 research in San Joaquin County." The letter demanded evidence supporting plaintiffs' claim of

1 being an established research cultivar by September 11, 2017. Because the County can't quite
2 understand that the word "cannabis" - which may be colloquially used interchangeably with
3 "marijuana" - doesn't actually mean "marijuana", this letter was on its face confusing.

4 38. On September 11, 2017, plaintiffs responded to the letter addressing the County's
5 position at length, disputing both the factual and legal basis for the County's letter. See Exhibit
6 B, attached hereto. No one vested Sakata with the power to preside over any qualification
7 determination hearings. In fact, under the newly enacted California law, this was properly the
8 domain of the newly established Industrial Hemp Advisory Board. Plaintiffs nonetheless, in
9 their responsive letter, diligently addressed each request County Counsel made.

10 39. On September 12, 2017, San Joaquin County responded to plaintiffs' letter,
11 declaring the September 11, 2017 letter non-responsive and insufficient to demonstrate an
12 "Established Agricultural Research Institution for the purposes of agricultural or academic
13 research."

14 40. On September 15, 2017, plaintiffs again replied offering specific information to
15 support and substantiate, attaching a plethora of documentation as exhibits, including but not
16 limited to: California Bureau for Private Postsecondary Education showing American States
17 University as offering a number of "currently approved [educational] programs."

18 41. Apparently this third letter was not adequate because on September 26, 2017, the
19 San Joaquin County Board of Supervisors passed and adopted the offending ordinance.

20 42. The video record of the meeting of September 26, 2017 speaks for itself- and the
21 number of falsehoods disclosed at that meeting was substantial. To identify a few:

- 22 - The subject grow was described as 500 or 600 acres, considerably more than the
23 actual 26.19 acres actually grown, causing it to fall under a commercial category;
24 - The suggestion that hemp is indistinguishable from marijuana was also made, when
25 there is a measurable distinction, notably the THC content;
26
27

1 - The notable omission of the fact that hundreds if not thousands of patients have come
2 to depend on CBD for their health as the only medication that gives them relief, and
3 there's a shortage of CBD as a result of the DEA ban on imports;

4 -The implication that laboratories are difficult to find when plaintiffs have handed
5 defendants a binder with test results from local labs all over the bay area on multiple
6 occasions;

7 -The statement that the plant must be taken to a lab to test despite that there are
8 countless products on the market, including on Amazon.com, which enable anyone to
9 test using a portable handheld device;

10 -The suggestion that there is criminal activity associated with hemp growing without
11 any shred of evidence;

12 - The "wise use of resources" argument is provably fallacious - the resources which
13 were expended by the County on the subject grow would have likely saved a boy who
14 was just recently shot nearby had defendants targeted the illegal marijuana grow up the
15 road from the subject grow rather than plaintiffs' legal grow;

16 -The implication that small marijuana grows are hard to find when a simple and
17 inexpensive drone can easily be used to map them out - and plaintiffs hereby make an
18 offer to do this for defendants as it is apparently too difficult for them to figure out;

19 -Many more blatant misrepresentations which can be identified with a modestly
20 competent google search, too numerous to list, as will be shown at trial.

21 43. On September 28, 2017, Sakata sent yet another letter to plaintiffs, this time
22 attaching the offending ordinance, stating it was immediately effective, the subject grow was a
23 public nuisance, and demanding abatement as "[e]ach day that [the] illicit grow remains
24 constitutes a separate offense." (See Exhibit C, attached hereto).

25 44. On October 3, 2017, plaintiffs again had their crops analyzed, this time by
26 Konocti Analytics R&D Program, another party, for purposes of verifying the Steep Hill
27 findings. This test resulted in a finding of THC at 0.24%, again clearly designating it as hemp.

1 45. On October 5, 2017, Roger Agajanian, Administrative Dean of plaintiff ASU,
2 telephoned the Board respectfully requesting a hearing. He was told to email Mimi Duzenski,
3 Clerk of the Board. He did so and requested a hearing to be heard on October 24, 2017. He
4 was denied, and instead told that plaintiffs would be put on the agenda for the next Board
5 meeting on November 7, 2017. Duzenski wrote this from an email address with an “sj.gov”
6 domain, and above her signature identifying her as Clerk of the Board. October 5, 2017, the
7 date the email was sent, was a Thursday, one working day before Columbus Day weekend, a
8 holiday observed by County. On October 6, 2017, Agajanian confirmed this in writing and
9 discussed every portion of the offending ordinance. See attached Exhibit D.

