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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

ROUND VALLEY INDIAN TRIBES, et al.,  
Plaintiffs,  
v.  
MATT KENDALL, et al.,  
Defendants.

Case No. 25-cv-03736-RMI

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTIONS TO  
DISMISS FIRST AMENDED  
COMPLAINT**

Re: Dkt. Nos. 40, 46

Now pending before the court are the Motions to Dismiss Plaintiffs' first amended complaint ("FAC") by Defendant Sheriff Kendall ("Sheriff Kendall") and Defendant Mendocino County ("the County") (collectively, "Mendocino Defendants") (dkt. 40), and, separately filed, by Defendant California Highway Patrol Commissioner Sean Duryee ("Defendant Duryee") (dkt. 46). Plaintiffs have responded to both Motions to Dismiss (dkt. 48, dkt. 56), and Mendocino Defendants have replied (dkt. 53), as has Defendant Duryee (dkt. 46).

For the reasons stated below, Mendocino Defendants' Motion to Dismiss will be GRANTED IN PART and DENIED IN PART, while Defendant Duryee's Motion to Dismiss will be GRANTED IN PART and DENIED IN PART.

## BACKGROUND

*Plaintiffs' First Amended Complaint<sup>1</sup>*

<sup>25</sup> Pursuant to Public Law 280, 42 U.S.C. § 1983, California Constitution Article I § 13, the

<sup>1</sup> By way of stipulation approved by this court in June 2025, Plaintiffs agreed to file the first amended complaint (“FAC”), which amends the initial complaint to include “specific allegations regarding unidentified California Highway Patrol officers (Doe defendants) who were allegedly involved in the execution of the search warrant at issue.” (Dkt. 25 at 2.) Plaintiffs filed the FAC on July 17, 2025. (Dkt. 35.)

1 California Tort Claims Act (“CTCA”), the Bane Act (Cal. Civil Code § 52.1)<sup>2</sup>, and the common  
 2 law doctrine of negligence, three individuals and the Round Valley Indian Tribes (“Tribe”) have  
 3 sued the California counties of Humboldt and Mendocino, Sheriff Matt Kendall of the Mendocino  
 4 County Sheriff’s office, Sheriff William Honsal of the Humboldt County Sheriff’s Office,  
 5 Commissioner Sean Duryee of the California Highway Patrol (“CHP”), deputy Justin Pryor of the  
 6 Humboldt County Sheriff’s Office, and “DOES 1 through 50.” The Tribe<sup>3</sup> is a named Plaintiff; the  
 7 three named individual Plaintiffs are April James, Eunice Swearinger, Steve Britton (“Individual  
 8 Plaintiffs”), all of whom are enrolled members of the Tribe, live on the Round Valley Indian  
 9 Reservation (“Reservation”),<sup>4</sup> and allege that Defendants’ July 2024 cannabis raids on Reservation  
 10 land caused them harm.

11 Summary of Facts in the FAC

12 Plaintiffs allege that Defendants conducted a series of three raids on Individual Plaintiffs’  
 13 properties on July 22 and 23, 2024, “without probable cause and without search warrants,” which  
 14 resulted in the destruction of “hundreds” of cannabis plants and other significant property damage.  
 15 (FAC ¶ 37.) Plaintiff James suffers from arthritis and degenerative disc disorder—she treats the  
 16 pain from these conditions with a homemade medicinal cream for which she cultivates cannabis.  
 17 (FAC ¶ 39.) According to the FAC, she had two structures on her property within which she grew  
 18 the cannabis for the cream. (FAC ¶ 39.) On July 22, 2024, Plaintiff James heard loud knocking  
 19 and opened her door to see a handful of deputies “with their guns drawn.” (FAC ¶ 40.) The  
 20 deputies allegedly told Plaintiff James that they had a search warrant, but they did not present it to  
 21 her before entering her home and searching for about an hour. (FAC ¶ 40.) When Plaintiff James  
 22 asked why they were there, the deputies allegedly responded that they were looking for  
 23 environmental violations involving river water, parole violations, and illegal cannabis cultivation,  
 24

25 \_\_\_\_\_  
 26 <sup>2</sup> The Tom Bane Civil Rights Act (“the Bane Act”) is codified at California Civil Code 52.1.  
 27 <sup>3</sup> The Round Valley Indian Tribes was formerly known as the Covelo Indian Community of the Round Valley  
 28 Indian Reservation. (FAC at 2 n.1.) The Tribe is a “federally recognized Indian Tribe in Mendocino County  
 organized under the provisions of the Act of June 18, 1934 (48 Stat. 984), commonly known as the Indian  
 Reorganization Act (“IRA”) and codified at 25 U.S.C. § 5101.” (FAC ¶ 11.)

<sup>4</sup> Individual Plaintiffs’ trust allotments were secured by Act of Congress, per the FAC. *Id.* at 4. Their allotted  
 trust lands are within the boundaries of the Reservation. (FAC ¶ 12.)

1 sale, and manufacturing. (FAC ¶ 40.) According to the FAC, Plaintiff James has a well on her  
2 property that precludes the need for river water and no one in her family has a criminal record.  
3 (FAC ¶ 40.) Before they left, the deputies plowed all the plants on Plaintiff James's property into  
4 piles of soil, vegetation, metal, and plastic. (FAC ¶ 40.)

5 Plaintiff Swearerger uses cannabis ointment to treat pain from arthritis and disabling traffic  
6 accident injuries. (FAC ¶ 51.) She allegedly cultivates cannabis for her personal medical use in  
7 compliance with the Tribe's ordinance. (FAC ¶ 51.) On July 22, 2024, Plaintiff Swearerger  
8 learned of a law enforcement raid near her property and returned home to find two sheriff's  
9 vehicles and one "California Fish and Game" vehicle parked outside her gate. (FAC ¶¶ 42–43.)  
10 She left to avoid approaching the vehicles and returned about 45 minutes later to see the deputies  
11 leaving; one Fish and Game officer remarked on the raid to her, but no deputy presented her with a  
12 warrant. (FAC ¶¶ 43–44.) Plaintiff Swearerger then entered her home and allegedly found that the  
13 deputies had damaged three doors, trim, doorknobs, and locks while breaking into locked rooms  
14 during their search. (FAC ¶ 45.) According to the FAC, the vegetable garden behind her house had  
15 been scraped and overturned with a tractor, destroying two small cannabis plants in addition to  
16 multiple fruit and vegetable plants. (FAC ¶ 46.) The same scraping had been done to her son  
17 Felix's cannabis cultivation area farther back on her property, where the soil had been scraped into  
18 mounds filled with dead cannabis plants and the debris from the surrounding structures. (FAC ¶  
19 47.) Plaintiff Swearerger and Felix saved and replanted about ten cannabis plants. (FAC ¶ 47.)  
20 Plaintiff Swearerger was at home the next day when she saw two sheriff's vehicles, three CHP  
21 vehicles, and two Fish and Game trucks carrying tractors drive across her property towards the  
22 cannabis cultivation site. (FAC ¶ 48.) The vehicles left about 30 minutes later, after which  
23 Plaintiff Swearerger discovered that the deputies had scraped more soil and destroyed another 25  
24 cannabis plants, including the ten salvaged plants. (FAC ¶ 50.) She did not approach the vehicles  
25 on the second day, and no deputy presented her with a warrant. (FAC ¶ 53.)

26 On July 23, 2024, Plaintiff Britton heard that a raid was happening on his family's trust  
27 allotment, and he went to the property with his son. (FAC ¶ 54.) When they arrived, they  
28 encountered sheriff's deputies who allegedly said they had a search warrant for any building on

1 the property and ordered them to leave. (FAC ¶ 54.) No search warrant was presented. (FAC ¶ 54.)  
2 During the search, the deputies purportedly destroyed cannabis plants, cannabis cultivation  
3 structures and equipment, fencing, and an electric gate. (FAC ¶ 54.) The FAC alleges that Plaintiff  
4 Britton had the right to cultivate cannabis on the trust allotment under the Tribe's Compassionate  
5 Use Ordinance. (FAC ¶ 100.)

6 After the raids, Plaintiff James was presented with the search warrant apparently used in  
7 the search of her property, attached to the FAC as Exhibit F, which did not indicate that her  
8 property was on the Reservation. (FAC ¶ 57.) No criminal charges had been filed against any of  
9 the Plaintiffs when the FAC was submitted in July 2025, but Sheriff Kendall allegedly stated that  
10 Defendants were preparing criminal cases for the District Attorney's Office to consider. (FAC ¶  
11 61.) The Tribe was not informed about any of the searches prior to their execution. (FAC ¶ 38.)  
12 The FAC also alleges that, on July 24, 2024, after the raids, the Tribe issued a "cease-and-desist"  
13 order to Sheriff Kendall to stop the raids. (FAC ¶ 70.) The raids ended, but Mendocino Defendants  
14 then purportedly "refused to perform law enforcement services" on the Reservation in retaliation  
15 for the cease-and-desist order. (FAC ¶ 70.)

16 Plaintiffs further allege that Defendants "have raided tribal trust lands on the Reservation  
17 with impunity for over a decade." (FAC ¶ 64.) They support this allegation with a search warrant  
18 for another trust allotment served on a different Tribal member in 2022, and with citations to  
19 multiple press releases that describe a series of operations by Defendants targeting cannabis  
20 cultivations sites since 2021.<sup>5</sup> (FAC ¶¶ 63–64.) They also state that Sheriff Kendall has posted on

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21  
22 <sup>5</sup> *Mendocino Cannabis Crackdown Results in 11 Tons of Product, 30K Plants*, MENDOFEVER (Oct. 8, 2024)  
23 ("During the last weeks of September 2024, the Mendocino County Sheriff's Office, with the assistance of  
24 the Humboldt County Sheriff's Office, served numerous warrants at unlicensed cannabis sites in the Round  
25 Valley area. . . A total of sixteen (16) locations were targeted during the week-long operation, with the  
26 majority of locations being in the greater Covelo area and one site in the Mendocino National Forrest.");  
27 *Mendocino Sheriff Briefs Community on Round Valley Marijuana Enforcement*, MENDOFEVER (Aug. 4,  
28 2024) ("Thanks to the previously mentioned partnerships, the Mendocino County Sheriff's Office  
collaborated with the Humboldt County Sheriff's Office regarding illegal cannabis being cultivated in Round  
Valley. . . These lands were identified as being private properties, as well as state and tribal lands. . . Let me  
be clear about this, we will continue to investigate these crimes and will continue to charge the violators.");  
*California's Cannabis Taskforce Targets Covelo Grow Sites Eradicating an Estimated \$45 Million of  
Product*, MENDOFEVER (Sept. 2, 2023) ("During the week of Aug. 21, wildlife officers at the California  
Department of Fish and Wildlife (CDFW) led a Unified Cannabis Enforcement Taskforce (UCETF)  
operation in Covelo and the surrounding areas in Mendocino County. . . The operation targeted 29 properties,

1 Facebook for years about cannabis raids on the Reservation targeting the “most egregious  
2 violators” of marijuana laws and attached some of his posts, including a 2022 post discussing his  
3 collaboration with other local sheriffs on marijuana enforcement and an August 2024 post  
4 apparently discussing the raids central to the allegations. (FAC ¶ 65; FAC Ex. H.) Attached to the  
5 FAC are eight supporting exhibits, including the following: three claims forms filed by the three  
6 Individual Plaintiffs in Humboldt and Mendocino counties for the damage caused during the raids  
7 (Ex. A); the Amended Compassionate Use Ordinance of the Round Valley Indian Tribes of 2006  
8 (Ex. B); title status reports for the three allotments allegedly raided by Defendants (Exs. C, D, E);  
9 the search warrant and affidavit presented to Plaintiff James after the search of her property (Ex.  
10 F);<sup>6</sup> a search warrant and property receipt, apparently relating to the 2022 search of an allotment  
11 owned by a Tribal member (Ex. G); and three public Facebook posts by Sheriff Kendall on the  
12 Mendocino Sheriff account from 2022 and 2024 describing local cannabis enforcement operations  
13 (Ex. H).

14 Summary of Plaintiffs' Claims and the Pending Motions

15 Plaintiffs plead seven causes of action: unlawful assertion of jurisdiction by Defendants  
16 under Public Law 280 (“First Claim”) (FAC ¶¶ 84–89); unlawful interference with Plaintiff  
17 Tribe’s sovereignty (“Second Claim”) (FAC ¶¶ 90–94); unlawful searches and seizures under the  
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19 where officers located and eradicated over 41,000 cannabis plants, destroyed over 7,000 pounds of processed  
20 cannabis and seized 40 firearms.”); Shafiq Najib, *MSCO: Unlawful marijuana farm in Covelo abolished,*  
21 *multiple people detained Thursday*, KRCRTV (July 30, 2021, updated August 2, 2021) (“Over 20,000  
22 illegally cultivated marijuana plants were reportedly confiscated and multiple people were detained at the  
23 site during a major bust in Covelo on Thursday, according to the Mendocino County Sheriff’s Office. . . . The  
24 Mendocino County Sheriff’s Office would like to recognize and thank the following participating agencies  
who assisted in the successful operations conducted on 07-29-2021. . . . County of Mendocino Marijuana  
Enforcement Team, Mendocino Major Crimes Task Force, Mendocino County Sheriff’s Office Detective  
Bureau, Mendocino County Sheriff’s Office Patrol Division, Mendocino County Code Enforcement, . . . ,  
*California Highway Patrol . . .*” (emphasis added)). All articles were accessed by the court through the  
Internet Archive Wayback Machine.

