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8
9 **UNITED STATES DISTRICT COURT FOR THE**
10 **EASTERN DISTRICT OF CALIFORNIA**

11
12 WINNEMUCCA SHOSHONI, MBS;
AMERICAN STATES UNIVERSITY;
13 CANNABIS SCIENCE, INC.; FREE
SPIRIT ORGANICS; and HRM FARMS;
14 Plaintiffs,

15 v.

16 SAN JOAQUIN COUNTY BOARD OF
SUPERVISORS, et al.

17
18 Defendant.

CASE NO. 2:17-cv-02271-KJM-EFB

[CORRECTED]*

OPPOSITION TO MOTION TO
DISMISS SECOND AMENDED
COMPLAINT; POINTS AND
AUTHORITIES

April 20, 2018
Time: 10:00 am
Room: 3

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23 • This memo is corrected because a draft without pagination was accidentally filed.
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OPPOSITION TO MOTION TO DISMISS

1
2 The Plaintiffs, Free Spirit Organics, American States University, Cannabis Science, Inc.,
3 HRM Farms, William Bills, and Glen Burgin file this, their Opposition to Motion to Dismiss and
4 memorandum of Points and Authorities, and incorporate herein the Declarations of Glen Burgin,
5 Roger Agajanian, and William Bills (Dk #'s 11 – 13) and in support of their opposition state:

6
7 1. This opposition shall be based on the Points and Authorities incorporated herein and
8 such other matters on file with the Court, or as may be subjected to the Court taking or making
9 orders in relation to judicial notice, any and all depositions, other discovery, or third party records
10 which may become apparent or produced between the making of this Response in Opposition and
11 the hearing on this matter.

12
13 2. It is respectfully suggested that the hearing be continued until some additional cursory
14 discovery is made, in order to determine if the Second Amended Complaint should be further
15 amended to include any additional claims or parties defendants or to amend to further clarify the
16 facts of the case.

17
18 **POINTS AND AUTHORITIES**

19 **I. STATUTORY AUTHORITIES:**

20 **A. FEDERAL LAW**

21 7 U.S.C. § 5940 (Section 7606 of the Agricultural Act of 2014) legalizes the growing and
22 cultivation of industrial hemp for research purposes in States where such growth and cultivation
23 are legal under State law, and excepts Hemp production under these circumstances from existing
24 Federal statutes that would otherwise criminalize these activities. (Sometimes referred to as
25 “research Hemp”.)
26
27
28

1 **Hemp** is distinguished from **marijuana** under federal law, because it has a THC content of
2 less than .3%(three-tenths of one percent) per dry weight, and is defined under 7 U.S.C.
3 §5940(b)(2) as: “(2) Industrial hemp. The term “industrial hemp” means the plant Cannabis sativa
4 L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol
5 concentration of not more than 0.3 percent on a dry weight basis.”

6 **B. STATE LAW:**

7
8 **(1). PROPOSITION 64 (2016):**

9 In 2016 pursuant to a referendum, the People of the State of California, based on
10 constitutionally permissible grounds, voted for and passed California Proposition 64 (2016).
11 Nearly 60 percent of the voters approved this measure in the referendum.¹

12 **(2). CAL. HEALTH AND SAFETY CODE:**

13 Industrial Hemp, however, is covered under a different provision of the California Health
14 and Safety Code. (Cal. H.S.C. §11018.5, et seq.) and the California Food and Agricultural Code
15 (Cal. F.A.C. §81000, et seq.) which was amended in the 2013-14 legislative session. (SB 566
16 attached hereto.)

17
18 This provision of the Health and Safety Code provides, as follows:
19 “[Cal. F.A.C. §81000] (d) “Industrial hemp” has the same meaning as that term is defined in
20 Section 11018.5 of the Health and Safety Code.” Section 11018.5 states: “(a) “Industrial hemp”
21 means a fiber or oilseed crop, or both, that is limited to types of the plant Cannabis sativa L. having
22 no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried
23 flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of
24 the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant,
25
26

27
28 ¹ <http://graphics.latimes.com/la-na-pol-2016-election-results-california/>

1 its seeds or resin produced therefrom. (b) Industrial hemp shall not be subject to the provisions of
2 this division or of Division 10 (commencing with Section 26000) of the Business and Professions
3 Code, but instead shall be regulated by the Department of Food and Agriculture in accordance with
4 the provisions of Division 24 (commencing with Section 81000) of the Food and Agricultural
5 Code, inclusive.”