10 46. The Sheriff, brandishing an embarrassingly inadequate search warrant with many
11 of the aforementioned false facts sworn out by Agent Michael Eastin, the signature of a-not-
12 easily-identified Magistrate with no typed name underneath, entered on the subject grow the
13 next Tuesday, one day after Columbus day. See Attached Exhibit E. The warrant further does
14 not identify what agency employs Eastin. The warrant does not indicate Eastin’s expertise,
15 experience, familiarity with the subject matter of the warrant, or the basis on which he believed
16 the property authorized to be searched for including “Marijuana/Hemp” was illegal.
17 Throughout the warrant, the terms “marijuana” and “hemp” are only used in conjunction with
18 each other, never individually, despite that they are measurably unique products with a wildly
19 different legal implication. The warrant does not indicate that Eastin had visited the subject
20 grow on at least two prior occasions, including speaking with plaintiff Winnemucca’s Chief,
21 William Bills. The warrant further makes no mention of the research or development aspects
22 which had been duly offered to defendants. The warrant prohibits night entry, yet at the time
23 the Sheriff entered onto the subject grow, it was so dark that lights had to be erected. The
24 warrant does not indicate that any property may be seized. The warrant was never correctly
25 returned and there was no specific inventory performed of the evidence seized. There are many
26 other deficiencies, too numerous to list herein, which will be shown at trial.

1 47. The offending ordinance purports to prohibit all growing of hemp for any
2 purposes within the unincorporated areas of County, in direct conflict with existing law, in
3 excess of the Board’s delegated powers, in violation of United States Constitution, and in
4 violation of plaintiffs’ constitutionally protected rights, and is therefore void pursuant to the
5 Supremacy Clause.

6 48. The offending ordinance denies plaintiffs the ability to continue to cultivate
7 industrial hemp plants in violation of the Agricultural Act of 2014 [“Farm Bill”] signed into law
8 by former President Barack Obama which specifically permits such cultivars, codified at 7
9 U.S.C. 5940(a) and the corresponding California Industrial Hemp Farming Act signed into law
10 by Governor Jerry Brown in 2013. Obstacle preemption arises when a challenged ordinance
11 stands as an obstacle to the accomplishment and execution of the full purposes and objectives of
12 a higher law. *Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363. The offending
13 ordinance is therefore in violation of and preempted by both of these laws as the objectives of
14 the higher laws - to promote hemp cultivation - is being directly prohibited.

15 49. The offending ordinance uses the terms “marijuana”, “cannabis”, “Cannabis
16 Sativa L.” and “hemp” in such a confusing matter, technically incorrect from a strict
17 constructionist perspective, such that an ordinary person, or even an attorney “of ordinary
18 intelligence” would have trouble saying for sure what is being permitted and what is not.
19 Therefore the ordinance as written is unconstitutionally vague. *Connally v. General*
20 *Construction Co.* (1926) 269 U.S. 385, 391.

21 50. The United States Constitution likewise prohibits “[L]egislative acts, no matter
22 what their form, that apply either to named individuals or to easily ascertainable members of a
23 group in such a way as to inflict punishment on them without a judicial trial are bills of attainder
24 prohibited by the Constitution.” *United States v. Lovett* (1946) 328 U.S. 303, 315-6; *accord*,
25 *Estate of Castiglioni* (1995) 40 Cal.App.4th 367, 377, fn. 17; *California State Employees Assn.*
26 *v. Flournoy* (1973) 32 Cal.App.3d 219, 225. The subject ordinance was specifically tailored to
27

1 the subject grow, targeting plaintiffs with deliberate intention. For this reason it is
2 unconstitutional.

3 51. In addition to being preempted, vague, and constituting a bill of attainder, the
4 offending ordinance constitutes an *ex post facto* law: “[t]he Ex Post Facto Clause forbids the
5 Congress to enact any law “which imposes a punishment for an act which was not punishable at
6 the time it was committed...” *Weaver v. Graham* (1981) 450 U.S. 24, 28. This is precisely what
7 happened in the present case.

8 52. County proceeded on an emergency basis to ensure that plaintiffs were surprised,
9 could not be heard or have time to remediate. Moreover, County was specifically told of the
10 majority of the illegalities contained in the ordinance by Agajanian and nonetheless failed to
11 address them at the public meeting or at all. Finally, in what can only be viewed as sheer bad
12 faith, the County informed plaintiffs that they could come to the meeting on November 7, 2017
13 to voice their concerns whilst simultaneously planning to preemptively enter onto their land
14 with a fraudulently obtained search warrant, exceed its stated scope, and unlawfully seize their
15 hemp crops without affording them one second of time at a board meeting to be heard.

16 53. Given the degree of egregious conduct, one can only speculate what defendants’
17 true motivations were. Whatever they are, their actions are clearly and inexcusably unlawful,
18 and plaintiffs have been severely damaged as a result.

