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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

APRIL JAMES, EUNICE SWEARINGER, STEVE BRITTON, and ROUND VALLEY INDIAN TRIBES,

Plaintiffs,

vs.

MATTHEW KENDALL, Sheriff of Mendocino County; COUNTY OF MENDOCINO; WILLIAM HONSAL, Sheriff of Humboldt County; JUSTIN PRYOR, deputy of Humboldt County Sheriff's Office; COUNTY OF HUMBOLDT; SEAN DURYEE, Commissioner of the California Highway Patrol; CALIFORNIA HIGHWAY PATROL; and DOES 1 through 50,

Defendants.

Case No.: 25CV-03736-RMI
Judge: Hon. Robert M. Illman

DEFENDANTS SHERIFF KENDALL AND COUNTY OF MENDOCINO'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Filed concurrently with:
(1) [Proposed] Order; and
(2) Certification of Interested Parties.]

Date: September 9, 2025
Time: 2:00 p.m.
Crtm: Eureka-McKinleyville Courthouse

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 9, 2025, at 2:00 p.m., or as soon thereafter as the matter may be heard in Courtroom 1 of the above-entitled Court, located at 3140 Boeing Ave., McKinleyville, CA 95519, Defendants, COUNTY OF MENDOCINO and SHERIFF MATTHEW KENDALL will, and hereby do, move to dismiss Plaintiffs' Complaint for Declaratory and Injunctive Relief and Money Damages in the above-captioned matter.

Defendants bring this Motion pursuant to Federal Rule of Civil Procedure 12(b)(1), on the grounds that Plaintiff Round Valley Indian Tribes lack standing to bring the Third and Seventh Claims. Additionally, County of Mendocino and Sheriff Kendall bring this Motion pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds that:

- Despite changes to California's laws and policy on marijuana, large-scale marijuana cultivation and possession has always been, and remains, criminally prohibited;
- Tribal sovereignty does not prohibit enforcement of criminal law;
- The Fourth Claim for Relief must be dismissed as failing to state facts sufficient to constitute a claim for relief;
- The Third and Seventh Claims for Relief as to Sheriff Kendall in his official capacity must be dismissed because he is a redundant Defendant;
- The Third and Seventh Claims for Relief as against the County of Mendocino and Sheriff Kendall in his official capacity should be dismissed because a county cannot be liable under Section 1983 on the basis of respondeat superior liability;
- The Third Claim for Relief must be dismissed as against Sheriff Kendall in his individual capacity because there are no facts plead establishing that Sheriff Kendall was personally involved in the alleged Section 1983

violations;

- The Fifth and Sixth Claims for Relief must be dismissed as against Sheriff Kendall in his individual capacity because they fail to state facts sufficient to constitute a claim for relief; and
- The Fifth and Sixth Claims for Relief must be dismissed as against the County of Mendocino and Sheriff Kendall in his official capacity as they fail to allege facts sufficient to constitute a claim.

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities attached hereto, the file and records in this case, and whatever further argument the Court deems just and proper to entertain at the hearing on this Motion.

Dated: August 5, 2025

Respectfully submitted,

JONES MAYER

By: *s/ Denise Lynch Rocawich*
JAMES R. TOUCHSTONE
DENISE LYNCH ROCAWICH
Attorneys for Defendants County of Mendocino and Sheriff Matthew Kendall

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants, County of Mendocino and Sheriff Matthew Kendall, respectfully move under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss Plaintiffs' First Amended Complaint ("FAC") for Declaratory and Injunctive Relief and Money Damages on the ground that this Court lacks subject matter jurisdiction, and that the FAC does not allege any facts establishing any viable claim against the County of Mendocino or Sheriff Kendall. Accordingly, the FAC should be dismissed.

II. STATEMENT OF RELEVANT FACTS ALLEGED IN COMPLAINT

Plaintiffs allege that, on July 22-23, 2024, the Defendants executed raids on the Plaintiffs' properties on the Round Valley Indian Reservation in Indian Country, without probable cause and without valid search warrants. FAC ¶ 37. Plaintiffs allege that Defendants were targeting marijuana cultivation sites and destroyed hundreds of marijuana plants during the raids. Id. ¶¶ 37, 1. Plaintiffs are tribal members who own land on which the raids took place. Id. ¶¶ 40, 42, 54. Plaintiffs allege Public Law 280 ("PL 280") delegated federal authority to California to prosecute crimes committed by Indians in Indian country. See 28 U.S.C. § 1360. California regulates cannabis and allows citizens to cultivate, possess and use cannabis, but those regulatory laws cannot be enforced against Indians on their reservations. See California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987). FAC ¶ 5. Plaintiffs allege that Defendants' reliance on PL 280 to justify raids on the Reservation contravenes long standing recognition of tribal sovereignty and federal common law, which prohibit state enforcement of regulatory laws against Indians on Indian reservations. Chemehuevi Indian Tribe v. McMahon, 934 F.3d 1076 (9th Cir. 2019); Williams v. Lee, 358 U.S. 217 (1959). Id.

Plaintiffs allege that under PL 280, California has limited jurisdiction over Indian country, depending on whether the state law at issue prohibits or regulates conduct. Cabazon, 480 U.S. at 209. Id. ¶ 33. If a California law generally prohibits certain conduct, California has criminal jurisdiction under 18 U.S.C. § 1162 to enforce its law against individual Indians. Id. Conversely, if a California law merely regulates conduct and otherwise permits the conduct at issue, i.e. "civil/regulatory laws," California has no jurisdiction within Indian country to enforce that law. Id.

