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

Attorneys for Defendants, SHERIFF MATTHEW KENDALL and COUNTY OF MENDOCINO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

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

Defendants.

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

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

[Filed concurrently with:
(1) [Proposed] Order.]

Date: April 21, 2026
Time: 11:00 a.m.
Crtm: Eureka-McKinleyville Courthouse

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 21, 2026, at 11:00 a.m., or as soon thereafter as the matter may be heard in Courtroom 1 of the above-entitled Court, located at 3140 Boeing Ave., McKinleyville, CA 95519, Defendants, COUNTY OF MENDOCINO and SHERIFF MATTHEW KENDALL will, and hereby do, move the Court for an Order:

- Striking, pursuant to Federal Rule of Civil Procedure 12(f), the First and Second Claims in the Second Amended Complaint in their entirety on the ground that Plaintiffs re-alleged dismissed Claims 1 and 2 and/or filed amended Claims 1 and 2 without leave of Court without leave of Court in violation of Federal Rule of Civil Procedure 15(a)(2), and in direct contravention of this Court's Order dated January 29, 2026 dismissing the First Claim for Violation of PL 280 and Second Claim for Violation of Tribal Sovereignty with prejudice;

- Striking, pursuant to Federal Rule of Civil Procedure 12(f), the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth Claims for Relief to the extent that elements of those claims "rely on the contention that the underlying searches were illegal because Defendants lacked enforcement jurisdiction" on the ground that Plaintiffs filed the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth Claims for Relief in direct contravention of this Court's Order dated January 29, 2026 dismissing, with prejudice, "any elements of other claims that rely on the contention that the underlying searches were illegal because Defendants lacked enforcement jurisdiction";

- To dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth Claims for Relief for failing to state a claim upon which relief can be granted.

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

Dated: March 9, 2026

Respectfully submitted,

JONES MAYER

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action is premised on Plaintiffs' assertions that they are members of an Indian Tribe, that they owned Tribal land in trust, and that searches of their land resulting in seizures of marijuana crops and marijuana cultivation equipment were improperly conducted by deputies of one or more law enforcement agencies including the County of Mendocino Sheriff's Department. In their First Amended Complaint ("FAC"), Plaintiffs alleged, in their First and Second Claims, that Defendants violated Public Law 280 and Tribal Sovereignty by enforcing provisions of the California Health and Safety Code on Tribal lands without jurisdiction to do so. Plaintiffs alleged other Claims for Relief premised, in part, on this alleged lack of jurisdiction.

This Court dismissed the First and Second Claims with prejudice, as well as the other claims to the extent they relied on Plaintiffs' jurisdictional allegations, finding that Defendants had jurisdiction under PL 280 to enforce California law prohibiting possession of cannabis for sale and most marijuana cultivation on the Reservation. Plaintiffs, in their Second Amended Complaint ("SAC"), have now re-alleged their First and Second Claims for Violation of PL 280 and Violation of Tribal Sovereignty (albeit with minor amendments that contradict their earlier pleadings) in violation of Rule 15(a)(2) and this Court's Order of dismissal.

Therefore, Defendants, County of Mendocino and Sheriff Matthew Kendall, respectfully move under Federal Rules of Civil Procedure 12(f) to strike the First and Second Claims in the SAC in their entirety on the ground that Plaintiffs realleged dismissed Claims 1 and 2 and/or filed amended Claims 1-2 without leave of Court without leave of Court in violation of Federal Rule of Civil Procedure 15(a)(2) and in direct contravention of this Court's Order. Additionally, the Mendocino Defendants move under Federal Rules of Civil Procedure 12(f) to strike the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth

Claims for Relief to the extent that elements of those claims "rely on the contention that the underlying searches were illegal because Defendants lacked enforcement jurisdiction" on the ground that Plaintiffs filed the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth Claims for Relief in direct contravention of this Court's Order dated January 29, 2026 dismissing, with prejudice, "any elements of other claims that rely on the contention that the underlying searches were illegal because Defendants lacked enforcement jurisdiction."

Even if not stricken, the Court should dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth Claims for Relief for failing to state a claim upon which relief can be granted. Specifically, those Claims rely upon Plaintiffs' new theory that the facially valid search warrants served upon their properties were invalid because they were obtained under the false pretense of a criminal investigation when, in actuality, Defendants were proceeding with an abatement action. Plaintiffs cannot establish the necessary element to establish false statements or omissions material to the finding of probable cause such as to render the search warrants invalid – the only way they can establish a lack of jurisdiction under their new theory.

II. PROCEDURAL POSTURE

Plaintiffs filed their original Complaint on April 29, 2025. [DKT 1] The original Complaint plead Claims for Relief: (1) Unlawful Assertion of Jurisdiction [PL 280]; (2) Infringement of the Tribe's Sovereignty [Interference with Tribal Self-Governance]; (3) 4th Amendment – Unlawful Search and Seizure [42 U.S.C. § 1983]; (4) Unlawful Search and Seizure [Cal. Const. Art. I § 13]; (5) Bane Act [Cal. Civil Code § 52.1]; (6) Negligence; and (7) 14th Amendment -- Equal Protection/Selective Enforcement [42 U.S.C. § 1983]. Nearly the entire basis for

Plaintiffs' Claims rested on the question of whether Defendants were enforcing regulatory or criminal law in taking the actions they did with regard to Plaintiffs.

