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*APRIL JAMES, EUNICE SWEARINGER, STEVE BRITTON*
*AND ROUND VALLEY INDIAN TRIBES*

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

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. 1:25-cv-03736-RMI

**PLAINTIFFS' OPPOSITION TO DEFENDANTS KENDALL AND MENDOCINO COUNTY'S MOTION TO DISMISS COMPLAINT**

Date: September 9, 2025
Time: 11:00 a.m.
Crtrm: 1
Before: Honorable Robert M. Illman

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## MEMORANDUM OF POINTS AND AUTHORITIES

## INTRODUCTION

California's status as a Public Law 280 (PL-280) state means its authority in Indian country is limited to enforcing criminal/prohibitory laws; civil/regulatory laws—like California's post-Proposition 64 cannabis licensing and taxation scheme—do not apply to Indians on their own lands. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). In their Motion to Dismiss ("MTD") Plaintiffs' First Amended Complaint ("FAC"), Defendants Mendocino County and Sheriff Kendall ("Defendants") ask this Court to dismiss each of the Plaintiffs' claims for lack of subject matter jurisdiction, failure to state facts sufficient to support claims, no respondeat superior liability, redundant defendants and failure to allege or comply with California statutory requirements. But their attacks falter at every turn. Plaintiffs have alleged an ongoing pattern of warrantless searches, seizures, detentions, and property destruction on tribal trust allotments on the Round Valley Indian Reservation ("Reservation"), including on the individual Plaintiffs' April James, Eunice Swearinger and Steve Britton's trust allotments, in violation of federal law that inflicts concrete, imminent harm and establishes a credible threat of future injury. These unprovoked raids present quintessential federal questions and issues of tribal-sovereignty and self-governance that invoke this Court's subject-matter jurisdiction under both 28 U.S.C. § 1331 and § 1362 based on the Fourth and Fourteenth Amendments, 42 U.S.C. § 1983, the Indian Commerce Clause, PL-280 (18 U.S.C. § 1162, 28 U.S.C. § 1360), and federal common law. At the same time, Plaintiffs' state-law tort claims are actionable under California's Tort Claims Act (Gov. Code §§ 820, 815.2) without any need for an implied constitutional cause of action. Against Mendocino County and Sheriff Kendall, Plaintiffs have properly pleaded *Monell* liability, individual-capacity Bane Act and negligence claims under Federal Rule of Civil Procedure Rule 8's notice-pleading standard, and official-capacity claims that alone can secure prospective relief.

Defendants' motion would strip Plaintiffs of every avenue for redress—jurisdictional, constitutional, statutory, and procedural—despite the FAC's detailed allegations and controlling authority affirming each claim. Their motion should be denied in its entirety.

## FACTS AND BACKGROUND

The Round Valley Indian Tribes (the "Tribe") is a federally recognized Indian tribe that exercises jurisdiction over the Reservation in what is now Mendocino County. FAC ¶ 20. Under 18 U.S.C. § 1151, all lands within the boundaries of the Reservation are Indian country. FAC ¶ 28.

California is a PL-280 state. FAC ¶ 60. Under PL-280, the State's jurisdiction in Indian country extends only to criminal/prohibitory laws; civil/regulatory laws do not apply. *Cabazon*, 480 U.S. at 207-09. Since voters approved Proposition 64, California has implemented a statewide licensing, taxation, and regulatory framework for cannabis—a framework that reflects regulation rather than prohibition. This governing context formed the backdrop to the events at issue.

Each of the individual Plaintiffs, members of the Tribe, alleged that the Defendants raided their trust allotments on the Reservation and searched, seized and destroyed property thereon without a valid search warrant and without probable cause. FAC ¶¶ 39-56. They alleged that these trust allotments are recorded with the Land Titles and Records Office of the Bureau of Indian Affairs. FAC ¶¶ 39, 53, 59.

The Tribe's Constitution vests legislative authority in the elected Tribal Council. FAC ¶ 29. In 2006, the Council enacted the Compassionate Use Ordinance to regulate medical cannabis cultivation, possession, and use by tribal citizens on the Reservation. FAC ¶ 30, Ex. B (available at https://www.rvit.org/government/documents-forms (last visited June 6, 2025). The Ordinance, as amended, explicitly prohibits interpreting it to allow the imposition of State civil regulatory laws on the Reservation and asserts the inherent authority of the Tribe to regulate all individuals within its territory. FAC ¶ 30, Ex. B.

Under the Ordinance, County deputies are subject to strict limitations when operating within the Reservation. Deputies must give reasonable advance notice to Tribal Police if their actions are likely to involve state marijuana laws, and any such search, arrest, extradition, or investigation involving tribal members must be conducted in consultation, communication, and coordination with Tribal Police. FAC ¶ 30, Ex. B. These procedures are designed to ensure that tribal sovereignty and jurisdiction are respected during any enforcement activities within the Reservation. FAC ¶ 30,

Ex. B.

In July 2024, Humboldt County Sheriff's deputies executed a warrant at Plaintiff April James's trust allotment, holding her at gunpoint, searching her home, and destroying her cannabis plants. FAC ¶¶ 39-41, 57-58, Ex. F (Doc 35 at 86). The warrant was issued under Penal Code § 1524 for property used to commit a felony; the supporting affidavit identified Ms. James's trust allotment on the Reservation as the search location **but neglected to state that it is a trust allotment on the Reservation**. FAC ¶¶ 57-58 FAC, Ex. F (Doc 35 at 86-88). Plaintiffs allege similar warrants—not presented at the time—were used for raids on the trust allotments of Plaintiffs Swearinger and Britton. *See* FAC ¶ 59.

According to the FAC, these raids are consistent with a long-standing pattern and practice: entering Reservation trust lands under the pretense of enforcing state cannabis laws that, under PL-280 and *Cabazon*, are civil/regulatory in nature and inapplicable to Indians in Indian country. FAC ¶¶ 60-65, 86-86, Ex. H. Plaintiffs allege that the Sheriff's Office has for years pursued similar operations—including the use of incomplete or misleading warrant affidavits—against tribally regulated cannabis cultivation. FAC ¶¶ 60-65, 86-86, Ex. G.

Following the 2024 raids, Sheriff Kendall publicly praised the deputies' actions and imposed no discipline. FAC ¶¶ 64-65, Ex. H (Doc. 35 at 114). Courts recognize that such official endorsements—public defense of the conduct coupled with inaction—can constitute ratification by a final policymaker. *Larez v. City of Los Angeles*, 946 F.2d 630, 646–47 (9th Cir. 1991); *Henry v. County of Shasta*, 132 F.3d 512, 518–19 (9th Cir. 1997); *Fuller v. City of Oakland*, 47 F.3d 1522, 1534 (9th Cir. 1995).

