James R. Touchstone, SBN 184584
jrt@jones-mayer.com
Denise Lynch Rocawich, SBN 232792
dlr@jones-mayer.com
JONES MAYER
3777 North Harbor Boulevard
Fullerton, CA 92835
Telephone: (714) 446-1400
Facsimile: (714) 446-1448

Attorneys for Defendants, SHERIFF MATTHEW KENDALL and COUNTY OF MENDOCINO

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 REPLY TO OPPOSITION TO MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Date: September 9, 2025
Time: 11:00 a.m.
Crtm: Eureka-McKinleyville Courthouse

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I. INTRODUCTION

In Opposition to the Mendocino Defendants' Motion to dismiss the First Amended Complaint ("FAC"), Plaintiffs misstate the law, misstates the allegations of the FAC, and improperly attempts to supplement the factually deficient FAC. Simply put, the FAC completely lacks the factual allegations necessary to establish the required elements of the claims. Accordingly, Mendocino Defendants respectfully request the FAC be dismissed as follows.

II. THE FOURTH CLAIM FOR RELIEF FAILS AS THE GOVERNMENT CODE SECTIONS CITED BY PLAINTIFFS REQUIRE AN UNDERLYING TORT AND ART. I § 13 PROVIDES NO PRIVATE CAUSE OF ACTION

Plaintiffs' Fourth Claim for Relief is for "Unlawful Search and Seizure (Cal. Const. Art. I, § 13) (California Tort Claims Act, Cal. Gov't Code §§ 815.2, 820)." FAC p. 25. Confusingly though, in Opposition, Plaintiffs first argue they are not purporting to state a claim under the California Constitution rather for "trespass, conversion and false imprisonment" – none of which are plead in the FAC. See Oppo. p. 14 lns. 9-10. Indeed, the FAC contains no allegations whatsoever establishing the elements of any of those claims. Plaintiffs' attempt to supplement the FAC in their Opposition is wholly improper. See Fed. R. Civ. P. 8(a)(2); See also Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1974 (2007).

Plaintiffs discussion of Government Code §§ 815.2 and 820 is equally as misplaced. Government Code § 815.2 merely provides that a public entity can be vicariously liable for the torts of its employees. "[V]icarious liability is not a cause of action in and of itself […] there must be an underlying tort or statutory violation by an employee in the course and scope of his employment before vicarious liability can attach." Harvey v. City of Fresno, 2010 U.S. Dist. LEXIS 21302, *40 (E.D. Cal. 2010). Similarly, Government Code § 820 merely provides that public employees are liable for their torts to the same extent as a private person. In other words, Sections 815.2 and 820 are not causes of action rather require an underlying tort cause of action.

Plaintiffs' FAC alleges a violation of Art. I § 13 of the California Constitution as the

underlying tort, but that provision very clearly does not provide a cause of action for monetary damages. See Ohlsen v. County of San Joaquin, 2008 U.S. Dist. LEXIS 44566 (E.D. Cal. 2008), Roy v. Cnty. of Los Angeles, 114 F. Supp. 3d 1030, 1043 (C.D. Cal. 2015), Agro Dynamics, LLC v. United States, 692 F. Supp. 3d 1003, 1020 (S.D. Cal. 2023), Est. of Hennefer v. Yuba Cnty., 2023 U.S. Dist. LEXIS 107345 at *7 (E.D. Cal. 2023); Wood v. Cnty. of Stanislaus, 2024 U.S. Dist. LEXIS 153805, *24 (E.D. Cal. 2024). In other words, a violation of Art. I § 13 is not a "tort" for which a public entity can be vicariously liable or for which a public employee can be liable.

Mendocino Defendants do not contest that torts such as false imprisonment and conversion ***can*** be stated against a public employee and public entity, but ***Plaintiffs did not plead those claims***. The language of Plaintiffs' Fourth Claim is clear. Plaintiffs attempts to recharacterize their Fourth Claim for "Unlawful Search and Seizure (Cal. Const. Art. I, § 13)" as some other unplead tort is wholly improper. Indeed, the Court cannot consider Plaintiffs' new unpleaded theories. See Wheeler v. Cnty. of Orange, 2022 U.S. Dist. LEXIS 208780, *12 (C.D. Cal. 2022); see also Schneider v. California Dep't of Corrections, 151 F.3d 1194, 1197 n. 1 [A court may not take into account additional facts asserted in a memorandum opposing the motion to dismiss, because such memoranda do not constitute pleadings under Rule 7(a).] The Fourth Claim must fail.

