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9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 ANDRES RONDON and SKUNKWORX, ) 4:20-cv-07013-SBA  
13 )  
14 Plaintiffs, ) **COUNTY OF MENDOCINO**  
v. ) **DEFENDANTS’ NOTICE OF MOTION**  
15 ) **AND MOTION TO DISMISS**  
16 ) **PLAINTIFFS’ COMPLAINT**  
17 ) **PURSUANT TO F.R.C.P. 12(b)(6);**  
18 ) **MEMORANDUM OF POINTS AND**  
19 ) **AUTHORITIES IN SUPPORT**  
20 ) **THEREOF**  
21 )  
22 ) Date: January 13, 2021  
23 ) Time: 2:00 p.m.  
24 ) Location: U.S. District Court, 1301 Clay  
25 ) Street, Oakland, California  
26 )  
27 ) Honorable Sandra Brown Armstrong  
28 ) United States Senior District Judge  
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1 TO: Plaintiffs ANDRES RONDON and SKUNKWORX, and their attorney of record,  
2 Arthur R. Angel:

3 PLEASE TAKE NOTICE that on January 13, 2021, at 2:00 p.m., in the U.S. District  
4 Court located at 1301 Clay Street, Oakland, California, before the Honorable Sandra Brown  
5 Armstrong, Senior District Judge, Mendocino County Defendants will move for dismissal of all  
6 Plaintiffs' Causes of Action pursuant to Federal Rules of Civil Procedure ("F.R.C.P.") 12(b)(6)  
7 based on Plaintiffs' failure to state a claim under which relief can be granted.

8 Defendants ask that this Court dismiss Plaintiffs' Complaint. This motion is based on  
9 this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support of  
10 Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6) filed herewith, the Request for Judicial Notice  
11 filed herewith, and all the pleadings, papers, and records on file herein, and on such further oral  
12 and documentary evidence as may be presented at the hearing on this motion.

13 **DECLARATION OF MEET AND CONFER**

14 I, CHRISTIAN M. CURTIS, do hereby declare:

15 1. I am a member of the State Bar of California and an attorney with the Office of  
16 the County Counsel of Mendocino County, attorney of record for Defendant, County of  
17 Mendocino, in the above-captioned action.

18 2. The matters set forth in this declaration are within my personal knowledge, and  
19 if called upon to testify as to these matters, I could and would so testify.

20 3. On December 4, 2020, I met and conferred with attorney for Plaintiffs, Arthur  
21 R. Angel. However, Plaintiffs' counsel and I were not able to reach an agreement as to the  
22 issues to be raised in Defendants' motion to dismiss.

23 I declare under penalty of perjury, under the laws of the State of California, that the  
24 foregoing is true and correct and that if called as a witness, I could competently testify to the  
25 above facts which are from my own personal knowledge. Executed this 7<sup>th</sup> day of December  
26 2020, at Ukiah, California.

27 /s/ Christian M. Curtis

28 CHRISTIAN M. CURTIS, County Counsel

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**I. INTRODUCTION**

Plaintiffs Andres Rondon and Skunkworx Pharms, LLC (“Plaintiffs”) have brought this action against of the County of Mendocino and several of its current and former officers based on the alleged wrongful destruction of their cannabis by the Mendocino County Sheriff’s Office while executing a warrant on Plaintiffs’ property in Potter Valley, CA on or about October 21, 2018. Plaintiffs’ Complaint closely mirrors their claims in a state court action filed by Plaintiffs on or about May 2019. RJN #1. That action sought the same damages for the same events alleged in this proceeding, but asserted only state law causes of action.

As set forth more fully herein, the judgment entered in the state court action bars Plaintiffs’ claims in this proceeding under the doctrine of *res judicata*. Accordingly, Defendants now move this court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss this action on the grounds that it is barred by the claims splitting doctrine and/or *res judicata*, and that the allegations regarding the destruction of Plaintiffs’ cannabis fail to state a claim for which relief can be granted under federal law.

**II. LEGAL ARGUMENT**

**A. Legal Standard For Sustaining A Motion To Dismiss.**

For the purposes of this motion to dismiss, the Court must take all the factual allegations in the complaint as true. However, the Court is not bound to accept as true a legal conclusion couched as a factual allegation. *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (citing *Briscoe v. LaHue*, 663 F.2d 713, 723 (7th Cir. 1981), *aff’d on other grounds sub nom. Briscoe v. Lahue*, 460 U.S. 325 (1983)).

[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice ... Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.



1 *Bassett v. Ruggles*, No. CV-F-09-528 OWW/SMS, 2009 U.S. Dist. LEXIS 83349, at \*10 (E.D.  
2 Cal. Sept. 14, 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).  
3 Federal Rules of Civil Procedure ("F.R.C.P.") 12(b)(6) provides for dismissal for failure to  
4 state a claim when it appears beyond doubt that plaintiffs can prove no set of facts to support  
5 their claim entitling them to relief. *Conley v. Gibson*, 355 U.S. 41, 46 (1957). The Court must  
6 assume that the plaintiff's allegations are true and must draw all reasonable inferences in the  
7 plaintiff's favor. *Usher v. Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, while a  
8 complaint need not contain detailed factual allegations under Fed. R. Civ. P. 8(a), it must  
9 contain sufficient factual allegations "to raise a right to relief above the speculative level." *Bell*  
10 *Atl. Corp. V. Twombly*, 550 U.S. 544, 555 (2007).

11 Even if the face of the pleadings suggests that the chance of recovery is remote, the  
12 Court must allow a plaintiff to develop a case at this stage of the proceedings. *United States v.*  
13 *City of Redwood City*, 640 F.2d 963, 966 (9th Cir. 1981). A court, however, need not accept as  
14 true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations  
15 cast in the form of factual allegations. *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.  
16 1981), *cert. denied*, 454 U.S. 1031.

17 **B. The Case in Its Entirety Is Barred by the Doctrines of Claims Splitting and/or Res**  
18 **Judicata.**

19 In this instance, the entire action should be dismissed because Plaintiffs' action improperly  
20 brings only claims for the same injuries alleged in their prior lawsuit. That action, *Rondon v.*  
21 *County of Mendocino*, Mendocino County Superior Court case number SCUK-CVPO-19-  
22 72649, resulted in a judgment of dismissal for the Defendants. RJN #1. Plaintiffs appealed  
23 that judgment, which was affirmed by the First Appellate District of the California Court of  
24 Appeal on October 15, 2020. RJN #1. Accordingly, that judgment is now final. Cal Rules of  
25 Court Rule 8.264(b). Under 28 U.S.C. section 1738, this state court judgment is afforded full  
26 faith and credit by the federal courts. Because Plaintiffs' current Complaint asserts claims  
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1 against the same parties<sup>1</sup> for the same injuries as the prior state court proceeding, it is barred  
2 by *res judicata*.

3 "Res judicata and collateral estoppel relieve parties of the cost and vexation of multiple  
4 lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage  
5 reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94 (1984). "[T]he doctrine of res  
6 judicata (or claim preclusion) 'bar(s) all grounds for recovery which could have been asserted,  
7 whether they were or not, in a prior suit between the same parties ... on the same cause of  
8 action.'" *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982) (quoting  
9 *Ross v. IBEW*, 634 F.2d 453, 457 (9th Cir. 1980)). "[T]he 'could have been litigated' branch  
10 of res judicata, . . . is grounded in the policy of encouraging litigants to raise all of the claims  
11 arising out of one transaction in a single suit and precludes them from splitting causes of  
12 action." *Adolph Coors Co. v. Sickler*, 608 F. Supp. 1417, 1431 (C.D. Cal. 1985). It is closely  
13 related to the doctrine against claims splitting, which "provides that a party may not split a  
14 cause of action into separate grounds of recovery and raise the separate grounds in successive  
15 lawsuits." *MLC Intellectual Prop., LLC v. Micron Tech., Inc.*, No. 19-cv-03345-EMC, 2019  
16 U.S. Dist. LEXIS 174870, at \*10 (N.D. Cal. Oct. 8, 2019).

16 "To determine the preclusive effect of [a] state court judgment. . . [federal courts] look  
17 to state law." *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 927 (9th Cir. 2006). "California's res  
18 judicata doctrine is based on a primary rights theory." *Manufactured Home Cmty's., Inc. v.*  
19 *City of San Jose*, 420 F.3d 1022, 1031 (9th Cir. 2005).

20 [T]he primary right is simply the plaintiff's right to be free from the particular injury  
21 suffered . . . It must therefore be distinguished from the legal theory on which liability  
22 for that injury is premised: 'Even where there are multiple legal theories upon which  
23 recovery might be predicated, one injury gives rise to only one claim for relief.