## ARGUMENT

Defendants' motion rises or falls under the familiar Rule 12 standards. On a facial ule 12(b)(1) challenge, the Court accepts the complaint's allegations as true and draws all reasonable inferences in Plaintiffs' favor. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). Rule 12(b)(6) motions are "especially disfavored" where, as here, the claims present novel legal theories better assessed after factual development. *McGary v. City of Portland*, 386 F.3d 1259, 1270 (9th Cir. 2004). A complaint satisfies Rule 8 when its factual content allows the Court to reasonably

infer liability; well-pleaded facts are taken as true, and fact disputes are not resolved at this stage. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

## I. CALIFORNIA'S CANNABIS LAWS ARE CIVIL/REGULATORY UNDER *CABAZON* AND CANNOT BE ENFORCED ON TRIBAL LANDS UNDER PL-280

As a threshold matter, absent a federal statute that expressly grants a state authority to enforce its laws within Indian country, the state has no jurisdiction. *See, e.g., Williams v. Lee*, 358 U.S. 217, 219-20 (1959) (jurisdiction in Indian country lies with the tribe and the federal government unless "expressly conferred on the States by Congress"). The burden rests on the County to identify an "express" or "explicit" congressional delegation permitting it to enforce California's cannabis laws against Indians on tribal trust land. They have not met that burden. PL 280 is no such grant: it confers limited criminal jurisdiction and withholds authority over civil/regulatory matters—exactly where California's cannabis scheme falls.

PL-280 authorizes state jurisdiction in Indian country only when a law is "criminal in nature," meaning the intent of the law is "generally to prohibit certain conduct." *Cabazon*, 480 U.S. at 209. When a state "generally permits the conduct, subject to regulation," its laws are civil/regulatory and cannot be enforced on tribal lands. *Id*. This determination turns on the law's character, not the presence of criminal penalties: attaching criminal sanctions to a regulatory scheme does not convert it into a criminal/prohibitory law. *Id*. at 211.

Defendants concede California "created a licensing scheme for sales, distribution and large-scale cultivation" of cannabis and that "adult use, certain cultivations and certain possession is generally permitted." MTD at 9. Licensed cultivation is the rule; prohibition is the exception. Following the passage of Proposition 64 and the enactment of the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), California explicitly authorizes commercial cultivation, possession, distribution, and retail sales through year-round licensure, with taxation and regulatory oversight. *See* Bus. & Prof. Code § 26000 et seq.; Cal. Health & Saf. Code § 11362.1. That same conduct is lawful when licensed and unlawful only when unlicensed. Section 26038(e) itself confirms this by providing: "criminal penalties shall continue to apply to *an unlicensed person* engaging in commercial cannabis activity *in violation of this division*."

(Emphasis added). Sections 11358-11360 penalize only unlicensed activity.

Defendants attempt to collapse this distinction by relying on cases involving *per se* prohibitions such as supplying alcohol to minors (*United States v. Dotson*, 615 F.3d 1162 (9th Cir. 2010)) and the unauthorized practice of law (*United States v. Clark*, 195 F.3d 446 (9th Cir. 1999))—conduct "flatly prohibited and criminally penalized" with no lawful analog. Those Assimilative Crimes Act (ACA) (18 U.S.C. § 13(a)) cases involved bright-line bans and federal enclave law, not conduct that is lawful when licensed or regulated under a broader statutory scheme. Cannabis laws like § 11358 do not flatly prohibit cultivation; they penalize cultivation only when performed without a license. That distinction places them squarely within *Cabazon's* civil/regulatory category.

*Cabazon* draws a sharp line between criminal prohibitory and civil regulatory laws in that context. § 11358 does not categorically prohibit cultivation, placing it squarely within the civil/regulatory category under *Cabazon*, which held that laws regulating otherwise lawful conduct (e.g., bingo games) are not criminal prohibitory. It penalizes unlicensed cultivation, while expressly permitting it under the state's licensing regime. The ACA's purpose is to ensure uniformity of criminal enforcement on federal lands, not to determine whether a state law is criminal or regulatory for purposes of tribal sovereignty. The existence of a licensing framework, state agencies, and administrative penalties further supports the conclusion that cannabis laws are regulatory in nature.

Similarly, *United States v. Marcyes*, 557 F.2d 1361 (9th Cir. 1977) and *Quechan Tribe v. McMullen*, 984 F.2d 304 (9th Cir. 1993) addressed "dangerous fireworks" laws whose purpose was outright prohibition, with only narrow carve-outs. In *Marcyes*, applying the ACA to conduct on the Puyallup Reservation, the court concluded Washington's fireworks statute was "prohibitory rather than … primarily a licensing law" because its object was to eliminate general possession and sale, not to regulate a lawful market or generate revenue. 557 F.2d at 1364. The opinion expressly contrasted such a ban with licensing regimes for hunting and fishing, where the conduct is presumptively lawful upon payment of a fee and compliance with conditions based on laws intended "to regulate the described conduct and to generate income." *Id*. Washington's fireworks

laws were not intended 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." *Id*. (emphasis added).

In *Quechan*, decided under PL-280, the Ninth Circuit emphasized that *Cabazon* requires looking past labels to legislative intent. 984 F.2d at 307-08. It found that intent in the statute's declaration of purpose: "protection of life and property," Cal. Health & Saf. Code § 12552, and in its structure: a categorical ban on the sale of federally classified Class C fireworks except for a narrow "safe and sane" subset, available only eight days per year, with no revenue-raising component and criminal penalties for violations. *Id*. Those features, the court held, made the law criminal/prohibitory despite the existence of limited permits. Under *Cabazon's* criminal-prohibitory versus civil-regulatory test, *Quechan's* fireworks law fit the former because permission was the exception to prohibition; California's cannabis framework fits the latter because prohibition is the exception to permission.

*Confederated Tribes of Colville Reservation v. Washington*, 938 F.2d 146 (9th Cir. 1991) sharpened *Cabazon's* inquiry: labels and penalty form are not dispositive; what matters is whether the prohibited conduct is a subset of a larger permitted activity, or whether the state generally bans the activity with narrow exceptions. 938 F.2d at 149-51. There, Washington had decriminalized speeding as a civil infraction within a broader, permitted activity—driving—while leaving truly criminal traffic offenses (e.g., DUI, reckless driving) intact. *Id*. at 150-51. Applying *Cabazon*, the court held speeding was civil/regulatory, emphasizing that the State cannot decriminalize conduct, strip criminal procedures and protections, and then recharacterize the same conduct as "criminal" to expand PL-280 jurisdiction and funding. *Id*. at 151.

California's licensing framework permits cultivation, manufacturing, distribution, and retail year-round; unlicensed, aggravated, or harmful variants are a subset policed at the margins. California presumes cultivation is lawful when conducted under a state license. Provisions penalizing sales to minors, environmental harms, or unlicensed commerce are backstops to a permitted market, not evidence of a general ban. *See* Cal. Health & Saf. Code § 11358; MAUCRSA. Licensure is not an exception but the principal means by which the activity occurs, making it civil/regulatory, unlike in *Marcyes* and *Quechan* where fireworks prohibition was the

rule and permission the exception.