6 On these points 7 U.S.C. §5940 and the California Health and Safety Code and Food and
7 Agricultural Code are all three in accord.
8

9 **(3). CALIFORNIA FOOD & AGRICULTURAL CODE:**

10 As stated above, Cal. F.A.C. governs the growing and production of Hemp in California.
11 Because the F.A.C. regulates Hemp production, which is legal. F.A.C. §81000(c) defines this as
12 an: “Established agricultural research institution” as meaning any institution that is either:
13

14 (1) A public or private institution or organization that maintains land or facilities for
15 agricultural research, including colleges, universities, agricultural research centers, and
conservation research centers; or

16 (2) An institution of higher education (as defined in Section 1001 of the Higher Education
17 Act of 1965 (20 U.S.C. 1001)) that grows, cultivates or manufactures industrial hemp for
18 purposes of research conducted under an agricultural pilot program or other agricultural or
academic research.”

19 **(a). 20 U.S.C. §1001:**

20 20 U.S.C. §1001 states:

21 “(a) Institution of higher education. For purposes of this chapter, other than subchapter IV,
22 the term “institution of higher education” means an educational institution in any State
23 that—

24 (1) admits as regular students only persons having a certificate of graduation from a school
25 providing secondary education, or the recognized equivalent of such a certificate, or
persons who meet the requirements of section 1091(d) of this title;

26 (2) is legally authorized within such State to provide a program of education beyond
27 secondary education;

1 (3) provides an educational program for which the institution awards a bachelor’s degree or
2 provides not less than a 2-year program that is acceptable for full credit toward such a
3 degree, or awards a degree that is acceptable for admission to a graduate or professional
4 degree program, subject to review and approval by the Secretary;

5 (4) is a public or other nonprofit institution; and

6 (5) is accredited by a nationally recognized accrediting agency or association, or if not so
7 accredited, is an institution that has been granted preaccreditation status by such an agency
8 or association that has been recognized by the Secretary for the granting of preaccreditation
9 status, and the Secretary has determined that there is satisfactory assurance that the
10 institution will meet the accreditation standards of such an agency or association within a
11 reasonable time.

12 (b) Additional institutions included. For purposes of this chapter, other than subchapter IV,
13 the term “institution of higher education” also includes—

14 (1) any school that provides not less than a 1-year program of training to prepare students
15 for gainful employment in a recognized occupation and that meets the provision of
16 paragraphs (1), (2), (4), and (5) of subsection (a); and

17 (2) a public or nonprofit private educational institution in any State that, in lieu of the
18 requirement in subsection (a)(1), admits as regular students individuals—

19 (A) who are beyond the age of compulsory school attendance in the State in which the
20 institution is located; or

21 (B) who will be dually or concurrently enrolled in the institution and a secondary school.

22 (c) List of accrediting agencies

23 For purposes of this section and section 1002 of this title, the Secretary shall publish a list
24 of nationally recognized accrediting agencies or associations that the Secretary determines,
25 pursuant to subpart 2 of part H of subchapter IV, to be reliable authority as to the quality of
26 the education or training offered.”

27 **(4). CALIFORNIA SCIENTIFIC/AGRICULTURAL RESEARCH ORGANIZATION,**
28 **DEFINED:**

A research organization is defined as [FAC 81000(c)(1)] “A public or private institution or
organization that maintains land or facilities for agricultural research, including colleges,
universities, agricultural research centers, and conservation research centers”**and is expressly**
exempted from regulation.

1 **II. PLAINTIFFS POSITION IN AGRICULTURAL RESEARCH OF HEMP:**

2 **(a). CANNABIS SCIENCE, INC.**

3 Cannabis Science, Inc. (“CSI”), is a publicly held (OTC PINK:CBIS), private company that
4 specializes in agricultural research and maintains facilities designed to research the cultivation of
5 hemp seed varieties and the proper growing and cultivation of Hemp for medicinal purposes. The
6 ultimate mission of CSI is to deliver high quality, first class cannabinoid pharmaceuticals to those
7 critically in need of new treatments for life threatening and debilitating conditions. To do so, this
8 requires agricultural research into developing the proper Hemp plants to provide these cannabinoid
9 pharmaceuticals. CSI subscribes to the age old relationship in research and development to
10 collaborate with other prestigious qualified educational and professional entities. It is this
11 collaboration that provides even greater possibility of success. An example of this is the most
12 recent article published in the Frontier of Oncology addressing the issue of cannabinoids and their
13 use in medicine. (Exhibit B.) They include such entities as Dr. Allen Herman MD, PhD Chief
14 Medical Officer of Cannabis Science Inc. and Dean of American States University; Dana Farber
15 Cancer Research Institute; Harvard Medical School; University of Massachusetts-Lowell;
16 Northeastern University; and several physicians and research scientists. This Plaintiff conducts
17 research and development. Not only were Defendants advised of this prior to seeking Criminal
18 Ordinance #4497 on September 26, 2017; but they did not even mention the names of this Plaintiff
19 to the San Joaquin County Board of Supervisors when seeking Criminal Ordinance #4497. CSI
20 partnered with Dana Farber of Harvard University School of Medicine, University of
21 Massachusetts-Lowell, Northeastern University CIS with American States University, and Free
22 Spirit Organics Native American Corporation collectively own the crops grown to be extracted and
23 synthesized into cannabinoid pharmaceuticals as part of their research.
24
25
26
27