24 *Mycogen Corp. v. Monsanto Co.*, 28 Cal. 4th 888, 904, 123 Cal. Rptr. 2d 432, 443-44, 51 P.3d  
25 297, 306-07 (2002) (quoting *Crowley v. Katleman*, 8 Cal.4th 666, 681-682 (1994)). "When  
26 there is only one primary right an adverse judgment in the first suit is a bar even though the

27 <sup>1</sup> The only defendant not named in the prior action was Mendocino County Sheriff Matthew  
28 Kendall. Sheriff Kendall, however, is named only in his official capacity. Complaint ¶ 6. His  
predecessor, Sheriff Allman, was named in the prior suit in his official capacity. RJN #1.

1 second suit is based on a different theory . . . or seeks a different remedy . . .” *Crowley v.*  
 2 *Katleman*, 8 Cal. 4th 666, 682, 34 Cal. Rptr. 2d 386, 394, 881 P.2d 1083, 1091 (1994).

3 In this case, the state court action was unambiguously based on the same primary right  
 4 as the current Complaint. Both actions stemmed from Mendocino County Sheriff’s Office’s  
 5 response to a 911 call on October 21, 2018. Complaint ¶ 12; RJN #1, Ex. A ¶ 12. Both actions  
 6 allege that, after arriving on scene, sheriff’s deputies left to obtain a warrant through  
 7 misrepresentations to the court. Complaint ¶¶ 14-15; RJN #1, Ex. A ¶¶ 14-15. The deputies  
 8 subsequently returned with a wood chipper and destroyed Plaintiffs’ cannabis. Complaint ¶  
 9 17; RJN #1, Ex. A ¶ 18. Both actions seek to recover damages from the lost income and  
 10 interruption of their cannabis business, emotional harm, and punitive damages. Complaint ¶¶  
 11 22-24; RJN #1, Ex. A ¶¶ 25-27. Many of the allegations in the current case were copied,  
 12 verbatim, from the state court complaint.

13 The only meaningful difference between the two actions is that, in the prior case,  
 14 Plaintiffs asserted exclusively state law legal theories. RJN #1, Ex. A. In doing so, Plaintiffs  
 15 insulated themselves from potential removal to federal court, where their claims might be  
 16 hampered by the fact that their business was prohibited under federal law. 28 U.S. Code  
 17 § 1441. By choosing to proceed exclusively on state law legal theories, however, Plaintiffs  
 18 effectively waived their opportunity to assert claims for the same injury under federal statute,  
 19 because claims splitting is prohibited. “When there is only one primary right an adverse  
 20 judgment in the first suit is a bar even though the second suit is based on a different theory . . .  
 21 or seeks a different remedy . . .” *Crowley v. Katleman*, 8 Cal. 4th 666, 682, 34 Cal. Rptr. 2d  
 22 386, 394, 881 P.2d 1083, 1091 (1994). Consequently, the current action should be dismissed,  
 23 as this sort of gamesmanship is not permitted under state or federal law.

24 **C. Plaintiffs’ Damages Claims for Destruction of their Cannabis, Loss of Cannabis  
 25 Revenue, and Interruption of their Cannabis Business Should be Dismissed,  
 26 Because Federal Law Does Not Recognize a Property Interest in Cannabis.**

27 Plaintiffs’ First, Second and Third, Causes of Action assert that the County of  
 28 Mendocino violated their rights unlawfully seized and destroyed Plaintiffs’ property without  
 probable cause or due process. The property in question is primarily Plaintiffs’ cannabis  
 plants. Complaint ¶¶ 17-18. Plaintiffs seek lost profits stemming from their inability to sell

1 the cannabis. Complaint ¶ 22. These damages, however, are unavailable, because the  
2 cultivation of cannabis remains prohibited by federal statute. Consequently, “Plaintiffs face  
3 the insurmountable hurdle that federal law does not recognize any protectible liberty or  
4 property interest in the cultivation, ownership, or sale of marijuana.” *Citizens Against*  
5 *Corruption v. Cty. of Kern*, No. 1:19-CV-0106 AWI GSA JLT, 2019 U.S. Dist. LEXIS 75225,  
6 at \*8 (E.D. Cal. May 3, 2019)

7 “Courts will not entertain a claim contesting the confiscation of contraband *per se*  
8 because one cannot have a property right in that which is not subject to legal possession.”  
9 *Cooper v. Greenwood*, 904 F.2d 302, 305 (5th Cir. 1990). “A typical example [of contraband  
10 *per se*] is cocaine, a controlled substance, the possession of which is unlawful under the  
11 Controlled Substances Act . . .” *Id.* Cannabis is also a controlled substance. 21 U.S.C. §  
12 812(c)(10). “[B]ecause marijuana is contraband *per se* under federal law . . . no person can  
13 have a cognizable legal interest in it.” *Marble v. Strecker*, No. CV 13-00186-M-DWM-JCL,  
14 2014 U.S. Dist. LEXIS 50770, at \*22 (D. Mont. Feb. 26, 2014). The same is true for any  
15 entitlement to possess cannabis under state law, such as a “marijuana card.” *Id.*; see also *Smith*  
16 *v. City of Berkeley*, No. C 15-04227 WHA, 2015 U.S. Dist. LEXIS 170826, at \*6 (N.D. Cal.  
17 Dec. 21, 2015); *Barrios v. Cty. of Tulare*, No. 1:13-CV-1665 AWI GSA, 2014 U.S. Dist.  
18 LEXIS 71406, at \*12-13 (E.D. Cal. May 22, 2014); *Staffin v. Cty. of Shasta*, No. 2:13-cv-  
19 00315 JAM-CMK, 2013 U.S. Dist. LEXIS 64625, at \*13-14 (E.D. Cal. May 6, 2013); *Schmidt*  
20 *v. Cty. of Nev.*, No. 2:10-CV-3022 FCD/EFB, 2011 U.S. Dist. LEXIS 78111, at \*18 n.10 (E.D.  
21 Cal. July 19, 2011). Consequently, while the County of Mendocino and the State of California  
22 have chosen to regulate cannabis and cannabis production in a manner other than blanket  
23 prohibition, that decision does not create a federally recognized property right to do what  
24 remains prohibited under federal law.

25 In the event that this Court fails to dismiss this action in its entirety, then it should  
26 dismiss all of Plaintiffs’ damages claims which relate to the destruction of cannabis, lost  
27 opportunity to sell cannabis, or interruption to their cannabis business. Improper damages  
28 claims are properly dismissed under Federal Rules of Civil Procedure Rule 12(b)(6), rather  
than a motion to strike. *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 974-75 (9th Cir.  
2010); See also *Staley v. Gilead Scis., Inc.*, No. 19-cv-02573-EMC, 2020 U.S. Dist. LEXIS

1 167071, at \*43 (N.D. Cal. July 24, 2020) (“[T]he Ninth Circuit has indicated that, where a  
2 defendant contends damages are precluded as a matter of law, such an argument should not be  
3 raised through a Rule 12(f) motion to strike but rather through as 12(b)(6) or even summary  
4 judgment.”); *Black v. Wells Fargo & Co.*, No. 3:15-cv-270-RJC, 2016 U.S. Dist. LEXIS  
5 14266, at \*9 n.2 (W.D.N.C. Feb. 5, 2016) (citing Wright & Miller for the proposition that “a  
6 Rule 12(b)(6) motion ‘may be used to challenge the sufficiency of part of a pleading, such as a  
7 single count or claim for relief’”).<sup>2</sup> Since Plaintiffs’ claims for damages to their cannabis and  
8 cannabis business are not cognizable under federal statute, dismissal of those claims is proper.

9 **D. The Entire Action Should Be Dismissed Under the Doctrine of ex Turpi Causa**  
10 **Non Oritur Actio, Because Congress Did Not Intend 42 U.S.C. § 1983 to Allow a**  
11 **Plaintiff to Receive Monetary Damages for Disruption of an Enterprise Forbidden**  
12 **by Federal Criminal Statutes.**

13 As noted above, Plaintiffs’ claims are based on the County’s seizure and destruction of  
14 their cannabis plants. Plaintiffs’ claims for monetary damages are founded exclusively on a  
15 federal statute, 42 United States Code section 1983, as all state law claims have been  
16 conclusively adjudicated in the County’s favor. Complaint ¶ 40-55; See Cal. Gov. Code §  
17 911.2. Based on the seizure of their cannabis, Plaintiffs seek “consequential damage, business  
18 interruption and lost income.” Complaint ¶ 22. That is, Plaintiffs seek monetary  
19 compensation for a lost opportunity to cultivate and sell cannabis. These activities, however,  
20 are prohibited by federal criminal law. 21 U.S.C. § 812. Accordingly, federal statutes and  
21 federal courts will not afford Plaintiffs the relief they seek.

22 //  
23 //

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25  
26 <sup>2</sup> A few district courts have construed *Whittlestone* as holding that a defendant may never  
27 challenge a damages claim at the pleading stage. See *Gers v. New Rds. Sch.*, No. 2:19-cv-  
28 08003-ODW (Ex), 2020 U.S. Dist. LEXIS 141691, at \*21 (C.D. Cal. Aug. 7, 2020); *Bocock v.*  
*Specialized Youth Servs. of Va.*, Civil Action No. 5:14cv00050, 2015 U.S. Dist. LEXIS 47005,  
at \*7 (W.D. Va. Apr. 10, 2015). This approach, however, appears to be a minority view.