California does not treat cannabis as inherently dangerous. Far from outright prohibition, the state invites broad commercial participation and expressly regulates large-scale cultivation through canopy-tiered licensing, taxation, and environmental compliance. A state that affirmatively licenses, taxes, and regulates an activity has, by definition, adopted a permissive policy; its cannabis laws are civil-regulatory. Criminal penalties for unlicensed or aggravated conduct police the edges of that permissive framework—they do not define the whole as prohibitory. *See, e.g., People v. Fews*, 27 Cal.App. 5th 553 (2018) ("It remains unlawful . . . 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") (citations omitted).

*Colville* also reaffirmed that Indian sovereignty is the backdrop for PL-280, and courts must resolve doubts about a statute's purpose in favor of tribal self-government. 938 F.2d at 149; *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985) ("statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.") (citations omitted). Thus, any "doubtful expression [must be] resolved in favor of the Indians," preserving their tribal sovereignty and self-governance. *Id*. This canon of construction applies with full force to PL-280. Applying this canon in *Cabazon*, the Supreme Court held that PL-280's grant of jurisdiction is limited and does not authorize California to enforce "civil regulatory" laws, such as gambling regulations, against tribes or their members on their reservations. The Court made clear that PL-280's grant of jurisdiction is limited and does not extend to state laws that merely regulate, rather than prohibit, conduct.

To treat California's licensed cannabis market as "criminal/prohibitory" would replicate exactly the bootstrapping *Colville* forbids: reaping the benefits of civil regulation while invoking "criminal" labels only to extend state jurisdiction into Indian country. *Id*. at 148 ("We conclude the state may not declare certain infractions as civil, remove the panoply of constitutional and procedural protections associated with criminal offenses, save itself the time and expense of criminal trials, and then insist the same infraction is criminal for purposes of expanding state jurisdiction and appropriating the revenue raised through enforcement of the speeding laws.")

Defendants' reliance on *Granny Purps, Inc. v. County of Santa Cruz*, 53 Cal.App.5th 1, 10 (2020), generic seizure statutes and jury instructions, is misplaced. MTD at 12-13. *Granny Purps* addressed return of seized plants and simply observed that non-compliant cultivation is contraband—true of any regulated market. It did not apply *Cabazon* or address PL-280. Seizure and warrant provisions are enforcement measures for regulation; they do not transform a licensed industry into a criminal ban. And jury-instruction labels reflect trial burdens, not public policy.

Defendants' reliance on *Ross v. Ragingwire Telecomms., Inc*., 42 Cal.4th 920 (2008) and *United States v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016) is likewise misplaced. Federal illegality under the Controlled Substances Act (CSA) is irrelevant to PL-280 analysis; *Cabazon* asks only whether California generally prohibits the conduct. *See Cabazon*, 480 U.S. at 209 n.9 (explaining the prohibition of liquor sales and possession in Indian country under 18 U.S.C. § 1161 do not apply when the act conforms with state and tribal law). *Ross* addressed whether the Fair Employment and Housing Act required an employer to accommodate off-duty medical marijuana use. It neither concerned PL-280 nor undertook the *Cabazon* regulatory/prohibitory analysis. *McIntosh* construed appropriations riders limiting DOJ's spending authority; it confirmed that federal law still prohibits marijuana, but that budget riders bar the Department from preventing States from implementing their own medical regimes. Neither case examined California's cannabis policy under *Cabazon*, and both presuppose the existence of State-regulated cannabis activity. They therefore shed no light on whether California's scheme is civil-regulatory and outside PL-280 criminal jurisdiction in Indian country.

Nor do Defendants' vehicle stop and probable-cause cases alter the jurisdictional analysis under *Cabazon*.[1] Those cases turn on whether officers had reason to believe unlicensed or

[1] *People v. McGee*, 53 Cal. App. 5th 796 (2020) (violation of Cal. Health & Saf. Code §§ 11362.3 unsealed container, 23222 broken seal/loose marijuana on highway); *Fews*, 27 Cal.App. 5th at 561 (Probable cause was based on "evasive and uncooperative conduct, combined with the high-crime area in which the traffic stop took place, the odor and presence of marijuana and Fews's continuous and furtive movements inside the SUV"); *Armstrong v. Sexson*, 2007 U.S. Dist. LEXIS 60023, at *20 (E.D. Cal. 2007) ("[CUA] provides for an affirmative defense to prosecution, not to arrest … property damage caused by police executing a search warrant does not amount to taking of private property under the California Constitution."); *People v. Mower*, 28 Cal.4th 457 (2002) (same); *Call v. Badgley*, 254 F. Supp. 3d 1051, 1067 (N.D. Cal. 2017) ("Plaintiff's IMCV does not dispel *otherwise legitimate* probable cause for an arrest.") (emphasis added).

improper use occurred; they assume, rather than decide, that state enforcement authority exists. None examines whether California's cannabis statutes are "criminal/prohibitory" or "civil/regulatory."

Likewise, Defendants' list of felony provisions—including recidivist enhancements under §§ 11358(d)(2) and 11360(a)(3)(B), felony classifications under § 11361, aggravated circumstance felonies under § 11379.6, and the Schedule I listing in § 11054—does not change the outcome. *Cabazon* squarely rejected the argument that the presence of criminal penalties automatically renders a law prohibitory within the meaning of PL-280. 480 U.S. at 211. California's gambling laws carried misdemeanor provisions and jail time, yet were deemed regulatory because the State "generally permits" the activity subject to licensure. *Id*. at 209-12. Here, Defendants concede California licenses commercial cultivation, including large-scale grows. MTD at 9.

That scheme is the hallmark of a permissive policy. Proposition 64's own findings state that "[t]he Adult Use of Marijuana Act… establishes a comprehensive regulatory structure… to allow nonmedical marijuana to be cultivated, processed, distributed, and sold by licensed businesses." 2016 Bill Text CA V. 13. The felony backstops Defendants cite are tied to aggravating factors—sales to minors, environmental crimes, unlicensed operations—not to the underlying conduct itself when performed within the licensing framework. That is civil regulation.

Under *Cabazon*, a State that generally permits conduct subject to licensing and regulation has adopted a civil/regulatory policy. Because California has made that policy choice for cannabis, PL-280 does not authorize it to enforce its licensing scheme—including §§ 11358–11360—against tribally authorized cultivation on trust land. Plaintiffs have therefore stated plausible claims, and the motion to dismiss should be denied.

For all these reasons, California's cannabis code remains civil/regulatory under *Cabazon* and beyond PL-280's reach in Indian country. That classification is not undone by the State's choice of enforcement vehicle. Whether through a licensing notice, a civil inspection, or a search warrant, the substance of what is being enforced here is a permissive regulatory scheme — and PL-280 draws a bright line against exporting that scheme onto tribal trust land.

## II. REFRAMING REGULATORY ENFORCEMENT AS "CRIMINAL PROCESS" CANNOT EVADE *CABAZON'S* LIMITS OR EXPAND PL-280 JURISDICTION

Defendants argue they may execute warrants in Indian country whenever they call their actions "criminal investigations." MTD at 15-17. *Cabazon* forecloses that move: PL-280 analysis turns on the character of the underlying law, not the enforcement label.

