

1 DEREK P. COLE, Bar No. 204250
dcole@colehuber.com
2 RONALD J. SCHOLAR, Bar No. 187948
rscholar@colehuber.com
3 COLE HUBER LLP
2261 Lava Ridge Court
4 Roseville, California 95661
Telephone: (916) 780-9009
5 Facsimile: (916) 780-9050

6 Attorneys for Defendants
SAN JOAQUIN COUNTY BOARD OF
7 SUPERVISORS; SAN JOAQUIN COUNTY
COUNSEL; ERIN HIROKO SAKATA;
8 MIGUEL VILLAPUDUA; KATHERINE
MILLER; TOM PATTI; BOB ELLIOTT;
9 CHUCK WINN; SAN JOAQUIN COUNTY
SHERIFF

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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13 SACRAMENTO DIVISION
14

15 FREE SPIRIT ORGANICS, NAC, et al.,

16 Plaintiffs,

17 v.

18 SAN JOAQUIN COUNTY BOARD OF
SUPERVISORS, et al.,

19 Defendants.
20

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

**DEFENDANTS' POST EVIDENTIARY
HEARING BRIEF IN SUPPORT OF
MOTION TO DISMISS DUE TO LACK
OF STANDING**

The Hon. Kimberly J. Mueller

Trial Date: None
Action Filed: 10/27/2017

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I. INTRODUCTION

The only question remaining with respect to the issue of standing¹ is whether or not Plaintiff S.G. Farms was a vendor that sold seeds and was paid for them or was it a partner with an ongoing financial interest in the crop. On this front, the evidence is muddled and conflicted. As such, it should be dismissed with prejudice for failing to carry its burden of proof that it had a financial interest beyond the sale of the seeds.²

II. LAW AND ARGUMENT

A. LEGAL STANDING

A motion to dismiss can challenge a plaintiff’s standing both facially based upon the confines of the complaint and factually. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). “[I]n a factual attack...the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Id.* In this context, the Court “may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment.” *Id.* The Court “need not presume the truthfulness of the plaintiff’s allegations” in deciding a factual attack and on a motion to dismiss, the plaintiff bears the burden of establishing the Court’s jurisdiction. See *Chandler v. State Farm Mut. Auto Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010).

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¹ Pursuant to party stipulations, all individual plaintiffs have been dismissed. The standing issue has been resolved as to all of the entity plaintiffs except for S.G. Farms. The other issues raised in the Motion to Dismiss remain under submission.

² This brief is submitted in addition to the previously filed briefing on the Motion to Dismiss.

1 **B. S.G FARMS LACKS STANDING**

2 **1. The Evidentiary Hearing**

3 **(a) George Bianchini**

4 George Bianchini, the owner of S.G. Farms testified that S.G. Farms was not a party to
5 either of the “Master Facilitator Agreements” (T³. 91:23-92:15; Exs. 311 and 312.) He said S.G.
6 Farms had an oral agreement with Mr. Bills and that there was a receipt for the plants and seeds.
7 (T. 89:14-90:1.) S.G. Farms issued an invoice to Free Spirit Organics/CVIS in the amount of
8 \$15,500. (S.G. Farms Ex. 204; T. 98:8-12.) The invoice was paid by cashier’s checks. The checks
9 were given to Mr. Bianchini by Mr. Bills. (S.G. Farms Ex. 208; T. 98:2-7.) The handwritten words
10 “consulting fee” appear at the bottom of one of the checks. (S.G. Farms Ex. 208; T. 109:13-20.)

11 Mr. Bianchini claims that this transaction was done at his cost and that he had an
12 arrangement where he would make his retail profit at the time of harvest. (T. 92:22-25.) Mr.
13 Bianchini testified he provided a work crew which built greenhouses and other structures. (T.
14 94:12-17.) However, he did not keep any records of time he claims to have spent at the grow site
15 (T. 90:25-91:2.) and S.G. Farms produced no documentation to support payment to his crew or for
16 the structures.

17 While Mr. Bianchini testified that there were emails that reflected the terms and conditions
18 of his agreement with Mr. Bills, no such documents were introduced at the hearing. (T. 93:10-20.)
19 He also described a conference call attended by several individuals associated with Cannabis
20 Science, but states that Mr. Bills, with whom he supposedly had the agreement with, was not on
21 the call (T. 94:3-17; 123:2-19; 143:18-144:7.) It also appears like the parties did not settle on a
22 final price. Through it all, Mr. Bianchini did not believe he was going to be paid for this grow (T.
23 95:10-12.)

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28 ³ “T” references the transcripts of the January 7-8, 2019 evidentiary hearing filed with the Court as docketing number 93.