Mendocino Defendants filed a timely Motion to Dismiss on June 2, 2025. [DKT 20] Mendocino Defendants' Motion to Dismiss addressed the criminal/regulatory issue arguing that Mendocino Defendants were properly enforcing criminal law in executing warrants on Plaintiffs' property on Tribal land. On July 11, 2025, even before Opposing Mendocino's Motion to Dismiss, Plaintiffs filed a Motion for Partial Summary Judgment ("MPSJ") . [DKT 30] Moving for summary judgment as to the First, Second and Third Claims, Plaintiffs' MPSJ rested almost entirely on whether Defendants were enforcing criminal or regulatory laws in taking the actions they did with regard to Plaintiffs.

On July 17, 2025, without Mendocino's written consent or the court's leave, Plaintiffs filed the FAC. [DKT 35] The FAC stated Claims for: Claims for Relief: (1) Unlawful Assertion of Jurisdiction [PL 280]; (2) Infringement of the Tribe's Sovereignty [Interference with Tribal Self-Governance]; (3) 4th Amendment – Unlawful Search and Seizure [42 U.S.C. § 1983]; (4) Unlawful Search and Seizure [Cal. Const. Art. I § 13]; (5) Bane Act [Cal. Civil Code § 52.1]; (6) Negligence; and (7) Violation of 14th Amendment -- Equal Protection/Selective Enforcement [42 U.S.C. § 1983]. After the Court found Mendocino's Motion to Dismiss the Complaint moot due to the filing of the FAC, Mendocino Defendants then filed a Motion to Dismiss the FAC on August 5, 2025. [DKT 40] The Mendocino Defendants' Motion to Dismiss the FAC, again, addressed the criminal/regulatory issue at length. On August 18, 2025, Mendocino Defendants opposed Plaintiffs' MPSJ -- *briefing the criminal/regulatory issue at length for a third time*. On October 14, 2025, the Court heard both the Mendocino Defendants' Motion to Dismiss the FAC and Plaintiffs' MPSJ. [DKT 61]

On January 29, 2026, the Court issued a 38-page Order granting in part and denying in part the Mendocino Defendants' Motion to Dismiss the FAC ("January

29 Order").

Specifically, the Court stated:

> ***Because the court finds that Defendants have jurisdiction under PL 280 to enforce California law prohibiting possession of cannabis for sale and most marijuana cultivation on the Reservation, the court GRANTS Mendocino Defendants' Motion to Dismiss as to the First and Second Claims and DISMISSES the First and Second Claims with prejudice, as well as any elements of other claims that rely on the contention that the underlying searches were illegal because Defendants lacked enforcement jurisdiction***." [January 29 Order, DKT 64 p. 21:9-13]

In turn, the Court also issued an Order denying Plaintiffs' MPSJ as to the First, Second and Third Claims as moot noting: "In this court's January 2026 Order (dkt. 64) on two separate motions to dismiss (dkt. 40, dkt. 46), the court dismissed Plaintiffs' first two claims." [DKT 65 at p. 1:15-17]

On February 23, 2026, Plaintiffs filed their SAC . [DKT 71] In violation of Federal Rule of Civil Procedure 15(a)(2) and in direct contravention to the Court's January 29 Order, Plaintiffs' SAC re-alleges the First Claim for Violation of PL 280 and Second Claim for Violation of Tribal Sovereignty with minor amendments. SAC at ¶¶ 137-168. Plaintiffs did not file a Motion for Reconsideration of the January 29 Order. In fact, and bafflingly when considered in light of their SAC re-alleging the First and Second Claims, Plaintiffs' filed a Motion for Entry of Judgment of their First and Second Claims under Rule 56(b) on February 6, 2026. [DKT 67]

III. RELEVANT FACTS AND PREVIOUS JUDICIAL ADMISSIONS

Factual allegations in a prior complaint are "judicial admissions," and when the party fails to provide a credible explanation for its "error," a court may disregard the contradictory pleading. Bauer v. Tacey Goss, P.S., 2012 U.S. Dist. LEXIS 95334 at *3 (N.D. Cal. 2012); see also In re Bang Energy Drink Mktg. Litig., 2021 U.S. Dist. LEXIS 146977, *10 (N.D. Cal. June 30, 2021). "[T]he

Court is not required to accept as true allegations in an amended complaint that contradict an earlier complaint without explanation". Volis v. Hous. Auth. of City of L.A. Emps. Guthrie, 2014 U.S. Dist. LEXIS 199892 at *9 (C.D. Cal. 2014) *quoting* Designing Health, Inc. v. Erasmus, 2000 U.S. Dist. LEXIS 23000 at *9 (C.D. Cal. Oct. 31, 2000).

In both the FAC and the SAC, Plaintiffs allege that, on July 22-23, 2024, the Defendants executed raids on the Plaintiffs' properties on the Round Valley Indian Reservation targeting marijuana cultivation sites and destroying hundreds of marijuana plants. FAC ¶ 37, 1; SAC ¶ 1, 66. In both the FAC and SAC, Plaintiffs allege Public Law 280 ("PL 280") [28 U.S.C. § 1360] delegated federal authority to California to prosecute crimes committed by Indians in Indian country. FAC ¶ 5; SAC ¶ 6. Plaintiffs allege that under PL 280, California has limited jurisdiction over Indian country, depending on whether the state law at issue is criminal thus prohibits conduct or is regulatory thus regulates conduct. See California v. Cabazon Band of Mission Indians, 480 U.S. 202, 209 (1987); FAC ¶ 33; SAC ¶ 37. If a California law is criminal, California has criminal jurisdiction under PL 280 to enforce its law against individual Indians. Id. Conversely, if a California law is regulatory, California has no jurisdiction within Indian country to enforce that law. Id.

