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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11

12 **ANDRES RONDON and SKUNKWORX**
13 **PHARMS, LLC**

14 **Plaintiffs,**

15 **vs.**

16 **MENDOCINO COUNTY, CALIFORNIA;**
17 **MATT KENDALL, THOMAS ALLMAN,**
18 **DARREN BREWSTER; JAMES WELLS;**
19 **DOES 1-10**

20 **Defendants**

21 Case No.: 4:20-cv-07013-SBA

22 **PLAINTIFFS' OPPOSITION TO**
23 **MOTION TO DISMISS**

24 Hearing:

25 Date: January 13, 2021

26 Time: 2:00 pm

27 Location: U.S. District Court, 1301 Clay St.,
28 Oakland, California

Hon. Sandra Brown Armstrong
United States Senior District Judge

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I. INTRODUCTION

Plaintiffs Andres Rondon and Skunkworx Pharms, LLC hereby submit their opposition to the Defendants' FRCP Rule 12 (b) (6) motion to dismiss the complaint filed in this case. The complaint asserts three causes of action under 42 USC §1983. It derives from the events of October 21, 2018. At that time, plaintiffs were engaged in the lawful cultivation of cannabis, having complied with all licensing and registration requirements of the state of California and defendant Mendocino County, as the complaint specifically avers. Their licensure and registration were shown on the databases maintained by the state and Mendocino County. Notwithstanding plaintiffs' full compliance with the law as shown of record, Mendocino County deputy sheriffs submitted a sworn affidavit that falsely asserted that plaintiffs were unlicensed and un-registered and cultivating unlawfully to a Mendocino judge who issued a search warrant based on the false allegations. Armed with the search warrant the deputies proceeded to go to the plaintiffs' farm and destroyed, on the spot, the crop that was ready for harvest and also destroyed structures and equipment. No criminal charges were ever filed or any criminal proceeding initiated.

A first amended complaint was filed in the superior court of Mendocino County asserting trespass and other solely state law claims. The court dismissed the claims upon the defendants' demurrer, ruling that defendants had complete immunity under California law, and the ruling was affirmed on appeal. It is important to note, however, that plaintiff Skunkworx Pharms, LLC was not a party in or to the state court decision, as is reflected in the first amended complaint, RJN 1.

Plaintiffs respond to defendants arguments in support of the motion to dismiss below.

II. LEGAL ARGUMENT

A. Legal Standards for ruling on Motion to Dismiss

Defendants' memorandum adequately summarizes the pertinent principles applicable to the determination of the motion to dismiss. Further explication from plaintiffs is unnecessary.

B. Plaintiffs' Suit In This Court Is Not Barred by Res Judicata or Claims-Splitting

1 **There is no res judicata or claims preclusion as to plaintiff Skunkworx Pharms, as it was**
2 **not a party in the first amended complaint in the state case**

3 As defendants have noted, the doctrine of res judicata bars a new action that asserts claims
4 by a party which were, or could have been, asserted in a prior suit between the same parties,
5 citing *Constantini v. Trans World Airlines*, 681 F. 2d 1199, 1201 (9th Cir. 1982). Res judicata
6 has no application to plaintiff Skunkworx Pharms as it was not a party in the prior state court
7 action or ruling, See RJN 1. Indeed, the Mendocino defendants maintained in the state court
8 action that Skunkworx could not have been made a party in the state case.¹ Accordingly, the
9 same parties requirement for res judicata is absent as to Skunkworx and its claims are not barred
10 by res judicata.

11 **Plaintiff Rondon's claims should not be barred because the claims in this case are not the**
12 **same as those in the state case**

13 Plaintiff Rondon was a party in the prior state court suit. He maintains that his claims in this
14 case should not be barred by the prior action because the rights and injuries involved in this case
15 are different from those asserted in the state case. Courts have delineated four factors to
16 determine whether claims in a new case are identical or congruent to those asserted in a prior
17 action: 1) whether rights or interests established in the prior judgment would be impaired by
18 prosecution of the 2nd action; 2) whether substantially the same evidence is presented; 3)
19 whether the two suits involve infringement of the same right; and 4) whether the two suits arise
20 out of the same transactional nucleus of facts, *Silberstein v. Fox Entertainment Group*, 732 Fed.
21 *Appx.* 517, 519 (9th Cir. 2018); *Turtle Island Restoration Network v. U.S. Dept. of State*, 673 F.
22 *3d* 914, 917-18 (9th Cir. 2012).