1 <https://www.cannabisscience.com/index.php/news-media/cbis-latest-news/875-cannabis-science-partner-american-states-university-asu-re-launches-website-offering-combined-37-state-approved-certificate-and-degree-programs-its-department-of-agriculture-houses-the-industrial-hemp-program-for-the-native-american-economic-plans>
2
3

4 **(b). FREE SPIRIT ORGANICS:**

5 Free Spirit Organics Native American Corporation (“FSO”) is a partner with CSI in
6 researching and developing pharmaceutical applications of cannabinoids, vocational and
7 educational research assistance, and assisting in developing the following long-term plans in
8 relation to Hemp production research:

- 9
10 (1) Academic and vocational training covering each applied industry;
11 (2) Development of healthcare infrastructure, including hospitals and health centers;
12 (3) Pharmaceutical development;
13 (4) Creation of a sustainable, food security system that is based on sound agricultural practices that
14 produce sufficient food for consumption and that are designed to reduce poverty and allow for real
15 farm-to-table programs;
16 (5) Development of water management systems;
17 (6) Development of waste management systems that reduce the prevalence of critical risk factors
18 for infectious diseases;
19 (7) Investment in communications infrastructure, to include satellite, internet, mechanical device
20 development, and cellphone infrastructure;
21 (8) Support for policy, regulatory, and jurisdictional environments, as they pertain to public
22 healthcare, agriculture, education; and
23 (9) Job creation and most important; on the job training oriented for success.

24 Of importance is that Free Spirit Organics has been approved as an educational research
25 and development research center. It is evidenced by the Approved as an educational research and
26 development research center. It is evidenced by the Approval Letter from the Nevada Department
27 of Agriculture which is attached herein as (William Bills Declaration, Exhibit A page 12 of Dk
28

1 #11). This Approval Letter is telling since the Guidelines set forth by the neighboring state of
2 Nevada mirror the federal guidelines set forth by the U.S. Farm Bill 2014 which decriminalized
3 Industrial hemp.

4
5 See: [https://www.cannabisscience.com/index.php/news-media/cbis-latest-news/866-cannabis-
6 science-and-free-spirit-organics-native-american-corporation-report-positive-analytical-lab-results-
7 from-its-250-acre-industrial-hemp-research-project-in-san-joaquin-sovereign-tribal-free-land-mbs-
8 california](https://www.cannabisscience.com/index.php/news-media/cbis-latest-news/866-cannabis-science-and-free-spirit-organics-native-american-corporation-report-positive-analytical-lab-results-from-its-250-acre-industrial-hemp-research-project-in-san-joaquin-sovereign-tribal-free-land-mbs-california)

8 See: [https://www.cannabisscience.com/index.php/news-media/cbis-latest-news/862-cannabis-
9 science-and-free-spirit-organics-native-american-corporation-fso-nac-begin-harvesting-
10 approximately-60-acres-of-its-250-acre-industrial-hemp-project-on-san-joaquin-sovereign-tribal-
11 fee-land-mbs-california](https://www.cannabisscience.com/index.php/news-media/cbis-latest-news/862-cannabis-science-and-free-spirit-organics-native-american-corporation-fso-nac-begin-harvesting-approximately-60-acres-of-its-250-acre-industrial-hemp-project-on-san-joaquin-sovereign-tribal-fee-land-mbs-california)

11 **(c). HRM FARMS**

12 HRM Farms is an organization and is also represented in the person of Glen Burgin,
13 Plaintiff. HRM owns the land and leases out the real property where the hemp grown in issue was
14 taken and destroyed by San Joaquin County. (Burgin Declaration, [Dk #12] in Support of
15 Injunctive Relief at 2nd page Para. 2:5-6; 3rd page Para. 9:14 – 4th page continued to line 2). HRM
16 Farms is one of the partners with CSI, ASU and FSO (Page 3, Para. 7:3-9.)

17
18 Glen Burgin, and HRM Farms prior to growing research Hemp, submitted a Commodities
19 Report of July 31, 2017 (William Bills Declaration, Exhibit A thereto, Dk# 11 at pg 54) which
20 notified the San Joaquin Department of Agriculture of Plaintiff's intent to cultivate industrial
21 research Hemp.

22
23 In addition to the report to the Department of Agriculture and Tim Pelican its
24 Commissioner, Glen Burgin and HRM Farms brought to the table of Collaborators his
25 qualification in that he “maintains land or facilities” used for agricultural research. He qualifies as
26 an agricultural research center as well. Glen Burgin, individually is also a cancer patient who uses
27

1 CBD's medicinally to treat his various conditions. (Burgin Declaration in Support of Injunctive
2 Relief, generally at 2nd Page Para.s 2 – 5 [lines 2-23].)