This case is not about prosecuting genuine crimes; it is about using criminal process to bypass limits on state authority over tribes. PL-280 allows prosecution of crimes, not governance of the Tribe. Here, deputies, relying on boilerplate affidavits and outdated aerial photos, raided trust land, destroyed crops cultivated under the Tribe's ordinance, and targeted both tribal and individual allotments—a direct intrusion into self-government, not *Inyo's* § 1983 standing issue.

### A. Form Cannot Change Substance

California's cannabis regime is civil/regulatory: it affirmatively licenses, taxes, and regulates it. Criminal penalties for non-compliance police the edges of a permissive policy; they do not transform the policy into a criminal/prohibitory regime.

### B. The County's Cited Cases Do Not Authorize Their Incursion

None of the cases Defendants rely on involved the enforcement of civil/regulatory licensing laws against a tribe. *Inyo County v. Paiute-Shoshone Indians of the Bishop Cmty.*, 538 U.S. 701 (2003) resolved only that the Bishop Tribe was not a "person" under § 1983 for purposes of bringing that particular suit; it expressly noted the absence of controlling law on such warrants. The warrant in *Inyo* was issued on the Inyo County District Attorney's showing of probable cause. Here, the warrant was issued based on a Humboldt County Sheriff's deputy's generic boilerplate affidavit with an outdated picture of cannabis hoop houses that ignored—and failed to disclose—that the targeted properties are located on Reservation tribal trust land subject to the Tribe's cannabis ordinance. *See Inyo*, 538 at 705; FAC, Ex. F.

*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) reaffirmed that state authority in Indian country must be tested under a balancing inquiry weighing federal, tribal, and state interests. Defendants skip this analysis and entirely ignore the strong federal and tribal interests in protecting self-governance and self-determination.

Under the Indian Commerce Clause, Art. I, § 8, cl. 3, Congress holds broad and exclusive power over tribal affairs. *Bracker*, 448 U.S. at 142. That authority, and the semi-independent position of tribes, create two independent but related barriers to state regulation in Indian Country: Federal preemption and infringement on self-government. *Id*. at 142-43. Either barrier alone is sufficient to bar state law; both apply here. *Id*. The right of tribal self-government is so deeply embedded in our jurisprudence that it serves as the backdrop against which all ambiguous statutes must be measured. *Id*. PL-280 contains no clear statement authorizing state officers to destroy tribally sanctioned crops grown on tribal trust land under tribal law.

Congress has enacted a comprehensive federal regime governing controlled substances that leaves no room for states to regulate cannabis cultivation or possession by Indians on tribal lands. The CSA creates a closed system making it unlawful to manufacture, distribute, or possess marijuana except as authorized under federal law. 21 U.S.C. §§ 801-971; *Gonzales v. Raich*, 545 U.S. 1, 12-13 (2005). Cannabis is a Schedule I controlled substance, reflecting Congress's choice to prohibit its cultivation and possession nationwide. 21 U.S.C. §§ 812(c), 841(a)(1).

Federal primacy is further underscored by the Agricultural Improvement Act of 2018, which removed hemp from the CSA only by creating a federal licensing framework. 7 U.S.C. § 1639p. That statute expressly authorizes tribes—not states—to submit regulatory plans for hemp cultivation. When Congress intends to permit local control over cannabis-related activity in Indian country, it does so by empowering tribal governments, not by delegating authority to the states. This statutory structure confirms that the federal scheme occupies the field and preempts state efforts to impose civil-regulatory cannabis regimes on reservations.

Even if the Court were to find no field preemption, state civil-regulatory authority here is barred under *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). The federal and tribal interests are not merely substantial—they are paramount. The federal government maintains exclusive authority over cannabis regulation through the CSA, tempered only by express tribal participation under the 2018 Farm Bill. The Tribe's sovereign authority to determine on-reservation conduct by its members lies at the heart of its right to self-government.

By contrast, the state's asserted interest in extending its cannabis regime into Indian country

is minimal and indirect. No state law enforcement burden is implicated when on-reservation activity is confined to tribal members and regulated by tribal law. As in *Bracker*, the "tradition of Indian sovereignty" and the pervasive federal scheme leave no room for state interference. Any attempt to impose state licensing or penalties in this context would impermissibly infringe on tribal self-government and is preempted under settled federal law.

The Constitution's Supremacy Clause makes "the Laws of the United States… the supreme Law of the Land… any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. Where, as here, Congress has enacted a pervasive federal scheme and expressly engaged tribal governments in its administration, any conflicting state regulatory regime is without force. Bracker and the CSA together leave no room for the State to impose its cannabis laws on tribal lands. The State's attempt to do so is not merely unauthorized — it is constitutionally foreclosed.

*McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164 (1973) and *Williams v. Lee,* 358 U.S. 217 (1959) confirm that the "Indian sovereignty doctrine" derives from the federal government's protection of the authority of Indian tribes over their territory and members from competing state authority. *See* 411 U.S. at 168; 358 U.S. at 218-20. Absent express congressional authorization, state laws are inapplicable to Indians on their reservations and may not infringe on the right of reservation Indians to make their own laws and be ruled by them. *Id*. at 170-71. A warrant that seizes and destroys crops authorized under tribal law is the very definition of such an infringement.

Finally, *Narragansett Indian Tribe v. Rhode Island,* 449 F.3d 16 (1st Cir. 2006) (en banc) is inapposite. It arose in a non-PL-280 state. The dispute centered around a negotiated settlement of the Tribe's suit against the State to reclaim its ancestral territory and that expressly conferred jurisdiction on the State. 449 F.3d at 19. It concerned sovereign immunity of tribal officials, not the export of a state licensing regime onto trust land. *Id*. at 30.

**C. Principles of Sovereignty Control**

PL-280 is construed narrowly and "liberally in favor of the Indians." *Montana*, 471 U.S. at 766. Consequently, the scope of tribal sovereignty is "dependent on, and subordinate to, only the

Federal Government, not the States." *Washington v. Confederated Tribes*, 447 U.S. 134, 152-54 (1980). Without explicit federal authorization, "all aspects of tribal sovereignty [are] privileged from diminution by the States." *Three Affiliated Tribes v. Wold Eng'g*, 476 U.S. 877, 891 (1986). "The policy of leaving Indians free from state jurisdiction and control," the Supreme Court has said, "is deeply rooted in the Nation's history." *Rice v. Olson*, 324 U.S. 786, 789 (1945).

