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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

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

Defendants.

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

DEFENDANT SHERIFF KENDALL AND COUNTY OF MENDOCINO'S OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

[*Filed and lodged concurrently herewith: (1) Declaration of Rocawich*.]

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

OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

Defendants, Mendocino County Sheriff Matthew Kendall and the County of Mendocino ("Mendocino Defendants"), hereby respectfully submit their Opposition to Plaintiffs Motion for Partial Summary Judgment ("MPSJ") pursuant to Fed. R. Civ. P. 56(d) as premature and pursuant to 56(a) either because there are genuine disputes as to material facts or because Plaintiffs are not entitled to judgment as a matter of law.

As to Rule 56(d), Plaintiffs' MPSJ comes prior to any adherence to Fed. R. Civ. P. 26. Specifically, there has been no conference of parties under Rule 26(f), no Joint Case Management Statement filed under Rule 26(f) and N.D. L.R. 16-9 and no Initial Disclosures served under Rule 26(a)(1)(C). Discovery has not commenced in this case, and Mendocino Defendants disagree with Plaintiffs' assessment that their MPSJ does not implicate any factual issues. As discussed below and in the accompanying Declaration, the discovery of specific and existing facts are essential to surviving the MPSJ. Additionally, Mendocino Defendants currently have pending a Motion to Dismiss the Plaintiffs' First Amended Complaint. There has been no resolution to determine what, if any, Claims or Defendants survive such pending motion and no resolution to determine whether all Plaintiffs even have standing to maintain those Claims. Mendocino Defendants' Motion to Dismiss could vitiate any need to consider Plaintiffs' Summary Judgment Motion.

As to Rule 56(a), summary judgment is not appropriate on Plaintiffs' Claims under 42 U.S.C. § 1983 because there are currently genuine issues of material fact. Moreover, summary judgment is not appropriate on Plaintiffs' First and Second Claims because the law is clear that 11 U.S.C. § 1162 ("PL 280") grants county law enforcement authority to enforce criminal law against Indians in Indian Country. For all these reasons, Plaintiffs' MPSJ is deficient, premature, and should

be denied.

II. LEGAL STANDARD

When a Motion for Summary Judgment is filed "before a party has had any realistic opportunity to pursue discovery relating to its theory of the case," "a Rule 56(d) motion should be freely granted." Burlington N. Santa Fe R.R. Co. v. Assinibione and Siuox Tribes of the Fort Peck Reservation, 323 F.3d 767, 773 (9th Cir. 2003). A party requesting a continuance pursuant to Rule 56(d) must show (1) that they have set forth in affidavit form the facts that they hope to elicit from further discovery, (2) that the facts sought exist, and (3) that these sought-after facts are "essential" to resist the summary judgment motion. State of Cal., on Behalf of Cal. Dep't of Toxic Substances Control v. Campbell, 138 F.3d 772, 779 (9th Cir. 1998). However, when "no discovery whatsoever has taken place, the party making a Rule 56(d) motion cannot be expected to frame its motion with great specificity as to the kind of discovery likely to turn up useful information, as the ground for such specificity has not yet been laid." Burlington N., 323 F.3d at 774.

On summary judgment the plaintiff bears the burden of establishing by significantly probative" evidence every element of the claim. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-250, 252, 106 S.Ct. 2505 (1986) [summary judgment motion implicates substantive evidentiary burden]; Celotex Corp. v. Catrett, 477 U.S. 317, 322-323, 106 S.Ct. 2548, 2551- 2553 (1986). In order to be entitled to summary judgment, Plaintiffs must do more than simply make allegations that defendants acted improperly. Fed. R. Civ. P. 56(e)(2); Jeffers v. Gomez, 267 F.3d 895, 907 (9th Cir. 2001). Plaintiff must make a showing with admissible evidence. See Celotex, 477 U.S. at 324.