3 **(d). AMERICAN STATES UNIVERSITY:**

4 American States University (“ASU”) is a California post-secondary educational institution.
5 It is also a research partner of CSI and they, together sponsor accredited courses in hemp research
6 and related hemp fields. (https cites Supra.)
7

8 American States University is represented in the person of Allen Herman MD, PhD, (See
9 also declarations of Roger Agajanian [Dk #13] in support of Preliminary Injunction.) American
10 States University is a partner with Cannabis Science, Inc. as well.

11 American States University has established itself as an agricultural research institution as
12 evidenced by Dr. Allen Herman MD, PhD who has participated in many research projects over the
13 past thirty years with such research entities as Johns Hopkins, Columbia University, Harvard
14 University and New York University. His Curriculum vitae attached as (Exhibit C).
15

16 See: [https://www.cannabisscience.com/index.php/news-media/cbis-latest-news/872-cannabis-
17 science-american-states-university-fso-nac-hrm-farms-and-winnemucca-shoshoni-tribe-
18 collectively-file-federal-action-against-the-san-joaquin-county-board-of-supervisors-drug-
enforcement-administration-and-does-1-50-among-others](https://www.cannabisscience.com/index.php/news-media/cbis-latest-news/872-cannabis-science-american-states-university-fso-nac-hrm-farms-and-winnemucca-shoshoni-tribe-collectively-file-federal-action-against-the-san-joaquin-county-board-of-supervisors-drug-enforcement-administration-and-does-1-50-among-others)

19 **(e). WILLIAM BILLS.**

20 William Bills essentially runs the Native American Allotment which is the subject of the
21 First Amended Complaint. Mr. Bills is also the CEO of plaintiff Winnemucca Shoshoni, MBS and
22 COO of plaintiff Free Spirit Organics (“FSO”). (William Bills Declaration in Support of Injunctive
23 Relief, Dk #11 at page 2, Para. 1:1-2.)
24

25 As stated above, FSO and CSI are partners along with ASU in perfecting Hemp research
26 for the production of CBD and other medicinal products from the Hemp plant. His contributions to
27 FSO NAC contribute to his collaboration as an agricultural research center.
28

ARGUMENT

Introduction

1
2
3 Though seemingly prolix at some points, the Complaint states a plausible cause of action
4 because research of Industrial Hemp production was expressly exempted from regulation by
5 legislative intent, and removed from the County’s jurisdiction. In short, the County may regulate
6 commercial growers; it may not regulate Hemp grown by research institutions which was expressly
7 excluded from all registration and regulatory schemes and taken beyond the reach of the County
8 with respect to outright bans.

9
10 The FAC expressly excludes Hemp research institutions from regulation in at least 10 (ten)
11 places: (1)§ 81002. (a); (2) §81003. (a); (3) §81004. (a); (4) §81005. (a); (5) §81006. (a) (1), (b),
12 (d),(f),(9) and (10)²³⁴⁵⁶⁷. Expressly and by implication, the legislature intentionally exempted
13 agricultural research institutions from any regulation.
14

15 The very essence of the Second Amended Complaint is simply that some authorities
16 connected with San Joaquin County’s Board of Supervisors, namely the Sheriff, the District
17

18
19 _____
20 ² “Except when grown by an established agricultural research institution or a registered seed breeder, industrial hemp shall be grown only as a densely planted fiber or oilseed crop, or both, in acreages of not less than five acres at the same time, and no portion of an acreage of industrial hemp shall include plots of less than one contiguous acre.”

21 ³ “(b)§81006(b) **All plots shall have adequate signage indicating they are industrial hemp.** (See Dkt # 11, Bills Declaration, Exhibit F.)(E.S.)

22 ⁴ “(d) Culling of industrial hemp is prohibited, except when grown by an established agricultural research institution, when the action is necessary to perform the THC testing described in this section, or for purposes of seed production and development by a registered seed breeder

23 ⁵ “(f) Except when industrial hemp is grown by an established agricultural research institution, a registrant that grows industrial hemp under this section shall, before the harvest of each crop and as provided below, obtain a laboratory test report indicating the tetrahydrocannabinol (THC) levels of a random sampling of the dried flowering tops of the industrial hemp grown.”

24 ⁶ “(9) Established agricultural research institutions shall be permitted to cultivate or possess industrial hemp with a laboratory test report that indicates a percentage content of THC that is greater than three-tenths of 1 percent if that cultivation or possession contributes to the development of types of industrial hemp that will comply with the three-tenths of 1 percent THC limit established in this division.”

25 ⁷ “(10) Except for an established agricultural research institution, a registrant that grows industrial hemp shall retain an original signed copy of the laboratory test report for two years from its date of sampling, make an original signed copy of the laboratory test report available to the department, the commissioner, or law enforcement officials or their designees upon request, and shall provide an original copy of the laboratory test report to each person purchasing, transporting, or otherwise obtaining from the registrant that grows industrial hemp the fiber, oil, cake, or seed, or any component of the seed, of the plant.”

