UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

ANDRES RONDON, et al., Plaintiffs, vs. MENDOCINO COUNTY, et al., Defendants.	Case No: 4:20-cv-07013 SBA **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS** Dkt. 9

Plaintiff Andres Rondon ("Rondon") and Skunkworx Pharms, LLC ("Skunkworx," and together with Rondon "Plaintiffs"), bring the instant action under 42 U.S.C. § 1983 against Defendants Mendocino County, California (the "County"); Matt Kendall; Thomas Allman; Darren Brewster, and James Wells (collectively, "Defendants"). Presently before the Court is Defendants' Motion to Dismiss Plaintiffs' Complaint Pursuant to F.R.C.P. 12(b)(6). Dkt. 9. Having read and considered the papers filed in connection with this matter and being fully informed, the Court GRANTS the motion for the reasons set forth below. The Court, in its discretion, finds the matter suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

I. BACKGROUND

A. FACTUAL ALLEGATIONS

Skunkworx is a limited liability company solely owned by Rondon. Compl. ¶¶ 3-4, 11, Dkt. 1. "[T]hrough" Skunkworx, Rondon operates a farm in Mendocino County, located at 12850 Pine Avenue, Potter Valley, California. Id. ¶ 11. Plaintiffs maintain that "[a]t all times material herein [they] were duly licensed as a cannabis cultivator by the state of California, registered as a lawful cannabis cultivator with Mendocino County, and were

in full compliance with applicable state and county licensing, registration, and certification requirements for the cultivation activities conducted." Id.

On October 21, 2018, at about 7:10 a.m., Rondon was in southern California when he was informed by his employees that robbers were at the farm. Id. ¶ 12. Rondon called the Mendocino County Sherriff's Office to report that a robbery was in progress. Id. He requested that the Sheriff's Office dispatch deputies to his farm and advised them that the farm was a legally licensed cannabis operation registered with the County. Id. According to Plaintiffs, deputies did not respond for approximately two hours, and, when they arrived, they were uninterested in investigating the robbery and more interested in "impugning the credibility of the robbery report and the employees who were at the farm." Id. ¶ 13.

The deputies departed the farm and returned several hours later with a search warrant. Id. ¶ 14. Plaintiffs claim the deputies obtained the warrant with a sworn affidavit that falsely asserted: (a) a record check had been conducted and determined that the farm was not licensed or registered for cannabis cultivation activities; and (b) it "was obvious" that the property owner was in violation of state law without being part of the County's permitting process. Id. Plaintiffs allege that these are "demonstrable falsehoods"; their licensure and registration with the County was readily verifiable through an online database and conveyed to the Sheriff's Office by Rondon when he reported the robbery. Id. ¶ 15.

When the deputies returned to the farm, they brought a wood-chipper, which they used to destroy 350 cannabis plants, causing damages of approximately $350,000 to $400,000. Id. ¶ 17. The deputies destroyed plant cuttings worth an additional $15,000. Id. The deputies also destroyed equipment, disrupted Plaintiff's future business, and seized and removed personal property, including cell phones, permits and other papers. Id. ¶ 19.[1]

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[1] According to Plaintiffs, Darren Brewster and James Wells, both deputy sheriffs, actively participated in the unlawful seizure and destruction of property. Compl. ¶¶ 8-9, 27. Brewster also signed the false affidavit used to obtain the search warrant. Id. ¶ 14. Thomas Allman was the Sherriff at the time of the events giving rise to this action and is alleged to have overseen and approved the wrongful actions of his subordinates. Id. ¶ 7. Matt Kendall is the current Sheriff and succeeded Allman in that office. Id. ¶ 6.

B. PROCEDURAL HISTORY

1. Prior State Court Action

Rondon filed an action against the County, Brewster, Wells, and Allman in the Superior Court of the State of California, Mendocino County. Rondon v. County of Mendocino, Case No. SCUK-CVPO-19-72640. On June 17, 2019, he filed a First Amended Complaint for Damages and Injunctive Relief ("State FAC"), alleging causes of action for: (1) Liability under the California Tort Claims Act, Cal. Gov't Code § 810, et seq.; (2) Willful Trespass/Unlawful or Forcible Entry; (3) Violation of the Tom Bane Civil Rights Act ("the Bane Act"), Cal. Civil Code § 52.1; and (4) Conversion. Dkt. 9-1, Ex. A.