1 Under established federal case law, “No court will lend its aid to a party who founds  
2 his claim for redress upon an illegal act.” *The "Florida"*, 101 U.S. 37, 42 (1879). “If, from the  
3 plaintiff’s own stating or otherwise, the cause of action appear to arise *ex turpi causa*, or the  
4 transgression of a positive law of the country, there the court says he has no right to be  
5 assisted.” *Danebo Lumber Co. v. Koutsky-Brennan-Vana Co.*, 182 F.2d 489, 494 (9th Cir.  
6 1950). “The denial of relief based on that maxim (known by the latin phrase *ex turpi causa*  
7 *non oritur actio*) is ‘not for the sake of the defendant, but because [courts] will not lend their  
8 aid to such a plaintiff.’” *Smith v. City of Berkeley*, No. C 15-04227 WHA, 2015 U.S. Dist.  
9 LEXIS 170826, at \*6 (N.D. Cal. Dec. 21, 2015) (quoting *Ewell v. Daggs*, 108 U.S. 143, 149, 2  
10 S. Ct. 408, 27 L. Ed. 682 (1883)). This doctrine applies to plaintiffs who attempt to use  
11 federal law to obtain damages for a lost opportunity to engage in a cannabis enterprise due to  
12 denial of local permits. *Id.*

13 Moreover, it would be anomalous to conclude that Congress intended that the federal  
14 statute at issue in this case would be a vehicle for obtaining lost revenue from an enterprise  
15 wholly forbidden under federal criminal law. Such an interpretation would place section 1983  
16 in tension with other federal criminal statutes and create absurd results. From context,  
17 however, it is clear that Congress intended no such result. In enacting 42 United States Code  
18 section 1983, Congress chose to rely on common law tort principles, rather than statutory  
19 language, for several of its key features. See, e.g., *Carey v. Piphus*, 435 U.S. 247 (1978); see  
20 also *Taliferro v. Augle*, 757 F.2d 157 at 161-62 (7th Cir. 1985) (“[F]ederal tort statutes such as  
21 42 U.S.C. § 1983 are not self-contained. They are enacted against a background of common  
22 law tort principles governing causation and damages.”). At the time of section 1983’s  
23 enactment, this include the common law principle of *ex turpi causa non oritur actio*. See *The*  
24 *"Florida"*, 101 U.S. 37, 42 (1879). Consequently, section 1983 cannot reasonably be  
25 understood to provide Plaintiffs with an entitlement to a monetary award for a local  
26 government’s denial of their request for a permit to cultivate cannabis.

#### 27 **E. Leave to Amend Should Be Denied.**

28 In this case, the Court should dismiss this action without leave to amend, because the  
final judgement in the state court matter necessarily renders any attempt at amendment to be

1 futile. RJN #1. “Although leave to amend should be given freely, a district court may dismiss  
2 without leave where a plaintiff’s proposed amendments would fail to cure the pleading  
3 deficiencies and amendment would be futile.” *Cervantes v. Countrywide Home Loans, Inc.*,  
4 656 F.3d 1034, 1041 (9th Cir. 2011). When an action is dismissed because of a prior  
5 judgment, “res judicata would render any attempt to amend [the Complaint] futile.” *Greene v.*  
6 *United States Bank, N.A.*, No. 19-cv-07448-RS, 2020 U.S. Dist. LEXIS 50020, at \*14 (N.D.  
7 Cal. Feb. 5, 2020); see also *Carrick v. Rice*, 749 F. App’x 615, 616 (9th Cir. 2019); *Mir v.*  
8 *Frantzel*, 699 F. App’x 752, 753 (9th Cir. 2017). Moreover, no new factual averments could  
9 possibly change the fact that the destruction of Plaintiffs’ cannabis is not a cognizable injury  
10 under federal statute. Accordingly, the Complaint should be dismissed without leave to  
11 amend.

12 **III. CONCLUSION**

13 For the reasons stated herein, Defendants request that the Complaint be dismissed  
14 without leave to amend.

15  
16 Dated: December 7, 2020

Respectfully submitted,  
CHRISTIAN CURTIS, County Counsel

17  
18 by /s/ Christian M. Curtis  
CHRISTIAN M. CURTIS, County Counsel  
19 Attorneys for County Defendant

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7 Attorneys for Defendants  
8 County of Mendocino, Matthew Kendall, Darren Brewster, James Wells

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 ANDRES RONDON and SKUNKWORX, ) 4:20-cv-07013-SBA  
13 )  
14 Plaintiffs, ) **[PROPOSED] ORDER ON COUNTY OF**  
v. ) **MENDOCINO DEFENDANTS’**  
15 ) **MOTION TO DISMISS COMPLAINT**  
COUNTY OF MENDOCINO, MATTHEW )  
16 KENDALL, THOMAS ALLMAN, DARREN )  
17 BREWSTER, JAMES WELLS, and DOES 1- ) Date: January 13, 2021  
10, ) Time: 2:00 p.m.  
18 Defendants. ) Location: U.S. District Court, 1301 Clay  
Street, Oakland, California  
19 )  
20 ) Honorable Sandra Brown Armstrong  
United States Senior District Judge  
21 )

22  
23 Plaintiffs, ANDRES RONDON and SKUNKWORX, filed a complaint for damages  
24 related to the seizure and destruction of their cannabis plants by Mendocino County law  
25 enforcement. County Defendants filed a motion to dismiss pursuant to F.R.C.P. rule 12(b).

26 Upon the consideration of all papers filed in favor and opposition to this motion, and  
27 oral argument by all parties or their attorneys, the Court hereby orders as follows:  
28



1 County Defendants' Motion to Dismiss Plaintiffs' Complaint is hereby GRANTED, and leave  
2 to amend is denied.

3 SO ORDERED.

4

5 Dated: by \_\_\_\_\_  
6 U.S. District Court Judge

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10 Attorneys for Defendants  
11 County of Mendocino, Matthew Kendall, Darren Brewster, James Wells

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 ANDRES RONDON and SKUNKWORX,

15 Plaintiffs,

16 v.

17 COUNTY OF MENDOCINO, MATTHEW  
18 KENDALL, THOMAS ALLMAN, DARREN  
19 BREWSTER, JAMES WELLS, and DOES 1-  
20 10,

21 Defendants.

) 4:20-cv-07013-SBA

) **REQUEST FOR JUDICIAL NOTICE IN**  
) **SUPPORT OF COUNTY**  
) **DEFENDANTS’ MOTION TO DISMISS**  
) **PLAINTIFFS’ COMPLAINT**

) Date: January 13, 2021

) Time: 2:00 p.m.

) Location: U.S. District Court, 1301 Clay  
) Street, Oakland, California

) Honorable Sandra Brown Armstrong

) United States Senior District Judge

22 \_\_\_\_\_ )  
23 **TO: Plaintiffs ANDRES RONDON and SKUNKWORX, and their attorney of record,**  
24 **Arthur R. Angel:**

25 Pursuant to Rule 201(b) of the Federal Rules of Evidence, County Defendants request  
26 judicial notice of the following:  
27  
28

- 1 1. First Amended Complaint for Damages and Injunctive Relief; Andres Rondon v.  
2 Mendocino County et al., Mendocino County Superior Court Case No. SCUJ-CVPO-  
3 2019-72649, June 20, 2019, attached as “Exhibit A.”
- 4 2. Order Granting County of Mendocino Defendants’ Demurrer to Plaintiff’s Unverified  
5 First Amended Complaint for Damages and Injunctive Relief; Andres Rondon v.  
6 Mendocino County et al., Mendocino County Superior Court Case No. SCUJ-CVPO-  
7 2019-72649, September 25, 2019, attached as “Exhibit B.”
- 8 3. Ruling on Appeal; Andres Rondon v. Mendocino County et al.; Court of Appeal Case  
9 No. A159474, October 15, 2020, attached as “Exhibit C.”

10  
11 Rule 201(b) of the Federal Rules of Evidence provides that a court may take judicial  
12 notice of a fact “that is not subject to reasonable dispute because it is: (1) generally known  
13 within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready  
14 determination by resort to sources whose accuracy cannot reasonably be questioned.”  
15 Fed.R.Evid. 201. This section allows a federal court to judicial notice of the final judgment and  
16 other filings from a state court. *Conopco, Inc. v. Roll Int’l*, 231 F.3d 82, 86 n.3 (2d Cir. 2000);  
17 see also *Brooks v. Alameida*, 446 F. Supp. 2d 1179, 1182 (S.D. Cal. 2006). The documents of  
18 which judicial notice is requested consist of Plaintiffs’ filings and the court’s orders in a prior,  
19 state court, proceeding.