25 <sup>6</sup> Exhibit F to the FAC is a copy of an executed search warrant, sworn to by Humboldt County Sheriff’s  
26 Office Deputy Justin Pryor, alleging probable cause to believe that the property described in the warrant can  
be seized as it was “used as the means of committing a felony” and “is evidence which tends to show a felony  
27 has been committed,” among other violations. (FAC Ex. F., at 1.) The warrant includes as an attachment a  
photograph of a rural parcel containing five large greenhouses covered in plastic next to a single-family  
28 residence, and a series of authorizations, including an order to “destroy the marijuana plant/products.” (FAC  
Ex. F., at 2–4.)

1     Fourth Amendment (“Third Claim”) (FAC ¶¶ 95–102); unlawful searches and seizures under the  
2     California Constitution Article I § 13 (“Fourth Claim”) (FAC ¶¶ 103–106); intentional  
3     interference with Plaintiffs’ constitutional rights under the Bane Act by Defendants Kendall,  
4     Honsal, and Pryor, with Defendants Mendocino and Humboldt counties vicariously liable under  
5     the CTCA (“Fifth Claim”) (FAC ¶¶ 107–111); negligence by Defendants Kendall, Honsal, and  
6     Pryor, and Defendants Mendocino and Humboldt counties vicariously liable (“Sixth Claim”)  
7     (FAC ¶¶ 112–119); and violation of Plaintiffs’ Fourteenth Amendment equal protection rights  
8     against selective enforcement by Mendocino Defendants and Does 1–50 (“Seventh Claim”) (FAC  
9     ¶¶ 120–127).

10 By way of remedy, Plaintiffs seek “declaratory and injunctive relief against Defendants  
11 preventing them from enforcing State cannabis laws against Plaintiffs while engaging in cannabis  
12 activities on the Reservation and requiring that Defendant Kendall and Mendocino County enforce  
13 State criminal law and serve and protect Indians on the Reservation”; an award of compensatory  
14 and punitive damages against all Defendants for the violations of federal and state law; an award  
15 of compensatory damages against Defendants Mendocino County and Humboldt County under the  
16 CTCA; an award of prejudgment interest on any award of damages to the extent permitted by law;  
17 and an award of “reasonable attorneys’ fees, costs and disbursements” pursuant to state and  
18 federal law. (FAC at 28.)

19 Mendocino Defendants filed the pending Motion to Dismiss pursuant to Fed. R. Civ. P.  
20 12(b)(1) and 12(b)(6), asserting lack of subject matter jurisdiction and challenging the sufficiency  
21 of the allegations set forth in the FAC. (Dkt. 40.) Defendant Duryee also moves to dismiss the  
22 FAC pursuant to Rules 12(b)(1) and 12(b)(6). (Dkt. 46.) Defendant Duryee argues that the FAC  
23 must be dismissed for lack of standing, ripeness, and Eleventh Amendment immunity, and  
24 because Plaintiffs fail to state a claim for relief against him. (Dkt. 46 at 9–11.)

## LEGAL STANDARDS

When evaluating 12(b)(1) challenges to the court's subject-matter jurisdiction, it should be noted that plaintiffs bear the burden of proving jurisdiction at the time the action is commenced. *See Tosco Corp. v. Cmtys. for Better Env't*, 236 F.3d 495, 499 (9th Cir. 2001), overruled on other

1 grounds by *Hertz Corp. v. Friend*, 559 U.S. 77, 96–97 (2010); *see also Kingman Reef Atoll Invs.,*  
2 *LLC v. United States*, 541 F.3d 1189, 1197 (9th Cir. 2008). Challenges to standing are properly  
3 brought through a Rule 12(b)(1) motion to dismiss. *Chandler v. State Farm Mut. Auto. Ins. Co.*,  
4 598 F.3d 1115, 1122 (9th Cir. 2010) (“Because standing and ripeness pertain to federal courts’  
5 subject matter jurisdiction, they are properly raised in a Rule 12(b)(1) motion to dismiss.”). “A  
6 Rule 12(b)(1) jurisdictional attack may be facial or factual.” *Safe Air for Everyone v. Meyer*, 373  
7 F.3d 1035, 1039 (9th Cir. 2004). A facial attack “asserts that the allegations contained in the  
8 complaint are insufficient on their face to invoke federal jurisdiction.” *Id.* When considering this  
9 type of challenge, courts are required to “accept as true the allegations of the complaint.” *See*  
10 *United States ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1189 (9th Cir. 2001); *see also*  
11 *Miranda v. Reno*, 238 F.3d 1156, 1157 n.1 (9th Cir. 2001). On the other hand, in a factual attack,  
12 “the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke  
13 federal jurisdiction.” *Safe Air*, 373 F.3d at 1039. In resolving a factual attack on jurisdiction,  
14 courts need not presume the truthfulness of the plaintiff’s allegations and may review evidence  
15 beyond the complaint without converting the motion to dismiss into a motion for summary  
16 judgment. *See id.*; *see also White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

17 In reviewing the sufficiency of a complaint in light of a request to dismiss under Rule  
18 12(b)(6), before the presentation of any evidence either by affidavit or admissions, the court’s task  
19 is limited—the issue is not whether a plaintiff will ultimately prevail, but rather whether a plaintiff  
20 is even entitled to offer evidence to support the claims. *See Scheuer v. Rhodes*, 416 U.S. 232, 236  
21 (1974); *see also Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). Dismissal is  
22 proper when an operative complaint either fails to advance “a cognizable legal theory,” or fails to  
23 include “sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police*  
24 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990); *see also Graehling v. Village of Lombard*, 58 F.3d 295,  
25 297 (7th Cir. 1995).

26 To survive dismissal under the standards associated with Rule 12(b)(6), complaints must  
27 contain enough relevant factual allegations to establish the grounds for a plaintiff’s entitlement to  
28 relief—doing so “requires more than labels and conclusions, and a formulaic recitation of the

1 elements of a cause of action . . . ." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Nor  
2 does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" "  
3 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp.*, 550 U.S. at 557). Under these  
4 standards, courts follow a "two-prong approach" for addressing a motion to dismiss: (1) the court  
5 must accept as true all of the allegations contained in a complaint except for legal conclusions,  
6 threadbare recitals of the elements of a cause of action, or conclusory statements; and (2) only a  
7 complaint that states a *plausible* claim for relief survives a motion to dismiss. Plausibility is a  
8 context-specific task that requires the reviewing court to draw on its judicial experience and  
9 common sense; however, where the well-pleaded facts do not permit the court to infer more than  
10 the mere *possibility* of misconduct, the complaint may have alleged, but it has failed to "show,"  
11 "that the pleader is entitled to relief" as required by Rule 8(a)(2). *See generally Iqbal*, 556 U.S. at  
12 678–79. In short, for a complaint to survive a Rule 12(b)(6) motion to dismiss, the non-conclusory  
13 factual content and the reasonable inferences from that content must plausibly suggest a claim  
14 entitling the plaintiff to relief. *See Moss v. U.S. Secret Serv.*, 572 F.3d 962, 970 (9th Cir. 2009).

15 As to the nature of dismissals, leave to amend should be granted unless it is clear that  
16 amendment would be futile because further amendments cannot remedy the defects in the  
17 complaint. *See Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1051 (9th Cir. 2008) ("Dismissal  
18 without leave to amend is proper if it is clear that the complaint could not be saved by  
19 amendment."); *see also Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th  
20 Cir. 2005); *California ex rel. Cal. Dep't of Toxic Substances Control v. Neville Chem. Co.*, 358  
21 F.3d 661, 673 (9th Cir. 2004) ("[D]enial of leave to amend is appropriate if the amendment would  
22 be futile.") (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

### 23 **JURISDICTION UNDER PUBLIC LAW 280 AND TRIBAL SOVEREIGNTY**

24 The first cause of action in the FAC requests declaratory and injunctive relief on the  
25 grounds that Defendants cannot enforce California's marijuana laws against Plaintiffs on the  
26 Reservation because they do not have jurisdiction under Public Law 280. It specifically seeks "an  
27 order declaring that the Defendants have no authority or jurisdiction to search, seize and destroy  
28 Individual Plaintiffs' property for alleged violations of the H & S Code by Individual Plaintiffs

1 and other Indians on the Reservation” and an injunction preventing Defendants from “searching  
 2 and destroying the Individual Plaintiffs’ and other Indians’ property on the Reservation for  
 3 violations of the H & S Code.” (FAC ¶¶ 87–88.) The second cause of action also requests similar  
 4 injunctive relief enjoining Defendants from “enforcing the provisions of the H & S Code” against  
 5 Indians on the Reservation, as this enforcement unlawfully interferes with the Tribe’s sovereignty  
 6 by “preventing the Tribe from determining to what extent and under what conditions, if any, tribal  
 7 members will be able to cultivate, possess and use cannabis on the Reservation.”<sup>7</sup> (FAC ¶¶ 90–  
 8 94.) Mendocino Defendants move to dismiss both causes of action in their entirety.

9 When the conduct of Indians on Indian country is at issue, tribal sovereignty is subordinate  
 10 only to federal law and is generally not subject to state law unless Congress has expressly  
 11 provided the state with such jurisdiction. *California v. Cabazon Band of Mission Indians*, 480 U.S.  
 12 202, 207 (1987), superseded by statute on other grounds; see also *Chicken Ranch Rancheria of*  
 13 *Me-Wuk Indians v. California*, 42 F.4th 1024, 1031 (9th Cir. 2022) (“State laws generally are not  
 14 applicable to tribal Indians on an Indian reservation except where Congress has expressly provided

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16 <sup>7</sup> As an aside, the court notes that the requests for injunctive and declaratory relief are overly broad and, as  
 17 worded, could not be granted based on the facts alleged in the FAC. Plaintiffs ask the court to declare that  
 18 Defendants have no jurisdiction to enforce “the provisions” of the California Health and Safety Code on the  
 19 Reservation or to conduct searches based on violations of the Health and Safety Code. These requests do not  
 20 limit the injunction to any specific sections of the Health and Safety Code or even generally refer to the  
 21 Cannabis Division of the code, which is far too broad—the Ninth Circuit has specifically found that some  
 22 provisions of the California Health and Safety Code are enforceable on Indian reservations. See *Quechan*  
 23 *Indian Tribe v. McMullen*, 984 F.2d 304, 308 (9th Cir. 1993) (holding that the fireworks laws at California  
 24 Health and Safety Code §§ 12500 *et seq.* are enforceable on reservations). The Prayer for Relief attempts to  
 25 mitigate this by asking the court to do the following: “Issue declaratory and injunctive relief against the  
 26 Defendants preventing them from enforcing State cannabis laws against Plaintiffs while engaging in cannabis  
 27 activities on the Reservation and requiring that Defendant Kendall and Mendocino County enforce State  
 28 criminal law and serve and protect Indians on the Reservation.” (FAC at 28.) But this request is contradictory,  
 as some provisions of “State cannabis laws” are indisputably criminal—for example, the prohibition on  
 selling or giving cannabis to minors. See *United States v. Dotson*, 615 F.3d 1162, 1169 (9th Cir. 2010)  
 (finding law prohibiting the furnishing of alcohol to minors to be criminal and thus enforceable on  
 reservations under the Assimilative Crimes Act). Under a 12(b) motion to dismiss, courts may consider such  
 questions as whether requested damages are barred as a matter of law or whether plaintiffs have standing to  
 request injunctive relief—at this stage, however, courts rarely dismiss a claim on the basis that the requested  
 relief is inappropriate because prayers for relief are not themselves causes of action. See *United States v.*  
*Maricopa Cnty.*, 915 F. Supp. 2d 1073, 1082 (D. Ariz. 2012) (denying request to dismiss portion of complaint  
 requesting injunctive relief because “[a] 12(b)(6) motion to dismiss challenges the legal sufficiency of the  
 pleadings, not the appropriateness of the relief sought.”). As such, the court moves to the substance of the  
 First and Second Claims despite the inoperable injunction requests.

1 that State laws shall apply.” (quoting *McClanahan v. State Tax Comm’n of Ariz.*, 411 U.S. 164,  
2 170–71 (1973)); *Big Sandy Rancheria Enters. v. Bonta*, 1 F.4th 710, 725 (9th Cir. 2021) (state  
3 regulatory law is generally inapplicable to the conduct of Indians on reservations). The relevant  
4 federal law conferring jurisdiction in this case is known as Public Law 280 (“PL 280”), which  
5 grants the State of California broad powers over criminal matters and limited powers over civil  
6 matters involving on-reservation conduct by Indians. 18 U.S.C. § 1162(a); 28 U.S.C. § 1360.<sup>8</sup> In  
7 defining the scope of those limited civil matters, the Supreme Court has held that Congress did not  
8 “confer upon the States general civil regulatory powers.”<sup>9</sup> *Bryan v. Itasca Cnty.*, 426 U.S. 373,  
9 385–390 (1976). Thus, in deciding whether a state law may be enforced pursuant to the  
10 jurisdiction granted by PL 280, the relevant question is whether the state law at issue is  
11 “criminal/prohibitory” or “civil/regulatory” in nature. *Cabazon*, 480 U.S. at 208–210.