The Supreme Court has consistently applied these sovereignty, preemption and infringement standards to bar state regulation in analogous contexts. *Cabazon* itself arose from the City of Indio and its Police Department's attempts to shut down the Tribe's card rooms, including the police entering the card club on the Reservation and issuing citations to over 100 people involved in the games, alleging violations of the Indio City Code. *Cabazon*, 694 F.2d at 636. This event spurred the initial litigation which challenged the city's authority. The Tribe sought "a declaratory judgment that the county had no authority to apply its ordinances inside the reservations and an injunction against their enforcement," and the State intervened as defendant. *Cabazon,* 480 U.S. at 206. The Court deemed county regulations preempted after balancing "traditional notions of Indian sovereignty and the congressional goal of Indian self-government" against claimed state interests in law enforcement. *Id*. at 216.

In *New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324 (1983) the Tribe claimed exclusive authority to regulate hunting and fishing activities within its reservation and brought an action to enjoin the enforcement of New Mexico's hunting and fishing laws. *Id*. at 229-30. Applying the preemption and infringement standards, the Supreme Court held that tribal regulation of on-reservation hunting and fishing trumped state law even as to non-Indians, because applying state rules would supplant tribal control with an "inconsistent dual system." *Id*. at 232-34, 238-41.

The County seeks the same substitution here: replacing the Tribe's cannabis ordinance with California's licensing framework under the guise of "criminal process." Because the underlying laws are civil/regulatory and the raids infringe self-government and are preempted under *Bracker*, PL-280 provides no jurisdiction. Allowing states to repackage regulatory schemes as "criminal" would erase Cabazon's distinction and nullify Congress's limits.

## III. PLAINTIFFS' STATE LAW CLAIMS ARE ACTIONABLE UNDER THE GOVERNMENT CLAIMS ACT WITHOUT RELYING ON AN IMPLIED CONSTITUTIONAL TORT

Defendants assert the Fourth Cause of Action must be dismissed because Article I, Section 13 of the California Constitution does not itself supply a damages remedy. MTD at 17-18. This argument misconstrues both the allegations and the law.

Government Code §§ 815.2 and 820 make public employees and entities liable "to the same extent as a private person" for conduct that would give rise to common law tort liability. Plaintiffs do not seek to imply a constitutional tort; they allege conduct—warrantless searches, unlawful detentions, and property destruction—that, if committed privately, would constitute trespass, conversion, and false imprisonment. FAC ¶¶ 104-06. § 820 renders officers personally liable; § 815.2 imposes respondeat superior liability on the County. *McKay v. County of San Diego*, 111 Cal.App.3d 251, 254 (Cal. App. 1980) ("Since the employee is exposed to personal liability, the employer public entity is equally liable under respondeat superior principles.") (citations omitted); *Scannell v. County of Riverside*, 152 Cal.App.3d 596 (1984) ("It follows that under the concept of respondeat superior, a public employer is responsible for the tort of false imprisonment by the conduct of a public employee acting within the course and scope of his employment."). This statutory framework is the precise mechanism for redressing Article I, Section 13 violations.

California courts have long endorsed it. *See, e.g.*, *Sullivan v. County of Los Angeles*, 12 Cal.3d 710 (1974) (upheld false imprisonment/excessive force claims under § 815.2 despite constitutional dimension); *Bradford v. State of California*, 36 Cal.App.3d 16 (1973) (wrongful arrest/detention under §§ 815.2, 820); *Asgari v. City of Los Angeles*, 15 Cal.4th 744, 752 (1997) (false imprisonment actionable under §§ 815.2, 820 without separate cause of action).

*Katzberg v. Regents of the Univ. of Cal.*, 29 Cal.4th 300 (2002) is not to the contrary. K*atzberg* does not bar statutory tort claims for constitutional violations. It declined to recognize a new, free-standing damages action under Article I, Section 7(a) absent statutory authority, but expressly acknowledged that constitutional violations remain actionable when pleaded through "an established statutory mechanism or common law theory." *Id*. at 317-18. That is exactly Plaintiffs' approach here.

Nor do California Torts Claims Act ("CTCA") immunities apply. Discretionary act immunity (§ 820.2) does not shield conduct that violates clearly established rights. *See Sullivan*, 12 Cal.3d at 721. Section 820.4 specifically withholds immunity for false arrest or false imprisonment. *McKay v. County of San Diego*, 111 Cal.App.3d 251, 254 (1980). Section 821.6 applies only to initiating judicial proceedings and does not bar claims for illegal searches or warrantless raids. *See Blankenhorn v. City of Orange*, 485 F.3d 463, 488 (9th Cir. 2007).

In short, Plaintiffs proceed on recognized statutory tort theories, not an implied constitutional tort. Their claims fit squarely within §§ 815.2 and 820, and Defendants' reliance on *Katzberg* is misplaced. The Fourth Claim should stand.

## IV. THE NINTH CIRCUIT'S REDUNDANCY DOCTRINE IS PERMISSIVE AND DOES NOT BAR OFFICIAL-CAPACITY CLAIMS THAT ALONE PROVIDE PROSPECTIVE RELIEF

Defendants misstate Ninth Circuit law in seeking to dismiss Sheriff Kendall as "redundant." MTD at 18. When a plaintiff seeks prospective relief, the proper defendant is the official with authority to implement the court's order. *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013). As Mendocino County's chief law enforcement officer—an independent, elected constitutional officer under Government Code § 24000(b), and the sole policymaker for the Sheriff's Office—Kendall is the official responsible for ending the unconstitutional raids at issue and for carrying out any injunctive or declaratory relief. *See Cortez v. County of Los Angeles,* 294 F.3d 1186, 1187 (9th Cir. 2002) (California sheriffs act as final policymakers for county law-enforcement functions).

The redundancy doctrine is discretionary, not mandatory. A court *may* dismiss an official capacity defendant as duplicative when nothing of substance would be lost. *Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dep't*, 533 F.3d 780, 799 (9th Cir. 2008) (citing omitted). Nothing compels dismissal; the doctrine simply authorizes it to avoid jury confusion in limited circumstances. *See Scarano v. Cnty. of Stanislaus*, 2:25-cv-00099-DJC-CKD *5-6 (E.D. Cal. Jun 20, 2025) (rejecting redundancy where both county and sheriff's department sued under § 1983).

*Bio-Ethical Reform* is distinguishable on the facts. There, plaintiffs sued the County, Sheriff's Department and Sheriff only in his official capacity. 533 F.3d at 799. Plaintiffs sue

Kendall in both capacities, name the County (under *Monell*), but not the Sheriff's Office as a separate entity—removing any risk of conflating the Sheriff with a separate Sheriff's Office defendant. *See Sinclair v. San Jose Unified School District Board*, No. 20-CV-02798-LHK, 2021 U.S. Dist. LEXIS 130648, at *19-20 (N.D. Cal. July 13, 2021) (distinguishing *Bio-Ethical Reform* because only the District's officials are named in their personal and official capacities but not a local government entity).