III. PLAINTIFFS ATTEMPTS TO SUPPLEMENT THEIR DEFICIENT THIRD AND SEVENTH CLAIMS IN THEIR OPPOSITION IS WHOLLY IMPROPER AND PLAINTIFFS OWN ARGUMENTS INDICATE BOTH A FAILURE TO STATE A CLAIM AND A FAILURE TO COMPLY WITH RULE 8

Plaintiffs' Third and Seventh Claims for Relief seek damages under 42 U.S.C. § 1983 against the County and Sheriff Kendall in his official capacity. Mendocino Defendants moved to dismiss the Third and Seventh Claims as against the County and Sheriff Kendall in his official capacity because the FAC contains no Monell claim – which is required for a government entity to be held liable for a constitutional violation under 42 U.S.C. § 1983 for the action of one of its

employees. Monell v. New York Dept. of Social Services, 436 U.S. 658, 691, 98 S.Ct. 2018, 2036 (1978). In Opposition, Plaintiffs insist they have indeed stated a Monell claim citing to various general allegations scattered throughout the FAC. As was the case above, Plaintiffs' attempt to supplement the factually deficient FAC in their Opposition is wholly improper. See Fed. R. Civ. P. 8(a)(2); See also Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1974 (2007).

Rule 8(a) states that "[a] pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." The purpose of Rule 8 is to "give the defendant fair notice of what the... claim is and the grounds upon which it rests." Allen v. Boeing Co., 821 F.3d 1111, 1119 (9th Cir. 2016) (alteration in original) *quoting* Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955 (2007). Even if the factual elements of a cause of action are present but are scattered throughout the complaint and are not organized into a "short and plain statement of the claim," dismissal for failure to satisfy Rule 8(a) is proper. Sparling v. Hoffman Constr. Co., 864 F.2d 635, 640 (9th Cir. 1988).

Plaintiffs FAC contains Seven Claims for Relief none of which are for Monell liability under Section 1983. Indeed, Monell is never mentioned in the FAC nor does the word "policymaker" appear anywhere in the FAC though Plaintiffs argue in Opposition they have adequately stated a Monell claim for actions of a final policymaker. Indeed, Plaintiffs FAC does not even contain a "threadbare recital of the elements" of any of the possible five basis for Monell liability much less does it simply, concisely, clearly, and directly identify the specific facts giving rise to each claim against each defendant. See Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937 (2009). Instead, as demonstrated very clearly in the Opposition, the FAC employs a shotgun approach where allegations are scattered, unclear, contradictory and often group together actions of "Defendants" without identifying what the particular Defendants specifically did wrong. Most importantly, the FAC is completely lacking in sufficient factual allegations to state any claim under Monell.

A. The FAC Contains Insufficient Facts to Maintain an "Final Policymaker" Monell Claim

Plaintiffs argue in Opposition they have sufficiently stated an Monell claim for the actions of a final policymaker. Oppo. p. 17-8 lns 27-5. It is unclear as to whether Plaintiffs are arguing they sufficiently stated a claim that the unconstitutional action 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 ("Pembaur[1]" theory") or whether they are arguing they stated a claim that an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it ("Gillette[2] theory") Either way, the FAC is deficient.

As to either theory, the FAC contains no factual allegations to show that defendant Kendall -- who is the Sheriff of Mendocino County -- was a final authority on the execution of search warrants on tribal land within the meaning of Monell. See Hall v. Cty. of Fresno, 2020 U.S. Dist. LEXIS 75579, *19-21 (E.D. Cal. 2020) [Motion to Dismiss granted where Plaintiff did not allege sufficient facts to state a claim against defendant Sheriff under a "final policymaker" theory of Monell liability] *citing* Ryan v. Santa Clara Valley Transportation Auth., 2017 U.S. Dist. LEXIS 48315, at *9 (N.D. Cal. Mar. 30, 2017); see also Yadin Co. v. City of Peoria, 2008 U.S. Dist. LEXIS 109501 at *5 (D. Ariz. Mar. 25, 2008) [dismissing Monell claim where the allegations were "simply conclusions for purposes of Twombly as there [were] no facts alleged showing that [Defendant] was in fact a final policymaker" for the county]. As noted above, Plaintiffs don't even make conclusory allegations of final policymaking authority.