12 There is no bright-line rule for distinguishing between criminal and regulatory statutes;  
13 “[t]he shorthand test is whether the conduct at issue violates the State’s public policy.”

14 *Confederated Tribes of Colville Rsrv. v. State of Wash.*, 938 F.2d 146, 147 (9th Cir. 1991)

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16 <sup>8</sup> The criminal provision reads as follows with respect to California:

17 [California] shall have jurisdiction over offenses committed by or against Indians in [all  
18 Indian country within the State] to the same extent that [California] has jurisdiction over  
19 offenses committed elsewhere within [California], and the criminal laws of [California] shall  
have the same force and effect within such Indian country as they have elsewhere within  
[California].

20 18 U.S.C. § 1162(a) (substituting the California-specific elements of the table into the general language that  
21 also applies to five other states). The civil jurisdiction grant reads as follows:

22 [California] shall have jurisdiction over civil causes of action between Indians or to which  
23 Indians are parties which arise in [all Indian country within the State] to the same extent that  
[California] has jurisdiction over other civil causes of action, and those civil laws of  
[California] that are of general application to private persons or private property shall have  
the same force and effect within such Indian country as they have elsewhere within the State.

24 28 U.S.C. § 1360(a) (substituting the California specific elements of the table into the general language that  
25 also applies to five other states).

26 <sup>9</sup> The Supreme Court in *Bryan* also held that Congress intended “to grant [States] jurisdiction over private  
27 civil litigation.” 426 U.S. 373, 385 (1976); *see also Confederated Tribes of Colville Rsrv. v. State of Wash.*,  
28 938 F.2d 146, 147 (9th Cir. 1991) (limited state civil jurisdiction conferred by PL 280 was intended  
“essentially to afford Indians a forum to settle private disputes among themselves.”). No party contends that  
the laws at issue in this case might fall into this category of private civil litigation.

1 (quoting *Cabazon*, 480 U.S. at 209); *Quechan Indian Tribe v. McMullen*, 984 F.2d 304, 307 (9th  
2 Cir. 1993) (holding that the proper inquiry is “one of the statute’s intent and not simply its label”).  
3 In most cases, a law whose intent is “generally to prohibit certain conduct” is criminal/prohibitory,  
4 *Quechan*, 984 F.2d at 306 (quoting *Cabazon*, 480 U.S. at 209), while a law which generally  
5 permits certain conduct subject to regulation is more likely to be civil/regulatory. *Colville*, 938  
6 F.2d at 147–48.

7 Mendocino Defendants argue that any claims based on alleged lack of jurisdiction under  
8 PL 280 to enforce marijuana laws on the Reservation should be dismissed as a matter of law  
9 because the marijuana regulations at issue in this case are criminal in nature. (Mot. Dismiss, Dkt.  
10 40, at 5–15.) Plaintiffs argue that Mendocino Defendants mischaracterize marijuana law in  
11 California and the scope of the laws at issue here, and that California marijuana law is regulatory  
12 in nature rather than criminal in nature.<sup>10</sup> (Pl.’s Resp., Dkt. 48, at 4–9.)

13 Plaintiffs and Defendants generally rely on the same cases analyzing jurisdiction under PL  
14 280 to reach opposite conclusions. The essential difference is the characterization of the conduct at  
15 issue and California’s public policy with regard to that conduct. Defendants argue that, while  
16 some cannabis-related conduct is regulated by state law, “large-scale marijuana cultivation”—the  
17 conduct they contend is at issue here—“is and has always been criminally prohibited.” (Def.’s  
18 Mot., Dkt. 40, at 16.) Defendants first rely on the Ninth Circuit’s opinions in *Dotson* and *Clark* to  
19 argue that the focus should be on the specific statute at issue rather than the overarching legal  
20 scheme, which in this case requires focusing on those statutes governing the cultivation of  
21 cannabis. *United States v. Dotson*, 615 F.3d 1162 (9th Cir. 2010) (holding that a penal provision  
22 under a regulatory scheme may be properly assimilated under the Assimilated Crimes Act  
23 (“ACA”) where the provision was both criminal and prohibitory and applying this analysis to  
24 assimilate the California law penalizing the furnishing of alcohol to minors); *United States v.*  
25 *Clark*, 195 F.3d 446 (9th Cir. 1999) (finding that a state law prohibiting the practice of law  
26 without a license could be assimilated under the ACA because it was both criminal and

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28 <sup>10</sup> Throughout this Order, the court uses “marijuana” and “cannabis” interchangeably to refer to the definition  
of cannabis contained in California Health and Safety Code § 11018.

1 prohibitory). Defendants then favorably compare Plaintiffs' case to *Marcyes* and *Quechan*, the  
2 latter of which led the Ninth Circuit to analyze the public policy of California and to conclude that,  
3 although the state regulated the sale of fireworks through a comprehensive licensing scheme, the  
4 purpose was to generally prohibit fireworks in order to protect public safety, and thus the  
5 fireworks laws were properly enforced on the reservation. *United States v. Marcyes*, 557 F.2d  
6 1361, 1364 (9th Cir. 1977) (holding that the fireworks laws were applicable on the reservation  
7 because "the purpose of the fireworks laws is not to generate income, but rather to prohibit their  
8 general use and possession"); *Quechan*, 984 F.2d at 307 (finding that California could enforce its  
9 fireworks laws under PL 280 because "the intent of the statute is to generally prohibit the sale of  
10 fireworks with [a] limited exception" despite the existence of a licensing scheme). Finally,  
11 Defendants point to a number of state criminal cases concerning a variety of cannabis-related  
12 conduct after the legalization of adult use of marijuana to argue that the new laws decriminalized  
13 certain marijuana-related offenses while purposefully prohibiting and maintaining criminal  
14 penalties for other conduct, including the large-scale cultivation and possession of marijuana.

15 Plaintiffs, on the other hand, argue that the wide-ranging scheme in California for licensing  
16 and taxing marijuana cultivation and distribution establishes that cannabis cultivation is not  
17 against California's public policy but is instead merely subject to regulation. Plaintiffs distinguish  
18 the laws at issue in this case with the laws analyzed under *Dotson* and *Clark* by arguing that those  
19 laws involved *per se* prohibitions on conduct with no legal analog, while the laws here both allow  
20 limited personal cultivation and possession while also creating a legal analog in the form of  
21 licensed large-scale cultivation. They also distinguish *Marcyes* and *Quechan* by arguing that  
22 marijuana cultivation is broadly permitted and that the state derives significant revenue from the  
23 licensing and taxing of the marijuana market. Plaintiffs analogize this case to *Colville*, in which  
24 the Ninth Circuit held that speeding offenses were not criminal under PL 280 after the Washington  
25 legislature had decriminalized these offenses and stripped them of criminal procedures and  
26 protections, 938 F.2d at 148—in Plaintiffs' view, "[a] state that affirmatively licenses, taxes, and  
27 regulates an activity has, by definition, adopted a permissive policy; its cannabis laws are  
28 civil-regulatory." (Pl.'s Resp., Dkt. 48, at 7.) Finally, they argue that state law criminal cases have

1 no bearing on the nature of the law under PL 280 because such cases presume legitimate criminal  
2 jurisdiction, and that any ambiguities in the statute must be resolved in favor of the Tribe. (*Id.* at  
3 7–11.)

4 Defining the Conduct and Laws at Issue

5 The threshold question is the definition and scope of the conduct at issue in this case. The  
6 answer to this question is consequential; the wide variety in outcomes across cases analyzing the  
7 regulatory/prohibitory distinction “tends to result from how courts characterize the scope of the  
8 conduct at issue.” *Doe v. Mann*, 415 F.3d 1038, 1954 (9th Cir. 2005). In *Cabazon*, the Supreme  
9 Court rejected the state defendants’ framing of the conduct as “high stakes, unregulated” bingo  
10 and instead examined state laws pertaining to gambling in general and bingo in particular, finding  
11 that the criminal penalties attached to “high stakes, unregulated” bingo did not convert “an  
12 otherwise regulatory law” into a criminal law enforceable under PL 280. *Cabazon*, 480 U.S. at  
13 211. The Court then held that California “regulates rather than prohibits gambling in general and  
14 bingo in particular.” *Id.* The Ninth Circuit applied this analysis in *Colville* to decide whether state  
15 speeding laws could be enforced on Indian reservations. *Colville*, 938 F.3d at 148–49. There, the  
16 court found that the *Cabazon* inquiry is “whether the prohibited activity is a small subset or facet  
17 of a larger, permitted activity . . . or whether all but a small subset of a basic activity is  
18 prohibited.” *Id.* at 149. Using *Marcyes* as an example of how this test should be implemented, the  
19 court held that speeding—the prohibited activity—was merely an extension of the broadly  
20 regulated activity of driving, and thus that speeding laws were regulatory and could not be  
21 enforced on the reservation. *Id.* at 149.

22 The first step in conducting this analysis is to determine the laws at issue in this case.  
23 Although Plaintiffs routinely reference “California’s cannabis laws” and discuss cannabis  
24 regulation in broad terms, identifying the specific statutory provisions at issue is necessary  
25 because some of the cannabis code is very likely criminal in nature—for example, the prohibition  
26 on selling or giving cannabis to minors mirrors the provision in *Dotson* that was deemed criminal  
27 by the Ninth Circuit, 615 F.3d at 1168–69—while other provisions appear much more regulatory.  
28 There have been no charges filed against Plaintiffs and no discovery, so it is not immediately

1 obvious which laws Defendants sought to enforce on the Reservation; the specific statutory  
2 provisions at issue must therefore be gleaned from the conduct central to the allegations and the  
3 attachments to the FAC. The FAC references statutes pertaining to cannabis cultivation,  
4 possession, and use by adults, and medicinal exceptions to limitations on such activities,  
5 specifically through stating that the Tribe's Compassionate Use Ordinance conflicts with state law,  
6 (FAC ¶ 30), and describing Health and Safety Code §§ 11362.5 and 11358 (governing cannabis  
7 cultivation, possession, and use) as regulatory rather than criminal, (FAC ¶¶ 35–36). However, the  
8 allegations concerning the raids themselves are focused on cannabis cultivation and medical use  
9 exceptions: the FAC mentions that two of the Individual Plaintiffs use cannabis medicinally, (FAC  
10 ¶¶ 39, 51); it discusses the destruction of “hundreds” of cannabis plants during the raids, (FAC ¶  
11 37); it states that at least one of the Individual Plaintiffs was not cultivating for sale or distribution,  
12 (FAC ¶ 51); it alleges that all three Individual Plaintiffs “had the right to cultivate cannabis” under  
13 the Tribe's Compassionate Use Ordinance, (FAC ¶ 100); it alleges that deputies told Plaintiff  
14 James that “growing cannabis is illegal and that they could charge her with the sale and  
15 manufacturing of illegal drugs,” (FAC ¶ 40); and it describes the intentional destruction of  
16 growing cannabis plants and cultivation equipment by Defendants or Defendants' agents in all  
17 three searches, (FAC ¶¶ 39–40, 46–47, 50, 54).

18 The FAC also includes one search warrant that was presented to Plaintiff James sometime  
19 after the search of her property, which specifies that probable cause for search and seizure existed  
20 pursuant to Penal Code §§ 1524, 1528(a), and 1536,<sup>11</sup> and references Health and Safety Code §§  
21 11470, 11472, and 11488. In addition, the warrant requests that the property be inspected for  
22 violations of a number of other codes pertaining to marijuana regulation, provides aerial pictures  
23 of greenhouses on the property, and describes the “removal” of 580 growing marijuana plants.

24

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25 <sup>11</sup> These three Penal Code sections referenced in the search warrant describe the necessary procedure for  
26 properly obtaining and executing search warrants, and they are unhelpful for identifying the specific basis on  
27 which the search warrant was obtained. Cal. Penal Code § 1524 (listing the grounds on which a search warrant  
28 may be issued, including when property was or will be used in the commission of a felony or public offense); Cal. Penal Code § 1528(a) (if a magistrate is satisfied with the grounds for a search warrant, they must issue the warrant to a peace officer with their signature); Cal. Penal Code § 1536 (“All property or things taken on a warrant must be retained by the officer in his custody”).