In the FAC, Plaintiffs admitted that Defendants relied upon provisions of the Health and Safety Code in searching Plaintiffs' properties and in seizing their marijuana. Specifically, Plaintiffs alleged that "[a]n actual controversy exists between the Plaintiffs and Defendants, in that the Tribe and the Individual Plaintiffs contend that Public Law 280 did not grant to California or its political subdivisions the authority to enforce its civil/regulatory laws against Indians on their Reservations and in Indian country, that the provisions of the H & S Code ***relied on by the Defendants to raid Plaintiffs' trust allotments*** are civil/regulatory in nature, and that, therefore, the Defendants had no jurisdiction to search, seize

and destroy the Individual Plaintiffs' properties…". FAC ¶ 86 [emphasis added]. Plaintiffs further alleged that "Defendants contend that they have jurisdiction to obtain a search warrant to search and destroy Plaintiffs' personal and trust property ***based on a felony violation of California H & S Code § 11472 and to enforce California's cannabis laws*** against the Plaintiffs while on the Reservation." Id. [emphasis added]. Further, Plaintiffs alleged that "[u]nless this Court issues an order declaring that the ***Defendants have no authority or jurisdiction to search, seize and destroy Individual Plaintiffs' property for alleged violations of the H & S Code by Individual Plaintiffs and other Indians on the Reservation***, the Defendants will continue to raid tribal trust land and trust allotments on the Reservation, even though federal Indian law clearly prohibits this intolerable and dangerous activity." FAC ¶ 87.

However, now in an obvious effort to circumvent the January 29 Order finding that Defendants had jurisdiction to enforce the relevant Health & Safety Code sections, Plaintiffs now allege a new, and completely contradictory theory. That is, that the County was not enforcing state criminal law, but instead, carrying out a County nuisance abatement operation under the guise of executing a criminal warrant. SAC ¶ 7-11, 15, 52, 57, 59, 60, 70-71, 100, 108, 110, 111, 141, 143, 144. Plaintiffs further allege that "[u]nless this Court declares that Defendants lack authority to enforce Mendocino County's civil/regulatory ordinances against Indians on trust allotments within the Reservation, Defendants will continue to raid tribal trust land and trust allotments on the Reservation, despite federal Indian law prohibiting such actions." SAC ¶ 152.

These allegations cannot be reconciled with the judicial admissions in Plaintiffs' FAC that Defendants were enforcing the Health and Safety Code in executing the warrants on Plaintiffs' property. Thus, those allegations should be disregarded and do not have to be accepted by this Court as true. See Bauer, supra 2012 U.S. Dist. LEXIS 95334 at *3 and Volis, supra 2014 U.S. Dist. LEXIS

199892 at *9. The new allegations also cannot be reconciled with Plaintiffs repeated admissions, in both the FAC and SAC, to cultivating large marijuana crops (a crime) – the basis for the finding of probable cause in the facially valid criminal warrants.

Further, and more importantly, Plaintiffs' First and Second Claims were dismissed with prejudice in the January 29 Order. The Court did not grant Plaintiffs leave to amend the First or Second Claims. Plaintiffs now re-allege the dismissed Claims amending them to include the new allegations in direct violation of the Court's Order. The Court additionally dismissed the remaining Claims to the extent that they relied on the contention that the underlying searches were illegal because Defendants lacked enforcement jurisdiction. Plaintiffs amendments in stating the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth Claims do ***exactly*** that and each rely on the contention that the underlying searches were illegal because Defendants lacked enforcement jurisdiction.

IV. LEGAL STANDARDS

A. Motion to Strike

Federal Rule of Civil Procedure 12(f) provides that a "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial . . . .". Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010) (citation omitted). Whether to grant a motion to strike lies within the sound discretion of the district court. See Fed. R. Civ. P. 12(f).

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Federal Rule of Civil Procedure 15(a) provides in relevant part:

> (1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:
> (A) 21 days after serving it, or
> (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
> (2) ***Other Amendments***. In all other cases, ***a party may amend its pleading only with the opposing party's written consent or the court's leave.*** Fed. R. Civ. P. 15(a) [emphasis added]

"Where a plaintiff exceeds the scope of the leave to amend and has not otherwise sought leave to add new claims ***or theories***, a court may strike the complaint." Cooper v. Cty. of L.A., 2020 U.S. Dist. LEXIS 261505, *6-7 (C.D. Cal. September 11, 2020); See also PB Farradyne, Inc. v. Peterson, 2006 U.S. Dist. LEXIS 67281 at *3 (N.D. Cal. Sep. 6, 2006) [striking, without leave to amend, new theory of liability alleged in third amended complaint because new claim was "outside the scope of the leave to amend granted" when court dismissed second amended complaint], Serpa v. SBC Telecomms., Inc., 2004 U.S. Dist. LEXIS 18307 at *3 (N.D. Cal. Sep. 7, 2004) [striking claim asserted for first time in amended complaint, since new claim exceeded scope of court's order granting limited leave to amend], Kennedy v. Full Tilt Poker, 2010 U.S. Dist. LEXIS 112119 at * 1 (C.D. Cal. Oct. 12, 2010) [noting that court struck third amended complaint because plaintiffs' new claims and defendants raised therein "exceeded the authorization to amend the court granted" and plaintiffs had not sought leave to add such new claims or defendants as required by Fed. R. Civ. P. 15].