III. PLAINTIFFS' MPSJ SHOULD BE DENIED UNDER RULE 56(D)

Plaintiffs filed their original Complaint on April 29, 2025. [DKT 1] Mendocino Defendants filed a timely Motion to Dismiss on June 2, 2025. [DKT 20] On July 11, 2025, even before Opposing Mendocino's Motion to Dismiss, Plaintiffs filed this MPSJ. [DKT 30] On July 17, 2025, in utter violation of Rule 15(a)(2) without opposing party's written consent or the court's leave, Plaintiffs filed a First Amended Complaint ("FAC"). [DKT 35]; Declaration of Rocawich filed concurrently herewith ("Decl. Rocawich") at ¶ 3. Mendocino Defendants then filed a Motion to Dismiss the First Amended Complaint on August 5, 2025. [DKT 40] That Motion to Dismiss is pending and challenges the standing of one of the Plaintiffs, challenges whether the Section 1983 Claims, included in the MPSJ, are properly brought against either the Sheriff or County of Mendocino, and challenges the entire basis for Plaintiffs' suit and MPSJ – whether Defendants were enforcing regulatory or criminal law in taking the actions they did with regard to Plaintiffs. Id. at ¶ 4.

"Although [Rule 56 of the Federal Rules of Civil Procedure] allows a motion for summary judgment to be filed at the commencement of an action, in many cases the motion will be premature until the nonmovant has had time to file a responsive pleading or other pretrial proceedings have been had." Fed. R. Civ. P. 56 Advisory Committee's Notes (2010 Amendments Subdivision (b)). A number of cases have found a summary judgment motion premature where motions to dismiss remain pending, especially when the motions to dismiss address some of the arguments raised in the motion for summary judgment. See Bennett v. United States United States FBI-As One of the Agencies of United States, 2023 U.S. Dist. LEXIS 218549, *2-3 (S.D. Cal. 2023); Samuel v. Woodford, 2011 U.S. Dist. LEXIS 38808 at *1 (C.D. Cal. Mar. 2, 2011), report and recommendation adopted, 2011 U.S. Dist. LEXIS 38844, (C.D. Cal. Apr. 8, 2011); White v. Sanchez, 2023 U.S. Dist. LEXIS 115355, *2 (C.D. Cal. 2023); Vashisht-Rota v. Howell Mgmt.

Servs., 2020 U.S. Dist. LEXIS 80803, *1-2 (S.D. Cal. 2020). With Mendocino Defendants Motion to Dismiss pending, Plaintiffs' MPSJ is premature.

Additionally, courts "generally disfavor summary judgment where relevant evidence remains to be discovered." Klingele v. Eikenberry, 849 F.2d 409, 412 (9th Cir. 1988). No discovery has taken place in this case thus far. Decl. Rocawich at ¶ 5. Discovery is not open, and no Fed. R. Civ. 26(f) conference has taken place. Id. The parties have not submitted a joint discovery plan. Id. This action is premised on Plaintiffs' assertions that they are members of an Indian Tribe, that they owned Tribal land in trust, that they were not violating any California criminal law, and that searches and seizures were improperly conducted on their land by deputies of one or more law enforcement agencies. Mendocino Defendants will need to conduct discovery to determine whether any of Plaintiffs' declarations are even remotely factual in any arena. Id. at ¶ 6. As of yet, Defendants have had no opportunity to test or explore the scope of Plaintiffs' assertions. Id. In support of the MPSJ, Plaintiffs rely on Declarations of four people who have not been deposed, and the documents they cite and rely on have not been subject to discovery or authenticated. Id.

Further, Plaintiffs' self-serving declarations are fraught with unascertained and vague accusations, as well as speculations which cannot be determined without discovery. Id. at ¶ 7. For example, Plaintiffs appear to move for summary judgment on their Fourth Amendment Section 1983 Claim (MPSJ pp. 10-12), but it is even wholly unclear whether Plaintiffs argue that the searches were warrantless, whether they argue they were conducted pursuant to search warrants but that they were conducted outside the scope of those warrants, or whether they argue they were conducted pursuant to search warrants but that those warrants were obtained by judicial deception or lacked probable cause. Id.[1]

[1] For example, Plaintiffs allege in the FAC that raids were conducted on their properties "without valid search warrants" (FAC ¶ 37) but also attach a warrant as an Exhibit to the FAC (Ex. "F" to FAC).