20  
21 Dated: December 7, 2020

Respectfully submitted,  
CHRISTIAN CURTIS, County Counsel

22  
23 by /s/ Christian M. Curtis  
CHRISTIAN M. CURTIS, County Counsel  
24 Attorneys for County Defendant

# **EXHIBIT A**



1 Arthur R. Angel , SBN 214611  
2 1305 N. Poinsettia Place  
3 Los Angeles, CA 90046  
4 Phone: (323) 656-9085  
5 Fax: (323) 417-4704  
6 arthurangel@sbcglobal.net

7 Attorney for Plaintiff Andres Rondon

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **MENDOCINO COUNTY**

11 **ANDRES RONDON**

12 **Plaintiff,**

13 **vs.**

14 **MENDOCINO COUNTY, CALIFORNIA;**

15 **DARREN BREWSTER; JAMES WELLS;**

16 **THOMAS ALLMAN; DOES 1-10**

17 **Defendants**

Case No.: SCUK-CVPO-2019-72649

**FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

**JURY TRIAL DEMANDED**

18 Plaintiff Andres Rondon for his First Amended Complaint against Defendants allege as  
19 follows:

20 **JURISDICTION AND VENUE**

- 21 1. This court has jurisdiction over Plaintiff's state law claims that arise from California  
22 law.  
23 2. The conduct alleged herein occurred in Mendocino County, State of California.

24 Accordingly, venue of this action lies in this court.

25  
26 **PARTIES**  
27  
28

1 3. Plaintiff Andres Rondon resides in California. He is the owner and operator of the  
2 cultivation business in Mendocino County where the wrongful conduct described herein  
3 occurred and of Skunkworks Pharms, LLC.

4  
5 4. Defendant Mendocino County is a public entity organized under the laws of  
6 the State of California and operates the Mendocino County Sheriff's Office, the  
7 employer of all other defendants. It is liable for its direct torts and, under the doctrine  
8 of respondeat superior, for torts committed by its employees and subordinates

9  
10 5. Defendant Darren Brewster is a Mendocino County deputy sheriff. He acted in the  
11 course and scope of his employment, and under color of state law, at all times mentioned  
12 herein, except insofar as he departed from his lawful duties and functions and the policies and  
13 procedures of Mendocino County and its sheriff's department. He is sued in both his official  
14 capacity and his individual capacity

15  
16 6. Defendant James Wells is a Mendocino County deputy sheriff. He acted in the course  
17 and scope of his employment, and under color of state law, at all times mentioned herein  
18 except insofar as he departed from his lawful duties and functions and the policies and  
19 procedures of Mendocino County and its sheriff's department. He is sued in both his official  
20 capacity and his individual capacity

21  
22 7. Defendant Thomas Allman is the Sheriff of Mendocino County. He is the ultimate  
23 policy maker and authority for the sheriff's office. He also is responsible for the training,  
24 supervision, discipline and oversight of Mendocino County deputy sheriffs and for the actions  
25 taken by his subordinates. He acted in the course and scope of his employment, and under  
26 color of state law, at all times mentioned herein except insofar as he departed from his lawful  
27 duties and functions and the policies and procedures of Mendocino County and its sheriff's  
28 department. He is sued in both his official capacity and his individual capacity.

1 8. Plaintiff does not presently know the true names and capacities of defendants DOES 1  
2 through 10, inclusive, and therefore sues them by these fictitious names. Plaintiff is informed  
3 and believes that DOES 1 through 10, and each of them, were responsible in some manner  
4 for the wrongful acts or omissions alleged herein, including participating in the unlawful  
5 seizure and destruction of plaintiffs' property, and false averments to obtain a search warrant  
6 that was obtained on false pretenses and efforts to conceal and avoid responsibility for the  
7 wrongful actions alleged herein. Plaintiff sought to identify the true names of all individuals  
8 who participated in the wrongful conduct alleged herein before filing suit but defendants have  
9 declined to divulge that information. Plaintiff will seek leave to amend this Complaint to add  
10 their true names and capacities when they have been ascertained.  
11  
12  
13  
14

15 **STATEMENT OF FACTS**

16 11. Plaintiff Andres Rondon operates a farm in Potter Valley, in Mendocino County, on which  
17 cannabis is lawfully cultivated for sale, under the name Skunkworks Pharms, a trade name of  
18 Skunkworks Pharms, LLC, which he owns and controls. The farm is located at 12850 Pine Ave.,  
19 Potter Valley, California, in Mendocino County. At all times material herein Plaintiff was duly  
20 licensed as a cannabis cultivator by the state of California, registered as a lawful cultivator with  
21 Mendocino County, and was in full legal compliance with applicable licensing, registration, and  
22 certification requirements for the cultivation activities conducted, under California law and  
23 Mendocino's rules.  
24  
25

26 12. On Sunday October 21, 2018 at about 7:10 am, Plaintiff Rondon, who was in southern  
27 California at the time with his wife, received a phone call from one of his employees at the farm  
28 in Potter Valley who reported that there were some robbers at the farm, wearing dark tactical or

1 combat garb. Plaintiff Rondon immediately called the Mendocino County Sheriff's Office,  
2 advised of the report of a robbery in progress and passed along what the employees had reported,  
3 and requested that Mendocino sheriffs be immediately dispatched to the farm to apprehend the  
4 robbers. Plaintiff Rondon noted that the farm was a legally licensed cannabis cultivation  
5 operation that was registered with Mendocino County.  
6

7 13. Instead of responding immediately to the report of a robbery in progress, the Mendocino  
8 Sheriff's office took approximately two hours before deputies went to the farm in Potter Valley.  
9 When they arrived they showed little interest in the reported robbery or the perpetrators and  
10 seemed more interested in impugning the credibility of the robbery report and the employees  
11 who were at the farm. A vehicle brought by the robbers was left at the farm and the deputies  
12 displayed little interest in it or the information it could provide as to the robbers or in following  
13 up the report of a Skunkworks employee about a robber who had fled the scene or apprehending  
14 that robber.  
15  
16

17 14. The Mendocino deputies departed from the farm and returned several hours later with a  
18 search warrant. During that interval, the Mendocino Sheriff's Office, acting without any  
19 probable cause to believe any crime had been committed by plaintiff, had obtained a search  
20 warrant by means of a sworn affidavit, signed by defendant Brewster as special agent supervisor,  
21 that falsely asserted: a) that there had been a check and it had been determined that plaintiff  
22 Rondon (or his farm property address) was not licensed or registered for cannabis cultivation  
23 activities; and b) that it "was obvious" to affiant Brewster that "the owner to this property (sic) is  
24 in violation of state law without being part of the counties (sic) permitting process."  
25  
26

27 15. Both of these were demonstrable falsehoods. Moreover: a) Plaintiff's licensure and  
28 registration with Mendocino County were both readily verifiable through the applicable on-line



1 databases; b) Plaintiff Rondon had directly advised the sheriff's office at the outset that the farm  
2 was engaged in cannabis cultivation and that it was in compliance with applicable legal  
3 requirements; and c) Rondon had affirmatively requested that the sheriff deputies come to the  
4 farm, which would not have made any sense if he was engaged in an unlawful cultivation  
5 operation, and the sheriff's office should have realized that. For these reasons, the false  
6 statements made in the affidavit to obtain the search warrant seem to have been made in bad  
7 faith, intentionally and fraudulently and/or with reckless disregard for the truth of the statements  
8 that were made under oath and under penalty of perjury and so as to deceive the presiding  
9 magistrate.  
10  
11

12 16. Additionally, based on defendants' Sunday presentation, the search warrant that was signed  
13 by Judge Jeanine B. Nadel authorized a search of 12805 Pine Ave., Potter Valley, California but  
14 Plaintiff's property, where the sheriff's deputies had gone previously and where they returned,  
15 ostensibly in execution of the search warrant, was 12850 Pine Ave, not 12805. Whether that was  
16 a deliberate deception or the product of sloppiness, indifference or something more sinister is not  
17 presently known,  
18

19 17. While ostensibly relying on the search warrant as authorization for the conduct that  
20 followed, the deputies were not in fact relying on the warrant as issued inasmuch as it authorized  
21 a search of a different address than the one they went to. Additionally, if the legal compliance  
22 check had accidentally searched for the wrong address that was on the presented affidavit and  
23 warrant, that was, and should have been, readily detectable since the deputies initially went to,  
24 and later returned to, a different address than the one on the warrant they obtained. They also  
25 found permits (after asserting that none had been obtained) when they went to 12850 Pine Ave.  
26  
27  
28

1 18. When the deputies returned to 12850 Pine. Ave. they brought a wood chipper. That clearly  
2 evidenced that the sheriff's department's plan and intent when they would return to that address,  
3 including back at the time of the procurement of a search warrant, was not to initiate or conduct  
4 an investigation but to destroy the cannabis on plaintiff's property. This plan and intent was  
5 unlawful and outside of valid law enforcement practice and was concealed from the warrant-  
6 issuing judge. It should also be noted that the sheriff's office obtained the warrant and destroyed  
7 plaintiff's property, as noted below, on a Sunday, knowing and intending that plaintiff would  
8 have no opportunity to question or challenge the department's wrongful actions toward plaintiff  
9 before they were a fait accompli.