Plaintiffs allege that California permits the cultivation, possession, and use of cannabis under Health and Safety Code §§ 11362.5 and 11358 (collectively, "H & S Code"). Id. ¶ 36. These provisions establish civil and regulatory requirements, not prohibitory or criminal statutes, and therefore do not apply to California Indians cultivating cannabis in Indian country. Id. On July 17, 2025, Plaintiffs filed their FAC for Declaratory and Injunctive Relief and Money Damages alleging the following Claims for Relief: (1) Unlawful Assertion of Jurisdiction [PL 280]; (2) Infringement of the Tribe's Sovereignty [Interference with Tribal Self-Governance]; (3) Fourth Amendment – Unlawful Search and Seizure [42 U.S.C. § 1983]; (4) Unlawful Search and Seizure [Cal. Const. Art. I § 13]; (5) Bane Act [Cal. Civil Code § 52.1]; (6) Negligence; and (7) Violation of Fourteenth Amendment -- Equal Protection/Selective Enforcement [42 U.S.C. § 1983]. As discussed below, Plaintiffs' claims fail as a matter of law for a variety of reasons.

III. LEGAL STANDARD

A. Dismissal Under Federal Rule of Civil Procedure 12(b)(1)

A court may dismiss a plaintiff's claim if the court finds that it lacks subject matter jurisdiction to adjudicate the claim. Fed. R. Civ. P. 12(b)(1). Unless affirmatively demonstrated, a federal court is presumed to lack subject matter jurisdiction. Renne v. Geary, 501 U.S. 312, 316 (1991). On a 12(b)(1) motion to

dismiss for lack of subject matter jurisdiction, the nonmoving party bears the burden of persuading the court that subject matter jurisdiction exists and must support its allegations with competent proof of jurisdictional facts. Thomson v. Gaskill, 315 U.S. 442, 446 (1942). Dismissal under Rule 12(b)(1) is appropriate when the plaintiff lacks standing. Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011).

B. Dismissal Under Federal Rule of Civil Procedure 12(b)(6)

Dismissal under Federal Rule of Civil Procedure 12(b)(6) is appropriate when it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations set forth in the Complaint. See Big Bear Lodging Ass'n v. Snow Summit, Inc., 182 F.3d 1096, 1101 (9th Cir. 1999); Newman v. Universal Pictures, 813 F.2d 1519, 1521-22 (9th Cir. 1987). A court should dismiss a claim if it lacks a cognizable legal theory or if there are insufficient facts alleged under a cognizable legal theory. Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1122 (9th Cir. 2008). If an amendment to the pleading could not cure the defect, a district court can deny leave to amend. Saul v. United States, 928 F.2d 829, 843 (9th Cir. 1991).

A complaint will only survive a motion to dismiss when it contains "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) *quoting* Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). While legal conclusions can provide the complaint's framework, neither legal conclusions nor conclusory statements are themselves sufficient, and such statements are "not entitled to a presumption of truth." Iqbal, 556 U.S. 662, 679. In other words, a pleading that merely offers "labels and conclusions," a "formulaic recitation of the elements," or "naked assertions" will not be sufficient to state a claim upon which relief can be granted. Id. at 678 [citations and internal quotation marks omitted]; see also Adams v.

Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004) ["[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss."] and Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011) ["[A]llegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively."] The Complaint suffers from such infirmities here and should be dismissed.

IV. THE TRIBE LACKS STANDING TO BRING THE THIRD AND SEVENTH CLAIMS FOR RELIEF UNDER SECTION 1983

A Native American Tribe, like a State of the United States, is not a "person" subject to suit under 42 U.S.C. § 1983 [42 U.S.C § 1983]. Conversely, the Tribe does not qualify as a "person" who may sue under Section 1983. Inyo County v. Paiute-Shoshone Indians of the Bishop Cmty. of the Bishop Colony, 538 U.S. 701, 704 123 S. Ct. 1887 (2003). The Inyo case is directly on point. Inyo concerned the execution of a state-court warrant for casino employment records maintained by the tribe on its reservation. Id. at 704. The tribe brought suit against Inyo County, the district attorney, and the sheriff. Id. The Supreme Court held the tribe could not maintain a Section 1983 action because the tribe did not constitute a "person". Thus, the Tribe, here, similarly lacks standing to bring the Third and Seventh Claims under Section 1983.

V. DESPITE CHANGES TO CALIFORNIA'S LAWS AND POLICY ON MARIJUANA, LARGE-SCALE MARIJUANA CULTIVATION AND POSSESSION HAS ALWAYS BEEN, AND REMAINS, CRIMINALLY PROHIBITED

Based upon the warrant attached as Exhibit "F" to the Complaint, Plaintiffs were suspected of violating California Health and Safety Code sections 11357

[prohibiting possession of marijuana over a certain amount] 11358 [prohibiting planting, cultivating, harvesting, drying, or processing more than six living cannabis plants], 11359 [possession for sale], and/or 11360 [unlawful transportation, importation, sale, or gift]. See Exhibit "F" to FAC [p. 89 of 117] and FAC ¶¶ 57 and 59. Thus, Plaintiffs' FAC here rests almost entirely on the determination of whether California law enforcement can enforce these Health and Safety Code sections, especially Section 11358, on tribal lands against tribal members. As discussed in detail below, throughout the many changes to California marijuana law and policy, large-scale marijuana cultivation is and has always been criminally prohibited.

Public Law 280—which is codified at 28 U.S.C. § 1360—grants California the authority to enforce criminal laws on Tribal land within the state's borders, but does not grant the state civil-regulatory authority. See California v. Cabazon Band of Indians, 480 U.S. 202, 207, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987)). Accordingly, even if a state statute provides a criminal penalty for its violation, California has jurisdiction to criminally prosecute an offense committed on Tribal land only if the intent of the statute "is generally to prohibit certain conduct" in order to promote the general welfare and/or safety of the public. Id.; see also United States v. Clark, 195 F.3d 446, 450 (9th Cir. 1999), United States v. Marcyes, 557 F.2d 1361, 1364 (9th Cir. 1977) and United States v. Dotson, 615 F.3d 1162 (9th Cir. 2010). "[B]ut if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and [Public Law] 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy." Cabazon, supra 480 U.S. at 207.