23 Plaintiff maintains that these four factors apply as to this case as follows. First, the rights or
24 interests established by the state court judgment would not be impaired by prosecution of this

25 ¹ In the initial filing of the state case Skunkworx was listed as an
26 additional plaintiff. The Mendocino plaintiffs objected on the basis that
27 Skunkworx was not named on the Notice of Claim submitted under the California
28 Tort Claims Act, a necessary prerequisite to a state tort suit. Skunkworx was
accordingly omitted as a plaintiff on the first amended complaint that was
the subject of the court's demurrer dismissal. As these same defendants took
the position that Skunkworx was a distinct and separate party previously they
cannot now assert that Rondon and Skunkworx are synonymous.

1 action. The state court ruling concluded that California Government Code § 821.6 provided
2 complete immunity as to all of plaintiff's claims, even if defendants submitted knowingly false
3 information to obtain the search warrant. In *Howlitt v. Rose*, 496 U.S. 356, 376 (1990) the U.S.
4 Supreme Court held that conduct which is wrongful under 42 US §1983 cannot be immunized
5 by state law. See also *Streit v. City of Los Angeles*, 236 F. 3d 552, 560 (9th Cir. 2001). The 9th
6 Circuit does not recognize the expanded scope of § 821.6 immunity that has been embraced by
7 several California appellate courts, See *Sharp v. City of Orange*, 871 F. 3d 907, 920-21 (9th Cir.
8 2017); *Mendez v. City of L.A.*, 897 F.3d 1067, 1083 (9th Cir. 2018); *Garmon v. County of L.A.*,
9 828 F. 3d 837 (9th Cir. 2016).

10 More specifically, courts have recognized there is no § 821.6 immunity for knowingly making
11 false or fraudulent statements to obtain a warrant. *Garcia v. City of Merced*, 637 F. Supp 2d 731
12 (9th Cir. 2018); *Baldwin v. Placer County*, 418 F. 3d 966, 971 (9th Cir. 2005); *Galbraith v. City*
13 *of Santa Clara*, 307 F. 3d 1119, 1126 (9th Cir. 2002) (*falsified autopsy report*).

14 Thus, the immunity applied in the state court ruling did not establish any rights or interests of
15 the defendants that this court would recognize or that pursuit of this §1983 action would impair.
16 The 2nd factor is not applicable. No evidence was considered or evaluated; the immunity was
17 applied as a matter of law.

18 With regard to the 3rd factor, plaintiffs maintain that the constitutional rights asserted here are
19 different from the state law rights and injuries asserted in the state case (trespass, conversion and
20 violation of the Banes Act, Civil Code sec 52.1). Also, there is a right under §1983 to not be
21 damaged by false statements to a magistrate but the state court held there was no such right under
22 state law because the defendants were immune from any liability. Finally, plaintiffs' liberty
23 interest in engaging in a lawful occupation, one made lawful by California law, was not an issue
24 in the state case.

25 As to the fourth factor, plaintiffs must acknowledge that generally the complaint here arises
26 from the same facts and circumstances as the prior state case. However, in one respect the due
27 process claim here involves some facts, circumstances and events that have occurred after the
28 first amended complaint in the state court that could not have been asserted then in that forum.

1 California Business & Professions Code §26032 provides as follows with regard to persons
2 engaged in the cannabis business who are licensed by the state of California:

3
4 **§ 26032. Lawful actions of licensee; Lawful actions of person allowing**
5 **property to be used by licensee**

6 (a) The actions of a licensee, its employees, and its agents are not unlawful under state law and
7 shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be
8 subject to a civil fine or be a basis for seizure or forfeiture of assets under state law if they are all
9 of the following:

10 (1) Permitted pursuant to a state license.

11 (2) Permitted pursuant to a local authorization, license, or permit issued by the local jurisdiction,
12 if any.

13 (3) Conducted in accordance with the requirements of this division and regulations adopted
14 pursuant to this division.

15 (b) The actions of a person who, in good faith, allows his or her property to be used by a
16 licensee, its employees, and its agents, as permitted pursuant to a state license and, if required by
17 the applicable local ordinances, a local license or permit, are not unlawful under state law and
18 shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be
19 subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

20
21 As the complaint here specifically alleges, plaintiffs Rondon and Skunkworx . satisfied
22 the conditions of §26032 (a)1-3. The general judicially expanded government immunity should
23 not have been applied to bar plaintiffs' claims given the specific prohibition of §26032 (a).
24 Plaintiffs maintain that the eventual court rulings in the trial court and upheld by the California
25 court of appeals were part of the denial of due process regarding the destruction of plaintiff's
26 property and the violation of the liberty interest in pursuing in California an occupation that was
27 and is specifically recognized by statute as lawful and not amenable to criminal prosecution,
28 search or seizure. Plaintiffs had no opportunity or ability to assert this claim in the state action
because it did not ripen into a claim until after the court rulings on the defendants' demurrer.
Thus res judicata is inapplicable.