Unlike the single enforcement act in *Bio-Ethical Reform*, Plaintiffs allege a continuing policy, practice and custom—warrantless raids of Reservation lands—that Kendall promulgates and enforces in his capacity as the County's final law-enforcement policymaker and has vowed to continue. *See* FAC at ¶¶ 1-2, 37-69, Ex. H (Doc. 35 at 114) ("Let me be clear about this, we will continue to investigate these crimes and will continue to charge the violators . . . and work towards safety in our rural areas."). Only an official-capacity claim against Kendall can enjoin these continuing violations. The County, as a legal entity, cannot by itself modify or enjoin the Sheriff's operational decisions. *Hartmann*, 707 F.3d at 1127 (plaintiff seeking equitable relief "should name the most appropriate defendant to execute court-ordered injunctive relief, an official who has the authority to ensure the injunction is carried out"). Removing Kendall in his official capacity would undercut the most direct means of enforcing court orders.

Neither *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1250 (9th Cir. 2016) nor *Kentucky v. Graham*, 473 U.S. 159 (1985) mandate dismissal. Neither case addresses the redundancy doctrine or purports to strip courts of their discretion under *Bio-Ethical Reform*. Instead, they confirm that an official-capacity suit "is, in all respects other than name, to be treated as a suit against the entity" (473 U.S. at 166) for *liability* purposes—a principle wholly compatible with retaining the official-capacity claim where, as here, the County cannot itself modify or enjoin the Sheriff's ongoing policy. In *Mendiola-Martinez*, the Ninth Circuit refused to dismiss Sheriff Arpaio's official-capacity claims as redundant and proceeded to deny him qualified immunity—underscoring the discretionary nature of redundancy rulings. 836 F.3d 1239, 1250.

Similarly, *Graham* underscores, but does not foreclose, courts' discretion to retain non-duplicative official-capacity claims. Defendants cite *Graham*, 473 U.S. at 165–66, for the

unremarkable proposition that an official-capacity suit is a suit against the entity. MTD at 18. This principle simply confirms that Plaintiffs' claims against Kendall in his official capacity stand or fall with the County's liability—yet it says nothing about stripping courts of the discretion *Bio-Ethical Reform* affords them to retain a claim when, as here, naming the officer in his official capacity can secure prospective relief.

Retaining Kendall in his official capacity causes no prejudice or inefficiency; he is already a party individually, and any official-capacity judgment will bind the County. Dismissing him would deprive Plaintiffs of the ability to obtain enforceable injunctive relief against the very office—headed by an independent, elected official—that is executing the challenged policy. *See Sinclair*, 2021 U.S. Dist. LEXIS 130648, at *19-20 (court applied *Bio-Ethical Reform's* permissive language to reject a redundancy argument). Because complete relief on Claims Three and Seven depends on Kendall's official-capacity role, the motion to dismiss those claims should be denied.

## V. THE COUNTY IS A PROPER DEFENDANT AS TO PLAINTIFFS' THIRD AND SEVENTH CLAIMS

The FAC plausibly alleges that the County has engaged—and continues to engage—in a pattern and practice of unlawful enforcement actions targeting Indians on the Reservation. Contrary to Defendants' claim that it cannot be held liable under respondeat superior liability (MTD at 19), the County's actions, carried out with deliberate indifference and knowing acquiescence, states a claim under *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

A municipality is subject to *Monell* liability where a constitutional deprivation is caused by its own policy or custom. *Id*. at 694. That policy or custom may be shown in several ways: (1) implementation of official policies or established customs; (2) acts or omissions amounting to official policy; or (3) ratification. *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1249-50 (9th Cir. 2010) (internal citations omitted). A single decision by a final policymaker can itself constitute official policy and serve as the basis of municipal liability. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-83 (1986); *Larez*, 946 F.2d at 646.

Under California law, the elected county sheriff is the final policymaker for law-enforcement operations. *See* Cal. Gov't Code § 25303; *Venegas v. Cnty. of L.A.*,

32 Cal.4th 820, 839 (2004). The FAC alleges that Sheriff Kendall personally authorized, directed, and oversaw raids on tribal trust land. FAC ¶¶ 98-99. That decision and directive by the County's chief law enforcement official constitutes official County policy for purposes of *Monell* purposes. *Pembaur*, 475 U.S. at 480-81; *Larez*, 946 F.2d at 646.

The FAC pleads facts supporting several independent *Monell* theories:

- **Affirmative policy and widespread practice.** Since at least 2020, Defendants have coordinated multi-day raids on tribal trust properties cultivating cannabis under the Tribe's ordinance. FAC ¶¶ 1, 30, 37-57, 63-65, 70, 73-74, 76, Ex. A, G, H. This is part of a policy created by Defendants in or about 2020. *See* FAC, Ex. H (Doc 35 at 112) ("In 2020, [Sheriff Kendall] and other Northern California Sheriffs, met in Trinity County with members of the state's marijuana policy team . . . [and] asked . . . how would they deal with the marijuana being diverted to the black market and . . . the enforcement of the massive wave of illegal marijuana[.]"). This has been occurring for years, not days. *See* FAC, Ex. H (Doc 35 at 113) (In 2022, Sheriff Kendall stated: "Over the past several years we have . . . taken on these issues, and . . . making a small dent in many areas")
- **Enforcement of inapplicable state regulatory schemes.** Application and enforcement of California's cannabis and environmental laws, which are civil/regulatory under *Cabazon*, 480 U.S. 202, to Reservation trust lands in violation of PL-280 and federal preemption. FAC ¶¶ 5, 31-34, 37-57, 60, 62-65, 70, 76, Ex. A, G, H; *see Chemehuevi Indian Tribe v. McMahon,* 934 F.3d 1076 (9th Cir. 2019).
- **Admissions evidencing policy.** Kendall publicly acknowledged executing at least 18 warrants targeting Reservation properties based on aerial surveillance over a two-day period because the operations were not state-licensed. FAC ¶¶ 64-65, Ex. H (Doc. 35 at 114) ("[The Reservation] properties were not *county or state licensed* and/or appeared to also have environmental impact crimes taking place") (emphasis added). He publicly confirmed that these raids were part of an ongoing enforcement campaign, that he would continue them, and that prosecutions would follow. ¶¶ 64-65, Ex. H (Doc. 35 at 114) ("Let me be clear about this, we will continue to investigate these crimes and will continue to charge the violators . . . and work towards

safety in our rural areas.")