19 FIRST CAUSE OF ACTION

20 Violation of Supremacy Clause/Preemption Doctrine

21 [U.S. Const. art. VI, cl. 2]

22 (by all plaintiffs against all defendants)

23 54. Plaintiffs hereby incorporate the entirety of the above and below allegations as if
24 fully set forth hereunder.

25 55. The Supremacy Clause and Preemption Doctrines are guaranteed by Clause 2 of
26 Article VI of the United States Constitution. Where there is a direct conflict of laws, such as
27

1 legalization of industrial hemp, and clear legislations permitting it on the federal and/or state
2 level, a lower state authority is prohibited from enacting any conflicting laws.

3 56. Defendants, and each of them, acted under color of a law when they seized
4 plaintiffs property on October 10, 2017. The offending ordinance is in direct conflict with
5 California law inasmuch as it vest the power to determine compliance in San Joaquin County,
6 rather than the Industrial Hemp Advisory Board. Moreover, this law is in direct conflict with
7 federal law which states that hemp is permitted if a grower is operating within the boundaries of
8 the state law, and obtained approval from the U.S. Department of Agriculture as was the case
9 here.

10 57. The importance of the Supremacy clause and Preemption doctrines in this
11 specific context cannot be overstated: Defendants relied on approvals from the U.S.
12 Department of Agriculture and from the State of Nevada Department of Agriculture and from
13 the San Joaquin County Agricultural Commission itself who plaintiffs made sure knew
14 everything about the subject grow, and they all knew they could request testing at any time.
15 Plaintiffs were open and transparent at every step. In reliance on these approvals, they invested
16 countless sums into the growing of the hemp seized, including hiring S.G. Farms; creating and
17 erecting customized signage to ensure that no criminal activity developed; testing of the soil
18 before planting the seeds to ensure that there were no pesticides, herbicides, fungicides, or other
19 chemical contaminants which would taint the grow and which would harm patients; developing
20 a customized water conservation technique *specific to this very grow*, to test it for research
21 purposes as well as to minimize water waste; and many others. A private party should be
22 allowed to rely on representations by its government, particularly when it goes out of its way to
23 comply with every law and be an open book to every entity of government involved.

24 58. As a proximate result of these act and/or omissions, plaintiffs have been
25 damaged in an amount to be proven at trial, presently estimated to be in excess of \$77M.
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1 plaintiffs, to tailoring the raid specifically to surprise them. This is all evident from the video of
2 the meeting available on the web.

3 72. Because plaintiffs are easily ascertainable members of a group and because the
4 law inflicts punishment on only them without a judicial trial, it is an unlawful bill of attainder,

5 73. Because the County made something already happening criminal, and denied
6 plaintiffs a realistic ability to abate the grow as well as an opportunity to be heard, the offending
7 ordinance is an *ex post facto* law as well.

8 74. As a proximate result of these act and/or omissions, plaintiffs have been damages
9 in an amount to be proven at trial, presently estimated to be in excess of \$77M.

10 75. Plaintiffs are informed and believe and thereon allege that defendants' conduct,
11 and each of theirs', was malicious, oppressive and/or in reckless disregard of plaintiffs' rights,
12 justifying an award of punitive damages.

13 Wherefore plaintiffs pray for relief as set forth fully below.

14 FOURTH CAUSE OF ACTION

15 Violation of Fifth Amendment - Procedural Due Process

16 [42 U.S.C. §1983]

17 (by all plaintiffs against all defendants)

18 76. Plaintiffs hereby incorporate the entirety of the above and below allegations as if
19 fully set forth hereunder.

20 77. The Fifth Amendment guarantees that "No person shall...be deprived of life,
21 liberty, or property, without due process of law," and is applied to all states by the Fourteenth
22 Amendment. Defendants and each of them have effectively stolen \$77M from plaintiffs without
23 affording them due process and accordingly, their actions were both unlawful and
24 unconstitutional.

25 78. Defendants, and each of them, went out of their way to ensure that no process
26 was available to plaintiffs:
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1 - They acted on alleged emergency basis, when there was no emergency, using
2 that as a reason to fail to notify anyone opposed to the offending ordinance
3 before it was passed, including all of plaintiffs, whilst concurrently taking great
4 care to inform those in favor of it to purposefully fabricate an apparent “good
5 record” of public participation;

6 - They informed plaintiffs of passage of the ordinance and demanded removal of
7 crops and acted on that demand within far too short a window to reasonably
8 permit compliance;

9 - They appeared to agree to afford plaintiffs due process, and then betrayed that
10 agreement by entering onto the subject grow and steal it beforehand;

11 - Other acts, which shall be proven at trial, all according to proof.