1 (FAC Ex. F, at 1, 5–6, 9.) The Health and Safety Codes referenced in the warrant do not specify  
2 which sections officials suspected Plaintiff James had violated: § 11470 lists the property subject  
3 to forfeiture when such property is associated with violations of the Controlled Substances Act  
4 division (which includes all cannabis-specific provisions), § 11472 allows peace officers to obtain  
5 a search warrant to seize any controlled substances possessed in violation of the controlled  
6 substances division, and § 11488 allows peace officers to seize property specified in § 11470  
7 when making or attempting to make an arrest under a list of sections, including § 11359 and §  
8 11360 of the cannabis subdivision. Sections 11359 and 11360 concern possession of cannabis for  
9 sale and the transport for sale, sale, furnishing, administering, and giving away of cannabis,  
10 respectively. Based on these code sections, the greenhouse photos, and the receipt for removed  
11 property, the warrant appears to be concerned with the cultivation and possible sale of cannabis.

12 Taken together, while the particular code sections Defendants attempted to enforce are not  
13 explicit, the information in the FAC and attached documents demonstrates that the relevant  
14 conduct in this case is the cultivation and possession for sale of cannabis, as well as cannabis  
15 cultivation and use for medicinal reasons under the compassionate use exemptions. The code  
16 sections directly regulating this conduct by unlicensed individuals are Health and Safety Code §  
17 11362.1 (defining legal cannabis use, possession, and cultivation), § 11358 (setting forth the  
18 penalties for unlawful cannabis cultivation), § 11359 (setting forth the penalties for possession of  
19 cannabis for sale), and § 11362.5 (Compassionate Use Act).

20 Public Policy and Statutory Intent

21 Having determined the conduct and statutes at issue, the court next examines the public  
22 policy of California and the intent of the cannabis-related Health and Safety Codes.<sup>12</sup> The current  
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24 <sup>12</sup> The laws governing cannabis-related conduct are widely distributed throughout California's codes,  
25 including include the Penal Code, the Education Code (e.g. covering use of medicinal marijuana in schools),  
26 the Civil Code (e.g. covering contracts involving marijuana), the Revenue and Taxation Code (e.g. covering  
27 cannabis excise taxes), and the Government Code (e.g. covering employment decisions related to prior  
28 cannabis use), to name a few. The Adult Use of Marijuana Act ("AUMA") alone added or altered code  
sections in the Health and Safety Code, the Business and Professions Code, the Labor Code, the Water Code,  
the Revenue and Taxation Code, and the Food and Agricultural Code. Plaintiffs argue that the totality of  
these code sections establish a generally permissive public policy towards cannabis in California. While it is  
relevant that these code changes together were intended to "establish a comprehensive system to legalize,  
control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical

1 Health and Safety Codes pertaining to cannabis were enacted by voters through Proposition 64 as  
2 the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA” or “the Act”) in 2016.<sup>13</sup>  
3 Section 2 of the Prop 64 text, “Findings and Declarations,” states that the Act “will legalize  
4 marijuana for those over 21 years old, protect children, and establish laws to regulate marijuana  
5 cultivation, distribution, sale and use, and will protect Californians and the environment from  
6 potential dangers”; it also clarifies that legalizing marijuana will reduce court workloads “but  
7 continue to allow prosecutors to charge the most serious marijuana-related offenses as felonies,  
8 while reducing the penalties for minor marijuana-related offenses as set forth in the Act.” Control,  
9 Regulate and Tax Adult Use of Marijuana Act, Initiative No. 15-0103, Section 2(A), (G) as  
10 amended (Dec. 7, 2015) (presented to and ratified by voters as Prop. 64 in general election of Nov.  
11 8, 2016). Section 3 of the AUMA, “Purpose and Intent,” contains a number of intended outcomes,  
12 including preventing illegal production of marijuana, “strictly control[ling]” nonmedical marijuana  
13 cultivation through regulation and enforcement, allowing adults to possess and cultivate marijuana  
14 “within defined limits,” and “tak[ing] nonmedical marijuana production and sales out of the hands

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15  
16 marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial  
17 growth and retail sale of marijuana,” the AUMA has many stated purposes and not all of its code changes  
18 are at issue in this case. It is important to determine the public policy of the state related to the specific  
19 conduct at issue. *See Dotson*, 615 F.3d at 1168–69 (analyzing the regulatory/prohibitory distinction under  
the ACA and rejecting the argument under *Cabazon* that the broader regulatory scheme governing alcohol  
rendered the prohibition on furnishing alcohol to minors a regulatory law). The court thus focuses this  
analysis on the Health and Safety Code.

20<sup>13</sup> The AUMA changed many code sections, with the most significant number of additions made to the  
21 Business and Professions Code. The current Business and Professions Codes §§ 26000–24325 regulating  
22 commercial nonmedical marijuana were integrated with the AUMA in 2017 and implemented as part of the  
23 Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The purpose of MAUCRSA  
24 was “to establish a comprehensive system to control and regulate the cultivation, distribution, transport,  
25 storage, manufacturing, processing, and sale” of both medicinal and recreational adult-use cannabis. Cal.  
26 Bus. & Prof. Code § 26000(b). These code sections create a comprehensive licensing and regulatory scheme  
27 for businesses growing and selling cannabis in California and lay out a series of administrative and civil  
28 penalties for failure to adhere to the regulations, although the statute does not limit the enforcement of  
additional penalties for unlicensed activities found elsewhere in the codes. Cal. Bus. & Prof. Code § 26038(e)  
(“Notwithstanding subdivision (a) [setting civil fines], criminal penalties shall continue to apply to an  
unlicensed person engaging in commercial cannabis activity in violation of this division.”); Cal. Bus. & Prof.  
Code § 26036 (“Nothing in this division shall be interpreted to supersede or limit the department or other  
state and local agencies from exercising their existing enforcement authority, including . . . [under] the Health  
and Safety Code [and] the Penal Code . . .”). The court does not focus on the Business and Professions Code  
because no party has alleged that any plaintiff was or intended to be conducting commercial cannabis activity  
under these sections or that any defendant intended to enforce these code provisions through the alleged  
searches.

1 of the illegal market and bring[ing] them under a regulatory structure that prevents access by  
2 minors and protects public safety, public health, and the environment.” *Id.* at Section 3(a)–(z).

3 The AUMA identified that it was not only important to create a legal and regulated market  
4 for marijuana, but that it was separately important to eliminate the illegal cultivation and  
5 production of marijuana. Eliminating this illegal market was an important stated goal not only for  
6 regulatory reasons like consumer safety and environmental protection, but also because the  
7 existence of the illegal market “benefits violent drug cartels and transnational gangs . . .  
8 jeopardizing public safety.” *Id.* at Section 2(H). In the furtherance of these goals, the AUMA  
9 reduced, but did not eliminate, the criminal penalties for most marijuana offenses, including felony  
10 penalties for recidivism and other aggravating factors associated with unlawful cultivation and  
11 possession for sale.<sup>14</sup> Moreover, the Act recognized the unique dangers of marijuana and the  
12 importance of discouraging “use by minors and abuse by adults,” and it did not remove cannabis  
13 from the list of Schedule I drugs in California. *Id.* at Section 3(s).

14 Given this background, the court finds that public policy in California is not generally in  
15 favor of cannabis production—it strictly limits and generally prohibits the large-scale cultivation  
16 and possession for sale of cannabis. Although California created a legal market for cannabis, the  
17 intent was, at least in part, to protect public safety through eradicating the illegal market. This goal  
18 was achieved in part through the retention of more severe criminal penalties for those offenses  
19 involving large-scale cultivation and possession-for-sale of cannabis. In particular, the AUMA  
20 draws a distinction between personal use, which was decriminalized, and other marijuana-related

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21  
22 <sup>14</sup> An adult over 21 may be subject to felony sentencing for marijuana cultivation if they have two or more  
23 prior convictions for unlawful cultivation, if they have one or more prior convictions for crimes specified in  
24 Penal Code § 667(a)(2)(C) or § 290(c), or if the unlawful cultivation resulted in additional violations of a  
25 variety of environmental codes or otherwise caused substantial environmental harm. Cal. Health & Saf. Code  
26 § 11358(d). An adult over 21 may be subject to felony sentencing for possession of cannabis for sale if they  
27 have two or more prior convictions for possession of cannabis for sale, if they have one or more prior  
28 convictions for crimes specified in Penal Code § 667(a)(2)(C) or § 290(c), if the possession for sale involved  
the knowing sale or attempted sale of cannabis to a person under 18 years of age, or if the possession for sale  
involved knowingly hiring, employing, or using a person under 21 years old for any part of the operation.  
Cal. Health & Saf. Code § 11359(c)–(d). In contrast, violations of the limitations on where cannabis may be  
smoked or ingested are only punishable by infraction; the exceptions are smoking or ingesting cannabis on  
school or day care grounds while youth are present, which is punishable by misdemeanor as described in §  
11357(c)–(d), and operating a vehicle while smoking or ingesting marijuana. Cal. Health & Saf. Code §  
11362.4(a)–(c).

1 conduct, which was not. This is similar to the distinction recognized by the Ninth Circuit in  
2 *Colville*, wherein Washington had amended its traffic laws and “carefully distinguished those  
3 offenses like speeding, which henceforth are subject to only civil penalties, from a long list of  
4 offenses like reckless driving or driving while intoxicated, which remain criminal.” *Colville*, 938  
5 F.2d at 148. Here, the statute decriminalized marijuana use by adults—nearly all violations for  
6 restrictions on use were made punishable by infraction only—while intentionally keeping more  
7 severe criminal penalties for unlawful cultivation and possession for sale.

8 Plaintiffs’ contention that cannabis has been broadly legalized and subject to regulation  
9 such that any criminal penalties are the exception and meant to enforce regulatory provisions  
10 overstates the AUMA’s impact. The underlying laws that set the foundation for California’s  
11 licensing scheme are criminal provisions. As explained above, criminal penalties were left in place  
12 for most cannabis offenses, and cannabis remains a Schedule I drug in California. This criminal  
13 legal framework is the background to all marijuana-related conduct in California. The exceptions  
14 to these criminal statutes are extremely limited. Adults may only cultivate up to six marijuana  
15 plants subject to a variety of restrictions and regulations, and may not possess any cannabis for  
16 sale, without a valid license. Moreover, the Health and Safety Codes do not penalize “unlicensed”  
17 cannabis cultivation or possession-for-sale on their face; instead, they broadly criminalize all  
18 possession-for-sale and almost all cultivation. Licenses are thus heavily-regulated exceptions to  
19 the broader scheme of criminalization, not the other way around. In addition, license fees are  
20 intended to cover the cost of administering the new regulations pertaining to marijuana businesses,  
21 not to raise revenue for the state. Cal. Bus. & Prof. Code § 26180 (“The licensure and renewal fee  
22 shall be calculated to cover the costs of administering this division.”); *see Quechan*, 984 F.2d at  
23 307 (finding fireworks law to be criminal because sale of fireworks was narrowly limited, licenses  
24 were intended to cover cost of administering and enforcing fireworks law, and criminal penalties  
25 were not removed). Finally, while state law is not controlling, it is persuasive that multiple  
26 California courts have found that Proposition 64 was not intended to (and did not) remove  
27 marijuana-related conduct from the criminal realm altogether. *See, e.g., People v. Herrera*, 267  
28 Cal. Rptr. 3d 95, 100–01 (Cal. Ct. App. 2020) (“after the passage of Proposition 64, possession

1 and use of cannabis is legal in some circumstances but not legal in other circumstances” and  
2 “cannabis remains a controlled substance listed in Schedule I”); *People v. Lin*, 236 Cal. Rptr. 3d  
3 818, 823 (Cal. App. Dep’t Super. Ct. 2018) (“With respect to the charges in the amended  
4 complaint (violations of sections 11359(b) [possession for sale] and 11358(c) [cultivation]) the  
5 penalty changed but the crime itself did not”).

6 The relevant distinction is not possession and cultivation versus large-scale cultivation, as  
7 the parties contend, but between personal use and broader cultivation and sale. While the AUMA  
8 specifically decriminalized cannabis consumption and use—instead subjecting that use to limited  
9 regulation—it did not broadly legalize other cannabis-related conduct, including cultivation and  
10 possession-for-sale. California’s public policy is concerned with eliminating illegal marijuana not  
11 just because it diverts licensing fees away from the state, but because the state has found that  
12 illegal marijuana cultivation and distribution is dangerous in its own right and must be eradicated.  
13 While there is no perfect analog to this case, California’s marijuana laws and policy are much  
14 more similar to those laws that have been found to be criminal/prohibitory in nature rather than  
15 those found to be regulatory in nature. *Compare Dotson*, 615 F.3d at 1169 (furnishing alcohol to  
16 minors is criminal); *Clark*, 195 F.3d at 450 (unlicensed practice of law is criminal); *Marcyes*, 557  
17 F.2d at 1364 (fireworks laws are criminal); *Quechan*, 984 F.2d at 307 (fireworks laws, even in  
18 presence of licensing scheme, are criminal); *St. Germaine v. Cir. Ct. for Vilas Cnty.*, 938 F.2d 75,  
19 77 (7th Cir. 1991) (driving without a license is criminal); *Cordova v. Mendocino Cnty. Sheriff’s*  
20 *Off.*, No. 23-CV-03830-RFL, 2024 WL 1090012, at \*2 (N.D. Cal. Feb. 2, 2024) (finding cannabis  
21 cultivation is criminal without engaging in analysis); *with Cabazon*, 480 U.S. at 208–11 (bingo  
22 statutes are regulatory); *Colville*, 938 F.2d at 148 (traffic laws prohibiting speeding are  
23 regulatory); *In re Sonoma Cnty. Fire Chief’s Application for an Inspection Warrant*, 228 F. App’x  
24 671, 672 (9th Cir. 2007) (building codes, including fire codes, are regulatory); *Doe*, 415 F.3d at  
25 1056 (child dependency proceedings are not criminal); *United States v. Best*, 573 F.2d 1095, 1100  
26 (9th Cir. 1978) (suspension of driver’s license is a regulatory, not criminal, penalty); *Burgess v.*  
27 *Watters*, 467 F.3d 676, 684–86 (7th Cir. 2006) (involuntary commitment statute is not criminal  
28 under PL 280); *U.S. v. Duro*, No. EDCV 07-1309 SGL (JCRX), 2009 WL 10669404, at \*12–15

1 (C.D. Cal. Apr. 1, 2009) (California's nuisance laws are regulatory); *Twenty-Nine Palms Band of*  
2 *Mission Indians v. Wilson*, 925 F. Supp. 1470 (C.D. Cal. 1996) (boxing laws are  
3 regulatory), *vacated as preempted by statute*, 156 F.3d 1239 (9th Cir. 1998).