1 Attorney's Office and County Counsel, were frustrated by the fact that there is no law, rule or
2 regulation specifically with laser-beam accuracy, defining "Industrial Hemp Research" facilities or
3 institutions, or organizations. First, this is untrue as the statute specifically does identify research
4 institutions for Hemp purposes. Secondly, the Second Amended Complaint alleges that the
5 defendants got together, conspired and aided and abetted each other in fabricating a rationale for
6 attempting to overrule Congress's and the California Legislature's findings. This was a blatant
7 abuse of powers under the color of law. (SAC at Paras. 11 – 14.)
8

9 And so what did they do? They decided to outlaw all Hemp research in San Joaquin
10 County. In short, there is no law against what the Plaintiffs were engaged in, and in fact, there were
11 two laws promoting it: one on the state level and another on the federal level. And so the Board of
12 Supervisors decided to pass a moratorium, on an emergency basis in order to justify seizing and
13 eradicating an entire research project put together by a Native American tribe that raises the crops
14 to ultimately benefit its tribal members and neighboring tribes; a multi-national Cannabis Research
15 corporation engaged in cancer research projects around the world; and to punish a California
16 educational institution located in Irvine, California. In short, out of sheer ignorance of the
17 difference between Marijuana and Hemp, merely being that they are part of the same sub-genus of
18 plants called Cannabis Setiva L, decided it was easier to outlaw all such research instanter, and
19 then ... send the Sheriff out to eradicate scientific research by destroying and removing all of the
20 product of said research. There was virtually no notice, and definitely no opportunity to oppose this
21 questionable legislation; and there was no actual showing of any threat to health, safety and
22 welfare sufficient to justify a draconian step such as the one orchestrated here. Indeed, the meeting
23 was held and only one member of the public was present to make a statement other than officials:
24 Brent Williams. It is apparent Mr. Williams was told to appear and make his comments, despite the
25
26
27
28

1 real parties in interest – those involved in the research, being left out. This is an ex-post-facto law,
2 and a bill of attainder and is a violation of the civil rights of the cultivators of this scientific
3 research. Congress sanctioned it; the state has sanctioned it; and the Board of Supervisors, Sheriff
4 and District Attorney hate that fact. So they decided to come up with a plan to eradicate all
5 scientific research and attempt to overrule both Congress and the California legislature.

6
7 The problem is, as with all such legislation, it must be narrowly tailored to reach a
8 Constitutionally permissible governmental goal. The object in this case was to simply outlaw
9 research “until some other entity comes up with a better plan.” That isn’t sufficient grounds.
10 Congress rendered its judgment that Hemp production was desirable; the General Assembly voted
11 in and the Governor signed legislation finding Hemp production was desirable. Neither of these
12 two legislative behemoths felt further clarification was needed to these two pieces of seminal
13 legislation. See SB 566 (2013-14 Legislative Session) attached hereto as Exhibit A with the
14 legislative judgment included therein.⁸

15
16 In short, San Joaquin County had a research Hemp farm in it, and they simply didn’t like it.
17 And today, the Board of Supervisors, who attempted to overrule the US Government and the
18 California legislature, wish to justify their breach of the rights of the Plaintiffs by hiding behind
19 what they claim is a legislative privilege. Legislators are not privileged to engage in targeting
20 people beyond their jurisdiction. They have acted in excess of their jurisdiction. Their privilege is
21 qualified at best.
22

23
24
25 ⁸ Every argument raised before the Board of County Supervisors to justify this action was raised to the legislature when the law was
26 proposed. The legislature found no merit in these objections and overruled them finding no merit. Indeed the 9th Circuit Court of
27 Appeals found that Hemp was not even a public threat as noted in SB 566. (Hemp Industries Association v. Drug
28 Enforcement Administration, (9th Cir. 2004) 357 F.3d 1012). In short there is no explanation as to how Hemp is a
threat to the public health, safety and welfare to the citizens of San Joaquin County or the People of the State of
California since it contains no psychoactive drug of any marginal significance. In fact it has no psychoactive value
whatsoever.

A. EX-POST-FACTO/BILL OF ATTAINDER

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2 A Bill of Attainder is one that targets a specific person or group, whether it specifically
3 names them or not and inflicts a privation or penalty. It is one that inflicts punishment for past acts,
4 which otherwise were innocent conduct in this case, specifically sanctioned by the United States
5 Government and the California Legislature. (*United States v. Lovett* (1946) 328 U. S. 303). In this
6 case, the county board of supervisors finding that there was no law or regulation applicable to an
7 Industrial Hemp Research Facility, simply decided to outlaw it completely, and then ... confiscate
8 and destroy its products ... and did so by justifying an “emergency” action without notice, without
9 a trial, and without Due Process. In essence, the ordinance in question is a bill of attainder. (*United*
10 *States v. Brown* (1965) 381 U.S. 437.) The purpose of our court system is to insure that legislative
11 bodies, even county boards of supervisors, do not act arbitrarily and capriciously when they
12 disagree with innocent and constitutionally protected activities. Quoting Alexander Hamilton: “By
13 a limited constitution, I understand one which contains certain specified exceptions to the
14 legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post*
15 *facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than
16 through the medium of the courts of justice, whose duty it must be to declare all acts contrary to
17 the manifest tenor of the constitution void. Without this, all the reservations of particular rights or
18 privileges would amount to nothing. “(*Id* at 462.)