10 19. At the property the deputies proceeded to destroy 350 growing cannabis plants, that were  
11 ready to be harvested the next day, by running them through the wood- chipper, that were worth  
12 approximately \$350,000. They also destroyed plant cuttings for the next crop that were worth  
13 approximately \$15,000. The deputies also destroyed eight light deprivation gardens, coverings  
14 and lighting equipment, damages of approximately \$50,000. These destructions also damaged  
15 plaintiff's ability to conduct his lawful operations and deprived him of the next crop cycle, and  
16 proceeds thereof, and caused other business disruption damages of approximately \$350,000,  
17 collectively. The deputies also seized and removed various items of personal property from the  
18 residence, including cell phones, permits and other papers. In addition, the deputies seized from  
19 the blue Ford s.u.v. at the property a shotgun, blue jeans containing an ID, and other items. The  
20 fact that permits were found, and removed, is another clear indication that the deputies had  
21 ample opportunities to recognize that the assertion that the farm was unlicensed and un-permitted  
22 was wrong, that they were not engaged in any genuine investigative function but instead a  
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1 search-and-destroy mission, and that they could and should have refrained from destroying  
2 plaintiff's property.

3  
4 19. Plaintiff does not know what happened regarding the robbers but believes at least one was  
5 apprehended, Josue SanchezAguilar (sic?-the name as listed on a booking site). Whether that  
6 individual or the other robbers had any connection to law enforcement or to the individuals  
7 involved in the raid, and whether the defendants acted improperly in collaboration with them or  
8 with regard to how they, as law violators, were handled is presently unknown.

9  
10 20. On information and belief, the sheriff's department never reported back to the judge who  
11 had issued the arrest warrant any of the following: a) that the address on the warrant was not the  
12 address the deputies had gone to prior to the warrant or the one they returned to after the warrant  
13 was obtained; b) that notwithstanding the no-permit assertion that had been attested to in the  
14 search warrant affidavit, permits were found at plaintiffs' property; c) if the wrong address had  
15 been searched for licenses and permits, that fact and that error; d) that they took a wood chipper  
16 to the property and intended to destroy the crop there on the spot; e) that despite finding permits  
17 at the scene, plaintiff's crops and other property had been destroyed on the spot; f) that plaintiff  
18 in fact was at the pertinent time and since properly licensed and permitted to conduct the  
19 cannabis cultivation activities he was engaged in and that his activities and the cannabis at the  
20 property were both lawful; and g) that to shield their unlawful actions from scrutiny and to  
21 further threaten and intimidate plaintiff, the sheriff's office after the raid continued the pretense  
22 of asserting it had an open criminal investigation concerning plaintiff.  
23  
24

25 21. On information and belief there have been unlawful and unofficial raids of cannabis  
26 cultivators by individuals dressing and acting like law enforcement personnel and reports that  
27 some of that activity may have been done off-the-books by off-duty law enforcement people.  
28

1 22. Additionally, the Mendocino County Sheriff's Office has a history and pattern of practice  
2 of unlawful raids, confiscations, and destructions of cannabis and employing coercion,  
3 intimidation and oppressive tactics, disregarding constitutional safeguards, and of covering up its  
4 unlawful actions. That prior conduct supports the conclusion that the actions toward plaintiff  
5 were undertaken maliciously, in bad faith, and in deliberate disregard of the lawful functions,  
6 duties, and responsibilities of the sheriff's office.  
7

8 23. After the raid, plaintiff retained undersigned legal counsel who attempted to contact the  
9 sheriff's office by phone, letter, and email to discuss the raid, identify the individuals involved,  
10 and to obtain return of plaintiff's personal property. The sheriff's office ignored those  
11 communications and declined to return plaintiff's property. Additionally, several weeks after the  
12 raid counsel for plaintiff made a written request to the Mendocino County Records Department  
13 for a copy of the incident report on the 10/21 raid. The response was that the report could not be  
14 provided because it was part of an open law enforcement investigation. Plaintiff is not aware of  
15 any valid factual or legal basis for a continuing criminal investigation concerning him, and any  
16 assertion that there is one is part of defendant's continuation of threats, intimidation and coercion  
17 and efforts to cover up and avoid responsibility for their wrongful conduct.  
18  
19

20 24. Plaintiff submitted a written notice of a tort claim to the County of Mendocino, which the  
21 county denied on January 7, 2019.  
22  
23

24 STATEMENT OF DAMAGES

25 25. As a result of the wrongful actions complained of herein, Plaintiff has suffered economic  
26 and consequential damage, business interruption, and lost income.  
27  
28

1 26. In addition to the \$415,000 of direct economic damage and \$350,000 business interruption  
2 damages noted above, plaintiff has also sustained and will continue to suffer general damages  
3 including fear, anxiety, humiliation, and emotional distress, the reasonable value of which is  
4 \$400,000.  
5

6 27. Plaintiff is also seeking exemplary damages from the individual defendants as noted below.

7 FIRST CAUSE OF ACTION

8 California Tort Claims Act

9 Govt Code §810 et seq-All defendants  
10

11 28. Previous paragraphs are incorporated.

12 29. As set forth above, Defendant Mendocino County and its employees and agents breached  
13 duties owed to plaintiff, were negligent or grossly negligent, intentionally and maliciously  
14 violated plaintiffs' rights, destroyed plaintiffs' property and caused plaintiffs damages, and the  
15 county was negligent in its supervision and training of its sheriff's deputies and overseeing their  
16 actions. On information and belief, even after prior unlawful actions, defendants did not  
17 implement meaningful remedial measures, training, or better supervision so as to prevent further  
18 instances of wrongful conduct by the sheriff's department.  
19

20 30. Defendants are not immune from liability for their actions toward plaintiff by virtue of  
21 Government Code §821.6 or §815.2 inasmuch as defendants were not engaged in instituting or  
22 investigating any judicial or administrative proceeding. They pursued a plan and course of  
23 unlawful conduct whose object was the destruction of plaintiff's property and interference with  
24 his lawful business activities, not initiation of legal proceedings or objective investigation of  
25 possible criminal conduct. The procurement of a search warrant was simply a means toward that  
26  
27  
28

1 end and for a cloak of surface putative propriety for the wrongful actions and property  
2 destruction they pursued.

3  
4 30. As a result of the breaches of duties and tortious actions described herein, plaintiff suffered  
5 the damages enumerated above.

6 31. Defendant Mendocino County is liable under state law for the tortious acts of its employees  
7 and subordinates.

8  
9 32. The breaches of duty by the individual defendants were accompanied by fraud, malice,  
10 and/or a willful and reckless disregard for the rights of others that created significant risk of  
11 injury to plaintiff and others, justifying an award of punitive damages.

12 33. Plaintiff timely submitted a notice of his tort claim to Defendant Mendocino County, which  
13 rejected it. This action is being commenced within the time allowed for suit after the county's  
14 rejection of the claim.

15  
16 34. Plaintiff's claims involve matters of broad public interest and import and plaintiff should  
17 further be entitled to recover his attorney's fees under CCP §1021.5

18 WHEREFORE, Plaintiff seeks relief as set forth below.

19  
20  
21  
22 SECOND CAUSE OF ACTION

23 Willful Trespass/Unlawful or Forcible Entry

24 Cal Code Civ. Pro. §735-All Defendants

25  
26  
27 35. Previous paragraphs are incorporated.

1 36. As plaintiff's cannabis cultivation was legally authorized by and in compliance with  
2 California law and Mendocino's cannabis cultivation rules and procedures and the search  
3 warrant putatively authorizing the return to plaintiff's farm was obtained under false pretenses  
4 and by false averments under oath, and the deputies went to plaintiff's property with a wood  
5 chipper to destroy property, not to investigate, the sheriff deputies who went to plaintiff's  
6 property to destroy plaintiff's property were trespassers.

7  
8 37. Defendants unlawfully and willfully entered upon plaintiff's cultivated real property and,  
9 acting in concert, thereafter destroyed valuable growing crops and other property and also caused  
10 plaintiff Rondon great annoyance, discomfort and emotional distress.

11  
12 38. Plaintiff is entitled to recover three times the amount of his proven actual damages  
13 pursuant to Cal civil Code §735, and also seeks attorney's fees pursuant to CCP §1021.9.

14 WHEREFORE, Plaintiff seeks relief as set forth below.  
15  
16

17 THIRD CAUSE OF ACTION

18 Cal Civil Code 52.1-All Defendants

19 39. Previous paragraphs are incorporated.