4 The medical exception for some of the limitations on cannabis possession and cultivation  
5 does not render the statutes regulatory in nature. The strict limits on cultivation and possession are  
6 not applicable to persons who cultivate or possess cannabis for "the personal medical purposes of  
7 the patient upon the written or oral recommendation or approval of a physician." Cal. Health &  
8 Saf. Code § 11362.5(d). This is a narrow exception to limits on possession and cultivation that  
9 does not undermine the public policy of eradicating illegal marijuana operations. Moreover, the  
10 medical use exemption does not provide protection from search or arrest based on suspected  
11 violations of the laws limiting cultivation and possession, only an affirmative defense to  
12 prosecution. *People v. Mower*, 49 P.3d 1067, 1073–74 (Cal. 2002). California courts have even  
13 found that police officers do not have a duty to investigate whether a person has a valid medical  
14 excuse when obtaining and executing search warrants related to illegal cannabis possession and  
15 cultivation, and that the number of plants alone may sometimes be enough to constitute probable  
16 cause even when a person claims a medical exemption. *People v. Clark*, 178 Cal. Rptr. 3d 649,  
17 656 (Cal. Ct. App. 2014) ("that act cannot be interpreted to impose an affirmative duty on  
18 law enforcement officers to investigate a suspect's status as a qualified patient or primary  
19 caregiver under the act prior to seeking a search warrant."); *Littlefield v. Cnty. of Humboldt*, 159  
20 Cal. Rptr. 3d 731, 739 (Cal. Ct. App. 2013) ("Here, the sheer quantity of marijuana under  
21 cultivation could lead a reasonably prudent officer to conclude that plaintiffs' production far  
22 exceeded their medical needs."); *Oceanside Organics v. Cnty. of San Diego*, 341 F. Supp. 3d  
23 1129, 1143 (S.D. Cal. 2018) ("Accepting as true Plaintiffs' argument that they are qualified  
24 patients, Defendants may have had probable cause to arrest Plaintiffs Sneller and Smith based on  
25 the totality of circumstances at the time of the raid, including the number of marijuana plants at the  
26 collective."). As in *Quechan*, the existence of this very limited exception does not change the  
27  
28

1 character of the entire scheme.<sup>15</sup> 984 F.2d at 307. As such, the court finds that California statutes  
 2 governing cannabis cultivation and possession for sale are criminal and may be enforced by the  
 3 state on the Reservation pursuant to PL 280. *Cabazon*, 480 U.S. at 207 (holding that a law which  
 4 generally prohibits certain conduct may be enforced by a state under PL 280 against individual  
 5 Indians on reservations).

6 When the state has jurisdiction to enforce a criminal law on a reservation, inherent tribal  
 7 sovereignty does not prevent state law enforcement from investigating and prosecuting those laws.  
 8 *See Inyo Cnty. v. Paiute-Shoshone Indians of the Bishop Cnty. of the Bishop Colony*, 538 U.S.  
 9 701 (2003). Because the court finds that Defendants have jurisdiction under PL 280 to enforce  
 10 California law prohibiting possession of cannabis for sale and most marijuana cultivation on the  
 11 Reservation, the court **GRANTS** Mendocino Defendants' Motion to Dismiss as to the First and  
 12 Second Claims and **DISMISSES** the First and Second Claims with prejudice, as well as any  
 13 elements of other claims that rely on the contention that the underlying searches were illegal  
 14 because Defendants lacked enforcement jurisdiction.

## 15 STANDING AND PRIVATE RIGHT OF ACTION

### 17 Third and Seventh Claims – The Tribe's Standing to Bring Claims under § 1983

18 Mendocino Defendants move to dismiss Plaintiffs' Third and Seventh Claims based on the  
 19 claim that the Tribe is not a person, citing to *Inyo County v. Paiute-Shoshone Indians of the*  
 20 *Bishop Cnty. of the Bishop Colony*, 538 U.S. 701, 704 (2003), and thus lacks standing to bring the

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 23<sup>15</sup> The court notes that many of the provisions in the Tribe's Compassionate Use Ordinance are the type of  
 24 local land-use regulation that is expressly permitted by California state law and can exist alongside state  
 25 criminal law. *See, e.g., Granny Purps, Inc. v. Cnty. of Santa Cruz*, 266 Cal. Rptr. 3d 752, 757 (Cal. Ct. App.  
 26 2020) ("Significantly, California laws allowing access to medical marijuana do not limit the ability of a local  
 27 government to make land use decisions"). However, compliance with local ordinances does not alter the  
 28 probable cause analysis for search and arrest related to marijuana violations. *See Stewart v. Morris*, No. 10-  
 CV-04106-NJV, 2013 WL 5268977, at \*7 n.10 (N.D. Cal. Sept. 17, 2013) ("A DNC Ordinance in effect at  
 the time allowed medical marijuana patients to grow up to 99 plants in a 100 square-foot canopy. Plaintiffs  
 contend they were in compliance with the ordinance; Defendants contend that Plaintiffs exceeded the number  
 of plants allowed in the square footage of the gardens they were cultivating. Whether Plaintiffs were in  
 compliance with the DNC Ordinance does not affect the probable cause analysis.").

1 Third and Seventh Claims against Defendants.<sup>16</sup>

2 Defendants rely principally upon *Inyo County*. There, a tribe challenged the county's  
3 authority to seize casino employee records as part of a welfare fraud investigation. The tribe  
4 sought relief under § 1983, claiming that the county had violated its Fourth and Fourteenth  
5 Amendment rights and its right to self-government. The Supreme Court rejected the claim,  
6 holding that the tribe was not a "person" for purposes of § 1983. *Id.* at 711.<sup>17</sup> Specifically, it held  
7 that the tribe's assertion of sovereign immunity did not fall within § 1983's purpose of securing  
8 private rights against government encroachment. *Inyo*, 538 U.S. at 712; *cf. id.* at 714 (Stevens, J.,  
9 concurring) ("the Tribe rests its case entirely on its claim that, as a sovereign, it should be  
10 accorded a special immunity that private casinos do not enjoy"). In other words, an Indian tribe  
11 "may not sue under § 1983 to vindicate [a] sovereign right," such as its right to be free of state  
12 regulation and control. *Inyo Cnty.*, 538 U.S. at 712; *see also Chemehuevi Indian Tribe v.*  
13 *McMahon*, 934 F.3d 1076, 1082 (9th Cir. 2019) (finding that the tribe had no § 1983 claim in  
14 Fourth Amendment case while individual plaintiffs' claims under § 1983 could proceed).  
15 However, tribes can sue in a capacity resembling a private person to vindicate private rights.  
16 *Skokomish Indian Tribe v. United States*, 410 F.3d 506, 514 (9th Cir. 2005) (citing to the examples  
17 in *Inyo* wherein sovereigns were purchasers and thus acted like "persons" who were allowed to  
18 sue under the Sherman Act and antitrust laws). Communal rights, like those reserved to a tribe and  
19 its members via treaty, also cannot be the basis of a § 1983 claim brought by either a tribe or  
20 individual tribe members. *Id.* at 514–15.

21 Here, based on the face of the FAC, the court does not read Plaintiffs' Third Claim to be  
22 brought by the Tribe at all—given the FAC's failure to reference the Tribe in any meaningful way  
23 under this cause of action—and instead reads this claim to be brought by Individual Plaintiffs  
24 only. Indeed, the FAC provides that "Individual Plaintiffs seek damages against the Defendants

25 \_\_\_\_\_  
26 <sup>16</sup> "[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement  
27 imposed by Article III of the Constitution by alleging an actual case or controversy." *Maya v. Centex Corp.*,  
658 F.3d 1060, 1067 (9th Cir. 2011) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983)).

28 <sup>17</sup> Section 1983 allows any "person" to sue for the "deprivation of any rights, privileges, or immunities  
secured by the Constitution and laws." 42 U.S.C. § 1983.

1 for violations of their rights under the Fourth Amendment to the United States Constitution, the  
 2 California Constitution, state law and 42 U.S.C. § 1983 after Defendants' unlawful searches,  
 3 seizures and destruction of the Individual Plaintiffs' property." (FAC ¶ 7) (emphasis added). The  
 4 only mentions of the Tribe within the Third Claim are contained within paragraphs 98 and 102,  
 5 with paragraph 102 being an assertion that there is no complete remedy at law and that declaratory  
 6 and injunctive relief are necessary. (Dkt. 35 at 24–25.) As to paragraph 98, the FAC reports that  
 7 the searches Defendants conducted infringed on "the Tribe's sovereignty and right to self-  
 8 governance." (*Id.* at 24.) However, the basis for the injunctive relief requested pursuant to the  
 9 Tribe's sovereignty and right to be free of state regulation has been rejected by the court as  
 10 described above. Moreover, in their response, Plaintiffs do not address the Tribe's standing with  
 11 respect to the Third Claim and instead reference this argument with respect to the Seventh Claim  
 12 only. (*See* Dkt. 48 at 27–28.) Thus, the Motion to Dismiss Plaintiffs' Third Claim as brought by  
 13 the Tribe is **DENIED** as moot.<sup>18</sup>

14 With respect to the Seventh Claim, which is brought under § 1983 based on the alleged  
 15 violation of Plaintiffs' Fourteenth Amendment equal protection rights, the Tribe is not attempting  
 16 to assert a sovereign or communal right. *Muscogee (Creek) Nation v. Okla. Tax Comm'n*, 611 F.3d  
 17 1222, 1234 (10th Cir. 2010). In fact, quite the opposite. There is "nothing uniquely sovereign  
 18 about the Tribe's interest . . . [in] seeking to protect its rights against alleged unlawful  
 19 discrimination or deprivation of due process of law." *Ute Indian Tribe of Uintah & Ouray Indian*  
 20 *Rsrv. v. Ure*, 737 F. Supp. 3d 1183, 1201 (D. Utah 2024) (finding that the tribe had standing to sue  
 21 under § 1983). Here, the FAC does just that. The FAC asserts that Defendants' selective  
 22 enforcement of the laws involved discrimination against Plaintiffs "based on their race" and  
 23 asserts the protections that Plaintiffs have as citizens and "residents" of California—rights that all  
 24 citizens of California enjoy. (Dkt. 35 at 27–28.) An individual could similarly bring a claim on this  
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26 <sup>18</sup> To the extent that the FAC could be interpreted as the Tribe also bringing the Third Claim under § 1983,  
 27 the Tribe would be seeking to enforce a right that exists only by virtue of its status as a sovereign, running  
 28 afoul of the directives in *Inyo*. (FAC ¶ 98 ("Defendants . . . knowingly disregarded Public Law 280 and the  
 Plaintiff Tribe's sovereignty and right to self-governance.")); *see Inyo Cnty.*, 538 U.S. at 711 (rejecting tribe's  
 § 1983 claim where it was "only by virtue of the Tribe's asserted 'sovereign' status" that its rights were  
 allegedly violated).

1 anti-discrimination basis. Thus, with respect to the Seventh Claim, the Tribe qualifies as a  
2 “person” who can bring this claim under § 1983, and the Motion to Dismiss the Seventh Claim on  
3 this basis is **DENIED**.