- **Pattern and practice.** Nearly identical prior raids, including a 2022 raid on Gary Cordova's trust property based solely on the absence of a state permit for probable cause, FAC ¶ 63, Ex. G, placed the County on notice. *Velazquez v. City of Long Beach*, 793 F.3d 1010, 1027-28 (9th Cir. 2015); *Paredes v. City of San José*, 760 F. Supp. 3d 902, 925 (N.D. Cal. 2024) **(**citing *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).
- **Ratification.** Kendall's public praise for the raids and absence of any discipline amount to ratification by a final policymaker, which itself can establish municipal policy. *Fuller*, 47 F.3d at 1534. Courts have long recognized that a final policymaker's public praise or defense of unconstitutional conduct—coupled with a failure to discipline — can itself constitute ratification sufficient to establish municipal policy. *See City of St. Louis v. Praprotnik,* 485 U.S. 112, 123, (1988) (plurality) (ratification occurs when an authorized policymaker "approve[s] a subordinate's decision and the basis for it"); *Larez*, 946 F.2d at 646-47 (police chief's public defense of officers and refusal to impose discipline after internal review permitted jury finding of ratification); *Henry*, 132 F.3d at 518-19 (repeated constitutional violations and county's inaction supported deliberate indifference and inference of official policy); *see also McRorie v. Shimoda*, 795 F.2d 780, 784 (9th Cir. 1986) (failure of prison officials to discipline guards after impermissible shakedown search and failure to admit the guards' conduct was in error could be interpreted as a municipal policy). Such official endorsements are not "stray remarks" but affirmative signals, internal and public, that the conduct is approved and will continue—satisfying *Praprotnik's* requirement of approving "the decision and the basis for it."
- **Failure to train.** The FAC alleges deliberate indifference in failing to train deputies on jurisdictional limits and tribal sovereignty. FAC ¶¶ 55, 88-90; *City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989).

An unconstitutional custom can be inferred from "widespread practices or evidence of repeated constitutional violations for which the errant municipal officers were not discharged or reprimanded." *Hunter v. Cty. of Sacramento*, 652 F.3d 1225, 1233 (9th Cir. 2011); *Henry,* 132 F.3d at 518-19. The FAC alleges the County knew of these enforcement actions, had notice of

their legal infirmity, and took no remedial steps—supporting a reasonable inference of deliberate indifference. *See id.* at 519; *Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005). This satisfies the Rule 8 pleading standard.

Defendants' reliance on *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397 (1997), is misplaced. *Brown* addressed the evidentiary burden at trial, not pleading requirements. At this stage, Plaintiffs need only allege facts making it plausible that County policy or custom caused their injury. The FAC easily meets that standard.

The FAC plausibly alleges that a final policymaker adopted, implemented, ratified, and failed to correct an unconstitutional policy of enforcing inapplicable state law on tribal trust lands. These allegations fit squarely within *Monell* and its progeny. The motion to dismiss the Third and Seventh Claims as to the County should be denied.

## VI. SECTION 1983 PERSONHOOD AND THE TRIBE'S CLAIMS

Defendants misread *Inyo*, which bars a sovereign from using § 1983 to vindicate its own sovereign prerogatives, not representative suits to protect the private constitutional rights of members. The Tribe satisfies *Hunt's* associational-standing test: its members—"persons" under § 1983—allege a textbook equal-protection violation: the race-based withdrawal of police protection from Reservation residents while non-Indian communities continued to receive services. *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 (9th Cir. 2000).

California owe statutory, nondiscriminatory law-enforcement duties in Indian country under PL-280. *Acosta v. San Diego County*, 126 Cal.App. 2d 455, 467 (1954). The FAC alleges those duties were abandoned immediately after the Tribe's cease-and-desist letter following unlawful raids—conduct, if proved, squarely prohibited by the Equal Protection Clause. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369, 374 (1886); *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977).

Plaintiff April James's experience exemplifies the pattern: armed entry onto BIA-trust land without a warrant, destruction of property, and then, days later, a cutoff of police response to Reservation calls even as comparable non-Indian communities continued to receive service. FAC

¶¶ 39-41, 70-71. No policy change or resource shortage explains the withdrawal. Plaintiffs will establish discriminatory intent through service-call data, internal communications, patrol records, and other proof identified in *Arlington Heights* and *Yick Wo*. These facts plausibly allege intentional racial discrimination—the kind § 1983 was enacted to remedy. *Chemehuevi,* 934 F.3d at 1076.

## VII. THE FAC ADEQUATELY ALLEGES SHERIFF KENDALL'S PERSONAL PARTICIPATION AND SUPERVISORY LIABILITY

Defendants claim the § 1983 claim against Sheriff Kendall in his individual capacity fails for lack of personal involvement. MTD at 20. That is incorrect. The FAC alleges Kendall personally ordered, authorized, and orchestrated the raids on tribal trust land. FAC ¶¶ 43-49, 87. His liability is not premised on respondeat superior, but on his own conduct in setting the raids in motion and endorsing their execution. *See Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

Even aside from direct acts, the FAC states a valid supervisory-liability claim. A supervisor is liable for his own culpable action or inaction in training, supervision, or control of subordinates; for acquiescence in constitutional deprivations; or for reckless or callous indifference to the rights of others. *Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011) (quoting *Larez,* 946 F.2d at 646); *see also* CACI No. 3005 (supervisor liable if he knew or should have known of wrongful conduct, knew it created a substantial risk of harm, and disregarded that risk by approving or failing to prevent it). The FAC alleges Kendall enabled and encouraged the raids, coordinated with other agencies to carry them out on Reservation land, ignored clear jurisdictional limits, and publicly praised the operations afterward. FAC ¶¶ 2, 43-49, 87. Those allegations establish a sufficient causal connection between Kendall's conduct and Plaintiffs' injuries. *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989). At minimum, it constitutes deliberate indifference, which is actionable. *Starr*, 652 F.3d at 1216.

Defendants' complaint that the FAC sometimes refers to "Defendants" is immaterial. Rule 8 does not require Plaintiffs to itemize the actions of every deputy. The FAC alleges that Kendall's orders set the unlawful conduct in motion. FAC ¶ 87. That is sufficient notice.

Nor does *Iqbal* compel dismissal. *Iqbal* involved purposeful-discrimination claims and

rejected liability based solely on abstract knowledge and acquiescence. Plaintiffs proceed here on deliberate-indifference and supervisory-authority theories, which the Ninth Circuit has confirmed Iqbal did not abrogate. *Starr*, 652 F.3d at 1216-17. Because the FAC plausibly alleges Kendall's direct involvement and leadership role in the challenged operations, dismissal of the individual-capacity claim is unwarranted.

## VIII. THE FIFTH AND SIXTH CAUSES OF ACTION ARE PROPERLY PLEADED AGAINST SHERIFF KENDALL IN HIS INDIVIDUAL CAPACITY

Defendants argue the Bane Act and negligence claims (Fifth and Sixth Causes of Action) should be dismissed for lack of detailed allegations of Sheriff Kendall's personal involvement. MTD at 20-22. That misstates both the liberal notice-pleading standard and the Complaint's allegations. Under Rule 8(a)(2), a complaint need only provide "a short and plain statement of the claim" sufficient to allow a reasonable inference of liability. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

The Complaint meets that standard. It names Kendall, identifies him as the official responsible for the raid, alleges he publicly endorsed it and pledged to continue similar actions (FAC ¶¶ 2, 64-65, 72, Ex. H), and pleads that his negligence contributed to the destruction of Plaintiffs' property and violation of their rights. FAC ¶ 117. Combined with the detailed description of the raid by deputies under his authority, these facts plausibly support individual liability as a direct participant or one deliberately indifferent to constitutional violations. That is more than enough under *Twombly/Iqbal*.