B. Motion to Dismiss

Dismissal under Federal Rule of Civil Procedure 12(b)(6) is appropriate when it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations set forth in the Complaint. See Big Bear

Lodging Ass'n v. Snow Summit, Inc., 182 F.3d 1096, 1101 (9th Cir. 1999); Newman v. Universal Pictures, 813 F.2d 1519, 1521-22 (9th Cir. 1987). A court should dismiss a claim if it lacks a cognizable legal theory or if there are insufficient facts alleged under a cognizable legal theory. Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1122 (9th Cir. 2008). If an amendment to the pleading could not cure the defect, a district court can deny leave to amend. Saul v. United States, 928 F.2d 829, 843 (9th Cir. 1991).

A complaint will only survive a motion to dismiss when it contains "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) *quoting* Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). While legal conclusions can provide the complaint's framework, neither legal conclusions nor conclusory statements are themselves sufficient, and such statements are "not entitled to a presumption of truth." Iqbal, 556 U.S. 662, 679; see also Adams v. Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004) ["[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss."]

V. THE FIRST AND SECOND CLAIMS SHOULD BE STRICKEN BECAUSE THEY ARE RE-ALLEGED IN VIOLATION OF THE COURT'S ORDER AND/OR AMENDED IN VIOLATION OF RULE 15

In the January 29 Order, the Court granted Mendocino Defendants' Motion to Dismiss Plaintiffs' First Claim for Violation of PL 280 and Second Claim for Violation of Tribal Sovereignty and dismissed those Claims with prejudice. [DKT 64 at p.21:11-14] Despite the fact that these Claims were dismissed with prejudice, the SAC re-alleges both in direct violation of the Order. SAC at ¶¶ 137-168. More to the point, the identical Plaintiffs have attempted to revive Claims for Violation of PL 280 and Violation of Tribal Sovereignty against the identical Defendants and

based upon the nearly identical set of facts plead in the original Complaint and First Amended Complaint. Plaintiffs did make some changes; specifically, they now allege the theory that Defendants obtained and executed facially valid criminal warrants obtained under the false pretense of a criminal investigation when actually part of an abatement action. However, the dismissal with prejudice most certainly also precludes *amendment* of the First and Second Claims.

Because Plaintiffs amended and re-plead their First and Second Claims for Relief "in direct violation of the Court's prior Order, ***these amendments are unauthorized, impertinent, and properly stricken under Rule 12(f)***." Novitzky v. TransUnion LLC, 2024 U.S. Dist. LEXIS 104878 at *4 (C.D. Cal. June 11, 2024) *citing* Sunde v. Haley, 2013 U.S. Dist. LEXIS 160174 at *6 (D. Nev. Nov. 7, 2013). When "plaintiffs have re-asserted claims that were dismissed with prejudice . . . , these defective claims are specious and will be stricken." Lamumba Corp. v. City of Oakland, No. C 05-2712 MHP, 2006 U.S. Dist. LEXIS 82193 at *10 (N.D. Cal. Oct. 30, 2006). Further, "[d]isobeying a Court's order is, in and of itself, grounds for dismissal." Davis v. Gen. Atomics, 2025 U.S. Dist. LEXIS 123224 *5 (C.D. Cal. June 20, 2025) *quoting* Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992).

"Indeed, the great weight of authority in this circuit indicates that it is both proper and desirable to strike re-alleged claims that were previously dismissed with prejudice." Stiles v. Wal-Mart Stores, Inc., 2018 U.S. Dist. LEXIS 103476 at *15 (E.D. Cal. June 20, 2018). "[A]llowing Plaintiff to replead dismissed claims does nothing but waste the time and resources of both Defendants and the Court, who must continuously parse out viable claims from dismissed-but-replead claims." Id.; See also Saloojas Inc. v. Blue Shield of Cal. Life, 2023 U.S. Dist. LEXIS 2703 (N.D. Cal. January 6, 2023).

Here, this Court dismissed the Violation of PL 280 and Violation of Sovereignty Claims with Prejudice necessarily meaning that Plaintiffs were not

given leave to amend those Claims. Plaintiffs' attempt to re-allege and/or amend those Claims is wholly improper and those Claims should be stricken. Further, Plaintiffs' cannot escape having those improper Claims stricken via their new theory. In VNT Prop. 1 v. City of Buena Park, 2015 U.S. Dist. LEXIS 186840 (C.D. Cal. November 9, 2015), the court, nearly identical to the case at hand, had granted a motion to dismiss a 14th Amendment claim *with prejudice*. Id. at *11. Again, nearly identical to the present case, "[d]espite the fact that the due process claim was dismissed with prejudice, the SAC reallege[d] a § 1983 Fourteenth Amendment due process claim." Id. at *12. In granting the defendants motion to strike, the court in VNT Prop. rejected plaintiff's argument that their re-pleading of the claim was not in violation of the order of dismissal with prejudice because they asserted a new and distinctly different 14th Amendment theory. Id. This Court should similarly find that "Plaintiffs' attempt to resuscitate the claims the Court dismissed with prejudice is improper", and their thin attempt to rephrase the Claims as a new theory does not cure that impropriety. Id.