On September 25, 2019, the trial court sustained Defendants' demurrer without leave to amend on the ground that they were immune from liability pursuant to California Government Code §§ 815.2 and 821.6. Dkt. 9-1, Ex. B. The appellate court affirmed the judgement. Id., Ex. C. In affirming dismissal without leave to amend, the appellate court noted that Rondon did not seek to add a claim under 42 U.S.C. § 1983. Id. at 13 n.3.[2]

2. The Instant Action

On October 8, 2020, Plaintiffs filed the instant Complaint for Damages and Injunctive Relief, alleging causes of action under 42 U.S.C. § 1983 for: (1) Unlawful Seizure, against all Defendants; (2) Violation of Procedural Due Process, against all Defendants; and (3) Failure to Properly Supervise, Train, and Discipline, against the County, Allman, and Kendall. Dkt. 1. On December 7, 2020, Defendants filed the instant motion to dismiss. Dkt. 9.[3] Plaintiffs filed an Opposition, Dkt. 14, and Defendants filed a Reply, Dkt. 15. The motion is fully briefed and ripe for adjudication.

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[2] Defendants' request that the Court take judicial notice of (1) State FAC; (2) the superior court order sustaining the demurrer; and (3) the appellate court order affirming dismissal, Dkt. 9, is GRANTED. Fed. R. Evid. 201(b); Bennett v. Medtronic, Inc., 285 F.3d 801, 803 n.2 (9th Cir. 2002) (a court may take judicial notice of proceedings in other courts if those proceedings have a direct relation to matters at issue).

[3] The motion was not filed on behalf of Defendant Allman, who resigned from his position as Sheriff; however, he joins in the motion. Dkt. 10.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory." Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013). "To survive a motion to dismiss, a complaint must contain 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 Twombly, 550 U.S. at 570). In assessing the sufficiency of a claim, the court must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on a motion to dismiss, in particular, "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007). The court is to "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." Outdoor Media Group, Inc. v. City of Beaumont, 506 F.3d 895, 899-900 (9th Cir. 2007). Where a claim is dismissed, leave to amend should be freely given, unless amendment would be futile. Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1041 (9th Cir. 2011).

III. DISCUSSION

Defendants move to dismiss the instant action on the ground that it is barred by the doctrine of res judicata due to the prior state court action.[4] Plaintiffs respond that the doctrine of res judicata "has no application" to Skunkworx because it was not a party to the prior action. Opp'n at 2. Plaintiffs further argue that this action should not be barred because the claims in this case are not the same as those raised in state court. Id. at 2-5.

[4] In their motion to dismiss, Defendants also argue that: (1) Plaintiffs' damages claims for destruction of their cannabis should be dismissed because federal law does not recognize a property interest in cannabis; and (2) Plaintiffs' entire action should be dismissed because Congress did not intend section 1983 to allow a plaintiff to receive monetary damages for disruption of an enterprise forbidden by federal criminal statutes. See Mot. at 11-14. Because the Court finds that the action is barred by the doctrine of res judicata (as discussed below), it does not reach Defendants' other arguments.

A defendant may raise the affirmative defense of res judicata by way of a motion to dismiss under Rule 12(b)(6). Scott v. Kuhlmann, 746 F.2d 1377, 1378 (9th Cir. 1984). Under the doctrine of res judicata, also known as claim preclusion, a final judgment on the merits bars successive litigation of the same cause of action by the parties or their privies. Collins v. D.R. Horton, Inc., 505 F.3d 874, 880 n.5 (9th Cir. 2007) (quoting Parkland Hosiery Co., Inc., 439 U.S. 322, 326 n.5 (1979)). Res judicata serves the dual purpose of protecting litigants from the burden of relitigating a cause of action and of promoting judicial economy by preventing needless litigation. Parkland, 439 U.S. at 326.