Essentially identical to PL 280, the Assimilative Crimes Act ("ACA"), 18 U.S.C. § 13, makes criminal/prohibitory state laws applicable to conduct occurring on Federal lands but not civil/regulatory state laws. In Dotson, supra, 615 F.3d

1162, the Ninth Circuit considered whether a state law prohibiting the furnishing of liquor to minors was criminal or regulatory and, in doing so, resoundingly rejected the same arguments made by Plaintiffs here and the same interpretation of Cabazon urged by Plaintiffs here. In Dotson, defendants working at an Air Force base were charged with furnishing alcohol to minors under state law. In arguing that the state law was regulatory as opposed to criminal, defendants argued that state generally permits the sale, distribution, and consumption of alcohol, subject to regulation. Dotson, supra 615 F.3d. at 1168. The government countered that the state law flatly prohibits the furnishing of alcohol to minors, and thus was criminal in nature.

In support of their approach to framing the issues, defendants in Dotson relied upon Cabazon, contending "that, like California's gambling statutory scheme, in which California allowed for and benefitted from gambling, Washington's alcohol statutory scheme allows for widespread sale and consumption, authorizing state-run liquor stores, and generating income from alcohol-related taxes and fees." Dotson, supra at 1168. In doing so, defendants "focus[ed] on the overarching scheme to the exclusion of the specific statute at issue." Id. The Ninth Circuit rejected that approach stating, "[c]ontrary to Defendants' arguments, such an approach ***is not condoned by Cabazon***,…" Id. [emphasis added].

The Ninth Circuit in Dotson went on to discuss that the court had "previously rejected Defendants' approach to framing" in United States v. Clark, 195 F.3d 446 (9th Cir. 1999). In Clark, the court considered whether a provision making the unauthorized practice of law a misdemeanor was criminal or regulatory. Id. at 448. The defendant in Clark also cited to Cabazon arguing that the provision was regulatory because the statutory scheme as a whole regulated the practice of law, rather than prohibited the unauthorized practice of law. Id. at 449. The court "rejected this argument, emphasizing ***that a penal provision that is part***

of a larger regulatory scheme can nonetheless be assimilated ***where the penal provision is criminal and prohibitory***." Dotson, supra at 1169 *citing* Clark, supra at 450 [emphasis added]. More to the point, the court found the state law in Clark was criminal in nature as opposed to regulatory "because the unauthorized practice of law was 'flatly prohibited and criminally penalized.'" Dotson, supra at 1169 *citing* Clark, supra at 450. In turn, the Ninth Circuit in Dotson held "the conduct at issue -- the furnishing of alcohol to minors -- was flatly prohibited and criminally penalized." Dotson, supra at 1169.[1]

The Quechan and Marcyes fireworks cases cited in Dotson are particularly instructive to the analysis here. In Marcyes, the Ninth Circuit analyzed whether a Washington fireworks statute was regulatory or criminal. The Ninth Circuit concluded that the law was criminal in light of the state's determination that the possession of fireworks is dangerous to the general welfare of its citizens and that, unlike regulatory schemes such as hunting or fishing, the purpose of the fireworks laws is not to generate income, but rather to prohibit their general use and possession in a legitimate effort to promote the safety and health of all citizens. Marcyes, supra 557 F.2d at 1364. The court further concluded that permitting unlicensed/unpermitted fireworks sales on federal or tribal lands would entirely circumvent the state's determination that the possession of fireworks is dangerous to the general welfare of its citizens. The Supreme Court has expressly endorsed

[1] Notably, the Dotson court cites to several cases determining whether a state law is criminal for purposes of the ACA that have mirror cases for purposes of PL 280. See United States v. Quemado, 26 F.3d 920, 922 (9th Cir. 1994) [holding that state statute prohibiting driving with a revoked license is criminal for purposes of the ACA] and Germaine v. Circuit Court, 938 F.2d 75, 77 (7th Cir. 1991) [holding that driving with a revoked license is criminal for purposes of PL 280]; see also United States v. Marcyes, 557 F.2d 1361, 1363-1365 (9th Cir. 1977) [holding a state fireworks statute is criminal for purposes of the ACA] and Quechan Indian Tribe v. McMullen, 984 F.2d 304 (9th Cir. 1993) [holding a state fireworks statute is criminal for purposes of PL 280]; see also United States v. Carlson, 900 F.2d 1346, 1347-48 (9th Cir. 1990) [holding that state speed limit law was regulatory for purposes of the ACA] and Confederated Tribes of Colville Reservation v. Washington, 938 F.2d 146 (9th Cir. 1991) [holding that state speed limit law was regulatory for purposes of PL 280.]

the reasoning used in Marcyes to distinguish between criminal/prohibitory and civil/regulatory. Cabazon, 480 U.S. at 211 n.10.

In Quechan, the Ninth Circuit specifically addressed whether a California fireworks statute was enforceable on tribal lands under PL 280. In California, sale and use of fireworks are governed ***by a comprehensive system of permits and licenses*** overseen by the State Fire Marshal. See Quechan, supra 984 F.2d at 305. It is unlawful for any person to possess dangerous fireworks without holding a valid permit which shows the person is trained and qualified in the use of dangerous fireworks, and violation of the fireworks law is a misdemeanor. Id. Despite being codified in the in the California Health and Safety Code as a civil enactment, despite the California Attorney General characterizing the state fireworks law as "regulatory" and despite at least one court referring to the law as a "thorough guide for the state-wide administration and ***regulation*** of the manufacture, transportation, licensing, sale and use of fireworks", the Quechan court held that the general activity in question -- the sale and possession of fireworks -- was contrary to public policy and that permitting the sale and possession of fireworks on reservations would circumvent the states' determination that the possession of fireworks is dangerous to the general welfare of its citizens. Id. at 307.

Determining whether California marijuana laws are regulatory or criminal with the above cases in mind, it is first important to note that certain conduct is "flatly prohibited and criminally penalized" such driving under the influence of marijuana [Cal. Veh. Code § 23152(f) VC] or employing a minor to transport, sell, prepare to sell, or give away marijuana, selling, administering or offering marijuana to a minor or inducing a minor to use marijuana [Cal. Health & Safety Code § 11361]. See Dotson, supra. Other conduct, though subject to a "comprehensive system of permits and licenses" like California fireworks law, is nonetheless also criminal as violations can carry penalties as severe as felony

charges and the general activity in question is contrary to public policy and dangerous to the general welfare of California citizens. See Quechan, supra 984 F.2d at 307. More specifically, applying Cabazon, Dotson, Marcyes and Quechan, to the matter at hand leads to the inescapable conclusion that large-scale marijuana cultivation and possession of large quantities of marijuana, the statutes and conduct at issue in this case, are prohibited activities thus are criminal/prohibitory and fully applicable on tribal lands.