Moreover, just as was the case in Moon v. Cty. of Orange, 2020 U.S. Dist. LEXIS 197261, *15-16 (C.D. Cal. September 18, 2020), "Defendants have been significantly prejudiced by having to expend resources re-litigating issues that had already been brought before the Court and dismissed with prejudice." Id. at *16. In this case, Mendocino has been forced to oppose Plaintiffs' argument that PL 280 and Tribal Sovereignty was violated on three previous pleadings – in their Motion to Dismiss the Complaint, in their Opposition to Plaintiffs' MSPJ and in their successful Motion to Dismiss the SAC. Forcing Mendocino to re-litigate the very thoroughly briefed PL 280 and Tribal Sovereignty issues, after a very thorough ruling by the Court, is severely prejudicial. This is particularly true in light of Plaintiffs' Motion to Enter Judgment on those Claims – a position completely at odds with Plaintiffs' SAC – which Mendocino also had to oppose.[1]

[1] Mendocino's Opposition to the Motion for Judgment on the First and Second Claims

A court should not revisit its own decisions unless extraordinary circumstances show that its prior decision was wrong. Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816, 108 S. Ct. 2166, 100 L. Ed. 2d 811 (1988). This principle is generally embodied in the law of the case doctrine. That doctrine counsels against reopening questions once resolved in ongoing litigation. Pyramid Lake Paiute Tribe of Indians v. Hodel, 882 F.2d 364, 369 (9th Cir. 1989). The PL 280 issue and Tribal Sovereignty issue have been resolved and should not be reopened. In short, Plaintiffs' repeated displays of gamesmanship and disregard for both the Federal Rules of Civil and this Court's Order should not be entertained any further.

VI. THE COURT SHOULD STRIKE THE THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, NINTH, TENTH, ELEVENTH AND TWELFTH CLAIMS TO THE EXTENT THAT ELEMENTS OF THOSE CLAIMS RELY ON THE CONTENTION THAT THE UNDERLYING SEARCHES WERE ILLEGAL BECAUSE DEFENDANTS LACKED ENFORCEMENT JURISDICTION

In the January 29 Order, in addition to dismissing the First and Second Claims with prejudice, the Order additionally dismissed "any elements of other claims that rely on the contention that the underlying searches were illegal because Defendants lacked enforcement jurisdiction." [January 29 Order, DKT 64 p. 21:9-13] Despite this Order, Plaintiffs' Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth all rely on allegations that Defendants lacked enforcement jurisdiction. See SAC ¶¶ 144, 147, 167, 171, 172, 173, 191, 193, 202,

recognized that, though those claims were conclusively resolved as to Mendocino, the possibly remained that they were not conclusively resolved a to a non-moving co-Defendant. Further, although those two Claims were conclusively resolved as against Mendocino, the dismissal did not dispose of the case as to Mendocino due to the remaining Claims. Finally, Mendocino opposed entry of judgment because judgment would likely result in multiple appeals and/or piecemeal litigation – a scenario made even more likely by the filing of the SAC.

211, 222, 223, 225, 226, 228, 250, 251, 261, 264, 273, 276, 283, 284. Those allegations violate the Court's Order and should be stricken for the same reasons as discussed immediately above. Specifically, the jurisdictional allegations are unauthorized, impertinent, and properly stricken under Rule 12(f)." Novitzky, supra 2024 U.S. Dist. LEXIS 104878 at *4 *citing* Sunde, supra 2013 U.S. Dist. LEXIS 160174 at *6. Further, those Claims cannot be salvaged by Plaintiffs' new theory of a lack of jurisdiction. See NT Prop., supra 2015 U.S. Dist. LEXIS 186840 at *12.

VII. EVEN IF NOT STRICKEN, THE THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, NINTH, TENTH, ELEVENTH AND TWELFTH CLAIMS SHOULD BE DISMISSED BECAUSE THEY FAIL TO STATE FACTS SUFFICIENT TO CONSTITUTE A CLAIM FOR RELIEF

Even if the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth are not stricken, they should nonetheless be dismissed because each rely on the Plaintiffs' new theory that the Defendants lacked enforcement jurisdiction because the facially valid warrants were obtained under the false pretense of a criminal investigation when actually obtained as part of an abatement action. See SAC ¶¶ 144, 147, 167, 171, 172, 173, 191, 193, 202, 211, 222, 223, 225, 226, 228, 250, 251, 261, 264, 273, 276, 283, 284. However, Plaintiffs cannot establish that the warrants are invalid as a matter of law. If the warrants are valid, Plaintiffs cannot establish the lack of enforcement jurisdiction alleged in Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth Claims because this Court's Order has already established that Defendants had jurisdiction to enforce the relevant sections of the Health & Safety Code.

A. Many of Plaintiffs' General Allegations Regarding the Invalidity of the Warrants Are Wholly Contrary to Law

First and foremost, Plaintiffs make a number of completely irrelevant allegations regarding the validity of the warrants. Despite Plaintiffs' ire, the Fourth Amendment does not require that officers present the warrant to the property owner prior to the search. United States v. Grubbs, 547 U.S. 90, 99, 126 S. Ct. 1494 (2006); See also United States v. Stefonek, 179 F.3d 1030, 1034 (7th Cir. 1999) ["The absence of a constitutional requirement that the warrant be exhibited at the outset of the search, or indeed until the search has ended, is . . . evidence that the requirement of particular description does not protect an interest in monitoring searches." [citations omitted]

In that same vein, Plaintiffs' numerous allegations regarding the presence of other agencies during the searches, including environmental agencies, are another red herring. Officers from another jurisdiction or from other governmental agencies may accompany officers conducting a search pursuant to a warrant. People v. Carrington, 47 Cal. 4th 145, 167; see also U.S. v. Van Dreel (7th Cir. 1998) 155 F.3d 902, 903–905 [drug task force officers properly accompanied state officers on a search for evidence of hunting law violations (conducted pursuant to a warrant)]; U.S. v. Ewain, 88 F.3d 689, 693 (9th Cir. 1996) [postal inspector properly accompanied officers on a search conducted pursuant to a warrant]; U.S. v. Bonds (6th Cir. 1993) 12 F.3d 540, 571 [federal agent accompanied state agents acting under a warrant]. "What matters is whether the officers looked in places or in ways not permitted by the warrant. ***That the officer invited along, and not the officer to whom the warrant was issued***, has expertise which makes it 'immediately apparent' to him that objects in plain view are evidence of a crime, ***does not establish that the search went beyond the scope of the warrant***." Ewain, supra 88 F.3d at 693.