Mendocino Defendants have not taken the depositions of any of the three individual Plaintiffs or any person most knowledgeable of Plaintiff Round Valley Tribe. Decl. Rocawich at ¶ 8. Likewise, two elected County Sheriffs and the Commissioner of a State agency are named as Defendants as individuals and in their official capacities, three different law enforcement agencies are named as Defendants, and a Deputy Sheriff is named as a Defendant; however, no depositions have been taken nor any written discovery conducted to shed any light on the alleged and/or actual actions of each. Id.

The completion of discovery will shed light on the following facts: (1) The exact location of Plaintiffs' land currently identified only by trust allotment number for which no public maps appear to be available; (2) Whether warrants were issued that encompassed Plaintiffs' land; (3) Whether Plaintiffs' land had marijuana growing on it and how many plants; (4) Whether Plaintiffs' homes had any marijuana found inside and the amounts thereof; (5) Exactly what was seized or destroyed on which property belonging to which Plaintiff; (6) Which law enforcement agency(ies) executed each warrant and who was present for those warrant executions; (7) Whether either Sheriff was present for any of the searches or took any actions that could result in supervisor liability; (8) Whether probable cause existed that a California criminal law was being violated; and (9) Whether Plaintiffs conspired or acted in concert with any person whose property was searched pursuant to a warrant or other facts that would subject Plaintiffs' property to be included in the scope of the warrant. Id. at ¶ 9.

These are all key facts required to oppose Plaintiffs' Motion on their Fourth Amendment Claim and many are key to whether Plaintiffs were subject to the enforcement of a regulatory or criminal law – the very bedrock of their First and Second Claims on which they move for summary judgment. Id. at ¶ 10. These are also all key facts to determining the liability, or lack thereof, of each Defendant. Id. Mendocino Defendants expect discovery will support there was probable cause to

suspect violations of California criminal law, that each warrant was supported by probable cause, that each warrant was properly executed, and that the seizure and/or destruction of marijuana was valid. Id. at ¶ 11. For all these reasons, Plaintiffs MPSJ should be denied under Rule 56(d).

IV. IF THE MPSJ IS NOT DENIED AS PREMATURE, IT SHOULD NONETHELESS BE DENIED

As noted above, Plaintiffs' FAC and MPSJ rests almost entirely on whether Defendants were enforcing criminal or regulatory laws in taking the actions they did with regard to Plaintiffs. "State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply." McClanahan v. Ariz. State Tax Comm'n, 411 U.S. 164, 170-71, 93 S. Ct. 1257 (1973) [citation omitted]. In 1953, Congress enacted Public Law 280 ("PL 280), which expressly granted certain states, including California, jurisdiction over criminal offenses and certain civil causes of action arising in "Indian country." 18 U.S.C. § 1162; 28 U.S.C. § 1360.

The grant of criminal jurisdiction under PL 280 broadly covers criminal offenses committed by or against Indians within Indian country. 18 U.S.C. § 1162. However, unlike the criminal jurisdiction covered by PL 280, the grant of civil jurisdiction is more limited. 28 U.S.C. § 1360. PL 280 applies to private civil litigation involving reservation Indians in state court; however, PL 280 does not authorize enforcement of civil/regulatory laws against Indians in Indian Country. California v. Cabazon Band of Mission Indians, 480 U.S. 202, 208-09, 107 S. Ct. 1083 (1987). Mendocino Defendants do not dispute that PL 280 does not authorize enforcement of state civil regulatory laws. But despite Plaintiffs' attempts to broadly characterize ***all*** California marijuana laws as civil regulatory laws thus unenforceable against them, Plaintiffs' characterization is simply not correct.

A. Despite Changes to California's Laws and Policy on Marijuana, Large-Scale Marijuana Cultivation and Possession has Always Been, and Remains, Criminally Prohibited

Based upon the warrant attached as Exhibit "F" to the Complaint, Plaintiffs were suspected of violating California Health and Safety Code sections 11357 [prohibiting possession of marijuana over a certain amount] 11358 [prohibiting planting, cultivating, harvesting, drying, or processing more than six living cannabis plants], 11359 [possession for sale], and/or 11360 [unlawful transportation, importation, sale, or gift]. See Exhibit "F" to FAC [p. 89 of 117] and FAC ¶¶ 57 and 59.[2] Thus, Plaintiffs' MPSJ here rests almost entirely on the determination of whether California law enforcement can enforce these Health and Safety Code sections, especially Section 11358, on tribal lands against tribal members. As discussed in detail below, throughout the many changes to California marijuana law and policy, large-scale marijuana cultivation is and has always been criminally prohibited.