Beginning in 1996 with the passage of the Compassionate Use Act ("CUA"), followed by the passage of the Medical Marijuana Program Act ("MMPA"), and finally with the passage of the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA" or "Proposition 64") permitting recreational marijuana use by adults and small grows, California's marijuana laws became increasingly permissive and a licensing scheme was created for sales, distribution and large-scale cultivation. However, "California's marijuana laws do not legalize medical or recreational marijuana." Ross v. RagingWire Telecommunications, Inc., 42 Cal.4th 920, 926 (2008); see also U.S. v. McIntosh, 833 F.3d 1163, 1179, fn. 5 (9th Cir. 2016); see also Ceballos v. NP Palace, LLC, 514 P.3d 1074, 1075 (Sup. Ct. Nev. 2022) [citing Ragingwire and finding that although Nevada has decriminalized adult recreational marijuana use, the drug continues to be illegal under federal law. Because federal law criminalizes the possession of marijuana in Nevada, its use is not lawful in the state of Nevada.]

Instead of legalizing, California's marijuana laws ***decriminalize certain marijuana offenses*** under California law. In other words, while adult use, certain cultivations and certain possession is generally permitted, large-scale cultivation and possession are not. Under the Uniform Controlled Substances Act, marijuana remains a schedule I controlled substance in California, and it remains unlawful to possess, transport, or give away marijuana in excess of certain limits. Cal. Health & Safety Code § 11054(d)(13); Cal. Health & Safety Code §§ 11358,

11359, 11360 and 26038(e). Proposition 64 recognizes this explicitly stating that "***criminal penalties*** shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this division." Cal. Health & Safety Code § 26038(e) [emphasis added].

Further, courts have consistently refused to remove marijuana from the criminal realm. In People v. Trippet, 56 Cal.App.4th 1532 (1997), a California court declined a criminal defendant's invitation to interpret California's medical marijuana statutes "as a sort of 'open sesame' regarding the possession, transportation and sale of marijuana in this state." Id. at 1546. In People v. Mower, 28 Cal.4th 457 (2002), the California Supreme Court held that the CUA did not grant immunity from arrest, but rather only provided an affirmative defense to prosecution. Id. at 469.

Similarly, in Armstrong v. Sexson, 2007 U.S. Dist. LEXIS 60023 (E.D. Cal. 2007), the court addressed the execution of a search warrant resulting in the seizure and destruction of a number of marijuana plants plaintiffs claimed were legally grown. The Sexton court held that the CUA, and the fact that the plaintiffs may have been legally cultivating marijuana, did not protect them from searches and arrests. Id. at *20. Also addressing the execution of a search warrant resulting in seizure of marijuana plants, the court in Oceanside Organics v. Cty. of San Diego, 341 F. Supp. 3d 1129, 1140 (S.D. Cal. 2018) determined that "[t]he existence of the Compassionate Use Act [] and the Medical Marijuana Program Act [] do not change the probable cause analysis." Id. at 1140. Likewise, in Call v. Badgley, 254 F.Supp.3d 1051 (N.D. Cal. 2017), the court held that even if the plaintiff could legally cultivate marijuana, his Informed Medical Consent & Verification card did not dispel otherwise legitimate probable cause for an arrest or render the officer unreasonable in concluding he had probable cause to arrest the plaintiff. Id. at 1067.

Proposition 64 decriminalized the possession of up to 28.5 grams of

marijuana and the growing of not more than 6 plants for adults 21 years and older. However, courts have continued to recognize that despite a large regulatory scheme now existing, certain marijuana possession and/or cultivation continues to be criminal and prohibitory. Indeed, the very first line of SB 94 (a.k.a. MAUCRSA) which integrated previous medical marijuana regulations with the Proposition 64 regulations, states: "The California Uniform Controlled Substances Act makes various acts involving marijuana ***a crime except as authorized by law***." 2017 Cal ALS 27; 2017 Cal SB 94; 2017 Cal Stats. ch. 27 [emphasis added].

Thus, even after the enactment of Proposition 64, officers may still conduct a probable cause search pursuant to the automobile exception to determine whether a subject is properly adhering to the statutory limitations on possession and use that remain in effect. People v. Fews, 27 Cal.App.5th 553 (2018). In Fews, officers conducted a traffic stop during which they smelled the odor of burnt marijuana—suggesting the possibility of driving under the influence—and during which the driver of the vehicle admitted the half-burnt cigar in his hand contained marijuana. Id. The officers searched the vehicle finding an unsealed bag of marijuana and a firearm. Id. The driver challenged the search arguing that, under Proposition 64, small amounts of marijuana cannot provide probable cause to search. Id.

The court found that the driver's contention "overstates the effect of Proposition 64" noting that it "***remains unlawful*** to possess, transport, or give away marijuana in excess of the statutorily permitted limits, to cultivate cannabis plants in excess of statutory limits and in violation of local ordinances, to engage in unlicensed 'commercial cannabis activity,' and to possess, smoke or ingest cannabis in various designated places, including in a motor vehicle while driving. Id. at 561 [citations omitted] [emphasis added]. The court further noted that "the possibility of an innocent explanation for the possession of marijuana 'does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct.'" Id. [citations omitted]. Finally, the court concluded that "because

marijuana possession and use ***is still highly circumscribed by law even after the passage of Proposition 64***, the odor and presence of marijuana in a vehicle being driven in a high-crime area, combined with the evasive and unusual conduct displayed" by the driver and passenger, were still reasonably suggestive of unlawful drug possession and transport. Id. [emphasis added].