The Full Faith and Credit Act, 28 U.S.C. § 1738, requires that federal courts give a state court judgment the same preclusive effect it would be given by another court of that State. Brodheim v. Cry, 584 F.3d 1262, 1268 (9th Cir. 2009). Thus, in determining whether the prior state court action bars the instant action, the Court applies California law. Id. A claim is barred by res judicata under California law if three requirements are met: "(1) the second lawsuit must involve the same 'cause of action' as the first one, (2) there must have been a final judgment on the merits in the first lawsuit and (3) the party to be precluded must itself have been a party, or in privity with a party, to that first lawsuit." San Diego Police Officers' Ass'n v. San Diego City Employees' Ret. Sys., 568 F.3d 725, 734 (9th Cir. 2009); see also DKN Holdings LLC v. Faerber, 61 Cal. 4th 813, 824 (2015). Here, Plaintiffs do not dispute that the state court decision constitutes a final judgement on the merits.[5] Thus, the Court focuses its discussion on the first and third factors.

A. SAME CAUSE OF ACTION

In determining whether two suits involve the same cause of action, California employs the primary rights theory. Manufactured Home Communities Inc. v. City of San Jose, 420 F.3d 1022, 1031 (9th Cir. 2005) (citing Mycogen Corp. v. Monsanto Co., 28 Cal.

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[5] A state court order sustaining a general demurrer constitutes a final judgment on the merits, including a demurrer granted on the basis of prosecutorial and other immunities. Rasooly v. California, No. 14-CV-04521-JSC, 2015 WL 1222167, at *7-8 (N.D. Cal. Mar. 17, 2015), aff'd sub nom. Rasooly v. Tarin, 691 F. App'x 432 (9th Cir. 2017). !

4th 888, 904 (2002)). This theory "provides that a 'cause of action' is comprised of a 'primary right' of the plaintiff, a corresponding 'primary duty' of the defendant, and a wrongful act by the defendant constituting a breach of that duty." Mycogen, 28 Cal. 4th at 904 (citation omitted). "The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action." Id. (citation omitted). Thus, "all claims based on the same cause of action must be decided in a single suit: if not brought initially, they may not be raised at a later date." Id. at 897; see also Palomar Mobilehome Park Ass'n v. City of San Marcos, 989 F.2d 362, 364 (9th Cir. 1993) (holding that a litigant cannot avoid the preclusive effect of res judicata by failing explicitly to plead federal constitutional claims in a prior state action).

"[U]nder the primary rights theory, the determinative factor is the harm suffered." Boeken v. Philip Morris USA, Inc., 48 Cal.4th 788, 798 (2010). "If two actions involve the same injury to the plaintiff and the same wrong by the defendant, then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery." Brodheim, 584 F.3d at 1268 (quotation marks, alteration, and citations omitted). In short, "[d]ifferent theories of recovery are not separate primary rights." Manufactured Home Communities, 420 F.3d at 1032 (citing Mycogen, 28 Cal. 4th at 897).

Here, the factual allegations of the instant and prior actions are nearly identical. Compare Compl. ¶¶ 11-20 with State FAC ¶¶ 11-23. Both arise out of the raid of Plaintiffs' farm by Mendocino County Sheriff's deputies on October 21, 2018. Indeed, Plaintiffs acknowledge that "the complaint here arises from the same facts and circumstances as the prior state case." Opp'n at 4. Further, although the two actions assert different theories of recovery, Plaintiffs' injury is the same, i.e., the alleged wrongful seizure and destruction of their cannabis plants and other property. See Dkt. 9-1, Ex. C (wherein the state appellate court concluded: "Whatever label Rondon attaches to his causes of action, the gravamen of his case is that defendants swore out an affidavit falsely averring that he was violating state law and obtained a search warrant, based upon which