Defendants' invocation of Government Code § 951 is misplaced. Section 951—a state procedural rule requiring particularized allegations against public officials sued in their individual capacity—has no application in federal court. Federal pleading standards are governed by the Federal Rules of Civil Procedure, not state-specific fact-pleading or verification requirements. *See* Fed. R. Civ. P. 8(a); *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003). Even if treated as substantive, the Complaint satisfies § 951 by alleging Kendall was an active participant and policymaker behind the raids, linking him to the searches, seizures, and property destruction through direct involvement, supervisory authority, or deliberate indifference.

Defendants' reliance on Government Code § 820.8 is equally unavailing. That provision bars vicarious liability for injuries caused solely by another's conduct, but does not shield a public employee from liability for his own acts or omissions. Plaintiffs allege Sheriff Kendall personally authorized, directed, or knowingly permitted the unlawful raid, and that his negligence contributed to the resulting constitutional and statutory violations. FAC ¶¶ 2, 64-65, 116-117. These allegations are sufficient to state a claim for personal involvement, which § 820.8 does not preclude. *Milton v. Nelson*, 527 F.2d 1158, 1159 (9th Cir. 1975), cited by Defendants, is unhelpful to their argument, where there is no liability if "personal involvement is not alleged." MTD at 23; *id*. Here, personal involvement *is* alleged through Sheriff Kendall's own actions and omissions, which is enough to state a claim under both the Bane Act and negligence.

Defendants' assertion that the Bane Act claim fails because Sheriff Kendall must have personally used "threats, intimidation, or coercion" misstates the law. MTD at 23; *see* Civ. Code § 52.1. The Bane Act imposes liability on any person who, by those means, interferes with constitutional or statutory rights. *See Venegas*, 32 Cal.4th at 827 (allegations of unconstitutional search and seizure sufficiently State a Bane Act claim). Direct participation is unnecessary; those who plan, authorize, or direct coercive operations are equally liable. Plaintiffs allege Kendall orchestrated and executed a militarized raid involving armed officers surrounding homes, ignoring jurisdictional objections, and causing fear of harm and arrest. *See* FAC ¶¶ 109–110. These allegations describe conduct sufficient to support a Bane Act claim. Those who plan, authorize, or direct coercive operations can be held liable just as surely as those who carry them out. *See Blankenhorn v. City of Orange,* 485 F.3d 463, 481 n.12 (9th Cir. 2007); *Boyd v. Benton County,* 374 F.3d 773, 780 (9th Cir. 2004); *see also* FAC ¶ 108 (alleging that the violations occurred "through" Kendall and others). At the pleading stage, it is plausible to infer Kendall was a driving force behind the raid and its coercive impact.

Government Code § 821.6 does not immunize Sheriff Kendall's conduct. MTD at 24. It provides immunity for injuries caused by the institution or prosecution of judicial or administrative proceedings—it does not extend to investigatory conduct or pre-litigation law enforcement activity. *Leon v. County of Riverside*, 530 P.3d 1093, 1101 (Cal. 2023) (§ 821.6 does not immunize officers

from tortious conduct during investigations or other activities prior to formal proceedings; immunity is confined to malicious-prosecution-type claims); *Garmon v. Cnty. of L.A.*, 828 F.3d 837, 847 (9th Cir. 2016). Plaintiffs' negligence claim arises from executing a raid—an investigatory act—not from initiating proceedings. Even if § 821.6 applied, it is an affirmative defense ill-suited for resolution on a Rule 12(b)(6) motion, particularly where the Complaint alleges the raid was unlawful, unauthorized, and outside any valid judicial process. FAC ¶¶ 31–36, 85-87, 91–94.

The Complaint gives Kendall fair notice of the claims and factual grounds. At this stage, Plaintiffs need not detail every aspect of his involvement, especially where key facts are within Defendants' control. The allegations plausibly suggest Kendall played a central role in the raid and its consequences. That is all Rule 8 requires. The motion to dismiss the Fifth and Sixth Causes of Action against him should be denied.

## IX. THE BANE ACT AND NEGLIGENCE CLAIMS AGAINST THE COUNTY ARE PROPERLY PLED UNDER CAL. GOV'T CODE § 815.2, AND PLAINTIFFS HAVE SATISFIED THE CTCA

Defendants also seek dismissal of Plaintiffs' Fifth and Sixth Causes of Action on the ground that the Complaint does not expressly plead compliance with the CTCA. Motion at 24. This argument fails both legally and factually.

It is true that Civil Code § 52.1 defines the Bane Act cause of action in terms of a "person," but Government Code § 815.2(a) squarely provides that public entities are vicariously liable for the torts of their employees committed within the scope of employment. This vicarious-liability pathway applies unless another statute provides immunity. Numerous courts have held that § 815.2 permits Bane Act claims against counties when the underlying violation is committed by their officers within the scope of employment. *See, e.g., D.V. v. City of Sunnyvale*, 65 F. Supp. 3d 782, 787-88 (N.D. Cal. 2014); *Bass v. City of Fremont*, No. C12-4943 TEH, 2013 U.S. Dist. LEXIS 32590, at *23 (N.D. Cal. Mar. 7, 2013).

The FAC alleges that the individual deputies committed the alleged constitutional violations while acting in the course and scope of their employment with Mendocino County. FAC ¶¶ 18, 81. That is all § 815.2 requires to state a derivative claim against the County.

Section 820(a) makes public employees "liable for injury caused by [their] act or omission

to the same extent as a private person," absent an applicable immunity. Section 815.2(a) then makes the employing public entity vicariously liable for that employee liability. Plaintiffs' negligence claim against the County is derivative of the negligence of its deputies alleged at FAC ¶¶ 18, 81, 116-17, and therefore fits within the CTCA's statutory scheme. California law does not require a plaintiff to cite the specific code section in the pleading so long as the factual allegations fall within the statute's terms. *Lopez v. S. Cal. Rapid Transit Dist.*, 40 Cal.3d 780, 795 (1985). If the Court prefers an explicit citation to § 815.2, amendment—not dismissal—is the proper remedy.

The Bane Act and negligence claims against the County rest on the express statutory vicarious-liability framework of Government Code § 815.2, and the FAC alleges facts bringing them within that scheme and showing CTCA compliance. The motion to dismiss the Fifth and Sixth Causes of Action should be denied, or, in the alternative, Plaintiffs should be granted leave to amend to make explicit what is already true.

**CONCLUSION**

For the foregoing reasons, the Court should deny the Defendants' motion to dismiss in its entirety. In the alternative, Plaintiffs seek leave to amend their complaint.

DATED: August 19, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I am employed in the County of Mendocino, State of California. I am over the age of 18 years and not a party to the within action; my business address is that of Rapport & Marston, 405 West Perkins Street, Ukiah, California 95482.

I hereby certify that I electronically filed with the Clerk of the United States District Court for the Northern District of California by using the CM/ECF system on August 19, 2025, which generated and transmitted a notice of electronic filing to CM/ECF registrants.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; executed on August 19, 2025, at Ukiah, California.

*/s/ Ericka Duncan*
Ericka Duncan