Similarly in People v. McGee, 53 Cal. App. 5th 796 (2020), the driver of a vehicle stopped by officers argued that the presence of an unsealed bag of marijuana plainly visible on an automobile passenger's could not constitute probable cause to search the vehicle or a purse therein because Proposition 64 legalized possession of small amounts of marijuana for personal use. Id. at 801. The court found that, while the possession of up to 28.5 grams of marijuana was lawful, it remained unlawful to "[p]ossess an open container or open package of cannabis or cannabis products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle." Id. at 804 *citing* Cal. Veh. Code § 11362.1. Because the officer witnessed the passenger in possession of an unsealed container of marijuana, "[t]he presence of this contraband provided probable cause to believe the passenger possessed other open containers" and the officer "therefore had probable cause to search the passenger and her purse for further evidence of contraband." Id.

The criminal and prohibitory cultivation statutes have likewise been challenged since the enactment of Proposition 64, and courts have likewise recognized the continued criminality of certain conduct. In Granny Purps, Inc. v. County of Santa Cruz, 53 Cal. App. 5th 1, 10 (2020), plaintiff challenged the seizure of a large number of marijuana plants. Plaintiff was able to survive demurrer due to the court accepting as true that the cultivation of marijuana complied with state law. However, the court explicitly stated that "[i]f plaintiff was cultivating marijuana in a manner not allowed by state law, ***the marijuana would indeed be contraband*** and not subject to return." Id. at 9-10 [emphasis added].

Additionally, because marijuana continues to be a controlled substance, Health and Safety Code § 11472 permits seizure by any peace officer and, in the aid of such seizure, a search warrant may be issued as prescribed by law when it is illegally possessed. See Exhibit "F" to FAC [search warrant] p. 90 of 117. And even after adult use became permitted, Compassionate Use (Health & Saf. Code, § 11362.5), Collective or Cooperative Cultivation (Health & Saf. Code, § 11362.775) and Lawful Use (Health & Saf. Code, § 11362.1) remain ***criminal defenses***. 2 CALCRIM 3411, 3413 and 3415. In other words, exceptions to the general rule that the conduct at issue is criminally prohibited.

In addressing whether California motor vehicle registration and driver's license requirements found in Vehicle Code sections 4000 and 12500 are subject to enforcement against Indian tribal members on roads within their Indian reservation, the California Attorney General applied the "criminal/prohibitory"/"civil regulatory" analysis and concluded that the laws were regulatory thus not enforceable against tribal members on tribal land. In so concluding, the Attorney General noted that a violation of Section 4000 [Registration] is an infraction and that a violation of Section 12500 [Unlicensed driving] is a misdemeanor that many be treated as an infraction, does not include a mandatory fine or jail sentence, is "not substantial" and "has no recidivist provisions". 2006 Cal. AG LEXIS 2, *8, 2006 Cal. AG LEXIS 2 [citations omitted].

In contrast, a number of California's marijuana laws constitute a felony and also contain provisions that the punishment for recidivism is a felony. Particularly pertinent here, Section 11358(d) provides that cultivation is a felony if the person cultivating has certain prior convictions or is cultivating in violation of certain environmental laws. Further, under Section 11358(d)(2), the punishment for recidivism is a felony. Similarly, Section 11360(a)(3) provides that transportation, importation, selling, furnishing, administering or giving away marijuana is a felony

in certain circumstances, and Section 11360(a)(3)(B) provides that the punishment for recidivism is a felony.

Further, Section 11361(b) provides that furnishing, administering or giving away marijuana to a minor is a felony, Section 11359(c) and (d) provide that possession for sale is punishable as a felony in two instances, and finally Section 11379.6 provides that manufacture of controlled substances by chemical extraction or chemical synthesis is a felony and that certain aggravation factors can be considered by the sentencing court. In sum, it defies logic to argue that these laws can be equated to "otherwise regulatory laws enforceable by criminal as well as civil means" or that potential penalties for violations of these statutes are "not substantial". See Cabazon, supra 480 U.S. at 211 and 2006 Cal. AG LEXIS 2 at *14. Laws such as Cal Health & Saf Code § 11054(d)(13), 11358, 11359, 11360, 11361, 11379.6 and 26038(e) are criminal laws and carry substantial penalties, in some cases, the most severe of criminal penalties.

Each of these many cases and statutes discussed above clearly show that the conduct at issue here – large scale cultivation and/or possession of large amounts of marijuana – has historically been criminal and prohibited. Most importantly though, despite a regulatory framework now existing, large-scale marijuana grows remain criminally prohibited. The fact that licenses may be obtained permitting large-scale grows does not change this analysis in the slightest just as the "comprehensive system of permits and licenses" for certain classes of fireworks in Quechan and Marcyes did not render the law prohibiting possession of those fireworks regulatory rather than criminal. Quechan, supra 984 F.2d at 305; Marcyes, supra 557 F.2d at 1364. This is because California has never waivered from its public policy determination that certain acts involving marijuana are dangerous to the general welfare of its citizens. See Marcyes, supra 557 F.2d at 1364, Quechan, supra 984 F.2d at 305 and Cabazon, 480 U.S. 202 [courts must consider whether the conduct at issue violates the State's public policy.]

"[U]nlike regulatory schemes such as hunting or fishing," the purpose of the large scale-cultivation and possession laws are not to generate income, but rather to prohibit such conduct in a legitimate effort to promote the safety and health of all citizens. See Marcyes, supra 557 F.2d at 1364. Indeed, the text of Proposition 64 specifically noted that permitting adult use of marijuana would "help police crackdown on the underground black market that currently benefits violent drug cartels and transnational gangs, which are making billions from marijuana trafficking and jeopardizing public safety." 2016 Bill Text CA V. 13 (Adult Use of Marijuana Act). Permitting unlicensed/unpermitted large-scale marijuana grows on tribal lands would entirely circumvent this determination. In short, it would entirely thwart the State's public safety goals. For all these reasons, Cal Health & Saf Code § 11054(d)(13); Cal. Health & Safety Code §§ 11358, 11359, 11360, 11361, 11379.6 and 26038(e) are criminal/prohibitory laws enforceable against the Tribe on Tribal land pursuant to PL 280. As such, Plaintiffs' claims here must fail.