1 they entered his farm and destroyed his crops and other property."). Finally, the two
2 actions even allege the same constitutional injuries, albeit through different statutory
3 vehicles—i.e., the Bane Act in the prior state court action and section 1983 in this action.
4 See State FAC ¶ 40 (alleging that Defendants interfered with Plaintiffs' constitutional
5 rights "including the right to be free of unlawful searches and seizures and the right to not
6 be deprived of life, liberty, or property without due process of law"). Accordingly, the
7 Court finds that the instant and prior actions involve the same primary right, giving rise to
8 but one cause of action. See McElhinny v. Cty. Of Tehama, 120 F.3d 268 (9th Cir. 1997)
9 (holding that res judicata barred a subsequent § 1983 action for constitutional violations
10 where a prior state court action concerned "the same seizure and deprivation of property").
11 Plaintiffs' arguments to the contrary are uncompelling. As a threshold matter, even
12 though Defendants set forth the applicable law in their motion, Plaintiffs do not discuss
13 California's primary rights doctrine. Instead, they discuss the standard used to determine
14 the preclusive effect of a prior federal court judgment, which is inapplicable. Brodheim,
15 584 F.3d at 1268. Plaintiffs' arguments are therefore largely inapposite. Looking past this
16 fundamental error to the substance of Plaintiffs' arguments, they still miss the mark.
17 Plaintiffs argue that "the constitutional rights asserted here are different from the state law
18 rights and injuries asserted in the state case." Opp'n at 4. However, Plaintiff's focus is too
19 narrow. The phrase "cause of action" is often used "indiscriminately" to mean "counts,"
20 which state according to different legal theories the same cause of action. Boeken, 48 Cal.
21 4th at 798. "But for purposes of applying the doctrine of res judicata, the phrase 'cause of
22 action' has a more precise meaning: The cause of action is the right to obtain redress for a
23 harm suffered, regardless of the specific remedy sought or the legal theory . . . advanced."
24 Id.; Slater v. Blackwood, 15 Cal. 3d 791, 795-96 (1975) (although various "counts" may be
25 predicated on different legal theories, one injury gives rise to but one "cause of action").
26 The seizure and destruction of Plaintiffs' cannabis plants may give rise to various counts,
27 but nonetheless constitutes one cause of action for res judicata purposes.
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1 Plaintiffs further argue that, although the two actions generally arise out of the same
2 facts and circumstances, "in one respect the due process claim here involves some facts,
3 circumstances and events that have occurred after the first amended complaint in the state
4 court that could not have been asserted then in that forum." Opp'n at 4. Plaintiffs argue
5 that their activities were lawful under California Business & Professions Code § 26032(a),
6 and thus, "judicially expanded government immunity should not have been applied to bar
7 plaintiffs' claims [in the state court action]." Id. at 5. Plaintiffs argue that "the eventual
8 court rulings in the trial court and upheld by the California court of appeals were part of the
9 denial of due process," and that they "had no opportunity or ability to assert this claim in
10 the state action because it did not ripen into a claim until after the court rulings on the
11 defendants' demurrer." Id. This argument fails for at least two reasons.
12 As a threshold matter, the Complaint alleges a claim for denial of procedural due
13 process on the ground that the deputies wrongfully seized and destroyed Plaintiffs'
14 cannabis plants. Compl. ¶ 32. It *does not allege* a claim for denial of procedural due
15 process *in the state court proceedings*. Moreover, insofar as this newly asserted claim "is
16 tied to the state court's decision [to sustain the demurrer]," Defendants "cannot be said to
17 have caused the deprivation, as [they] [were] not involved in that decision." Merlo v. City
18 of Palo Alto, No. 18-CV-03943-BLF, 2018 WL 5780077, at *1 (N.D. Cal. Nov. 1, 2018)
19 (finding that the plaintiff failed to state a claim for denial of due process against the City of
20 Palo Alto, i.e., the defendant in the prior state court action, because it was the court—not
21 the City—that made the challenged decision), aff'd, 793 F. App'x 558 (9th Cir. 2020)
22 (citing Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008) ("In a § 1983
23 action, the plaintiff must also demonstrate that the defendant's conduct was the actionable
24 cause of the claimed injury.")).[6] Plaintiffs cite no authority, and the Court is aware of none,
25 supporting the proposition that one litigant can deprive another of due process simply by
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27 [6] The superior court is an arm of the State, not the County. See Simmons v.
Sacramento Cty. Superior Ct., 318 F.3d 1156, 1161 (9th Cir. 2003) (citing Great L.A.
28 Council on Deafness, Inc. v. Zolin, 812 F.2d 1103, 1110 (9th Cir. 1987)). !

defending against, or advancing arguments in, a legal action. Plaintiffs' attempt to avoid a res judicata bar by raising this new claim in their opposition brief therefore fails.

Accordingly, the instant and prior actions involve the same cause of action.