20 40. Defendants, acting under color of state law, accompanied by threats, intimidation and  
21 coercion, interfered with and attempted to interfere with plaintiffs' constitutional rights including  
22 the right to be free of unlawful searches and seizures and the right to not be deprived of life,  
23 liberty, or property without due process of law, and thereby caused plaintiffs substantial  
24 damages, as enumerated above.  
25  
26  
27  
28

1 41. Because plaintiff's cannabis cultivation was lawful under California law, plaintiff had a  
2 valid property interest in the cannabis and his equipment in addition to other constitutional rights  
3 under Article 1 of the California Constitution.  
4

5 42. Defendants employed force, intimidation, threats and coercion, including obtaining a  
6 search warrant under false pretenses, forcefully destroying plaintiff's property, and threats of  
7 arrest and intimidation concerning those who were at the farm, and coercion, intimidation and  
8 threat of criminal prosecution afterward. Moreover, the bringing of a wood-chipper evidences  
9 the intent to use force and to destroy plaintiff's property and to prevent plaintiff from challenging  
10 or preventing the destruction before it was accomplished on the spot.  
11

12 43. Whether defendant Allen physically intruded on plaintiff's property or not, he authorized,  
13 oversaw, and/or condoned the unlawful actions of his deputies and acted in concert with them.  
14

15 44. Said conduct by defendants violated Cal. Civil Code §52.1.

16 45. Under §52.1 plaintiff seeks three times the proven actual damages, appropriate injunctive  
17 relief and attorney's fees.

18 WHEREFORE, Plaintiff seeks relief as set forth below.  
19

20  
21 FOURTH CAUSE OF ACTION

22 Conversion-all defendants

23 46. Previous paragraphs are incorporated.

24 47. Defendants wrongfully asserted dominion over and converted plaintiff's property and  
25 caused plaintiff damages in excess of \$415,000, as to be proved at trial, and are liable to plaintiff  
26 for same along with interest since October 21, 2018, pursuant to Civil Code §3336.  
27  
28



1 48. The actions of the individual defendants were accompanied by oppression, fraud or malice,  
2 justifying an award of punitive damages, which plaintiff seeks, in an amount to be determined at  
3 trial, both for purposes of punishment and deterrence.  
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5 WHEREFORE, Plaintiff seeks relief as set forth below.  
6

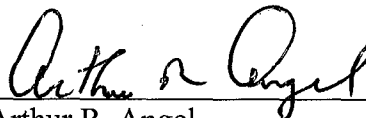
7 PRAYER FOR RELIEF

8 WHEREFORE, plaintiff prays for relief as follows:  
9

- 10 1. Judgment in his favor on all causes of action.
- 11 2. Compensatory damages as proven. (including treble damages as applicable).
- 12 3. Punitive damages against each of the individual defendants of \$250,000 each.
- 13 4. Pre and post judgment interest as allowed by law.
- 14 5. Costs and reasonable attorney's fees.
- 15 6. Appropriate injunctive relief to prevent and deter future unlawful seizures and raids and  
16 further violations of the constitutional rights of plaintiffs and others.
- 17 7. Such other relief to which plaintiffs may be entitled.  
18  
19

20 JURY TRIAL DEMANDED  
21

22 DATE 6/17/19

23   
24 Arthur R. Angel  
25 Attorney for Plaintiff  
26  
27  
28

1  
2  
3 **PROOF OF SERVICE**

4 I am employed in the County of Los Angeles, State of  
5 California. My business address is 1305 N. Poinsettia Pl., Los  
6 Angeles, CA 90046. I am over the age of 18 and not a party to  
7 the within action. On 6/17, 2019, I served the foregoing  
8 document: **First Amended Complaint** on the following interested  
9 parties:

10 Ms. Brina Blanton  
11 Office of Mendocino County Counsel  
12 501 Low Gap Road, Rm. 1030  
13 Ukiah, CA 95482

14 Attorney for Defendants

15  
16 [x]By U.S. Mail: I deposited the document in the U.S. Mail, in  
17 a sealed envelope with proper postage affixed.

18  
19 I declare under penalty of perjury under the laws of the  
20 State of California that the foregoing is true and correct.

21 Executed in Los Angeles, California.

22 Date: 6/17, 2019

23   
24 Arthur R. Angel

# **EXHIBIT B**

ROCHELLE MILLER  
SEP 10 2019

1 KATHARINE L. ELLIOTT, County Counsel SBN 135253  
2 BRINA A. BLANTON, Deputy SBN 260829  
3 Office of the County Counsel  
4 County of Mendocino – Administration Center  
5 501 Low Gap Road, Room 1030  
6 Ukiah, CA 95482

7 Telephone: (707) 234-6885  
8 Facsimile: (707) 463-4592  
9 blantonb@mendocinocounty.org

10 Attorneys for Defendant  
11 MENDOCINO COUNTY, DARREN BREWSTER, JAMES WELLS and THOMAS  
12 ALLMAN

**ENDORSED-FILED**

SEP 25 2019

CLERK OF MENDOCINO COUNTY  
SUPERIOR COURT OF CALIFORNIA

**ROCHELLE MILLER**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF MENDOCINO**

15 ANDRES RONDON,

16 Plaintiff,

17 v.

18 MENDOCINO COUNTY, CALIFORNIA;  
19 DARREN BREWSTER, JAMES WELLS;  
20 THOMAS ALLMAN, and DOES 1 to 10,

21 Defendants.

) SCUK-CVPO-2019-72649  
)  
) **[Proposed] ORDER GRANTING**  
) **COUNTY OF MENDOCINO**  
) **DEFENDANTS' DEMURRER TO**  
) **PLAINTIFF'S UNVERIFIED FIRST**  
) **AMENDED COMPLAINT FOR**  
) **DAMAGES AND INJUNCTIVE**  
) **RELIEF**  
)  
) DATE: September 4, 2019  
) TIME: 3:00 p.m.  
) CTRM: G

22 County of Mendocino Defendants' Demurrer to Plaintiff's Unverified First Amended  
23 Complaint for Damages and Injunctive Relief came on regularly for hearing on the 4<sup>th</sup> of  
24 September, 2019, in Department ~~9~~<sup>6</sup> of this Court, the Honorable Judge Ann C. Moorman  
25 presiding. Deputy County Counsel Brina A. Blanton appeared for defendants; no appearance  
26 was made for plaintiff. After reviewing the memoranda of points and authorities submitted in  
27 support and opposition thereto, this Court rules as follows:  
28

1 Defendants' demurrer is **Sustained Without Leave to Amend** on the grounds that the  
2 facts alleged show that defendants, the County of Mendocino, Darren Brewster, James Wells  
3 and Thomas Allman, are immune from liability pursuant to California Government Code  
4 sections 815.2 and 821.6, and Plaintiff has not shown any viable way to amend the pleadings to  
5 avoid these governmental immunities. Further, leave to amend was not requested by Plaintiff.

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**It is so ordered.**

DATED: SEP 25 2019

**ANN MOORMAN**

\_\_\_\_\_  
Judge of the Superior Court

# **EXHIBIT C**

Filed 10/15/20 Rondon v. Mendocino County CA1/4

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ANDRES RONDON,  
Plaintiff and Appellant,  
v.  
MENDOCINO COUNTY, et al.,  
Defendants and Respondents.

A159474

(Mendocino County  
Super. Ct. No.  
SCUKCVPO1972649)

Andres Rondon brought this action against Mendocino County, its sheriff, Thomas Allman, and two deputy sheriffs, Darren Brewster and James Wells, for losses allegedly suffered when the deputies entered his cannabis farm pursuant to a search warrant and destroyed his crops and other property. The trial court sustained defendants' demurrer without leave to amend, based on its conclusion that their actions were protected by governmental immunity. (Gov. Code., §§ 815.2, 821.6.)<sup>1</sup> We shall affirm the ensuing judgment of dismissal.

**FACTUAL AND PROCEDURAL BACKGROUND**

**I. Allegations of the Complaint**

In the operative first amended complaint, Rondon alleges he owns and operates a cannabis farm in Mendocino County, and that he is licensed and

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<sup>1</sup> All undesignated statutory references are to the Government Code.

registered as a cannabis cultivator and in full compliance with all legal requirements for cultivating cannabis.

Rondon was in Southern California on the morning of October 21, 2018, when an employee called to tell him there were robbers at the farm. Rondon called the Mendocino County Sheriff's Office, reported the robbery, told them the farm was a licensed and registered cannabis cultivation operation, and asked them to send sheriffs to the farm. When sheriff's deputies went to the farm two hours later, they did not try to find or apprehend the robbers. They left the farm and obtained a search warrant, based on an affidavit by defendant Brewster that asserted it had been determined that the farm was not licensed and registered for cannabis cultivation and Rondon was violating state law. Rondon alleges these statements were made in bad faith, intentionally and fraudulently, and with reckless disregard for the truth of the statements made under penalty of perjury. The address provided in the search warrant was incorrect, in that it transposed two of the numbers in the farm's street address. And the affidavit in support of the warrant did not disclose that the owner of the farm had told the 911 dispatcher his farm was fully licensed and registered for cannabis cultivation.