4 *Fourth Claim (Private Right of Action)*

5 Mendocino Defendants argue that the Fourth Claim for relief must be dismissed because  
6 Article I § 13 of the California Constitution does not create a private right of action for monetary  
7 damages. Drawing on this interpretation of the law, Defendants argue that Plaintiffs cannot bring  
8 this claim based on the cited constitutional article alone. Plaintiffs’ response, however, clarifies  
9 that they based this claim “on recognized statutory tort theories, not an implied constitutional tort”  
10 and that their claims for common law torts including false imprisonment, trespass, and conversion  
11 fit “squarely” within Government Code § 815.2 and § 820 (and not Article I § 13 of the California  
12 Constitution). (Dkt. 48 at 14–15.) While the allegations in the FAC might support these underlying  
13 torts, the tort elements are not pleaded as required. *Bearden v. Alameda Cnty.*, No. 19-CV-04264-  
14 SI, 2020 WL 1503656, at \*4 (N.D. Cal. Mar. 30, 2020) (dismissing tort claim brought under §  
15 815.2 without prejudice given failure to allege facts supporting a tort injury underlying the § 815.2  
16 claim). Accordingly, Mendocino Defendants’ Motion to Dismiss is **GRANTED** as to the Fourth  
17 Claim. Plaintiffs are granted leave to amend to plead a specific tort injury or injuries.

18 **CLAIMS AGAINST SHERIFF KENDALL<sup>19</sup>**

19 *Third and Seventh Claims – Sheriff Kendall in His Official Capacity as A Redundant Defendant*

20 In Section VIII of their Motion to Dismiss, Mendocino Defendants move to dismiss the  
21 Third and Seventh Claims against Sheriff Kendall in his official capacity on the grounds that he is  
22 a redundant defendant, noting that Plaintiffs’ claims in the FAC are against Sheriff Kendall in both  
23 his official and individual capacities. (Def.’s Mot., Dkt. 40, at 18 (citing *Mendiola-Martinez v.*  
24 *Arpaio*, 836 F.3d 1239 (9th Cir. 2016) and *Ctr. for Bio-Ethical Reform v. L.A. Cty. Sheriff Dep’t*,  
25 533 F.3d 780, 786 (9th Cir. 2008))). Plaintiffs argue that he is not redundant in his official  
26 capacity because he is the person with operational control who would implement any injunctive  
27

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28 <sup>19</sup> This section addresses Mendocino Defendants’ Motion to Dismiss sections VIII, X, and XI, all of which seek to dismiss claims against Sheriff Kendall.

1 relief. (Pls.' Resp., Dkt. 48, at 15–17.)

2 Plaintiffs are correct in that if the court were to grant injunctive relief, these claims against  
3 Sheriff Kendall may not be redundant to the extent that he, and not the County, is the official in  
4 charge of carrying out injunctive or declaratory relief awarded to Plaintiffs. *See Hartmann v. Cal.*  
5 *Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013) (“A plaintiff seeking injunctive  
6 relief against the State . . . [should] name the official within the entity who can appropriately  
7 respond to injunctive relief.”); *Roy v. Cnty. of Los Angeles*, 114 F. Supp. 3d 1030, 1047 (C.D. Cal.  
8 2015) (finding that sheriff named in his official capacity was not a redundant defendant where the  
9 complaint named the sheriff and the county but not the sheriff’s department). Plaintiffs seek  
10 injunctive relief as to the Seventh Claim. (FAC at 28 (Prayer for Relief requesting the court “issue  
11 declaratory and injunctive relief . . . requiring Defendant Kendall and Mendocino County enforce  
12 State criminal law and serve and protect Indians on the Reservation”).) Accordingly, Sheriff  
13 Kendall in his official capacity is not a redundant Defendant, and the Motion to Dismiss the Third  
14 and Seventh Claims against him on this basis is **DENIED**.

15 *Third Claim (Fourth Amendment) Against Sheriff Kendall in his Individual Capacity*

16 In Section X of their Motion to Dismiss, Mendocino Defendants argue that Plaintiffs'  
17 Third Claim for relief should be dismissed against Sheriff Kendall in his individual capacity  
18 because there are no facts pled establishing that he was personally involved in the alleged § 1983  
19 violations. (Dkt. 40 at 20.) Mendocino Defendants cite to *Barren v. Harrington*, 152 F.3d 1193,  
20 1194 (9th Cir. 1998) for the proposition that “[a] plaintiff must allege facts, not simply  
21 conclusions, that show that an individual was personally involved in the deprivation of his civil  
22 rights,” to support their argument that Sheriff Kendall should be dismissed in his individual  
23 capacity. Mendocino Defendants further cite to *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)  
24 for the proposition that there is no respondeat superior liability under § 1983 and for the  
25 proposition that “[a] supervisor is only liable for constitutional violations of his subordinates if the  
26 supervisor participated in or directed the violations, or knew of the violations and failed to act to  
27 prevent them.” (*Id.*; Dkt. 40 at 32.)

28 In opposition, Plaintiffs argue that the FAC properly alleges that Sheriff Kendall

1 “personally ordered, authorized, and orchestrated the raids on tribal trust land” and that Sheriff  
2 Kendall’s liability “is not premised on respondeat superior, but on his own conduct in setting the  
3 raids in motion and endorsing their execution,” citing to *Barren*. (Dkt. 48 at 21.) Plaintiffs further  
4 argue that the FAC states a valid supervisory liability claim against Sheriff Kendall given his  
5 leadership role in the alleged operations. (*Id.* at 21–22.)

6 “Although there is no pure *respondeat superior* liability under § 1983, a supervisor is  
7 liable for the acts of his subordinates ‘if the supervisor participated in or directed the violations, or  
8 knew of the violations [of subordinates] and failed to act to prevent them.’” *Preschooler II v.*  
9 *Clark Cnty. Sch. Bd. of Trustees*, 479 F.3d 1175, 1182 (9th Cir. 2007) (quoting *Taylor v. List*, 880  
10 F.2d 1040, 1045 (9th Cir.1989)). A supervisor may be held liable for (1) his “own culpable action  
11 or inaction in the training, supervision, or control of his subordinates,” (2) his “acquiescence in the  
12 constitutional deprivations of which the complaint is made,” or (3) conduct that showed a  
13 “reckless or callous indifference to the rights of others.” *Larez v. City of Los Angeles*, 946 F.2d  
14 630 (9th Cir. 1991) (internal citations omitted); *see also Bedford v. City of Hayward*, No. 3:12-  
15 CV-00294-JCS, 2012 WL 4901434, at \*10 (N.D. Cal. Oct. 15, 2012) (finding Plaintiff’s  
16 allegations sufficient to state a claim of supervisor liability on the part of defendant law  
17 enforcement officers—all of whom were supervisors of the three officers who allegedly  
18 unlawfully detained plaintiff); *Sandoval v. Cnty. of Sonoma*, No. 11-CV-05817-TEH, 2015 WL  
19 678519, at \*2 (N.D. Cal. Feb. 17, 2015); *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011).

20 Here, Plaintiffs allege that, in his individual capacity, Sheriff Kendall was responsible for  
21 their constitutional deprivations because he directed and approved, or knew of and failed to stop,  
22 the raids of Individual Plaintiffs’ properties described in detail in the FAC (as well as other past  
23 and future cannabis raids discussed in the FAC). (*See, e.g.*, Dkt. 35 at 2–5, 17–20, 24–28, Ex. H).  
24 While there is no evidence of Sheriff Kendall’s direct participation in the raids themselves, the  
25 allegations that he “intentionally directed, approved and authorized, or knew or should have  
26 known” about the alleged improper searches described in the FAC, as well as the allegations that  
27 he failed to train his deputies to prevent invalid search warrants and his public statements about  
28 his collaboration with other sheriffs in conducting cannabis operations, are sufficient at this

1 juncture to state a § 1983 claim against him. Accordingly, Defendants' Motion to Dismiss the  
2 Third Claim as to Sheriff Kendall in his individual capacity is **DENIED**.

3 *Fifth Claim (Bane Act) Against Sheriff Kendall in his Individual Capacity*

4 In Section XI of their Motion to Dismiss, Mendocino Defendants argue that Plaintiffs'  
5 Fifth Claim for relief should be dismissed against Sheriff Kendall in his individual capacity  
6 because Plaintiffs fail to state facts sufficient to constitute a claim for relief. (Dkt. 40 at 33–35.)  
7 Defendants argue that the FAC fails to allege facts pointing to “any personal involvement or  
8 participation” in “either obtaining or executing the warrants at issue” or to “what particular acts or  
9 omissions of Sheriff Kendall allegedly caused Plaintiffs’ claimed injuries,” in violation of the  
10 pleading standard set by Government Code § 951.<sup>20</sup> (*Id.* at 34; *see also* Dkt. 48 at 22.) Defendants  
11 further argue that the FAC fails to meet the standards required for a Bane Act claim brought under  
12 California Civil Code § 52.1. (Dkt. 48 at 22.)

13 Plaintiffs in opposition provide that, under any pleading standard, the FAC properly  
14 alleges that Sheriff Kendall helped coordinate and direct the raids and supervised the deputies  
15 involved in the raids, linking him to the searches, seizures, and property destruction at issue here,  
16 through either supervisory authority or direct involvement. (Dkt. 48 at 22.)

17 Defendants first argue that California Government Code § 820.8 precludes Sheriff  
18 Kendall’s liability under the Bane Act, citing to *Milton v. Nelson*, 527 F.2d 1158 (9th Cir. 1975).  
19 In opposition, Plaintiffs argue that § 820.8 bars vicarious liability for injuries caused solely by  
20 another’s conduct but does not shield a public employee from liability for his own acts or  
21 omissions. (Dkt. 48 at 30.) Plaintiffs further argue that the facts alleged (including that Sheriff  
22 Kendall personally authorized, directed, or knowingly permitted the unlawful raid, and that his  
23 negligence contributed to the resulting constitutional and statutory violations) are sufficient to

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26 <sup>20</sup> This is a California state, and not federal, pleading rule, as Plaintiffs point out in their opposition.  
27 Defendants do not provide any argument as to why the state pleading rule should apply in this case. The court  
28 finds that Government Code § 951 does not change the pleading standards here and only Rule 8 applies.  
*DeShazer v. Williams*, No. F06-0591 AWISMS, 2006 WL 2522397, at \*6 (E.D. Cal. Aug. 29, 2006)  
 (“Plaintiff correctly contends the complaint need conform only to the notice pleading standard set forth in  
 Rule 8 of the Federal Rules of Civil Procedure; there is no requirement that claims for relief be plead with  
 particularity where municipal liability is alleged.”).

1 state a claim for personal involvement, which § 820.8 does not preclude, and which is enough to  
2 state a claim under the Bane Act and for negligence. (*Id.*)

3 The Bane Act “provides that a person may bring a cause of action ‘in his or her own name  
4 and on his or her own behalf’ against anyone who ‘interferes by threats, intimidation or coercion,’  
5 with the exercise or enjoyment of any constitutional or statutory right.” *Bay Area Rapid Transit  
6 Dist. v. Superior Ct.*, 44 Cal. Rptr. 2d 887, 887 (Cal. Ct. App. 1995) (quoting Cal. Civ. Code §  
7 52.1). California Government Code Section 820.8 provides, “a public employee is not liable for an  
8 injury caused by the act or omission of another person.” Cal. Gov’t Code § 820.8. A public  
9 employee may be liable, however, “for injury proximately caused by his own negligent or  
10 wrongful act or omission.” *Id.* Thus, § 820.8 immunizes an individual from vicarious liability but  
11 does not provide immunity for direct supervisory actions. *Turano v. Cnty. of Alameda*, No. 17-  
12 CV-06953-KAW, 2019 WL 501479, at \*4 (N.D. Cal. Feb. 8, 2019) (internal citations omitted).  
13 The district court in *Turano v. Cnty. of Alameda*, No. 17-CV-06953-KAW, 2019 WL 501479, at  
14 \*4 (N.D. Cal. Feb. 8, 2019), summarized:

15 In *Johnson v. Baca*, the district court found that § 820.8 immunity did not apply  
16 where the plaintiff sought to hold a sheriff liable based on his failure to implement  
17 adequate policies and sufficiently train staff to avoid violation of inmates’ rights.  
18 Case No. CV 13-4496 MMM (AJWx), 2014 WL 12588641, at \*17 (C.D. Cal. Mar.  
19 3, 2014). In other words, the plaintiff sought to hold the defendant “personally liable  
20 for his conduct as a supervisor.” *Id.*; *see also Doe v. Regents of Univ. of Cal.*, No.  
21 CIV. S-06-1043 LKK/DAD, 2006 WL 2506670, at \*5 (E.D. Cal. Aug. 29, 2006)  
22 (denying motion to dismiss on § 820.8 immunity grounds where the plaintiffs’ theory  
23 of liability was based on the defendant’s direct actions as a supervisor); *Phillips v.  
24 Cty. of Fresno*, No. 1:13-cv-538 AWI BAM, 2013 WL 6243278, at \*13 (E.D. Cal.  
Dec. 3, 2013) (“Plaintiffs’ complaint . . . allege[s] the direct participation of the  
supervisory Defendants in Plaintiffs’ harms based on the failure to carry out various  
managerial functions to prevent the harm, including adequate discipline, training,  
supervision and the failure to promulgate appropriate policies. Thus there is no  
apparent applicability of section 820.8.”); *Staten v. Calderon*, No. F052046, 2008  
WL 4446526, at \*8 (Cal. Ct. App. Oct. 3, 2008) (“the immunity provided by section  
820.8 does not extend to claims of negligent training and supervision”).