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22 Likewise, an ex-post-facto law, is a law that outlaws previously innocent conduct, and
23 makes criminals of otherwise innocent actors, increases punishments for acts committed in the
24 past, or criminalizes previous innocent conduct. (US Const. Art. I, §10, Cl. 1; *Stogner v. California*
25 (2003) 539 U.S. 607.) In this case, a penalty was assessed against a legal research Hemp grow that
26 was legal at the time it was grown, and ordered eradicated. In essence the law targeted a specific
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1 research Hemp grow for immediate destruction without any Due Process. In *Stogner*, supra, the
2 Supreme Court listed two categories and 2 sub-categories in alternative, where previous conduct
3 was punished: Category 1: "Sometimes they respected the crime, by declaring acts to be treason,
4 which were not treason, when committed."; Category 2: "[At other times they inflicted
5 punishments, where the party was not, by law, liable to any punishment."; Category 3: "[I]n other
6 cases, they inflicted greater punishment, than the law annexed to the offence."; and Category 4:
7 "[At other times, they violated the rules of evidence (to supply a deficiency of legal proof) by
8 admitting one witness, when the existing law required two; by receiving evidence without oath; or
9 the oath of the wife against the husband; or other testimony, which the courts of justice would not
10 admit." (Citing *Calder v. Bull* (1798) 3 Dall. 386, 390-91.) These laws are declared oppressive and
11 tyrannical by our Supreme Court's jurisprudence.
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14 Here, innocent conduct and pre-existing product were declared illegal, then a punishment of
15 eradication was inflicted – that is the taking and destruction of private property by legislative fiat
16 of a board of county supervisors and the Sheriff and District Attorney acting in concert.

17 **B. NO ABSOLUTE PRIVILEGE OR IMMUNITY:**

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19 The tactics used to punish otherwise lawful conduct; and to extract a penalty or forfeiture of
20 innocent goods or chattels is never fully privileged from court action when a board meets allegedly
21 on an "emergency basis" without proper notice specifically for the purposes of enacting draconian
22 legislation. Legislators and legislative actors may not hide behind a claim of privilege or immunity
23 from civil liability in equity for knowing, wrongful conduct on their part. California has
24 specifically waived this immunity. (See, i.e. Cal. Gov. Code §54960, et seq.) This immunity is
25 specifically waived in instances where the notice was inadequate, and, the improper actions have
26 already taken place. (See, i.e. Cal. Gov. Code §54960.1, et seq.) In short, repealing the legislation
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1 alone will not prevent it from being re-enacted after proper notice, or more public debate;
2 especially given the Federal and State exemptions extended to research institutions, specifically
3 exempting them from regulations.

4 Here the actions taken by the Board of Supervisors were taken without notice to the
5 affected parties or the general public; and there is no evidence propounded to show that the notice
6 complied with any law. It was merely raw legislative power in action.
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8 **(i). The Sheriff's Office and District Attorney have Liability**

9 In order to obtain a warrant to enter onto the land and destroy the research Hemp being
10 grown on the land in question, the Sheriff's Office and District Attorney's Office obtained a
11 warrant based upon false information related to an unknown magistrate. (Dkt #11, Declaration of
12 Bills, Exhibit E and attachment). The warrant falsely states that the items to be seized are
13 "marijuana/hemp". However, under state and federal law, marijuana and hemp are classified as
14 different things. One is a Schedule I drug (marijuana) and the other, Hemp, is not a Schedule I drug
15 and has been removed from the list. Therefore by claiming that the items to be seized were both,
16 the Sheriff's and District Attorney's offices misled the magistrate and falsely categorized the
17 research Hemp as contraband when it was not. The warrant was obtained based on a knowingly
18 fraudulent statement. Moreover, because Capt. Jerry Alejandro attended the county board of
19 supervisors' meeting to voice his support of the proposed "emergency" ordinance to outlaw
20 agricultural research, it was clear that the point of the meeting itself was to seize and destroy legal
21 crops, known to be research on the property in question. In short, Capt. Alejandro knew that at the
22 time the crops were grown and possessed, prior to the meeting, they were lawful crops under both
23 state and federal law, and in fact intentionally excluded from any regulation or registration scheme.
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1 A warrant intentionally obtained by a law enforcement officer based on knowingly false or
2 fraudulent information, or fraudulent omissions that this was research Hemp intentionally excluded
3 from all of the penal codes, **is actionable**. (42 USC §1983; *Wilson v. Russo* (3rd Cir. 2000) 212
4 F.3d 781, 786-87; *Golino v. City of New Haven*, 950 F.2d 864, 871 (2d Cir. 1991), cert. denied,
5 (1992) 505 U.S. 1221; *United States v. Stanert* (9th Cir. 1985) 762 F.2d 775, 781.) The shield of
6 any virtue of immunity is entirely shed when a magistrate is intentionally misled in issuing a
7 warrant. Here the Sheriff's Office and District Attorney's Office failed to disclose to the magistrate
8 that research Hemp, such as what was going on in this case, was entirely exempt from the penal
9 statutes; moreover, the Sheriff's Office failed to distinguish that the Hemp was research Hemp and
10 not marijuana by "lumping" what was legal together with what was illegal and subject to seizure.
11 In short the application did not specify what unlawful articles were to be subjected to seizure **and**
12 **instead included lawful articles**. This was a deliberate omission on the part of the Sheriff's Office
13 and District Attorney's Office in order to gain access to, and then seize and destroy Plaintiffs'
14 research Hemp crop.
15