12 79. Defendants, and each of them, in so acting and failing to act, have proximately
13 caused damage to the thousands of patients plaintiffs service who will suffer personal injury as a
14 direct result of their actions and omission.

15 80. Plaintiffs are informed and believe and thereon allege that defendants’ conduct,
16 and each of theirs’, was malicious, oppressive and/or in reckless disregard of plaintiffs' rights.

17 Wherefore plaintiffs pray for relief as set forth fully below.

18 FIFTH CAUSE OF ACTION

19 Violation of Fourth Amendment - Unlawful Seizure

20 [42 U.S.C. §1983]

21 81. Plaintiffs hereby incorporate the entirety of the above and below allegations as if
22 fully set forth hereunder.

23 82. The Fourth Amendment, applied to the States by virtue of the Fourteenth
24 Amendment, protects the People of the United States from unreasonable search and seizure.

25 83. The search warrant at issue contained inaccurate facts sworn out by Agent
26 Michael Eastin, and the signature of a-not-easily-identified Magistrate was taken, with no typed
27 name underneath. The warrant further does not identify what agency employs Eastin. The

1 warrant does not indicate Eastin's expertise, experience, familiarity with the subject matter of
2 the warrant, or the basis on which he believed the property authorized to be searched for
3 including "Marijuana/Hemp" was illegal. Throughout the warrant, the terms "marijuana" and
4 "hemp" are only used in conjunction with each other, never individually, despite that they are
5 measurably unique products with a wildly different legal implications. The warrant does not
6 indicate that Eastin had visited the subject grow on at least two prior occasions, including
7 speaking with plaintiff Winnemucca's Chief Bills. The warrant further makes no mention of the
8 research or development aspects, evidence of which had been duly handed to defendants. The
9 warrant prohibits night entry, yet at the time the Sheriff entered onto the subject grow, it was so
10 dark that lights had to be erected. The warrant does not indicate that any property may be
11 seized. The warrant was never correctly returned and the exact amounts of what were taken
12 have not been verified. There are many other deficiencies, too numerous to list herein, but
13 which will be shown at trial in this matter.

14 84. Given the gross insufficiency of the search warrant and the gross deviations from
15 its scope, the seizure is an unlawful violation of the Fourth Amendment.

16 85. As a proximate result of these act and/or omissions, plaintiffs have been damages
17 in an amount to be proven at trial, presently estimated to be in excess of \$77M.

18 86. Plaintiffs are informed and believe and thereon allege that defendants' conduct,
19 and each of theirs', was malicious, oppressive and/or in reckless disregard of plaintiffs' rights,
20 justifying an award of punitive damages.

21 Wherefore plaintiffs pray for relief as set forth fully below.

22 **IRREPARABLE HARM**

23 Plaintiffs hereby incorporate by reference their Application for a temporary restraining
24 order to be filed after this Second Amended Complaint in which they detail the reasons they
25 believe they have a strong likelihood of success on the merits as well as will suffer irreparable
26 harm if the requested relief is denied.

PRAYER

WHEREFORE, plaintiffs request judgment be entered in their favor as follows:

- Defendants be ordered to immediately return the hemp taken as well as any all other items seized or, if no longer available, the reasonable value thereof;

- Defendants and each of them be enjoined from acting pursuant to the offending ordinance or any other similar ordinance they may choose to create;

- Defendants and each of them be enjoined from interfering with plaintiffs' growing of hemp and conducting research in connection therewith, except as may be explicitly authorized by the legislature or the newly forming Industrial Hemp Advisory Board;

- Defendants and each of them be enjoined from entering onto plaintiffs' land except for the purposes of taking samples of the crops thereon grown, and then only by appointment and prior consent, not to be unreasonably withheld;

- An order declaring the each and all of the actions taken against plaintiffs by defendants was unlawful and unconstitutional;

- An order declaring the offending ordinance unconstitutional and therefore void;

- An order declaring the search warrant issued unconstitutional and therefore void;

- An order declaring that any and all criminal actions pursuant to the offending ordinance be dismissed with prejudice;

- Return of the property wrongfully seized or, if no longer available, the fair market value;

- Punitive damages against the individually named defendants;

- Attorney fees and costs pursuant to 42 U.S.C. §1988;

- Any and all other allowable damages according to proof;

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1 - Other further relief as this Honorable Court may deem just and appropriate.
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3 Respectfully submitted,
4 LAW OFFICES OF JOSEPH SALAMA

5 December 25, 2017

6 /s/ Joseph Salama
7 JOSEPH SALAMA
8 Attorneys for Plaintiffs
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