As noted above, PL 280 grants California the authority to enforce criminal laws on Tribal land within the state's borders, but does not grant the state civil-regulatory authority. See California v. Cabazon Band of Indians, 480 U.S. 202, 207, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987). Under Cabazon, even if a state statute provides a criminal penalty for its violation, California has jurisdiction to criminally prosecute an offense committed on Tribal land only if the intent of the statute "is generally to prohibit certain conduct" in order to promote the general welfare and/or safety of the public. Id.; see also United States v. Clark, 195 F.3d 446, 450 (9th Cir. 1999), United States v. Marcyes, 557 F.2d 1361, 1364 (9th Cir. 1977) and United States v. Dotson, 615 F.3d 1162 (9th Cir. 2010). "[B]ut if the

[2] Plaintiffs have also attached this warrant as Exhibit "A" to the Declaration of April James in support of the MPSJ. As discussed in detail above, because no discovery has occurred, there has been no authentication of the warrant, There has been no discovery as to whether this warrant indeed encompasses Plaintiff James' or other Plaintiffs' properties, and there has been no discovery as to whether there were other warrants executed during the "raids".

state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and [Public Law] 280 does not authorize its enforcement on an Indian reservation." Cabazon, supra 480 U.S. at 207. "The shorthand test is whether the conduct at issue violates the State's public policy." Id.

Essentially identical to PL 280, the Assimilative Crimes Act ("ACA"), 18 U.S.C. § 13, makes criminal/prohibitory state laws applicable to conduct occurring on Federal lands but not civil/regulatory state laws. In Dotson, supra, 615 F.3d 1162, the Ninth Circuit considered whether a state law prohibiting the furnishing of liquor to minors was criminal or regulatory and, in doing so, resoundingly rejected the same arguments made by Plaintiffs in their MPSJ and the same interpretation of Cabazon urged by Plaintiffs therein. In Dotson, defendants working at an Air Force base were charged with furnishing alcohol to minors under state law. In arguing that the state law was regulatory as opposed to criminal, defendants argued that state generally permits the sale, distribution, and consumption of alcohol, subject to regulation. Dotson, supra 615 F.3d. at 1168. The government countered that the state law flatly prohibits the furnishing of alcohol to minors, and thus was criminal in nature.

In support of their approach to framing the issues, defendants in Dotson relied upon Cabazon, contending "that, like California's gambling statutory scheme, in which California allowed for and benefitted from gambling, Washington's alcohol statutory scheme allows for widespread sale and consumption, authorizing state-run liquor stores, and generating income from alcohol-related taxes and fees." Dotson, supra 615 F.3d. at 1168. In doing so, defendants "focus[ed] on the overarching scheme to the exclusion of the specific statute at issue." Id. The Ninth Circuit rejected that approach stating, "[c]ontrary to Defendants' arguments, such an approach ***is not condoned by Cabazon***…" Id. [emphasis added].

The Ninth Circuit in Dotson went on to discuss that the court had "previously rejected Defendants' approach to framing" in United States v. Clark, 195 F.3d 446 (9th Cir. 1999). In Clark, the court considered whether a provision making the unauthorized practice of law a misdemeanor was criminal or regulatory. Id. at 448. The defendant in Clark also cited to Cabazon arguing that the provision was regulatory because the statutory scheme as a whole regulated the practice of law, rather than prohibited the unauthorized practice of law. Id. at 449. The court "rejected this argument, emphasizing ***that a penal provision that is part of a larger regulatory scheme*** can nonetheless be assimilated ***where the penal provision is criminal and prohibitory***." Dotson, supra at 1169 *citing* Clark, supra at 450 [emphasis added]. More to the point, the court found the state law in Clark was criminal in nature as opposed to regulatory "because the unauthorized practice of law was 'flatly prohibited and criminally penalized.'" Dotson, supra at 1169 *citing* Clark, supra at 450. In turn, the Ninth Circuit in Dotson held "the conduct at issue -- the furnishing of alcohol to minors -- was flatly prohibited and criminally penalized." Dotson, supra at 1169.[3]