"Additionally, the discovery of evidence unrelated to the evidence sought in

a warrant need not be inadvertent." Carrington, 47 Cal. 4th at 167. "If a police officer has a valid warrant for one item, and 'fully expects' to find another, based upon a 'suspicion … whether or not it amounts to probable cause,' the suspicion or expectation does not defeat the lawfulness of the seizure." Ewain, supra, 88 F.3d at p. 693 *quoting* Horton v. California, 496 U.S. 128, 138–139 , 110 S. Ct. 2301 (1990).

Plaintiffs' repeated allegations that the warrants are invalid due to the lack of citation therein to a specific section or sections of the Health and Safety Code alleged to have been violated are also contrary to law. In fact, the Ninth Circuit has expressed that it favors warrants "describing the criminal activit[y] … ***rather than simply referring to the statute*** believed to have been violated." United States v. Spilotro, 800 F.2d 959, 964 (9th Cir. 1986) [emphasis added] As to the suspected criminal activity, a warrant must limit the search for evidence of a specific crime and the affidavit supporting the warrant must detail the crime contemplated by the warrant. See United States v. Adjani, 452 F.3d 1140, 1148-1149 (9th Cir. 2006).

Here, the warrant affidavits more than clearly specify the crimes at issue. For example, the warrant issued to Plaintiff Swearinger's property (See Ex. A to SAC at p.65; Ex. J to SAC at p. 175), detailed the following:

> The green house is contained a large amount of marijuana plants ***far in excess of the legal limit of six marijuana plants allowed by state law*** for personal use....
>
> Based upon the fact that ***commercial marijuana cultivation operations on this property are unlawful*** and the quantity of marijuana that is being cultivated, I believe that the persons cultivating marijuana on this property ***are cultivating marijuana for the purpose of sales***. Ex. J at p. 175.
>
> Based on my training and experience, I believe the evidence sought will still be present on the properties within 10 days of the Court's authorization of this search warrant based on the current stage of growth and extended processing time required after

> harvest.
>
> Based on my training and experience, I know that operating ***large-scale marijuana cultivation sites*** involves agreements between two or more persons to plant, cultivate, process, and sell illegal marijuana. Large-scale marijuana cultivation sites, such as the one subject to this investigation... requires more than one person to plant, water, and maintain the plants, as well as process (dry, trim, package, the final product. For those reasons, there is probable cause to believe that more than one individual is involved in the operation of this marijuana cultivation site, and that ***agreements between more than one person have been made to commit the crimes of cultivating marijuana and possessing marijuana for the purpose of sale***. Id. at p.176 [emphasis added]
>
> Based on the results of my investigation, as described in this affidavit, and upon my training and experience, I believe that ***a search of the property will reveal evidence that the persons at the scene of this marijuana cultivation operation are involved in a conspiracy to cultivate marijuana for the purpose of sales,*** and the items listed in Exhibit 1B are very probably present at the location of the search I propose an Exhibit 1A. Id. at p. 179.

In short, the warrants describe at some length both the nature of and the means of committing the crime in question clearly satisfying the particularity requirement with respect to the criminal conduct at issue. See Adjani, supra 452 F.3d at 1149.[2]

In that same vein, Plaintiffs' repeated allegations that they have not been arrested or charged are likewise irrelevant. "Property owned by a person ***absolutely innocent of any wrongdoing*** may nevertheless be searched under a valid warrant." United States v. Tehfe, 722 F.2d 1114, 1118 (3d Cir. 1983) [emphasis added]; see also United States v. Taketa, 923 F.2d 665, 674 (9th Cir. 1991) and United States

[2] Plaintiffs' SAC does not appear to take issue with the particularity of the evidence sought. However, this standard is also clearly met as all the items descried are "associated with the specific criminal conduct of 'cultivation, storage, packaging and sale of marijuana.'" United States v. Joe, 2007 U.S. Dist. LEXIS 5282, *16-19 (N.D. Cal. January 10, 2007) [finding particularity requirement met with description of evidence sought nearly identical to the case at hand]; see also Ex. J at pp. 167-169.

v. Adjani, 452 F.3d 1140, 1146-1147 (9th Cir. 2006). "The correct inquiry is whether there was reasonable cause to believe that evidence of … misconduct was located on the property that was searched." Taketa, supra 923 F.2d at 674; see also Zurcher v. Stanford Daily, 436 U.S. 547, 556, 98 S. Ct. 1970 (1978) ["The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought."

In United States v. Hay, 231 F.3d 630 (9th Cir. 2000), a defendant facing child pornography charges challenged a warrant affidavit arguing the warrant did not establish probable cause to engage in a search of his computer because "there was no evidence that he fell within a class of persons likely to collect and traffic in child pornography because the affidavit does not indicate that he was a child molester, pedophile, or collector of child pornography and sets forth no evidence that he solicited, sold or transmitted child pornography." Id. at 635. The Ninth Circuit rejected that challenge holding "[i]t is well established that a location can be searched for evidence of a crime even if there is no probable cause to arrest the person at the location." United States v. Hay, 231 F.3d 630 (9th Cir. 2000). Similarly, in Adjani, supra, the Ninth Circuit held that there was no need for officers to expressly to claim in the warrant affidavit that they wanted to arrest the person whose property was to be searched, nor were they required to claim that person was even suspected of any criminal activity. Adjani, supra 452 F.3d at 1146-1147. “The government needed only to satisfy the magistrate judge that there was probable cause to believe that evidence of the crime in question” could be found at the property to be searched. Id. In short, the lack of arrests or criminal charges does not render the warrants at issue here invalid.