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(b) William Bills

William Bills testified that the entity involved in the present litigation, which is the signatory on the two Master Facilitation Agreements, was his company Free Spirit Organics, NAC and not the LLC. (Ex. 311 and 312; T. 184:8-188:21.) Astonishingly, Mr. Bills also admitted that in September 2016, when he received the March 21, 2016 letter from the Nevada Department of Agriculture from John Taylor, he understood that the letter was issued to the LLC and not Free Spirit Organics, NAC.

Q: My question is, at the time you saw this letter from the Nevada Department of Agriculture, isn't it true that it was your understanding that it was issued to Free Spirit Organics, LLC?

A: Yes, correct.

(T. 180:25-181:1-23; Ex. 308.)

Mr. Bills also admitted that sometime between August and October 2016, when he saw the Declaration for Industrial Hemp Production issued by the State of Nevada Department of Agriculture, that he understood that it was issued to the LLC and not his company, Free Spirit Organics, NAC. (T. 181:24-182:13; Ex. 309.) Mr. Bills also understood that Mr. Taylor had submitted the application to the State of Nevada on behalf of Free Spirit Organics, LLC. (T. 182:14-24.)

Despite his admitted knowledge to the contrary, Mr. Bills then directed Mr. Agajanian to prepare submissions to the County of San Joaquin claiming that the Nevada letter and certification were issued to his company, Free Spirit Organics, NAC in an effort to mislead the County into believing the "legitimacy" of his hemp operation. (T. 24:2-28:12; 183:2-184:7; 192:2-193:14; Exs. 309, 309, 315, 317, 318, 319, 320.)

Mr. Bills then perpetuated his deception before this Court when he filed, under oath, a declaration in support of injunctive relief in this action. (T. 190:4-19; Ex. 313.) Attached to the declaration were the Nevada letter and certification which Mr. Bills then falsely declared were issued to Free Spirit Organics, NAC when he knew full well they were issued to the LLC. (T. 190:20-191:23; Ex. 313.012-013.)

COLE HUBER LLP
2261 LAVA RIDGE COURT
ROSEVILLE, CALIFORNIA 95661

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(c) **Glen Burgin**

According to Glen Burgin, Mr. Bianchini was at the grow site from time to time, but was unable to say with any certainty how frequently, stating that sometimes it was weekly and others “a couple weeks went by.” (T. 81:5-15.)

2. Analysis

The plaintiff bears the burden of establishing the Court's jurisdiction. (See *Chandler v. State Farm Mut. Auto Ins. Co.*, supra, 598 F.3d at 1122.) S.G. Farms has failed to satisfy its burden of proof that it had an agreed upon continuing interest in the hemp crops at the time they were seized by the County. At best, the evidence is contradictory and murky. Despite claiming that there were email confirmations, S.G. Farms has failed to produce them. Instead, the Court is left with Mr. Bianchini’s statements that he reached an agreement with Mr. Bills that was then altered by Cannabis Science representatives and which Mr. Bianchini never believed he was going to be paid on. Mr. Bianchini claims that the invoice was only for the seeds and plants. However, the checks that paid that invoice state they were a “consulting fee.” There are no records of any of the after sale work Mr. Bianchini claims he and his work crew did at the site. The only other evidence is that Mr. Burgin saw Mr. Bianchini at the site on several occasions. These facts do not sufficiently establish that S.G. Farms had a sufficiently certain continuing interest in the crops at the time of the seizure.

This is not to say that William Bills does not have his own severe credibility issues. Mr. Bills has all but admitted to a concerted effort to put one over on the County and then under penalty of perjury, the Court, by deliberately and expressly misrepresenting that the Nevada Department of Agriculture issued his company, Free Spirit Organics, NAC “licenses” and “certifications.” In support of these false statements, Mr. Agajanian, at the direction of Mr. Bills, submitted documents to both the County and this Court making the false assertion that the Nevada certification was for Free Spirit Organics, NAC.

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COLE HUBER LLP
2261 LAVA RIDGE COURT
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III. CONCLUSION

S.G. Farms has failed to carry its burden of proof that it has standing to prosecute this action. Therefore, dismissal is appropriate. Having been provided with ample opportunity to prove its case on this issue at the evidentiary hearing, it is appropriate that the dismissal be with prejudice.

Dated: February 22, 2019

COLE HUBER LLP

By: /s/ Ronald J. Scholar

Ronald J. Scholar
Attorneys for Defendants
SAN JOAQUIN COUNTY BOARD OF
SUPERVISORS; SAN JOAQUIN COUNTY
COUNSEL; ERIN HIROKO SAKATA; MIGUEL
VILLAPUDUA; KATHERINE MILLER; TOM
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