As to a possible Pembaur theory, the FAC contains zero allegations that the Sheriff personally committed the alleged constitutional violation. Specifically, there are zero allegations he was present during any of the searches and/or personally seized any property. As such. the FAC plainly fails to state a claim under that theory of Monell liability. As to a possible Gillette theory, "[t]o show ratification, a plaintiff must prove that the 'authorized policymakers approve a

[1] Pembaur v. City of Cincinnati, 475 U.S. 469, 480 106 S. Ct. 1292, 1298 (U.S. 1986).
[2] Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992).

subordinate's decision and the basis for it,'". Christie v. Iopa, 176 F.3d 1231, 1239 (9th Cir. 1999). A plaintiff must include factual allegations about actions that policymakers took in connection with their express "approval" of the misconduct. See Mitchell v. County of Contra Costa, 600 F.Supp.3d 1018, 1033 (N.D. Cal. 2022) and Perryman v. City of Pittsburg, 545 F. Supp. 3d 796, 803 (N.D. Cal. 2021) [finding ratification theory insufficient where pleading "failed to plead facts as to how policymakers ratified police conduct".]

Here, not only is the FAC entirely devoid of factual allegations regarding final policymaking authority and entirely devoid of factual allegations as to what specific actions Sheriff Kendall took in connection with his express approval of misconduct[3], the FAC does not even identify the "subordinate" whose actions Sheriff Kendall allegedly ratified. More importantly, the only subordinate mentioned at all in the FAC – the person who allegedly obtained and executed the warrants about which Plaintiffs complain -- is a Deputy for Humboldt County and thus not a subordinate of the Mendocino County Sheriff. In sum, the FAC is factually deficient and Plaintiffs' arguments in Reply do not absolve that deficiency.

B. The FAC Contains Insufficient Facts to Establish Any Other Theory of Monell Liability

Though Plaintiffs appear to focus on a policymaker theory in their Opposition, they also point to various other allegations scattered throughout the FAC. In addition to failing to comply with Rule 8 as discussed above, those shotgun allegations are simply factually insufficient. Specifically, "[i]n order to state a claim under Monell, a party must (1) identify the challenged policy or custom; (2) explain how the policy or custom is deficient; (3) explain how the policy or custom caused the plaintiff harm; and (4) reflect how the policy or custom amounted to deliberate indifference, i.e., show how the deficiency involved was obvious and the constitutional injury was likely to occur." Harvey v. City of S. Lake Tahoe, No. CIV S-10-1653

[3] Plaintiffs argue in their Opposition that Sheriff Kendall's praise for the raids amounts to ratification. Not only is this not plead, the FAC makes it clear that Sheriff Kendall praised targeting "***illegal*** marijuana grows" – which is not unconstitutional. See FAC ¶ 65. Indeed, Plaintiffs admit that California has criminal jurisdiction under 18 U.S.C. § 1162 to enforce its law against individual Indians. FAC ¶ 33.

KJM EFB PS, 2011 U.S. Dist. LEXIS 87944, at *9-10 (E.D. Cal. Aug. 9, 2011) *citing* Young v. City of Visalia, 687 F. Supp. 2d 1141, 1149 (E.D. Cal. 2009)); see also Crockett v. City of Hermosa Beach, No. CV 11-9789-DOC (SP), 2012 U.S. Dist. LEXIS 67840, at *16 (C.D. Cal. Apr. 16, 2012) *citing* Van Ort v. Estate of Stanewich, 92 F.3d 831, 835 (9th Cir. 1996)).

As a preliminary matter, the FAC fails to even clearly allege which custom or practice maintained by the County of Mendocino is alleged to have caused Plaintiffs' injuries. In fact, Plaintiffs simultaneously allege both that the searches and seizures of Plaintiffs' property were warrantless (FAC ¶ 3) and also that search was conducted upon execution of similar warrants (FAC ¶¶ 57, 59). Plaintiffs oppose Mendocino Defendants' Motion arguing that the FAC indeed makes the specific factual allegations yet merely points back to the FAC's bald assertions regarding the City's alleged policies, practices, and customs according to which the unknown deputies allegedly acted (or whether those Deputies were even Mendocino employees), and avers that these policies include certain directions, hiring and retention and training practices, and failure to discipline deputies. Moreover, no factual allegation in the FAC supports an assertion that the County of Mendocino or Sheriff Kendall was the "moving force" behind the conduct of the Deputy or Deputies who searched Plaintiffs land.