B. Plaintiffs Cannot Establish That The Warrants Here Were Obtained Under False Pretenses

To be valid, a search warrant must (1) be issued by a neutral magistrate judge; (2) be supported by probable cause to believe that the evidence sought will aid in a particular apprehension or conviction for a particular offense; and (3) describe with particularity the things to be seized and the place to be searched. United States v. Artis, 919 F.3d 1123, 1129 (9th Cir. 2019). Probable cause exists when "there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). The Fourth Amendment specifies only two matters that must be particularly described in the warrant: the place to be searched and the persons or things to be seized. See United States v. Grubbs, 547 U.S. 90, 97

Here, the warrants in question were issued by neutral magistrates which is not challenged by Plaintiffs. The warrants identified the places to be searched by either address, APN or GPS coordinates or all three. See Ex. F at p. 117 and J at p. 162 to SAC. The warrants described large marijuana grows to be seized supported by photographs of the properties showing the large grows and were supported by detailed affidavits establishing probable cause. See Ex J to SAC at pp. 175-179. Each Plaintiff admits that they were indeed cultivating a large number of marijuana plants. SAC at ¶¶ 80, 90, 92 and 100 and Ex. G an J to SAC.[3] As such, the warrants are facially valid.

The allegation that a search was conducted pursuant to an "ill-begotten or otherwise invalid warrant" is a claim for judicial deception. Johnson v. City of Atwater, 2019 U.S. Dist. LEXIS 100276, *17 (E.D. Cal. June 14, 2019) *citing* Oceanside Organics v. Cty. of San Diego, 341 F.Supp.3d 1129, 1136 (S.D. Cal.

[3] Disingenuously, Plaintiffs removed many of their more specific allegations establishing large scale cultivation from their SAC. For example, whereas the FAC contains allegations that Plaintiff James had "two structures on her trust allotment within which she grew cannabis plants" (FAC ¶ 39) the SAC is much more vague with regard to her cultivation. SAC ¶¶ 72-84. Whereas the FAC contains allegations that Plaintiff Swearinger's land had a "cannabis cultivation area" (FAC ¶ 47), the SAC omits this. SAC at ¶¶ 85-96.

2018). To challenge that a facially valid search warrant was obtained under false pretenses, plaintiff must show that the investigator either made deliberately false statements, recklessly disregarded the truth in the affidavit, or that the affidavit contained an actual omission made intentionally or recklessly. See Johnson, supra 2019 U.S. Dist. LEXIS at *18 and United States v. Chesher, 678 F.2d 1353, 1360 (9th Cir. 1982). Then, a plaintiff must establish that the falsifications or omissions were material to the finding of probable cause. See Galbraith v. County of Santa Clara, 307 F.3d 1119, 1126 (9th Cir. 2002) and Franks v. Delaware, 438 U.S. 154, 155, 98 S. Ct. 2674 (1978).

To establish materiality, a plaintiff must show that the false statement or material omission made a difference to the question whether the affidavit established probable cause. See Franks, supra 438 U.S. at 156 and United States v. Crawford, 943 F.3d 297, 309-310 (6th Cir. 2019). In other words, "Plaintiffs must show that a search warrant would not have issued had the affidavit contained the truthful or omitted information." Johnson, supra at *18 *quoting* Oceanside Organics v. Cty. of San Diego, 341 F.Supp.3d 1129, 1137 (S.D. Cal. 2018).

In Johnson, an officer obtained a search warrant approving seizure of marijuana and items associated with marijuana sales. Id. at *5. Plaintiffs whose marijuana was seized, filed suit alleging that the officer had obtained the warrant under false pretenses knowing that "state law preempts the attempt to criminalize possession and cultivation of marijuana", and that the officer knew that plaintiffs were growing in compliance with the CUA and MMPA. Id. at *22, 34-35. In granting the defendants motion to dismiss, the Johnson court found that "if Defendants had sufficient probable cause for a warrant to have properly issued [plaintiffs'] judicial deception argument fails. The existence of the Compassionate Use Act and the Medical Marijuana Program Act do not change the probable cause analysis." Id. at *35.

Likewise here, the existence of the Mendocino County abatement scheme does not change the probable cause analysis, and the affiant's omission of mention of the abatement scheme or County licensing scheme in the warrant documents is not material. Nor is the omission that the properties at issue were on Tribal land. This is because more than adequate probable cause existed to obtain the warrants to search Plaintiffs' properties here. Officers had conducted aerial surveillance of the properties revealing marijuana cultivation sites with greenhouses containing a large amount of marijuana plants far in excess of the legal limit of six. See Ex. J at p. 175. Thus, probable cause was established via officer observation. Further, the officers' observations were supported by photographs obtained during the aerial surveillance which were provided to the magistrate. See Ex. J at pp. 162-164, Ex. F at p. 118. Plaintiffs, indeed, admit to growing and having seized hundreds of marijuana plants. Plaintiffs simply cannot show that the addition of language regarding the County's abatement procedure, County nuisance law, or County licensing procedures in the warrant affidavits would "leave the affidavit with insufficient content to establish probable cause." Franks v. Delaware, 438 U.S. 154, 155, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). The warrants established probable cause that evidence of large-scale marijuana sites would be found on Plaintiffs' property, and the CUA, MMPA, Tribal Ordinance or County Ordinance do not change the probable cause analysis.