Plaintiffs' MPSJ asks this Court to adopt the very approach to framing that was expressly rejected in Dotson and Clark. Specifically, Plaintiffs want this Court to "focus on the overarching scheme" of California's marijuana laws "to the exclusion of the specific statutes" that Defendants were enforcing in carrying out the operations on Plaintiffs' properties. See Dotson, supra 615 F.3d. at 1168. Such approach is equally as inappropriate here as it was in those cases. While California

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

indeed has a regulatory scheme pertaining to marijuana possession, growth and sales, the conduct investigated by Defendants is flatly prohibited and, in some cases, a felony.

The Quechan and Marcyes fireworks cases cited in Dotson are particularly instructive to the analysis here. In Marcyes, the Ninth Circuit analyzed whether a Washington fireworks statute was regulatory or criminal. The Ninth Circuit concluded that the law was criminal in light of the state's determination that the possession of fireworks is dangerous to the general welfare of its citizens and that, unlike regulatory schemes such as hunting or fishing, the purpose of the fireworks laws is not to generate income, but rather to prohibit their general use and possession in a legitimate effort to promote the safety and health of all citizens. Marcyes, supra 557 F.2d at 1364. The court further concluded that permitting unlicensed/unpermitted fireworks sales on federal or tribal lands would entirely circumvent the state's determination that the possession of fireworks is dangerous to the general welfare of its citizens. The Supreme Court has expressly endorsed the reasoning used in Marcyes to distinguish between criminal/prohibitory and civil/regulatory. Cabazon, 480 U.S. at 211 n.10.

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

manufacture, transportation, licensing, sale and use of fireworks", the Quechan court held that the general activity in question -- the sale and possession of dangerous fireworks -- was contrary to public policy and that permitting the sale and possession of fireworks on reservations would circumvent the states' determination that the possession of fireworks is dangerous to the general welfare of its citizens. Id. at 307.

Determining whether California marijuana laws are regulatory or criminal with the above cases in mind, it is first important to note that certain conduct is "flatly prohibited and criminally penalized" such driving under the influence of marijuana [Cal. Veh. Code § 23152(f) VC] or employing a minor to transport, sell, prepare to sell, or give away marijuana, selling, administering or offering marijuana to a minor or inducing a minor to use marijuana [Cal. Health & Safety Code § 11361]. See Dotson, supra. Other conduct, though subject to a "comprehensive system of permits and licenses" like California fireworks law, is nonetheless also criminal as violations can carry penalties as severe as felony charges and the general activity in question is contrary to public policy and dangerous to the general welfare of California citizens. See Quechan, supra 984 F.2d at 307. More specifically, applying Cabazon, Dotson, Marcyes and Quechan, to the matter at hand leads to the inescapable conclusion that large-scale marijuana cultivation and possession of large quantities of marijuana, the statutes and conduct at issue in this case, are prohibited activities thus are criminal/prohibitory and fully applicable on tribal lands.

Beginning in 1996 with the passage of the Compassionate Use Act ("CUA"), followed by the passage of the Medical Marijuana Program Act ("MMPA"), and finally with the passage of the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA" or "Proposition 64") permitting recreational marijuana use by adults and small grows, California's marijuana laws became increasingly permissive and a licensing scheme was created for sales,

distribution and large-scale cultivation. However, "California's marijuana laws do not legalize medical or recreational marijuana." Ross v. RagingWire Telecommunications, Inc., 42 Cal.4th 920, 926 (2008); see also U.S. v. McIntosh, 833 F.3d 1163, 1179, fn. 5 (9th Cir. 2016); see also Ceballos v. NP Palace, LLC, 514 P.3d 1074, 1075 (Sup. Ct. Nev. 2022) [citing Ragingwire and finding that although Nevada has decriminalized adult recreational marijuana use, the drug continues to be illegal under federal law. Because federal law criminalizes the possession of marijuana in Nevada, its use is not lawful in the state of Nevada.]