The "mere possibility of misconduct" falls short of meeting the required pleading standard. See Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). Plaintiffs must include in their pleading enough "factual content" to support a reasonable inference to show that "through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a causal link between the municipal action and the deprivation of federal rights." Brown, supra 520 U.S. at 404; see also Van Ort v. Estate of Stanewich, 92 F.3d 831, 835 (9th Cir. 1996), Iqbal, 556 U.S. at 678 and Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996). Both the FAC and the Opposition lack ***facts*** and do exactly what Iqbal prohibits which is to simply recite some select language of the elements of a Monell claim. Indeed, as noted above, the FAC does not even contain a threadbare recital of elements rather only sparse Monell-type allegations haphazardly throughout. For all these reasons, Plaintiffs

have failed to allege a viable Monell claim and their Opposition does not cure that deficiency.

IV. THE THIRD CLAIM FOR RELIEF MUST BE DISMISSED AND PLAINTIFFS MISTATE THE PLEADING REQUIREMENTS

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.

Plaintiffs argue in Opposition that "Defendants' complaint that the FAC sometimes refers to "Defendants" is immaterial. Rule 8 does not require Plaintiffs to itemize the actions of every deputy." Oppo. p. 21 lns. 25-27. Plaintiffs both misstate the law and miss the point. The purpose of Rule 8(a) is to ensure that the allegations in a complaint "provide sufficient notice to all of the [d]efendants as to the nature of the claims being asserted against them," including "what conduct is at issue." Guerrero v. REX Med., LP, 2025 U.S. Dist. LEXIS 23157, *4 (C.D.Cal. 2025) *citing* Villalpando v. Exel Direct Inc., 2014 WL 1338297, at *5 (N.D. Cal. 2014).

But "when a pleading fails to allege what role each [d]efendant played in the alleged harm, [it becomes] exceedingly difficult, if not impossible, for individual [d]efendants to respond to [the] [p]laintiffs' allegations." Adobe Sys. Inc. v. Blue Source Grp., Inc., 125 F. Supp. 3d 945, 964 (N.D. Cal. 2015) *quoting* In re iPhone Application Litig., 2011 U.S. Dist. LEXIS 106865, 2011 WL 4403963, at *8 (N.D. Cal. Sept. 20, 2011) [internal quotation omitted]. "Accordingly, courts routinely dismiss complaints ***when the plaintiff improperly lumps defendants together***." Guerrero, supra [emphasis added]; see also Gen-Probe, Inc. v. Amoco Corp., Inc., 926 F. Supp. 948, 961 (S.D. Cal. 1996).

Here, it is near impossible to discern what conduct is alleged against each Defendant. Many of Plaintiffs' allegations simply lump Mendocino, Humboldt and CHP together as a group, alleging that they are all liable for the searches and seizures. 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.

V. THE FIFTH AND SIXTH CLAIMS FOR RELIEF MUST BE DISMISSED AS AGAINST SHERIFF KENDALL IN HIS INDIVIDUAL CAPACITY AND PLAINTIFFS' OPPOSIITON MISTATES THE LAW AS TO THE PLEADING STANDARD

As stated in the Mendocino Defendants' Motion, 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.

In Opposition, Plaintiffs argue that Section 951 is inapplicable and that only Rule 8 and Iqbal need to be satisfied. Oppo. p. 22 lns. 7-13. Plaintiffs are simply wrong. The Section 951 pleading standard is applicable to state law claims brought against elected officials in federal court. See Cox v. Rackley, 2018 U.S. Dist. LEXIS 89313, *10 (E.D. Cal. 2018), Mendez v. Baca, 2011 U.S. Dist. LEXIS 165233, *6 (C.D. Cal. 2011), Mitchell v. Cate, 2014 U.S. Dist.

LEXIS 17239, *89-90 (E.D. Cal. 2014). 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 FAC does not allege with any specificity what particular acts or omissions of Sheriff Kendall allegedly caused Plaintiffs' claimed injuries. Because the FAC 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.

VI. THE LAW IS CLEAR THAT THE FIFTH AND SIXTH CLAIMS FOR RELIEF CANNOT STAND AS AGAINST THE COUNTY OR SHERIFF KENDALL IN HIS OFFICIAL CAPACITY

As stated against the County itself, the law is abundantly clear that 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 law is also abundantly clear that the California Tort Claims Act 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.

VII. 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. Plaintiffs' arguments regarding Plaintiff April James in Opposition are immaterial. Mendocino Defendants do not argue that the individual Plaintiffs lack standing to bring suit under Section 1983. Rather, Mendocino Defendants only argue that the Tribe itself lacks such standing, and Inyo is clear that it the Tribe itself cannot bring suit under Section 1983.