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17 **C. NO APPARENT RIGHT TO ERADICATE RESEARCH:**

18 The gathering of state and federally sanctioned scientific and agricultural research is
19 protected under the First and Fourteenth Amendments to the Constitution. (See, i.e. *Buckley v.*
20 *Valeo* (1976) 424 U.S. 1; and *Branzburg v. Hayes* (1972) 408 U.S. 665, "*Buckley*" and
21 "*Branzburg*" respectively.) In *Buckley* the Supreme Court determined that certain expressive
22 conduct though not speech in and of itself, is still protected under the First and Fourteenth
23 Amendments. In *Branzburg*, the same Court held that news-gathering may still be protected
24 conduct. Taken together, these two cases analogously portend a certain degree of privileges
25 extended to researchers in gathering data in order to share and trade research and further scientific
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1 inquiry. Each of the cases builds, at least in spirit, on Chief Justice Warren’s plurality opinion in
2 *Sweezy v. New Hampshire* (1957) 354 U.S. 234, 250:

3 “[t]o impose any strait jacket upon the intellectual leaders in our colleges and universities
4 would imperil the future of our Nation. No field of education is so thoroughly
5 comprehended by man that new discoveries cannot yet be made... Teachers and students
6 must always remain free to inquire, to study and to evaluate, to gain new maturity and
7 understanding; otherwise our civilization will stagnate and die ...”

8 In the same spirit of Justice Warren’s plurality opinion (*Id*) and that of *Buckley* and
9 *Branzburg*, Congress and the California Legislature both reached the conclusion that scientific
10 research in the growing and production of Hemp is sanctioned and desireable and poses no risks to
11 society. The only people who oppose it, are the Board of County Supervisors of San Joaquin
12 County, the Sheriff’s Office and the District Attorney’s Office along with the County Counsel.
13 And it is here where we are led into one of the next sections; that is that the ordinance in question
14 is preempted by the judgments of the federal and state governments. But before we go to that we
15 have to examine the next issue, and that is whether the ordinance went too far and overreached.

16 **D. THE ORDINANCE WAS NOT NARROWLY TAILORED TO ACHIEVE AN**
17 **IMPORTANT GOVERNMENT INTEREST AND IS VOID.**

18 One of the most important decisions regarding municipal and local ordinances ever issued
19 by the United States Supreme Court is *Church of the Lukumi Babalu Aye, Inc. v. Hialeah* (1993)
20 508 U.S. 520 (“*Church*”). In this case the City of Hialeah, Florida enacted emergency ordinances
21 banning animal sacrifices under the guise of animal cruelty statutes. Animal sacrifices by the actual
22 Santeria church members was a religious practice imported by slaves from Africa and elsewhere.
23 In short, it was a religious practice the city council wanted to ban. The law though facially neutral
24 was intended to target a specific group, and criminalize religious worship practices which
25 otherwise were legal, permissible conduct under existing law. In fact, in the Santeria religion,
26 animals are sacrificed in a specific way and consumed, no different than a farmer will butcher a pig
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1 or a chicken for food. As stated in *Church* at 535, “Apart from the text, the effect of a law in its
2 real operation is strong evidence of its object.” Here the effect and object was, essentially, to shut
3 down a scientific research project in San Joaquin County and destroy the research and its product,
4 despite the fact that Congress and the State of California sanctioned such research **and set it apart**
5 **from any regulations whatsoever**, and expressly did so **at least ten (10) times** when it enacted
6 the Hemp statute in the FAC, supra.
7

8 In *Church*, the US Supreme Court took no issue with a county’s right to regulate time,
9 place and manner of religious practices based on laws that are neutral both facially and as applied;
10 however, the Supreme Court cautioned that such regulations must be narrowly tailored to achieve
11 a legitimate governmental interest.