VI. TRIBAL SOVEREIGNTY DOES NOT PROHIBIT ENFORCEMENT OF CRIMINAL LAW

Plaintiffs do not argue that the state cannot enforce criminal laws on Tribal land rather only argue that Tribal sovereignty "prohibit[s] state enforcement of regulatory laws against Indians on Indian reservations." FAC ¶ 5. But, it is important to note for purposes of heading off another amendment to the Complaint that there is no case, much less line of cases, directly addressing whether a county law enforcement agency lacks authority to execute a search warrant as to tribal land during a criminal investigation. This lack of case law was noted by the Supreme Court in Inyo, cited above, concerning the execution of a state-court warrant for casino employment records maintained by the tribe on its reservation. Id. 538 U.S. at 704. Specifically, the Supreme Court highlighted that the Tribe had not cited to any law establishing their sovereign right to be free from state criminal

prosecution. Id. at 712.

Instead, repeated decisions have recognized that a tribe's sovereignty may not prevent criminal processes associated with the investigation of a crime, including execution of a search warrant. "Long ago the Court departed from Mr. Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries." White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 141-142, 100 S.Ct. 2578, 2582-2583, 65 L.Ed.2d 665, 671-672 (U.S. 1980) *citing* Worcester v. Georgia, 6 Pet. 515, 561 (U.S. 1832). The status of the tribes has been described as "'an anomalous one and of complex character,'" for despite their partial assimilation into American culture, the tribes have retained "'a semi-independent position . . . not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided.'" McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 173, 93 S.Ct. 1257, 1263, 36 L.Ed.2d 129, 136 (U.S. 1973) *quoting* United States v. Kagama, 118 U.S. 375, 381-382 (U.S. 1886).

Because of this sovereignty, states may exert their authority over reservation lands only where doing so does not undermine tribal self-governance by "infring[ing] 'on the right of reservation Indians to make their own laws and be ruled by them.'" McClanahan, supra 411 U.S. at 179 *quoting* Williams v. Lee, 358 U.S. 217, 220 (U.S. 1959). Numerous cases foreclose any contention that service of a search warrant on Tribal lands constitutes such an infringement. 28 U.S.C. § 1162 provides the State with criminal jurisdiction over crimes occurring on a reservation, while tribal sovereignty provides a tribe with concurrent jurisdiction. See Walker v. Rushing, 898 F.2d 672, 675 (8th Cir. 1990). The statutory grant of jurisdiction "necessarily entails the authorization of investigative and enforcement mechanisms" and that the exercise of criminal process is coextensive with the exercise of that statutory jurisdiction. In re Grand Jury Proceedings, 744 F.3d 211,

221 (1st Cir. 2014).

For example, in holding that sovereign immunity did not bar exercise of the grand jury subpoena power over tribal members, the court in In re Long Visitor, 523 F.2d 443 (8th Cir. 1975) explained that the extension of statutory criminal jurisdiction "to crimes committed on Indian reservations inherently includes every aspect of federal criminal procedure applicable to the prosecution of such crimes." Id. at 446-47. Similarly, tribal sovereignty does not bar issuance of a subpoena duces tecum by the grand jury to an Indian tribal agency. See In re Grand Jury Proceedings, 744 F.3d 211, 219-220 (1st Cir. 2014). In Narragansett Indian Tribe v. Rhode Island, 449 F.3d 16, 22, 26-27 (1st Cir. 2006) [en banc], though the grant of jurisdiction was via settlement between the State and tribe as opposed to statutorily provided, sovereignty did not bar execution of a state search warrant as to tribal property.

The reasoning behind these cases is clear. That is, the statutory grant of jurisdiction over crimes occurring on a reservation would be rendered somewhat useless should a tribe's sovereignty prevent completion of certain aspects of investigations and prosecutions of said crimes. "No rational system of criminal justice, and certainly no constitutional one, could operate under such a regime" where tribal compliance with criminal process is optional. United States v. Juvenile Male 1, 431 F.Supp.2d 1012, 1019 (D. Ariz. 2006). The Plaintiffs here seek just such a result. This Court cannot countenance Plaintiffs' actions asserted by way of this lawsuit.

VII. THE FOURTH CLAIM FOR RELIEF MUST BE DISMISSED AS FAILING TO STATE FACTS SUFFICIENT TO CONSTITUTE A CLAIM FOR RELIEF

The Fourth Claim seeks relief for violation of Art. I § 13 of the California Constitution. This Claim fails to state facts sufficient to constitute a claim for relief

because Art. I § 13 does not create a private right of action for monetary damages. See Katzberg v. Regents of Univ. of California, 29 Cal. 4th 300 (2002). Accordingly, the Fourth Claim should be dismissed in its entirety.

VIII. THE THIRD AND SEVENTH CLAIMS FOR RELIEF AS TO SHERIFF KENDALL IN HIS OFFICIAL CAPACITY MUST BE DISMISSED BECAUSE HE IS A REDUNDANT DEFENDANT

"When a county official like Sheriff [Kendall] is sued in his official capacity, the claims against him *are claims against the county*." Mendiola-Martinez v. Arpaio, 836 F.3d 1239, 1250 (9th Cir. 2016) [emphasis added]. "[***A]n*** *official-capacity suit is*, in all respects other than name, *to be treated* as a suit against the entity." Kentucky v. Graham, 473 U.S. 159, 166, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985) [emphasis added]. Hence, "[w]hen both a municipal officer and a local government entity are named, and the officer is named only in an official capacity, the court may dismiss the officer as a redundant defendant." Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dept., 533 F.3d 780, 798 (9th Cir. 2008).

Here, Plaintiffs name Sheriff Kendall in both his official and individual capacities. Plaintiffs' claims against Sheriff Kendall in his official capacity as Sheriff of Mendocino County are, in effect, claims against the County of Mendocino. Sheriff Kendall is therefore a redundant defendant, and Plaintiffs' claims against him in his official capacity must treated as a suit against the entity. Thus, to the extent Sheriff Kendall is sued in his official capacity, he should be dismissed.