C. Plaintiffs' Claims Fail Because They Depend Either Entirely or in Part On Plaintiffs' Failed Allegations of Judicial Deception in Obtaining the Warrants

As established at great length in previous pleadings, Defendants had jurisdiction to enforce California's criminal law prohibiting unlicensed large-scale marijuana cultivation and/or cultivation for sale. Under their new theory, Plaintiffs cannot establish the First or Second Claims in the SAC because they cannot

establish that the warrants were invalid due to judicial deception. In other words, Plaintiffs cannot establish that Defendants were not enforcing a criminal law. As such, those Claims should be dismissed with prejudice (again).

As to the Third Claim for Violation of Section 1983, to state a claim that a search and seizure was in violation of the Fourth Amendment due to a warrant invalidated by judicial deception, "a § 1983 plaintiff must show that the investigator 'made deliberately false statements or recklessly disregarded the truth in the affidavit' and that the falsifications were 'material' to the finding of probable cause…. And that "a search warrant would not have issued had the affidavit contained the truthful or omitted information." Johnson, supra 2019 U.S. Dist. LEXIS 100276 at *18. As discussed in detail above, Plaintiffs cannot establish this. As such, the Third Claim for Relief, which relies on the allegation that an officer "knowingly submitted a misleading affidavit to obtain a search warrant he knew could not lawfully be executed on trust land", must be dismissed. See SAC at ¶ 175.

For those same reasons, the Fourth Claim must be dismissed to the extent that it relies on allegations that Defendants are liable for "using search-warrant affidavits that mischaracterize county code-enforcement actions as criminal enforcement, or that omit the jurisdictional bar on enforcing county civil regulatory schemes in Indian country, in order to obtain warrants to raid trust allotments;." Id. at ¶ 191. The Fifth Claim for Relief is not a separate Claim rather enumerates multiple state law claims. Id. at ¶¶ 199-207. Several of those claims are conclusively barred due to Plaintiffs inability to establish judicial deception.

The Seventh Claim for Negligence relies entirely on allegations that "Defendants owed Plaintiffs a duty of care to communicate information accurately and truthfully in search warrant affidavits…including the duty not to misrepresent the nature of the enforcement action, the jurisdictional status of trust land, or the applicability of county civil regulatory codes"…that "Defendants owed Plaintiffs a

duty of care not to conduct searches, seizures and detentions, or property destruction without probable cause, without a valid warrant, and without lawful authority or jurisdiction"…and that "Defendant Pryor owed a duty of care to accurately represent the jurisdictional limitations applicable to Indian trust land when preparing and submitting the affidavit used to obtain the search warrant for Plaintiff James' property." See SAC at ¶¶ 224-226. As such, the Seventh Claim should be dismissed without leave to amend.

The Ninth Claim likewise depends entirely on whether Plaintiffs can invalidate the warrant due to judicial deception as it alleges Plaintiffs were falsely imprisoned when they were detained during execution of an invalid warrant. Because officers executing a search warrant for contraband have the authority to detain the occupants of the premises while a proper search is conducted, Plaintiff cannot establish their Ninth Claim because they cannot establish the invalidity of the warrant See Michigan v. Summers, 452 U.S. 692 (1981) and Muehler v. Mena, 544 U.S. 93, 104 n.2, 108 (2005). As such, the Ninth Claim should be dismissed without leave to amend.

The Tenth Claim and Eleventh Claim also entirely rest upon Plaintiffs' ability to establish the invalidity of the warrant. As to the Tenth Claim, "Section 821.8 provides that public employees are not liable for an entry onto property where the entry is under the express or implied authority of law." If the warrants were valid, this immunity provision bars Plaintiffs' claim for trespass because the warrant clearly authorized entry onto the Property and into the structures located there. See Ogborn v. City of Lancaster, 101 Cal. App. 4th 448, 462 (2002). As to the Eleventh Claim, the tort of conversion is the ***wrongful*** exercise of dominion over the personal property of another. See Mendoza v. Continental Sales Co., 140 Cal.App.4th 1395, 1404 (2006). To establish a cause of action for conversion, a plaintiff must show: (1) ownership or right to possession of the property; (2) defendant's conversion by a wrongful act or disposition of property rights; and (3)

damages. IIG Wireless, Inc. v. Yi, 22 Cal.App.5th 630, 650 (2018). A plaintiff cannot establish conversion if the property in question was seized and/or destroyed pursuant to a valid search warrant. Drewry v. Cnty. of Riverside, 2023 U.S. Dist. LEXIS 53263 at *14 (C.D. Cal. January 23, 2023). Because the warrants were valid and not obtained via judicial deception, the Tenth and Eleventh Claims should be dismissed without leave to amend. The Sixth Claim and Twelfth Claim partially rely upon Plaintiffs' ability to establish the invalidity of the warrant. See SAC at ¶ 211, ¶ 282. Thus, those Claims should be dismissed to the extent they rely on the invalidity of the warrants.

VIII. CONCLUSION

For all of the foregoing reasons, defendants County of Mendocino and Sheriff Kendall, respectfully request that Plaintiffs' First and Second Claims in the Second Amended Complaint be stricken in their entirety. Further, that the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth Claims be stricken to the extent any elements rely on the contention that the underlying searches were illegal because Defendants lacked enforcement jurisdiction. In the alternative, the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh and Twelfth Claims be dismissed for failure to state sufficient facts to constitute a claim for relief.

Dated: March 9, 2026

Respectfully submitted,

JONES MAYER

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