25 Moreover, courts have held that Bane Act claims against sheriffs can be based on supervisory  
26 conduct and respondeat superior liability. *See, e.g., Johnson v. Baca*, No. 13-cv-04496-MMM-  
27 AJWx, 2014 WL 12588641, at \*16 (C.D. Cal. Mar. 3, 2014) (holding that a Bane Act claim can be

1 asserted against a sheriff on the basis of supervisory conduct); *see also Neuroth v. Mendocino*  
2 *County*, No. 15-cv-03226-NJV, 2016 WL 379806, at \*7 (N.D. Cal. Jan. 29, 2016); *see also M.H.*  
3 *v. Cnty. of Alameda*, No. 11-CV-02868 JST, 2013 WL 1701591, \*6 (N.D. Cal. Apr. 18, 2013)  
4 (recognizing availability of respondeat superior liability for violations of Bane Act); *see also*  
5 *Martinez v. Cnty. of Sonoma*, No. 15-CV-01953-JST, 2015 WL 5354071, at \*10 (N.D. Cal. Sept.  
6 14, 2015) (same).

7 Here, Plaintiffs allege both that Sheriff Kendall had supervisory authority over the deputies  
8 involved in the raids and that he directly took part in planning the operations. For example,  
9 Plaintiffs allege that Sheriff Kendall publicly endorsed the raids and pledged to continue similar  
10 actions through his social media posts covering the raids (*see, e.g.*, Ex. F), as well as that he  
11 directed and coordinated the raids (*see, e.g.*, Dkt. 35 at 17, 24, 26), and that his negligence  
12 contributed to the destruction of Plaintiffs' property and violation of their constitutional rights. *Id.*  
13 at 27. His liability is therefore premised on his direct supervisory involvement and not vicarious  
14 liability, and § 820.8 does not grant Sheriff Kendall immunity here. At this stage, these allegations  
15 signal intent on the part of Sheriff Kendall to deprive Individual Plaintiffs of their constitutional  
16 rights. Thus, Plaintiffs have sufficiently pled a claim against Sheriff Kendall in his individual  
17 capacity under the Bane Act. Accordingly, the Defendants' Motion to Dismiss on this ground is  
18 **DENIED.**

19 *Sixth Claim (Negligence) Against Sheriff Kendall in his Individual Capacity*

20 Mendocino Defendants first argue that California Government Code § 821.6 immunizes  
21 Sheriff Kendall from the Sixth Claim for negligence related to the destruction of Plaintiffs'  
22 property during the execution of the search warrant on Plaintiffs' property, because the searches  
23 were part of a "judicial or administrative proceeding." Cal. Gov't Code § 821.6. In opposition,  
24 Plaintiffs argue that the FAC gives Kendall "fair notice" of the claims brought against him (dkt. 48  
25 at 24) and that Government Code § 821.6 does not immunize Sheriff Kendall's conduct here,  
26 citing to *Leon v. County of Riverside*, 530 P.3d 1093, 1101 (Cal. 2023). (Dkt. 48 at 23.)

27 Section 821.6 states, "[a] public employee is not liable for injury caused by his instituting  
28 or prosecuting any judicial or administrative proceeding within the scope of his employment, even

1 if he acts maliciously and without probable cause.” The California Supreme Court recently  
2 clarified that § 821.6 “immunizes public employees from claims of injury caused by wrongful  
3 prosecution” but does not “confer[ ] immunity from claims based on other injuries inflicted in the  
4 course of law enforcement investigations.” *Leon v. Cnty. of Riverside*, 530 P.3d 1093, 1096 (Cal.  
5 2023). The *Leon* court explained that § 821.6 immunity “is narrow in the sense that it applies only  
6 if the conduct that allegedly caused the plaintiff’s injuries was the institution or prosecution of an  
7 official proceeding,” but is “broad in the sense that it applies to every such tort claim, whether  
8 formally labeled as a claim for malicious prosecution or not.” *Id.* at 1100–01. The California  
9 Supreme Court explicitly disapproved of prior appellate court opinions extending § 821.6  
10 immunity to “acts that are merely investigatory and unconnected to the prosecution of any official  
11 proceeding,” including at least two cases concerning officer conduct during the execution of a  
12 search warrant and seizure of property. *Leon*, 530 P.3d at 1103, 1106 (disapproving of *Cnty. of*  
13 *Los Angeles v. Superior Ct.*, 104 Cal. Rptr. 3d 230 (2009), *as modified* (Jan. 22, 2010), and  
14 *Baughman v. State of Cal.*, 45 Cal. Rptr. 2d 82 (1995)).

15 Defendants’ argument about § 821.6 immunity cites to only one pre-*Leon* case and makes  
16 no argument as to how Sheriff Kendall’s alleged conduct is connected to the prosecution of an  
17 official proceeding. Indeed, multiple federal district courts have applied *Leon* to find that § 821.6  
18 immunity does not extend to actions taken by officials during investigatory searches. *Agro*  
19 *Dynamics, LLC v. United States*, 692 F. Supp. 3d 1003, 1018 (S.D. Cal. 2023) (holding that  
20 immunity does not apply to execution of search warrant); *Gatt v. Gascon*, No. 2:24-CV-02740-  
21 FLA (AGRX), 2025 WL 4058861, at \*9–10 (C.D. Cal. Sept. 5, 2025) (“Plaintiff’s state law claims  
22 against the City Defendants are based in part on alleged injuries separate from and unrelated to the  
23 initiation or prosecution of an official proceeding, including from his arrest and detention [and] the  
24 search of his home and seizure of his property”). Given that the injuries in this case arose from  
25 investigatory conduct unrelated to an official proceeding, and that Defendants have provided no  
26 argument to the contrary, Plaintiffs’ negligence claim against Sheriff Kendall is not barred by §  
27 821.6 immunity.

28 Mendocino Defendants further argue that Plaintiffs’ Sixth Claim for negligence should be

1 dismissed against Sheriff Kendall in his individual capacity because they fail to state facts  
2 sufficient to constitute a claim for relief. (Dkt. 40 at 33–35.) Defendants argue that “required  
3 particularized allegations” required under California Government Code § 951 are absent. (*Id.*)

4 Plaintiffs in opposition argue that they need only provide “a short and plain statement of  
5 the claim” sufficient to allow a reasonable inference of liability under Rule 8(a)(2) and the *Iqbal*  
6 standard and that the FAC meets this liberal notice-pleading requirement. Specifically, Plaintiffs  
7 allege that the FAC names Sheriff Kendall, identifies him as the official responsible for the raid,  
8 alleges he publicly endorsed it and pledged to continue similar actions, (Dkt. 35 at 17–20, 24–28,  
9 Ex. H), and pleads that his negligence contributed to the destruction of Plaintiffs’ property and  
10 violation of their rights. *Id.* at 27. Plaintiffs allege that these facts, combined with the detailed  
11 description of the raids conducted under Sheriff Kendall’s authority, “plausibly support individual  
12 liability as a direct participant or one deliberately indifferent to constitutional violations” sufficient  
13 to establish a negligence claim against Sheriff Kendall in his individual capacity. (Dkt. 48 at 29.)

14 In California, an adequately pleaded claim for negligence requires (1) a legal duty to use  
15 reasonable care; (2) breach of that duty; and (3) proximate cause between the breach and (4) the  
16 plaintiff’s injury. *Mendoza v. City of Los Angeles*, 78 Cal. Rptr. 2d 525 (1998) (internal citations  
17 omitted); *see also Melton v. Boustred*, 107 Cal. Rptr. 3d 481, 488 (Cal. Ct. App. 2010) (“The  
18 elements of a cause of action for negligence are duty, breach, causation, and damages.”).

19 As a threshold matter, “it is the Federal Rules of Civil Procedure that is applicable to  
20 pleading requirements in federal court.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002)  
21 (“Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited exceptions” like  
22 Rule 9(b)’s requirement of greater particularity for claims of fraud or mistake); *see also Newman*  
23 *v. Cnty. of Los Angeles*, No. CV062748RSWLSHX, 2006 WL 8436529, at \*1 (C.D. Cal. Dec. 11,  
24 2006). As noted above, Government Code § 951 does not apply to change the pleading standards  
25 here. *DeShazier*, No. F06-0591 AWISMS, 2006 WL 2522397, at \*6 (“Plaintiff correctly contends  
26 the complaint need conform only to the notice pleading standard set forth in Rule 8 of the Federal  
27 Rules of Civil Procedure; there is no requirement that claims for relief be plead with particularity  
28 where municipal liability is alleged.”).

1 At this juncture, the court finds that the FAC sufficiently pleads a negligence claim as to  
2 Sheriff Kendall. The FAC alleges a duty of care, breach, and damages, as well as facts to support  
3 Sheriff Kendall’s involvement in the raids beyond merely stating his role as a supervisor, and  
4 detailed descriptions of the raids themselves. (*See, e.g.*, Dkt. 35 at 2–5, 17–20, 24–28, Ex. H.); *Cf.*  
5 *Schmitz v. Asman*, No. 220CV00195JAMCKDPS, 2020 WL 6728226, at \*19 (E.D. Cal. Nov. 16,  
6 2020), *report and recommendation adopted*, No. 220CV00195JAMCKDPS, 2020 WL 7624963  
7 (E.D. Cal. Dec. 22, 2020) (“Plaintiffs must do more than simply assert that these defendants held  
8 leadership roles during the time that Decedent received less than the constitutional standard of  
9 medical care.”). Thus, Mendocino Defendants’ Motion to Dismiss the Sixth Claim against Sheriff  
10 Kendall in his individual capacity is **DENIED**.

## CLAIMS AGAINST DEFENDANT MENDOCINO COUNTY<sup>21</sup>

### Third and Seventh Claims Against Defendant Mendocino County – Monell Liability

13 Plaintiffs' Third and Seventh Claims for relief both involve Defendants' liability under §  
14 1983. Defendants argue that Mendocino County is not liable under § 1983 because Plaintiffs fail  
15 to show a "direct causal link" between their alleged custom or policy and the constitutional  
16 violation, citing to *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 415 (1997),  
17 which provides that "Congress did not intend municipalities to be held liable unless deliberate  
18 action attributable to the municipality directly caused a deprivation of federal rights." *Id.*  
19 Defendants further provide that Plaintiffs' Third and Seventh Claims "contain no allegations  
20 whatsoever" establishing any of the grounds for liability under § 1983.

21        In *Monell*, the Supreme Court held that “a municipality cannot be held liable under § 1983  
22 on a *respondeat superior* theory.” *Monell v. Dep’t of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 691  
23 (1978). Instead, municipal liability may be established in three ways: “(1) the constitutional  
24 violation was the result of a governmental policy or a longstanding practice or custom; (2) the  
25 individual who committed the constitutional violation was an official with final policy-making  
26 authority; or (3) an official with final policy-making authority ratified the unconstitutional act.”

<sup>28</sup> <sup>21</sup> This section of the Order addresses Mendocino Defendants' Motion to Dismiss sections IX and XII, both of which seek to dismiss claims against Defendant Mendocino County.

1 *Perryman v. City of Pittsburg*, 545 F. Supp. 3d 796, 799 (N.D. Cal. 2021) (citing *Gillette v.*  
2 *Delmore*, 979 F.2d 1342, 1346- 47 (9th Cir. 1992)). The Ninth Circuit has made clear that *Monell*  
3 claims “may not simply recite the elements of a cause of action but must contain sufficient  
4 allegations of underlying facts to give fair notice and to enable the opposing party to defend itself  
5 effectively.” *AE ex rel. Hernandez v. Cnty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012).

6 Plaintiffs appear to allege that Defendant Mendocino County should be liable for the  
7 alleged constitutional deprivations both on the basis of their failure to properly train deputies (dkt.  
8 35 at 19) as well as on the basis of ratification by a final policy-making authority. (*Id.* at 17–20,  
9 24.) Defendants argue that Plaintiffs fail to state a claim under any theory. For the reasons  
10 discussed below, Plaintiffs’ Third and Seventh Claims state a claim against Defendant Mendocino  
11 County under *Monell* on the basis of ratification.