IX. THE THIRD AND SEVENTH CLAIMS FOR RELIEF AS AGAINST THE COUNTY OF MENDOCINO[2] SHOULD BE DISMISSED BECAUSE A COUNTY CANNOT BE LIABLE UNDER SECTION 1983 ON THE BASIS OF RESPONDEAT SUPERIOR LIABILITY

Plaintiffs' Third and Seventh Claims for Relief seek damages under 42 U.S.C. § 1983. A government entity cannot be held liable for a constitutional violation under 42 U.S.C. § 1983 for the action of one of its employees on the basis of *respondeat superior* liability. Monell v. New York Dept. of Social Services, 436 U.S. 658, 691, 98 S.Ct. 2018, 2036 (1978). As stated by the Supreme Court in Board of the County Commissioners v. Brown, 520 U.S. 397, 117 S. Ct. 1382 (1997): "Congress did not intend municipalities to be held liable unless deliberate action attributable to the municipality directly caused a deprivation of federal rights." Brown, 520 U.S. at 415.

A government entity may only be held liable under § 1983 if the plaintiff proves: (1) The tort complained of was committed by an official with final policy-making authority and that the challenged action itself thus constituted an act of official governmental policy; See Pembaur v. City of Cincinnati, 475 U.S. 469, 480 106 S. Ct. 1292, 1298 (U.S. 1986); Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992); *or* (2) The existence of a formally promulgated municipal policy or regulation pursuant to which the employee was acting; See Monell 436 U.S. at 691; *or* (3) An official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it; See Gillette, 979 F.2d at 1346; *or* (4) The existence of a well-settled municipal custom or practice of permitting or condoning unconstitutional behavior; See Monell, 436 U.S. at 691; *or* (5) A policy of deliberate indifference in training, supervision and/or hiring. See City of Canton v. Harris, 489 U.S. 378, 109 S. Ct. 1197 (1989); Brown, 520 U.S. 397.

[2] And Sheriff Kendall in his official capacity.

To prevail on any of these grounds, Plaintiffs must show not only that such alleged polices exist, but also a "direct causal link" between the alleged custom or policy and the constitutional violation. See Brown, 520 U.S. at 404. The "'official policy' requirement is intended to distinguish acts of the *municipality* from acts of the *employees* of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible." Webb v. Sloan, 330 F.3d 1158, 1235 (*quoting* Pembaur, 475 U.S. at 479-80 [emphasis in original].) Plaintiffs' Third and Seventh Claims are stated against the County of Mendocino but contain no allegations whatsoever establishing any of the five grounds for liability under Section 1983. Instead, the Complaint attempts to hold the County liable under a *respondeat superior* theory. Accordingly, the Third and Seventh Claims for Relief are wholly improper as against the County of Mendocino and should be dismissed.

X. THE THIRD CLAIM FOR RELIEF MUST BE DISMISSED AS AGAINST SHERIFF KENDALL IN HIS INDIVIDUAL CAPACITY BECAUSE THERE ARE NO FACTS PLEAD ESTABLISHING THAT SHERIFF KENDALL WAS PERSONALLY INVOLVED IN THE ALLEGED SECTION 1983 VIOLATIONS

Plaintiffs' Third Claim is brought under Section 1983 for Unlawful Search and Seizure in Violation of the Fourth Amendment. In order to establish Section 1983 liability, Plaintiffs must allege "facts, not simply conclusions, that show that an individual was personally involved in the deprivation of his civil rights". Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998); see also Lacey v. Arpaio, 2011 U.S. App. LEXIS 11593 (9th Cir. Ariz. June 9, 2011). Plaintiffs cannot hold an individual liable "because of his membership in a group without a showing of individual participation in the unlawful conduct." Jones v. Williams, 297 F.3d 930, 935 (9th Cir. 2002); see Motley v. Parks, 432 F.3d 1072, 1082 (9th Cir. 2005);

Chuman v. Wright, 76 F.3d 292, 294 (9th Cir. 1996).

Moreover, "A supervisor is only liable for constitutional violations ***of his subordinates*** if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) [emphasis added]. "Thus, there must be facial plausibility in a plaintiff's allegations that some action/inaction on the part of a supervisor caused [their] alleged constitutional injury." Alston v. County of Sacramento, 2012 U.S. Dist. LEXIS 95494, 2012 WL 2839825, at *4 (E.D. Cal. 2012). "Vague and conclusory allegations of official participation in civil rights violations are not sufficient to withstand a motion to dismiss." Ivey v. Board of Regents of University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982).

Here, there are certainly no allegations that Sheriff Kendall was present for the execution of the warrants and/or personally participated in any of the raids. As to possible supervisor liability, the FAC contains only the vague allegation that "Defendants Kendall, Honsal and Duryee intentionally directed, approved and authorized, or knew or should have known about the search, seizure and destruction" of Plaintiffs' property. FAC ¶ 98. However, the FAC makes only vague references that "Defendants" subjected Plaintiffs to unlawful searches of their properties and that "Defendants" unlawfully destroyed their marijuana plants. See FAC ¶ 96, 97. "Defendants" include two County Sheriffs, two Counties and a state agency but there are zero allegations establishing what action was taken by what agency and/or what actions were taken by employees of what agency except that one of the searches was carried out pursuant to a warrant for which a Humboldt County Sheriff Deputy provided the affidavit. See FAC ¶ 96. Indeed, the alleged "unlawful searches and seizures" occurred on multiple properties over the course of two days.

Without any allegations of which Officers/Deputies conducted each search and destroyed the property at issue, or at a minimum, which agency's

Officers/Deputies conducted each search and destroyed the property at issue, it is impossible to determine whether those persons were even subordinates of Sheriff Kendall much less that he directed the violations. A CHP Officer or a Humboldt Deputy is not a subordinate of Mendocino County Sheriff Kendall and vice versa. Plaintiffs allegation in Paragraph 98 is exactly the type of "vague and conclusory allegations of official participation" barred by Iqbal and insufficient under Ivey. See Iqbal, supra 556 U.S.at 663 and Ivey, supra 673 F.2d at 268; see also Abu v. Cnty. of San Diego, 2022 U.S. Dist. LEXIS 109585, *8-9 (S.D. Cal. 2022) [supervisor liability not sufficiently plead where it was "wholly unclear which DOE defendants were at the scene and what their specific involvement entailed.] For these reasons, the Third Claim as against Sheriff Kendall in his individual capacity must be dismissed.