Instead of legalizing, California's marijuana laws ***decriminalize certain marijuana offenses*** under California law. In other words, while adult use, certain cultivations and certain possession is generally permitted, large-scale cultivation and possession are not. Under the Uniform Controlled Substances Act, marijuana remains a schedule I controlled substance in California, and it remains unlawful to possess, transport, or give away marijuana in excess of certain limits. Cal. Health & Safety Code § 11054(d)(13); Cal. Health & Safety Code §§ 11358, 11359, 11360 and 26038(e). Proposition 64 recognizes this explicitly stating that "***criminal penalties*** shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this division." Cal. Health & Safety Code § 26038(e) [emphasis added].

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

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

Proposition 64 decriminalized the possession of up to 28.5 grams of marijuana and the growing of not more than 6 plants for adults 21 years and older. However, courts have continued to recognize that despite a large regulatory scheme now existing, certain marijuana possession and/or cultivation continues to be criminal and prohibitory. Indeed, the very first line of SB 94 (a.k.a. MAUCRSA) which integrated previous medical marijuana regulations with the Proposition 64 regulations, states: "The California Uniform Controlled Substances Act makes various acts involving marijuana ***a crime except as authorized by law***." 2017 Cal ALS 27; 2017 Cal SB 94; 2017 Cal Stats. ch. 27 [emphasis added].

Thus, even after the enactment of Proposition 64, officers may still conduct a probable cause search pursuant to the automobile exception to determine whether a subject is properly adhering to the statutory limitations on possession and use that remain in effect. People v. Fews, 27 Cal.App.5th 553 (2018). In Fews, officers

conducted a traffic stop during which they smelled the odor of burnt marijuana—suggesting the possibility of driving under the influence—and during which the driver of the vehicle admitted the half-burnt cigar in his hand contained marijuana. Id. The officers searched the vehicle finding an unsealed bag of marijuana and a firearm. Id. The driver challenged the search arguing that, under Proposition 64, small amounts of marijuana cannot provide probable cause to search. Id.

The court found that the driver's contention "overstates the effect of Proposition 64" noting that it "***remains unlawful*** to possess, transport, or give away marijuana in excess of the statutorily permitted limits, to cultivate cannabis plants in excess of statutory limits and in violation of local ordinances, to engage in unlicensed 'commercial cannabis activity,' and to possess, smoke or ingest cannabis in various designated places, including in a motor vehicle while driving. Id. at 561 [citations omitted] [emphasis added]. The court further noted that "the possibility of an innocent explanation for the possession of marijuana 'does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct.'" Id. [citations omitted]. Finally, the court concluded that "because marijuana possession and use ***is still highly circumscribed by law even after the passage of Proposition 64***, the odor and presence of marijuana in a vehicle being driven in a high-crime area, combined with the evasive and unusual conduct displayed" by the driver and passenger, were still reasonably suggestive of unlawful drug possession and transport. Id. [emphasis added].

Similarly in People v. McGee, 53 Cal. App. 5th 796 (2020), the driver of a vehicle stopped by officers argued that the presence of an unsealed bag of marijuana plainly visible on an automobile passenger's could not constitute probable cause to search the vehicle or a purse therein because Proposition 64 legalized possession of small amounts of marijuana for personal use. Id. at 801. The court found that, while the possession of up to 28.5 grams of marijuana was lawful, it remained unlawful to "[p]ossess an open container or open package of

cannabis or cannabis products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle." Id. at 804 *citing* Cal. Veh. Code § 11362.1. Because the officer witnessed the passenger in possession of an unsealed container of marijuana, "[t]he presence of this contraband provided probable cause to believe the passenger possessed other open containers" and the officer "therefore had probable cause to search the passenger and her purse for further evidence of contraband." Id.

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

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

In addressing whether California motor vehicle registration and driver's license requirements found in Vehicle Code sections 4000 and 12500 are subject to enforcement against Indian tribal members on roads within their Indian

reservation, the California Attorney General applied the "criminal/prohibitory" vs. "civil/regulatory" analysis and concluded that the laws were regulatory thus not enforceable against tribal members on tribal land. In so concluding, the Attorney General noted that a violation of Section 4000 [Registration] is an infraction and that a violation of Section 12500 [Unlicensed driving] is a misdemeanor that many be treated as an infraction, does not include a mandatory fine or jail sentence, is "not substantial" and "has no recidivist provisions". 2006 Cal. AG LEXIS 2, *8, 2006 Cal. AG LEXIS 2 [citations omitted].