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 REGARDLESS OF THE RELIEF SOUGHT

Plaintiffs' Third and Seventh Claims are brought under 42 U.S.C. § 1983. A § 1983 "official capacity suit against a municipal officer is equivalent to a suit against the entity." Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles Cty. Sheriff Dep't, 533 F.3d 780, 799 (9th Cir. 2008) ["When 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."] "***This is true regardless of whether damages or injunctive relief is sought*** because

the County is also named as a defendant." Gonzalez v. Ahern, 2020 U.S. Dist. LEXIS 217163, *7-8 (N.D. Cal. 2020) [emphasis added]; see also Haines v. Brand, 2011 U.S. Dist. LEXIS 138972 at *3 (N.D. Cal. 2011) *citing* Kentucky v. Graham, 473 U.S. 159, 167 n. 14, 105 S. Ct. 3099 (1985) ["There is no longer a need to bring official capacity actions against local government officials [because] under Monell, ... local government units ***can be sued directly for damages and injunctive or declaratory relief***." (emphasis added).] Thus, the Third and Seventh Claims as to Sheriff Kendall in his official capacity must be dismissed.

IX. MENDOCINO DEFENDANTS WERE ENFORCING CRIMINAL LAW IN TAKING THE ALLEGED ACTIONS

Plaintiffs' FAC rests almost entirely on whether Mendocino Defendants were enforcing criminal or regulatory laws in taking the actions they did with regard to Plaintiffs. "State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply." McClanahan v. Ariz. State Tax Comm'n, 411 U.S. 164, 170-71, 93 S. Ct. 1257 (1973) [citation omitted]. In 1953, Congress enacted Public Law 280 ("PL 280), which expressly granted certain states, including California, jurisdiction over criminal offenses and certain civil causes of action arising in "Indian country." 18 U.S.C. § 1162; 28 U.S.C. § 1360. Mendocino Defendants do not dispute that PL 280 does not authorize enforcement of state civil regulatory laws. But despite Plaintiffs' attempts to broadly characterize ***all*** California marijuana laws as civil regulatory laws thus unenforceable against them, Plaintiffs' characterization is simply not correct.

At this point, the Parties have briefed the regulatory/criminal issue multiple times to the Court. Mendocino Defendants do not wish to belabor points already made. However, Mendocino Defendants do want to reiterate that they do not dispute that there have been widespread changes in various California marijuana laws and policies. Mendocino Defendants also do not dispute that ***some*** California marijuana laws are indeed regulatory. However, certain California marijuana laws have always been and continue to be criminal and prohibitory. Plaintiffs ask this Court to ignore those clear criminal statues, some even imposing felonies for violation thereof,

relating to marijuana because many (or even most) California marijuana laws now involve regulations, licenses and permits. However, in so arguing, Plaintiffs urge this Court to view this issue in a way that has been *specifically rejected* by the Ninth Circuit.

Under California v. Cabazon Band of Indians, 480 U.S. 202, 207, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987), 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." Cabazon, supra 480 U.S. at 207. "The shorthand test is whether the conduct at issue violates the State's public policy." Id.

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 interpretation of Cabazon urged by Plaintiffs therein. 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. 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 615 F.3d. 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.

Plaintiffs' Opposition to the Motion to Dismiss asks this Court to adopt the very approach to framing that was expressly rejected in Dotson and Clark. Specifically, Plaintiffs want this Court to "focus on the overarching scheme" of California's marijuana laws "to the exclusion of the specific statutes" that Defendants were enforcing in carrying out the operations on Plaintiffs' properties. See Dotson, supra 615 F.3d. at 1168. Such approach is equally as inappropriate here as it was in those cases. While California indeed has a regulatory scheme pertaining to marijuana possession, growth and sales, the conduct investigated by Defendants is flatly prohibited and, in some cases, a felony.

Similarly, in Quechan Indian Tribe v. McMullen, 984 F.2d 304, 306 (9th Cir. 1993) , 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. 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 dangerous 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, Mendocino Defendants urge the Court to reject Plaintiffs sweeping view of California marijuana laws. Though much conduct subject to a "comprehensive system of permits and licenses" like California fireworks law, other conduct is criminal and carries significant penalties because that conduct 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.

X. CONCLUSION

For all the foregoing reasons, Mendocino Defendants respectfully request that the Court grant their Motion to Dismiss Plaintiffs' First Amended Complaint.

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Respectfully submitted,

JONES MAYER

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