XI. THE FIFTH AND SIXTH CLAIMS FOR RELIEF MUST BE DISMISSED AS AGAINST SHERIFF KENDALL IN HIS INDIVIDUAL CAPACITY BECAUSE THEY FAIL TO STATE FACTS SUFFICIENT TO CONSTITUTE A CLAIM FOR RELIEF

California Government Code section 951 provides: "Notwithstanding Section 425.10 of the Code of Civil Procedure, any complaint for damages in any civil action brought against ***a publicly elected*** or appointed state or local officer, in his or her individual capacity, where the alleged injury is proximately caused by the officer acting under color of law, ***shall allege with particularity sufficient material facts to establish the individual liability*** of the publicly elected or appointed state or local officer and the plaintiff's right to recover therefrom." Cal. Gov. Code § 951 [emphasis added]. Sheriff Kendall is a publicly elected official. See Cal. Const. Art. XI § 1(b) and 4(c). Accordingly, claims against him in his individual capacity must be supported by specific factual allegations demonstrating that he allegedly is individually liable to the Plaintiffs.

Moreover, California Government Code § 820.8 also tracks federal law in precluding *respondeat superior* liability against a public employee like Sheriff Kendall. See Milton v. Nelson, 527 F.2d 1158, 1159 (9th Cir. 1975) [citing § 820.8 for the proposition that "supervisory personnel whose personal involvement is not alleged may not be responsible for the acts of their subordinates under California law"]; Walsh v. Tehachapi Unified School Dist., 827 F. Supp. 2d 1107, 1124-25 (E.D. Cal. 2011) [finding that while a school district was liable for the actions of its employees, the school superintendent was immunized from vicarious liability for the acts of others under § 820.8].

Plaintiffs FAC here identifies Sheriff Kendall as the Sheriff of Mendocino County, but states no facts pointing to any personal involvement or participation on Sheriff Kendall's part in either obtaining or executing the warrants at issue. More to the point, the Complaint does not allege with any specificity what particular acts or omissions of Sheriff Kendall allegedly caused Plaintiffs' claimed injuries. Because the Complaint is devoid of specific factual allegations demonstrating that Sheriff Kendall is individually liable for Plaintiffs' alleged injuries, the Complaint fails to state a valid claim against Sheriff Kendall under any theory.

Specific to the Fifth Claim, brought under California Civil Code section 52.1. Section 52.1 requires "an attempted or completed act of interference with a legal right, accompanied by a form of coercion." Jones v. Kmart Corp., 17 Cal.4th 329, 334 (1998). "The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., "threats, intimidation or coercion"), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law." Ramirez v. Wong, 188 Cal. App. 4th 1480, 1486-1487. Here, the Complaint is completely devoid of any allegations establishing this standard as to Sheriff Kendall, much less the particularized allegations required by Government Code section 951. Thus, the Fifth Claim fails and should be dismissed.

As to the Sixth Claim for Negligence, not only are the required particularized allegations absent, California Government Code section 821.6 immunizes Sheriff Kendall's conduct for acts related to the destruction of Plaintiffs' property during the execution of the search warrant on Plaintiffs' property. Plaintiffs cannot premise a negligence claim on the destruction of property when the destruction occurred pursuant to the execution of a valid search warrant and in the course of a criminal investigation. See Cal. Gov. Code § 821.6; see also Varlitskiy v. Cty. of Riverside, 2020 U.S. Dist. LEXIS 196490, *8 (Cal. C.D. 2020). Accordingly, the Sixth Claim fails for this additional reason and should be dismissed.

XII. THE FIFTH AND SIXTH CLAIMS FOR RELIEF MUST BE DISMISSED AGAINST THE COUNTY OF MENDOCINO[3] AS THEY FAIL TO ALLEGE FACTS SUFFICIENT TO CONSTITUTE A CLAIM

As stated against the County itself, the Fifth Claim for Relief for Violation of the Bane Act fails because Civil Code section 52.1 does not provide any claim against a public entity directly. Towery v. State of California (2017) 14 Cal.App.5th 226, 233. As to the Sixth Claim, the California Tort Claims Act, establishes procedures for actions against California public entities and public employees. See Cal. Gov't Code § 810-996.6. The Act abolished all common-law theories of governmental liability. Under the Act, all government tort liability must be based on statute. Cal. Gov't Code § 815; Guzman v. County of Monterey, 46 Cal.4th 887, 897 (2009). This limitation is found in Government Code section 815, which states in pertinent part: "Except as otherwise provided by statute: (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person."

[3] And Sheriff Kendall in his official capacity.

The Act not only affects the ultimate question of liability, but also imposes a heightened pleading standard upon those seeking tort damages from a California public entity. Plaintiffs must specifically identify the grounds for statutory liability against a public entity, *including citing the statute*. Searcy v. Hemet Unified Sch. Dist., 177 Cal. App. 3d 792, 802 (1986) [emphasis added].) Further, "every fact material to the existence of its statutory liability must be pleaded with particularity." Peter W. v. San Francisco Unified Sch. Dist., 60 Cal. App. 3d 814, 819 (1976).

Plaintiffs here seeks tort damages against the County of Mendocino, a public entity, and Sheriff Kendall in his official capacity. However, Plaintiffs' Sixth Claim for Relief does not specifically identify the grounds for statutory liability and does not cite a particular statute. Instead, Plaintiffs attempts to hold the County liable under a common law theory of negligence. This is in direct contravention of the Act and interpreting case law. Plaintiffs' failure to cite a statutory basis for liability on the part of the County and failure to plead their Claim with particularity, render the Sixth Claim wholly improper.

XIII. CONCLUSION

For all of the foregoing reasons, defendants County of Mendocino and Sheriff Kendall, respectfully request that Plaintiffs' First Amended Complaint be dismissed without further leave to amend.

Dated: August 4, 2025

Respectfully submitted,

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