12 To show liability based on ratification, a plaintiff must prove that the “authorized  
13 policymakers approve a subordinate’s decision and the basis for it.” *City of St. Louis v.*  
14 *Praprotnik*, 485 U.S. 112, 105 (1988). The policymaker must have knowledge of the  
15 constitutional violation and actually approve of it. A mere failure to overrule a subordinate’s  
16 actions, without more, is insufficient to support a *Monell* claim. *Lytle v. Carl*, 382 F.3d 978, 987  
17 (9th Cir. 2004); *Gillette v. Delmore*, 979 F.2d 1342, 1348 (9th Cir. 1992) (rejecting *Monell*  
18 liability where city manager failed to overrule a subordinate’s disciplinary decision, holding that  
19 failure to overrule without more does not amount to ratification and cautioning that such a theory  
20 would improperly reintroduce respondeat superior into § 1983 jurisprudence); *see also James v.*  
21 *Cnty. of San Bernardino*, No. 5:25-CV-00140-WLH-SHK, 2025 WL 1674463, at \*5 (C.D. Cal.  
22 May 9, 2025); *Sanders v. City of Nat’l City*, No. 20-CV-00085-AJB-BLM, 2020 WL 6361932, at  
23 \*4 (S.D. Cal. Oct. 29, 2020); *see also Little v. Gore*, 148 F. Supp. 3d 936, 957 (S.D. Cal. 2015)  
24 (finding allegations sufficient to allege *Monell* claim where defendant “promulgated, adopted,  
25 ratified, and acquiesced to policies, procedures, and customs governing the disposition of evidence  
26 in marijuana investigations”); *Nelson*, No. CV 11-5407-PSG (JPR) at \*8 (finding *Monell* liability  
27 against city on the basis of alleged ratification but denying *Monell* liability on other bases); *Cortez*  
28 *v. Cnty. of Los Angeles*, 294 F.3d 1186, 1187 (9th Cir. 2002) (finding that the Los Angeles County

1 Sheriff acts as the final policymaker for the County of Los Angeles in establishing and  
2 implementing policies and procedures for the safekeeping of inmates in the county jail).

3 Plaintiffs allege that Sheriff Kendall, acting as a final policymaker with responsibilities  
4 over Mendocino County's law enforcement customs and practices, ratified the deputies' conduct  
5 by coordinating and endorsing the raids—including publicly on social media. (FAC ¶¶ 65, 70–72,  
6 Ex. H). They further appear to assert that Sheriff Kendall's actions reflect a broader pattern of  
7 condoning unconstitutional practices within the Sheriff's Department. (FAC ¶ 62). While courts  
8 have held that a mere failure to overrule or discipline subordinates is insufficient to establish  
9 ratification, *Lytle*, 382 F.3d at 987, Plaintiffs here allege more than passive inaction. Specifically,  
10 they allege that Sheriff Kendall publicly endorsed the raids and affirmatively signed off on both  
11 the raids underlying this case and Mendocino County's broader program for marijuana  
12 enforcement.

13 Additionally, with respect to the Seventh Claim, Plaintiffs properly allege that Sheriff  
14 Kendall was the officer responsible for withholding law enforcement services on the Reservation  
15 in violation of Plaintiffs' constitutional rights. (FAC ¶¶ 9, 126.) At the pleading stage, these  
16 allegations plausibly support the inference that Sheriff Kendall made a conscious, affirmative  
17 decision to approve both the deputies' conduct and its legal basis. The Motion to Dismiss the §  
18 1983 claims against the County is therefore **DENIED**. *James*, No. 5:25-CV-00140-WLH-SHK,  
19 2025 WL 1674463, at \*5.

20 *Fifth Claim (Bane Act) Against Defendant Mendocino County*

21 Defendants also argue that, as to Defendant Mendocino County<sup>22</sup>, Plaintiffs' claim for  
22 relief for violation of the Bane Act fails because Civil Code § 52.1 does not provide for any claim  
23 against a public entity directly, citing to *Towery v. State of California*, 221 Cal. Rptr. 3d 692, 699  
24 (2017), *as modified* (Aug. 14, 2017). (Dkt. 40 at 25.) Plaintiffs contend in their response that  
25 Government Code § 815.2(a) "squarely provides" that public entities are vicariously liable for the  
26 torts of their employees committed within the scope of employment. (Dkt. 48 at 24.)

27  
28 <sup>22</sup> The FAC includes Sheriff Kendall in his official capacity here, too, as the County is equivalent to Sheriff  
Kendall in his official capacity.

1 Defendants' argument that the Bane Act does not provide for direct liability of public  
2 entities is irrelevant because the Bane Act claim against Mendocino County is not based on direct  
3 liability. The Fifth Claim explicitly pleads that the County is "vicariously liable" for the actions of  
4 Sheriff Kendall under Government Code § 815.2 and § 820. (FAC ¶ 111.) Courts have  
5 consistently allowed plaintiffs to bring Bane Act claims against public entities under theories of  
6 vicarious liability pursuant to Government Code § 815.2(a). *See, e.g., Yaple v. Cnty. of Riverside*,  
7 No. 523CV01478ODWASX, 2024 WL 1257434, at \*4 (C.D. Cal. Mar. 25, 2024) ("a government  
8 entity can be held vicariously liable for a Bane Act violation as an employer of the specific  
9 government employee"); *D.V. v. City of Sunnyvale*, 65 F. Supp. 3d 782, 787 (N.D. Cal. 2014)  
10 (collecting cases); *Towery*, 221 Cal.Rptr.3d at 697 ("Nor does Towery allege claims against a  
11 specific State employee or employees for which the State might be vicariously liable as an  
12 employer [under the Bane Act]."). Because Plaintiffs successfully stated a Bane Act claim against  
13 Sheriff Kendall in his individual capacity, they have also successfully alleged the County's  
14 vicarious liability. Accordingly, the court **DENIES** Defendants' Motion to Dismiss the Fifth  
15 Claim as against the County.

16 *Sixth Claim (Negligence) Against Defendant Mendocino County*

17 Mendocino Defendants also seek dismissal of Plaintiffs' Sixth Claim for negligence on the  
18 ground that the FAC fails to properly plead compliance with the California Tort Claims Act  
19 ("CTCA"), under which all government tort liability must be based on statute, citing to Cal. Gov't  
20 Code § 815. (Dkt. 40 at 35–36.) Defendants argue that there is a heightened pleading standard for  
21 plaintiffs seeking tort damages from a California public entity and contend that Plaintiffs fail to  
22 cite a statutory basis for liability on the part of Defendant Mendocino County with respect to the  
23 negligence claim and fail to plead "every fact material to the existence of its statutory liability"  
24 with particularity. (Dkt. 40 at 35–36.)

25 The California Government Code provides that "a public entity is not liable for an injury,"  
26 "[e]xcept as otherwise provided by statute." Cal. Gov't Code § 815. One of these statutory  
27 exceptions is Government Code § 815.2, which provides that "[a] public entity is liable for injury  
28 proximately caused by an act or omission of an employee of the public entity within the scope of

1 his employment if the act or omission would, apart from this section, have given rise to a cause of  
2 action against that employee or his personal representative,” unless the employee himself is  
3 immune from liability. Cal. Gov’t Code § 815.2. Section 815.2 is the statutory basis on which  
4 public entities may be held vicariously liable for the common-law tort actions of their employees.  
5 *See Societa Per Azioni De Navigazione Italia v. City of Los Angeles*, 645 P.2d 102, 112 (Cal.  
6 1982) (“[T]he general rule is that an employee of a public entity is liable for his torts to the same  
7 extent as a private person (§ 820, subd. (a)) and the public entity is vicariously liable for any  
8 injury which its employee causes (§ 815.2, subd. (a)) to the same extent as a private employer (§  
9 815, subd. (b)).”); *C.A. v. William S. Hart Union High Sch. Dist.*, 270 P.3d 699, 704 (Cal. 2012)  
10 (“Section 815.2, in turn, provides the statutory basis for liability relied on here [in bringing a  
11 negligence claim against a public entity].”). While Plaintiffs did not cite to § 815.2 under the  
12 negligence claim in the FAC, they specified that the County is “vicariously liable for the actions of  
13 Defendant Sheriffs and deputies,” which is sufficient to invoke the statutory basis for the County’s  
14 liability, particularly when considered in conjunction with the allegations elsewhere that connect §  
15 815.2 and vicarious liability. (FAC ¶ 119.) Thus, because Plaintiffs may proceed with their  
16 negligence claim against Sheriff Kendall in his individual capacity, they may proceed against  
17 Defendant Mendocino County on a respondeat superior theory. *Smith v. Cnty. of Orange*, No.  
18 8:23-CV-02426-DOC-KES, 2025 WL 3723748, at \*11 (C.D. Cal. Dec. 12, 2025) (“Because  
19 Plaintiff may proceed with its negligence claim against . . . Dr. Do, it may proceed against the  
20 County on a respondeat superior theory”); *see also Laurel v. Cnty. of Alameda*, No. 24-CV-04427-  
21 RFL, 2025 WL 2402674, at \*8 (N.D. Cal. Aug. 19, 2025) (denying motion to dismiss negligence  
22 claim against County). The County has not identified any other basis for immunity except those  
23 already considered by the court. Therefore, the Motion to Dismiss is **DENIED** as to the Sixth  
24 Claim against Defendant Mendocino County.

#### 25 DEFENDANT DURYEE’S MOTION TO DISMISS

26 In a separate Motion to Dismiss the FAC, Defendant Duryee (CHP Commissioner) argues  
27 that Plaintiffs’ claims against him must be dismissed for failure to state a claim under Rule  
28 12(b)(6). (Dkt. 46 at 17.) Specifically, Defendant Duryee moves to dismiss on the following

1 grounds: (1) Plaintiffs lack Article III standing to pursue prospective relief against Defendant  
2 Duryee because CHP did not participate in the challenged search and poses no threat of future  
3 enforcement; (2) Plaintiffs fail to state a claim upon which relief can be granted; (3) Plaintiffs  
4 allege merely that Defendant Duryee is the Commissioner of the CHP but do not identify any  
5 alleged duty or authority in connection with the actions taken in this matter, or any alleged  
6 wrongful conduct—and Plaintiffs cannot legitimately invoke the *Ex parte Young* exception to  
7 Defendant Duryee’s Eleventh Amendment immunity; and (4) Plaintiffs cannot recover money  
8 damages as to Commissioner Duryee because such claims are barred by the Eleventh Amendment.  
9 (Dkt. 46 at 9.)

10 Because the court has dismissed the First Claim and Second Claim, only the Third Claim  
11 remains against Defendant Duryee. Thus, the court analyzes Defendant Duryee’s arguments as to  
12 that Claim without reference to the theories and elements dismissed through the analysis above,  
13 and the Motion to Dismiss as to the First and Second Claims is **DENIED** as moot. What remains  
14 in the Third Claim is the § 1983 claim for violation of the Individual Plaintiffs’ Fourth  
15 Amendment rights through Defendants’ illegal searches, seizures, and destruction of property.  
16 Those claims are bolstered by factual allegations that, at least as to Swearinger, the CHP was  
17 involved in the warrantless destruction of her property (in a disproportionate use of force). (FAC  
18 ¶¶ 48–50.) The allegations are that she saw multiple CHP vehicles convoy with sheriff and Fish  
19 and Game vehicles to the back of her property, then approximately 30 mins later the convoy left,  
20 after which Plaintiff Swearinger discovered further property damage and destruction. (FAC ¶ 48–  
21 50.) Certainly, the direct implication is enough to allege CHP involvement in the raid.  
22 Furthermore, Plaintiffs allege that Duryee intentionally directed, approved and authorized, or  
23 knew or should have known of the raids (and their illegality); that through his acts or omissions  
24 maintained a custom, policy, and/or practice of committing warrantless (and otherwise illegal)  
25 raids on the Reservation; and that he is responsible for managing, supervising, training,  
26 disciplining, and directing the duties of all CHP employees, including officers. (See, e.g., FAC ¶¶  
27 63, 74, 98.)

28 These allegations, for the reasons stated above as to Sheriff Kendall, are sufficient to

1 maintain the Third Claim against Defendant Duryee in his individual capacity. However, because  
2 Plaintiffs' requests for prospective injunctive relief are tied to the now dismissed First and Second  
3 Claims, Defendant Duryee is entitled to dismissal in his official capacity as to the Third Claim  
4 pursuant to Eleventh Amendment Immunity. *See, e.g., Porter v. Jones*, 319 F.3d 483, 491 (9th Cir.  
5 2003) ("[Under the Eleventh Amendment,] suits against an official for prospective relief are  
6 generally cognizable, whereas claims for retrospective relief (such as damages) are not."); *Idaho v.*  
7 *Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 268–69 (1997) ("Indian tribes, we therefore  
8 concluded, should be accorded the same status as foreign sovereigns, against whom States enjoy  
9 Eleventh Amendment immunity."). Accordingly, Defendant Duryee's Motion to Dismiss is  
10 **GRANTED** and Defendant Duryee is **DISMISSED** in his official capacity. This dismissal is  
11 without prejudice because Plaintiffs could possibly state a claim for prospective injunctive relief  
12 against Defendant Duryee in his official capacity insofar as it is not tied to, or based on, the  
13 theories expressed in the now dismissed First and Second Claims. *Flint v. Dennison*, 488 F.3d  
14 816, 825 (9th Cir. 2007) ("When sued for prospective injunctive relief, a state official in his  
15 official capacity is considered a 'person' for § 1983 purposes.").

#### 16 CONCLUSION

17 For the foregoing reasons, Mendocino Defendants' Motion to Dismiss is **GRANTED IN**  
18 **PART AND DENIED IN PART**, and Defendant Duryee's Motion to Dismiss is **GRANTED IN**  
19 **PART AND DENIED IN PART**.

21 **IT IS SO ORDERED.**

22 Dated: January 29, 2026

23  
24  
25   
26 ROBERT M. ILLMAN  
27 United States Magistrate Judge  
28