The deputies who returned to the farm with the search warrant brought with them a wood chipper, showing their intent not to carry out an investigation but to destroy the cannabis on the property. They destroyed approximately \$365,000 worth of cannabis and plant cuttings, as well as light deprivation gardens, coverings, and lighting equipment worth approximately \$50,000, and seized personal property, including Rondon's permits. Their actions deprived Rondon of his next crop cycle as well, with a value of \$350,000.



Rondon alleged the Mendocino County Sheriff's Office had a history and pattern of unlawful raids, confiscations, and destruction of cannabis, supporting a conclusion that defendants' actions were undertaken maliciously, in bad faith, and in deliberate disregard for their legal responsibilities.

Rondon asserted four causes of action: liability under the California Government Claims Act (§ 810 et seq.), trespass, interference with constitutional rights under the Tom Bane Civil Rights Act (Civ. Code, § 52.1), and conversion.

## **II. Demurrer and Ruling**

Defendants demurred to the first amended complaint. They contended they were immune under sections 821.6 and 815.2 because all Rondon's claims were based on their actions connected to seeking and executing a search warrant. They also asserted a number of other grounds for demurrer, including failure to state a cause of action and uncertainty. In support of their demurrer, they requested judicial notice of the search warrant, which authorized defendants to search for, inter alia, marijuana, and to bring any seized items to court, "or retain such property in your custody subject to the order of this Court pursuant to Section 1563 of the Penal Code, or if applicable, dispose of per section 11479.5 or 11479 of the Health and Safety Code."<sup>2</sup>

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<sup>2</sup> We grant defendants' July 14, 2020 request to augment the record with certain documents filed in the trial court. One of those documents is their request for judicial notice of the search warrant. We take judicial notice of the search warrant. (Evid. Code., §§ 452, subd. (d), 459, subd. (a); see *Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 185 (*Linda Vista*) [where trial court's order did not expressly show whether request for judicial notice granted, appellate court assumed trial court took notice].) We also grant defendants' July 22,

The trial court granted the demurrer without leave to amend on the ground the facts alleged showed defendants were immune pursuant to sections 815.2 and 821.6. The court then dismissed the case with prejudice. This timely appeal ensued.

## DISCUSSION

### I. Standard of Review

Our standard of review of a judgment after a demurrer has been sustained without leave to amend is well settled. We treat the demurrer as admitting all material facts properly pleaded, but we do not assume the truth of contentions, deductions, or conclusions of law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966–967.) We also consider matters properly subject to judicial notice as if they had been pled. (*Linda Vista, supra*, 234 Cal.App.4th at p. 180.) We affirm the judgment if any of the grounds for demurrer is well taken, but not if the plaintiff has stated a cause of action under any possible legal theory. (*Aubry*, at p. 967.)

We review the denial of leave to amend for abuse of discretion, finding such abuse if the plaintiff has shown a reasonable possibility any defect may be cured by amendment. (*G. L. Mezzetta, Inc. v. City of American Canyon* (2000) 78 Cal.App.4th 1087, 1091–1092.)

### II. Governmental Immunity

Rondon contends the trial court erred in finding defendant’s alleged actions protected by governmental immunity. Two statutes underlie this question. First, section 821.6, part of the Government Claims Act, provides: “A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his

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2020 request for judicial notice of the return to the warrant, which was filed in the trial court on October 30, 2018.

employment, even if he acts maliciously and without probable cause.”  
 Second, under section 815.2, subdivision (b), “[e]xcept as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.”

California courts have interpreted section 821.6 expansively to include acts taken in preparation for formal proceedings, such as investigations of suspected crimes, in order “to protect public employees in the performance of their prosecutorial duties from the threat of harassment through civil suits.” (*Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1048 (*Gillan*); see also *Lawrence v. Superior Court* (2018) 21 Cal.App.5th 513, 527 (*Lawrence*)). Even if the officers abuse their authority or act maliciously as part of a threatened prosecution, “[a]cts undertaken in the course of an investigation . . . cannot give rise to liability.” (*Gillan*, at pp. 1048–1050 [immunity from defamation and intentional infliction of emotional distress based on public statements].) This rule covers matters “incidental to the investigation” (*Amylou R. v. County of Riverside* (1994) 28 Cal.App.4th 1205, 1210–1211 (*Amylou R.*), such as statements made to a witness to a crime that caused emotional distress (*ibid.*) and statements made in press releases (*Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1293). It also includes such matters as the suppression of exculpatory evidence during a criminal prosecution. (*Randle v. City and County of San Francisco* (1986) 186 Cal.App.3d 449, 456–457 (*Randle*)). Significantly for this case, the rule has been applied even where the investigation results in no criminal charges being filed. (See *Lawrence, supra*, 21 Cal.App.5th at pp. 525, 527.)

This principle is illustrated in a case analogous to the one before us, *County of Los Angeles v. Superior Court* (2009) 181 Cal.App.4th 218 (*County*

*of Los Angeles*). There, during the course of a criminal investigation, investigators for a district attorney obtained a search warrant for and seized computer hard drives, a network server, and a laptop, and then the case was closed without charges being filed. (*Id.* at pp. 223–224.) The plaintiffs brought an action against the county and the district attorney alleging injury from the search and from the seizure of, and damage to, their property, asserting that defendants irreparably destroyed computer data and failed to return some property until after plaintiffs filed their complaint. (*Id.* at pp. 224–225.) In considering the cause of action under Civil Code section 52.1, the appellate court concluded the defendants’ actions were shielded by section 821.6 because there was a “causal relationship between the act and the prosecution process,” even though no charges were ever filed. (*Id.* at p. 229.) The court reasoned, “all of the acts—investigating, *obtaining* the warrant, searching, *seizing*, retaining, and even *damaging* plaintiffs’ property—were committed as part of an investigation of crimes leading to prosecution in a judicial proceeding. This conduct fell within the scope of the investigating staff members’ employment with the County. Hence, the elements of Government Code section 821.6 immunity are present, even if the district attorney’s investigating staff ‘act[ed] maliciously and without probable cause.’ (§ 821.6.)” (*County of Los Angeles*, at p. 230, italics added.)

A similar result obtained in *Baughman v. State of California* (1995) 38 Cal.App.4th 182, 185–186 (*Baughman*), in which the plaintiff alleged defendant wrongfully destroyed computer disks containing his research when carrying out a search for stolen material pursuant to a warrant. In finding the cause of action for conversion barred by section 821.6 and 815.2, the court reasoned that the officers were acting within the scope of their duties when they destroyed the disks “while investigating a crime pursuant to a search

warrant concerning such media,” and their actions were therefore “cloaked with immunity.” (*Baughman*, at p. 192.)

Consistent with these authorities, we conclude defendants’ actions here were similarly cloaked with immunity. The deputy sheriffs—as Rondon alleges—were acting in the scope of their official duties, as they first obtained and then executed a search warrant authorizing them to search for marijuana. The warrant specifically authorized them to *dispose* of marijuana pursuant to Health and Safety Code section 11479, “if applicable.” Under certain conditions, this statute permits law enforcement agencies, after seizure of a suspected controlled substance such as “growing or harvested cannabis,” to preserve a representative sample and destroy the rest. (Health & Saf. Code, §11479.) Although the address on the warrant contained a clerical error, the allegations of the complaint show defendant’s property was the intended target of a search pursuant to the warrant for marijuana. We would be hard pressed to conclude there was no causal relationship between the investigation of possible crime and the actions Rondon challenges, or that defendants’ challenged actions were not incidental to the investigation. Rondon argues that, by bringing a wood chipper when they returned to execute the warrant, the deputies revealed their intentions as unrelated to investigating crime, but this argument ignores that state law allows deputies investigating allegations of an illegal marijuana grow to retain only a portion and destroy the remainder of the crop.

Against this conclusion, Rondon argues governmental immunity in this context extends only to causes of action for malicious prosecution. For this limitation, he relies on *Sullivan v. City of Los Angeles* (1974) 12 Cal.3d 710 (*Sullivan*). The issue in *Sullivan* was “whether an individual who is confined in a county jail beyond his proper jail term may maintain an action for false

imprisonment against the county or whether such a suit is barred by the governmental immunity of the California Tort Claims Act.” (*Id.* at p. 713.) Our high court concluded the claims were not barred by governmental immunity, rejecting the County’s argument that section 821.6 protected the sheriff’s activities. (*Id.* at pp. 713, 722.) The court noted first that the language of that statute, which applies to injury caused by “instituting or prosecuting” a judicial or administrative proceeding, does not encompass holding beyond his jail term a person who has already been convicted and sentenced. (*Id.* at p. 719.) Second, the court reasoned, “the history of section 821.6 demonstrates that the Legislature intended the section to protect public employees from liability only for *malicious prosecution* and not for *false imprisonment*.” (*Ibid.*) The court continued: “Cases dealing with actions for malicious prosecution against private persons require that the defendant has at least sought out the police or prosecutorial authorities and falsely reported facts to them indicating that plaintiff has committed a crime. [Citations.] Similarly the suits against government employees or entities cited by the Senate Committee in commenting upon section 821.6 all involve the government employees’ acts in filing charges or swearing out affidavits of criminal activity against the plaintiff. No case has predicated a finding of malicious prosecution on the holding of a person in jail beyond his term or beyond the completion of all criminal proceedings against him.” (*Id.* at p. 720, fn. omitted.) The court also noted that its interpretation was bolstered by another provision of the statutory scheme, section 820.4, which explicitly preserves governmental liability for false imprisonment. (*Id.* at p. 721; accord, *Asgari v. City of Los Angeles* (1997) 15 Cal.4th 744, 756–757 [police officer has statutory immunity for malicious prosecution, but not for false arrest and imprisonment].)