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

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

some cases, the most severe of criminal penalties.

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

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

enforceable against the Tribe on Tribal land pursuant to PL 280. As such, Plaintiffs' claims here must fail.

B. The Tribe Cannot Sue Under Section 1983 to Vindicate Sovereign Immunity and Tribal Sovereignty Does Not Prohibit Enforcement of Criminal Law

In Inyo County v. Paiute-Shoshone Indians of the Bishop Cmty. of the Bishop Colony, 538 U.S. 701, 704 123 S. Ct. 1887 (2003), the Supreme Court addressed whether a tribe and its wholly owned gaming corporation could sue under § 1983 to prevent non-tribal law enforcement officers from executing state-issued search warrants to seize tribal records. In Inyo, the Court explained that Section 1983 "was designed to secure private rights against government encroachment, not to advance a sovereign's prerogative to withhold evidence relevant to a criminal investigation." Id. at 712 [citation omitted]. On this reasoning, the Inyo court held that an Indian tribe "may not sue under § 1983 to vindicate" a "sovereign right," such as the right to sovereign immunity. Id. Further, the Tribe does not qualify as a "person" who may sue under Section 1983. Id. at 704. Thus, the Tribe doesn't have standing here with regard to its Section 1983 and certainly is not entitled to summary judgment on them as argued in the MPSJ.

Additionally, Plaintiffs do not argue here that the state cannot enforce criminal laws on Tribal land rather only argue that Tribal sovereignty prohibits state enforcement of regulatory laws against Indians on Indian reservations. First and foremost, as discussed in great detail above, the laws at issue here were criminal not regulatory. Further, there is no case directly addressing whether a county law enforcement agency lacks authority to execute a search warrant as to tribal land during a criminal investigation. This lack of case law was noted by the Supreme Court in Inyo.

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

Because of this sovereignty, states may exert their authority over reservation lands only where doing so does not undermine tribal self-governance by "infring[ing] 'on the right of reservation Indians to make their own laws and be ruled by them.'" McClanahan, supra 411 U.S. at 179 *quoting* Williams v. Lee, 358 U.S. 217, 220 (U.S. 1959). Numerous cases foreclose any contention that service of a search warrant on Tribal lands constitutes such an infringement. 28 U.S.C. § 1162 provides the State with criminal jurisdiction over crimes occurring on a reservation, while tribal sovereignty provides a tribe with concurrent jurisdiction. See Walker v. Rushing, 898 F.2d 672, 675 (8th Cir. 1990). The statutory grant of jurisdiction "necessarily entails the authorization of investigative and enforcement mechanisms" and that the exercise of criminal process is coextensive with the exercise of that statutory jurisdiction. In re Grand Jury Proceedings, 744 F.3d 211, 221 (1st Cir. 2014).

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

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

V. EVIDENTIARY OBJECTIONS

Pursuant to Northern District Local Rule 7-3, Mendocino Defendants state the following evidentiary objections to the Declarations of Britton, Swearinger, James and Russ. In all four Declarations, Declarants state that the officers on scene did not present a warrant or explain the legal authority for the searches and seizures. See Dec. Britton ¶¶ 4, 7; Decl. Swearinger ¶¶ 4, 9; Decl. James ¶¶ 3, 4, 9;

Decl. Russ ¶ 6. Defendants object to these paragraphs as referencing matters that are irrelevant. FED. R. EVID. 401, 402. More specifically, the United States Supreme Court has not interpreted the Fourth Amendment to the United States Constitution as requiring the officer executing the search warrant to display the warrant or provide a copy of it. United States v. Grubbs, 547 U.S. 90, 98-99, 126 S. Ct. 1494 (2006); see also West Covina v. Perkins, 525 U.S. 234, 240, 246, fn. 1 (1999) [conc. opn. of Thomas, J.] and People v. Calabrese, 101 Cal. App. 4th 79, 84 (2002). Failure to serve a warrant, furnish a copy or complete a search inventory does not affect the validity of a search or render it fatally defective. See Reisgo v. United States, 285 F. 740, 741 (5th Cir. 1923) and United States v. Hubbard, 493 F. Supp. 209, 221 (D.C. Cir. 1979).