12 (“...[n]arrower regulation would achieve the city's interest in preventing cruelty to animals. With
13 regard to the city's interest in ensuring the adequate care of animals, regulation of conditions and
14 treatment, regardless of why an animal is kept, is the logical response to the city's concern, not a
15 prohibition on possession for the purpose of sacrifice.”] *Church* at 539.) Likewise in this case, the
16 Board of Supervisors, the Sheriff, the District Attorney and County Counsel simply didn’t like the
17 fact that scientific research was being conducted under state and federal law, and indeed sanctioned
18 by it and deemed an important governmental interest in promoting it. Therefore the ordinance in
19 question is unconstitutionally broad, and suppresses innocent conduct permissible under existing
20 law. As in *Church*, supra, the ordinance is simply **void** and motivated by enmity towards the
21 research and the conduct of it, rather than health, safety and welfare. It was an impermissible
22 exercise of police powers beyond the jurisdiction of the Defendants under existing law.
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E. THE ORDINANCE IS PREEMPTED BY STATE AND FEDERAL LAW:

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2 As Exhibit A attached hereto explains, SB 566's goal was and remains to promote Hemp
3 Research and to specifically exclude research organizations from regulations imposed on
4 commercial growers and seed cultivars (see, generally, supra). Moreover, the legislation is
5 comprehensive with an entire scheme in place. The law preempts San Joaquin County from
6 outright banning research in Hemp cultivation. A local law that "duplicates, contradicts, or enters
7 an area fully occupied by general law, either expressly or by legislative implication" will be
8 preempted by the state law. (*Fireman's Fund Ins. Co. v. City of Lodi* (9th Cir. 2002) 302 F.3d 928,
9 941 (internal quotation omitted); *Tily B., Inc. v. City of Newport Beach* (Cal. App. 1998) 69
10 Cal.App.4th 1 [In California, "[s]tate law preempts local legislation if an ordinance duplicates,
11 contradicts, or enters an area fully occupied by the general laws, either expressly or by
12 implication."]; *Sherwin-Williams Co. v. City of Los Angeles* (Cal. 1993) 4 Cal.4th 893, 897).

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15 In this case, the FAC, supra, not only sets out a comprehensive scheme regarding the
16 cultivation and research into Industrial Hemp; it expressly exempts Research Organizations and
17 scientific research from any regulations, not once **but at least ten (10) times**. The fact that the
18 State of California has not issued regulations concerning commercial growers and cultivars (not
19 research institutions) is inapposite and renders the entire basis for the ordinance in question void
20 entirely. However, by expressly contradicting the California Legislative findings and intent, and
21 laws, and Congress's intent to fully legalize and promote research institutions in their scientific
22 inquiry into the cultivation of Industrial Hemp, the ordinance in question is unconstitutional,
23 constitutes an invasion of the legislative judgments of state and federal governments, and is
24 otherwise preempted. There was no right, nor was there any jurisdiction vested in the county when
25 it passed this law.
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1 Moreover, though San Joaquin County can regulate time, place and manner of a protected
2 activity, it cannot ban it. Nor may it impose agricultural restrictions either. In short the legislature
3 has spoken and Congress has spoken. The Board of Supervisors heard what both legislative bodies
4 had to say and decided to contradict them, and pass their own laws banning and criminalizing such
5 research.

6
7 **REQUEST FOR ORAL ARGUMENT**

8 The undersigned counsel has been licensed for less than four (4) years and requests oral
9 argument in this matter pursuant to the Court’s standing orders.

10 **REQUEST FOR FURTHER BRIEFING**

11 Because the issues raised in this case are of great public importance both to Commerce of
12 the United States under the Congressional mandate; and the State of California’s legislative
13 mandate to promote scientific research in Industrial Hemp; the Plaintiffs request further or
14 expanded briefing. In short 20 pages are insufficient to address the questions raised by the
15 Defendants’ Motion to Dismiss.

16
17 **LEAVE TO AMEND**

18 The Plaintiffs (responding parties here) request leave to amend the Second Amended
19 Complaint to fully develop the facts and further causes of action including ancillary state claims
20 and Fifth Amendment takings claims, including if this Court deems that it is somehow in anyway
21 deficient.

22
23 **CONCLUSION**

24 For the reasons set forth above, the Second Amended Complaint fully states a cause of
25 action; in the alternative leave to amend should be granted or briefing greatly expanded.

INCORPORATION OF OTHER PLAINTIFFS' ARGUMENTS

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2 To the extent the other plaintiffs' arguments (who are not represented by undersigned
3 counsel) are supportive of this Memorandum in Opposition to the Motion to Dismiss, they are
4 adopted herein by reference.

5 Dated: April 5, 2018

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7 /S/ Ronda Baldwin-Kennedy _____
8 Ronda Baldwin-Kennedy, Esq

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