Rondon argues that *Sullivan* means that section 821.6 does not protect defendants' actions because he was not arrested or charged with a crime and he does not assert a claim for malicious prosecution. We do not read *Sullivan* so narrowly. First, the plain language analysis in *Sullivan* points in a different direction here, where the alleged acts of investigation—sloppy or malicious as they may have been—are reasonably characterized as part of a process of “instituting,” or initiating, a criminal complaint. (§ 821.6.) That the process was aborted before criminal charges were actually filed does not gainsay this nexus. Second, *Sullivan* describes the precedents that the Legislature sought to codify in section 821.6 as granting immunity for “government employees’ acts in . . . swearing out affidavits of criminal activity against the plaintiff” (*Sullivan, supra*, 12 Cal.3d at p. 720), which aptly captures the deputies’ conduct here in obtaining the search warrant. California appellate court cases construing *Sullivan* have consistently held that its holding does not limit section 821.6 to cases alleging the tort of malicious prosecution. For instance, *Randle, supra*, 186 Cal.App.3d at pp. 456–457, concludes that section 821.6 immunizes a prosecutor’s or police officer’s suppression of evidence during a prosecution already begun. *Randle* distinguishes *Sullivan* on the ground that *Sullivan* arose in “the specific context of distinguishing actions for malicious prosecution from ones for false arrest or false imprisonment,” concepts that are “mutually inconsistent . . . , the former relating to conduct that is without valid legal authority and the latter to conduct where there is valid process or due authority.” (*Id.* at p. 456.) This distinction between unauthorized acts and acts pursuant to valid, if corrupt, process is one the California Supreme Court embraced in *Asgari, supra*, 15 Cal.4th at p. 757, and the distinction reinforces our conclusion that section 821.6 immunizes the conduct here. Acts of procuring

and executing a search warrant epitomize “valid process,” however carelessly or maliciously pursued here. Other cases that conclude section 821.6 immunizes tortious conduct beyond acts of malicious prosecution, even as it does not protect false arrests or imprisonment, include *Gillan, supra*, 147 Cal.App.4th at pp. 1048–1049 [immunity “extends to actions taken in preparation for” filing a criminal complaint] and *Amylou R.*, 28 Cal.App.4th at pp. 1209–1211 & fn. 2 [same]. (See also *Javor v. Taggart* (2002) 98 Cal.App.4th 795, 799, 807–809 [§ 821.6 barred claims for slander and clouding of title, intentional infliction of emotional distress, and negligence, for filing workers’ compensation lien on an employer’s residence].)

Rondon asks us to ignore these authorities and follow instead federal cases adopting a narrower view of section 821.6 in light of *Sullivan*. (See, e.g., *Sharp v. City of Orange* (9th Cir. 2017) 871 F.3d 901, 920–921 [limiting § 821.6 to malicious prosecution claims]; *Mendez v. City of Los Angeles* (9th Cir. 2018) 897 F.3d 1067, 1083 [following *Sharp* to reject § 821.6 immunity for investigation leading up to formal proceedings]; *Garmon v. County of Los Angeles* (9th Cir. 2016) 828 F.3d 837, 846–847.) But these cases engage in little more than cursory analysis, and in light of California courts’ consistent interpretation of section 821.6 to extend immunity to activities that are part of an investigation, we decline this invitation. 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 they entered his farm and destroyed his crops and other property. These actions are immune under sections 821.6.

None of the other cases Rondon relies upon persuades us defendants are not entitled to immunity for their alleged actions. Some of these cases



involve actions taken after an investigation or prosecution was complete, which were thus unconnected to “instituting or prosecuting” (§ 821.6) a proceeding. (*Ogborn v. City of Lancaster* (2002) 101 Cal.App.4th 448, 463; *Tallmadge v. County of Los Angeles* (1987) 191 Cal.App.3d 251, 253–255; *Green v. City of Yuba* (E.D.Cal. Feb 20, 2019, No. 2:18-cv-02234-JAM-AC) 2019 U.S. Dist. Lexis 27949, \*16–\*17.) Others involve claims for false arrest or false imprisonment. (*Harden v. San Francisco Bay Area Rapid Transit Dist.* (1989) 215 Cal.App.3d 7, 17; *Laible v. Superior Court* (1984) 157 Cal.App.3d 44, 53; *McKay v. City of San Diego* (1980) 111 Cal.App.3d 251, 256; *Blankenhorn v. City of Orange* (9th Cir. 2007) 485 F.3d 463, 488.) Still others consider actions taken by public employees who were not investigating anything nor initiating prosecution. (*Bell v. State of California* (1998) 63 Cal.App.4th 919, 929 [public employees were “simply seeing to the execution of” arrest warrant, not investigating]; *Phillips v. City of Fairfield* (E.D. Cal. 2005) 406 F.Supp.2d. 1101, 1118 [“buy-bust” drug operation is not investigation in preparation for judicial proceedings (italics omitted)].)

We find similarly unpersuasive Rondon’s reliance on cases that do not consider the scope of section 821.6 at all. (*Perez-Torres v. State of California* (2007) 42 Cal.4th 136, 141–145; *Barner v. Leeds* (2000) 24 Cal.4th 676, 679; *McCorkle v. City of Los Angeles* (1969) 70 Cal.2d 252, 260–264; *Bonner v. City of Santa Ana* (1996) 45 Cal.App.4th 1465, 1468–1470; *Kane v. County of San Diego* (1969) 2 Cal.App.3d 550, 552–553.) Rondon also seeks to rely on cases imposing liability for negligent hiring, training, or supervision (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 865–866, 873 [employee sexually abused student, and no immunity provision applied]; *Ramos v. County of Madera* (1971) 4 Cal.3d 685, 695–696 [county employee coerced people to violate state laws; county had mandatory duty to avoid that

harm]; *Dailey v. Los Angeles Unified School Dist.* (1970) 2 Cal.3d 741, 747 [failure to supervise children on school grounds]; *City of Los Angeles v. Superior Court* (1973) 33 Cal.App.3d 778, 782–783 [battery by police officer]), but he fails to explain how those cases either apply to the facts alleged in his complaint or defeat the statutory immunity of sections 821.6 and 815.2, subdivision (b).

We recognize that the application of governmental immunity in a case such as this may cause a substantial hardship to legitimate cannabis farmers whose crops are mistakenly destroyed during an investigation, and we are not unsympathetic. Indeed, we recognize that immunizing the conduct of any illegal search stymies efforts to hold to account rogue law enforcement officers and the agencies who employ them. (Cf., *Jamison v. McClendon* (S.D.Miss. Aug. 4, 2020, No. 3:16-CV-595-CWR-LRA) 2020 U.S. Dist. Lexis 139327, \*4–\*6 [qualified immunity protects police officer who subjects black man driving a Mercedes to unwarranted and intrusive search for drugs; “[t]his has to stop”].) In California, such protection for malicious conduct on the part of public employees has been intentional. When, in 1963, the Legislature adopted section 821.6 at the suggestion of the California Law Revision Commission, it rejected the commission’s simultaneous recommendation “that public entities be held liable for damages proximately caused by a public employee’s institution of judicial proceedings without probable cause and with actual malice.” (*Asgari, supra*, 15 Cal.4th at p. 753, fn. 7; Stats. 1963, ch. 1681, § 2, pg. 3268; Law Revision Com. Rep (1963) p. 841.)

Someday the Legislature, aware of the toll police misconduct takes on members of the public, may choose to revisit this decision. But the Legislature’s 1963 decision and a long line of judicial authority broadly

construing section 821.6 compel us to conclude that defendants are immune from liability for the actions alleged in the first amended complaint. Because Rondon does not suggest any manner in which he could amend his complaint to cure this defect,<sup>3</sup> we must affirm the judgment.

**DISPOSITION**

The judgment is affirmed.

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<sup>3</sup> Rondon did not seek to amend to add a section 1983 claim (see 42 U.S.C. § 1983), and we do not consider whether such a claim would be viable.

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TUCHER, J.

WE CONCUR:

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POLLAK, P. J.

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BROWN, J.