Additionally, those paragraphs contain a legal conclusion and improper opinion testimony. FED. R. EVID. 701. The paragraphs also assume facts not in evidence. FED. R. EVID. 611. In addition to the above, paragraph 6 of Decl. Russ does not establish an element of a claim against Mendocino Defendants or affect the outcome of the action; therefore, not a material fact. FED. R. CIV. P. 56(c). Additionally, paragraph 6 contains inadmissible hearsay, is lacking in foundation and assumes facts not in evidence. FED. R. EVID. 801, 802 FED. R. EVID. 602, FED. R. EVID. 611.

The Declarations of Britton, Swearinger and James all declare that they have never been charged with any offense arising out of the events of July 22–23, 2024. See Decl. Britton ¶ 8, Decl. Swearinger ¶ 10 and Decl. James ¶ 10. Mendocino Defendants object to these paragraphs as irrelevant and do not establish an element of a claim against Mendocino Defendants or affect the outcome of the action; therefore, not a material fact. FED. R. EVID. 401, 402; FED. R. CIV. P. 56(c). Further, those paragraphs assume facts not in evidence. FED. R. EVID. 611.

Paragraphs 7 of Decl. Swearinger and Decl. James both make declarations as to the extent or reason of their marijuana use/growth and reference compliance

with a Tribal regulatory ordinance. Mendocino Defendants object to these paragraphs as irrelevant and do not establish an element of a claim against Mendocino Defendants or affect the outcome of the action; therefore, not a material fact. FED. R. EVID. 401, 402; FED. R. CIV. P. 56(c). Additionally, those paragraphs include statements not based on personal knowledge and lacking in foundation. FED. R. EVID. 602. Those paragraphs also contain legal conclusions and improper opinion testimony. FED. R. EVID. 701. Finally, those paragraphs assume facts not in evidence. FED. R. EVID. 611.

Paragraph 3 of Decl. Britton declares "I told them they had no right to be there and that the cultivation was legal under the Tribe's law". Mendocino Defendants object to paragraph 3 as irrelevant and do not establish an element of a claim against Mendocino Defendants or affect the outcome of the action; therefore, not a material fact. FED. R. EVID. 401, 402; FED. R. CIV. P. 56(c). Paragraph 3 is also lacking in foundation and assumes facts not in evidence. FED. R. EVID. 602; FED. R. EVID. 611. Finally, paragraph 3 contains a legal conclusion and improper opinion testimony. FED. R. EVID. 701.

Paragraph 3 of Decl. James states: "I told them they had no jurisdiction on my tribal trust allotment." Mendocino Defendants object that the statement is not based on personal knowledge and is lacking in foundation. FED. R. EVID. 602. The statement also contains a legal conclusion and improper opinion testimony. FED. R. EVID. 701. Finally, the statement assumes facts not in evidence. FED. R. EVID. 611. Paragraph 5 of Decl. James states: "Deputies also said they had the right to search my home for parole violations, but nobody in my household has a criminal record, and they were not involved in conduct that would lead law enforcement to reasonably believe they were engaged in criminal conduct." Mendocino Defendants object that paragraph 5 is irrelevant and does not establish an element of a claim against Mendocino Defendants or affect the outcome of the action; therefore, not a material fact. FED. R. EVID. 401, 402; FED. R. CIV. P. 56(c).

Paragraph 5 contains inadmissible hearsay. FED. R. EVID. 801, 802. Additionally, the above-cited portion of Paragraph 5 assumes facts not in evidence. FED. R. EVID. 611. Finally, the above-cited portion of Paragraph 5 is not based on personal knowledge, is lacking in foundation and calls for speculation. FED. R. EVID. 602.

VI. CONCLUSION

For all the foregoing reasons, Defendants, Mendocino County Sheriff Matthew Kendall and the County of Mendocino respectfully request that Plaintiffs Motion for Partial Summary Judgment be denied as premature pursuant to Fed. R. Civ. P. 56(d). In the alternative, Mendocino Defendants request the Motion be denied pursuant to 56(a) either because there are genuine disputes as to material facts or because Plaintiffs are not entitled to judgment as a matter of law.

Dated: August 21, 2025

JONES MAYER

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