If the present allegations of the complaint here are insufficiently detailed with respect to
this aspect of plaintiffs' due process claim, they seek leave to amend. The Ninth Circuit has

1 repeatedly recognized that leave to amend should be granted, even if no request to amend was
2 made, unless it determines that the pleading could not possibly be cured by the allegation of
3 other facts, *See, e.g., Lopez v. Smith, 203 F. 3d 1122, 1130 (9th Cir. 2000)*.

4
5 **C. Plaintiffs' Damages Claims Should Not Be Dismissed**

6 In their 3rd proposition, defendants argue that plaintiff's claims for destruction of their
7 cannabis, loss of cannabis revenue, and interruption of their cannabis business should be
8 dismissed because cannabis is unlawful under federal law and therefore contraband.

9 First, it should be noted that plaintiffs are also seeking damages for the destruction of
10 property and equipment. That property and equipment are not illegal or contraband under
11 federal law, so defendants' contraband argument has no application to that portion of plaintiffs'
12 claims and there is no basis for dismissing them.

13
14 It is somewhat ironic for the Mendocino defendants to be arguing that they cannot be held
15 liable for an unauthorized and unlawful destruction of cannabis. Like the state of California,
16 Mendocino specifically authorizes the cultivation of cannabis if done in compliance with the
17 regulatory scheme, as was the case for plaintiffs. As the court knows, nearly half the states
18 have legalized cannabis in one form or another, despite the federal proscription, and there are
19 cannabis farms and dispensaries throughout California and Mendocino County. Cannabis
20 distributors are publicly traded.

21
22 Additionally, as previously noted, California Business & Professions Code §26032
23 specifically recognizes by statute that cannabis activities done in compliance with applicable
24 licensing and permit requirements are lawful in California and are protected against criminal
25 prosecutions, searches and seizures. Plaintiffs maintain that §26032 gives them protectible
26 property and liberty interests in California that apply to state and local law enforcement
27
28

1 officials and Mendocino County despite the fact that cannabis is still listed as a controlled
2 substance under the federal statute. §26032 specifically recognizes the ability of plaintiffs to
3 carry on a cannabis business in California lawfully. Plaintiffs have a liberty interest in
4 engaging in a lawful occupation, so there should be no dismissal of plaintiffs' loss of business
5 or business interruption claims.
6

7 **D. Defendants' Ex Turpi Causa Non Oritur Actio Argument Is Without Merit**

8 Defendants argue in their fourth proposition that the court should dismiss plaintiffs' claims
9 because they are founded on an illegal act. That is unmeritorious. First, defendants should be
10 estopped from making that argument because Mendocino County specifically authorized the
11 subject activities by plaintiff by issuing a permit for those activities. If defendants' argument
12 were correct the very issuance of the cultivation permit would have been a per se illegal act.
13 Secondly, as previously noted, in §26032 the state of California specifically declared that the
14 cannabis cultivation activities were not illegal in the state of California.
15

16
17 It appears that defendants' briefing on its fourth proposition may have been imported from
18 some different case. The concluding sentence says "Consequently, section 1983 cannot
19 reasonably be understood to provide Plaintiffs with an entitlement to a monetary award for a
20 local government's denial of their request for a permit to cultivate cannabis." There is no such
21 claim or issue in this case.
22

23 **E. Leave to Amend Should Be Granted**

24 Plaintiffs have previously discussed the issue of amendment in connection with their due
25 process claim. Plaintiffs should be granted leave to amend insofar as any deficiencies the court
26 might find could be cured by amendment, *Lopez v. Smith, supra*.
27
28

1 **III. CONCLUSION**

2 Based upon the foregoing arguments and authorities defendants' motion to dismiss should be
3 overruled. A proposed Order is submitted herewith. Plaintiffs have no objection to Defendants'
4 Request for Judicial Notice.

5
6 Respectfully Submitted,

7 Date: December 21, 2020

8 /Arthur R. Angel/

9 Attorney for Plaintiffs
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PHARMS, LLC

Plaintiffs,

vs.

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MATT KENDALL, THOMAS ALLMAN,
DARREN BREWSTER; JAMES WELLS;
DOES 1-10**

Defendants

Case No.: 4:20-cv-07013-SBA

**[PLAINTIFFS' PROPOSED] ORDER ON
DEFENDANTS' MOTION TO DISMISS**

Hearing:

Date: January 13, 2021

Time: 2:00 pm

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

Defendants filed an FRCP Rule 12 (b) 6 Motion to Dismiss the complaint filed
herein by Plaintiffs Andres Rondon and Skunkworx Pharms, LLC.

Upon consideration of all papers filed in support of and in opposition to the motion and
the arguments of the respective counsel the Court orders as follows:

The defendants' motion to dismiss is hereby DENIED.

SO ORDERED.

Date _____

by _____

U.S. District Court Judge