B. PARTIES OR PRIVIES

Plaintiffs contend the doctrine of res judicata "has no application" to Skunkworx because it was not a party to the state court action. Opp'n at 2.[7] Plaintiffs do not address the issue of privity, however. As rightly noted by Defendants, "the preclusive effect of *res judicata* does not apply just to the named parties in a prior proceeding, but also to those in privity with [the named] parties." Reply at 2-3 (citing Citizens for Open Access & Tide, Inc. v. Seadrift Ass'n., 60 Cal. App. 4th 1053, 1069-71 (1998).

"As applied to questions of preclusion, privity requires the sharing of 'an identity or community of interest,' with 'adequate representation' of that interest in the first suit, and circumstances such that the nonparty 'should reasonably have expected to be bound' by the first suit." DKN Holdings, 61 Cal. 4th at 826 (quoting Clemmer v. Hartford Insurance Co., 22 Cal. 3d 865, 875 (1978)). "A nonparty alleged to be in privity must have an interest so similar to the party's interest that the party acted as the nonparty's 'virtual representative' in the first action." Id. (quotation marks and citation omitted).

Here, the Court finds that Rondon and Skunkworx are in privity. Skunkworx is solely owned and operated by Rondon. Compl. ¶¶ 3, 11. "When a person owns most or all of the shares in a corporation and controls the affairs of the corporation, it is presumed in any litigation involving that corporation the individual has sufficient commonality of interest." In re Gottheiner, 703 F.2d 1136, 1140 (9th Cir.1983); see, e.g., Arunachalam v.

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[7] Plaintiffs acknowledge that Skunkworx was initially a plaintiff in the state court action, but note that Skunkworx was later "omitted" because it "was not named on the Notice of Claim submitted under the California Tort Claims Act, a necessary prerequisite to a state tort suit." Opp'n at 3 n.1. Defendants assert that, although Skunkworx was not named as a plaintiff in the State FAC, it does not appear "a dismissal of [Skunkworx] was ever requested or entered with the Court." Reply at 2. The import of Skunkworx's initial appearance in the state court action need not be addressed because, as Defendants persuasively argue (and as discussed below), Skunkworx is in privity with Rondon.

1 Fremont Bancorporation, No. 15-CV-00023-EDL, 2015 WL 12806552, at *2 (N.D. Cal.
2 May 4, 2015), aff'd, 672 F. App'x 994 (Fed. Cir. 2017) (finding privity between an entity
3 and its sole owner). Plaintiffs here are represented by the same counsel that represented
4 Rondon in the state court action, and Skunkworx does not contend that representation in the
5 earlier action was inadequate. Rondon's interests in the state court action and Skunworx
6 interests here are also identical—they seek to recover for the destruction of their cannabis
7 and other property at the farm Rondon operates through Skunkworx. See Trevino v. Gates,
8 99 F.3d 911 (9th Cir. 1996) (finding virtual representation where the interests of the named
9 party and non-party were "identical"). It is axiomatic that Plaintiffs may recover only once
10 for destruction of their property; thus, had Rondon prevailed in the state action, Skunkworx
11 would have been unable to later recover for destruction of the same property.

12 Accordingly, Skunkworx should reasonably have expected to be bound by the state
13 court action, and thus, is in privity with Rondon.

14 **C. SUMMARY**

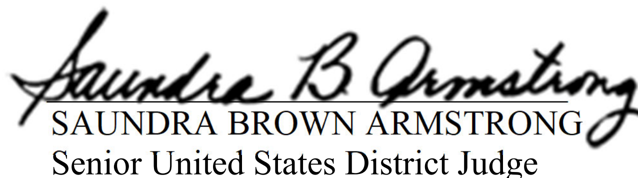
15 The Court finds that the elements for application of res judicata are satisfied, and
16 thus, the instant action is barred. Amendment would be futile.

17 **IV. CONCLUSION**

18 For the reasons stated above, IT IS HEREBY ORDERED THAT Defendants'
19 motion to dismiss is GRANTED and the action is DISMISSED without leave to amend.
20 The clerk shall close the action and terminate all pending matters.

21 IT IS SO ORDERED.

22 Dated: March 31, 2021



SAUNDRA BROWN ARMSTRONG
Senior United States District Judge

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