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9	UNITED STATES DISTRICT COURT		
11	NORTHERN DISTRICT OF CALIFORNIA		
12 13	ANDRES RONDON and SKUNKWORX,	) 4:20-cv-07013-SBA	
14	Plaintiffs, v.	COUNTY OF MENDOCINO DEFENDANTS' REPLY TO	
15 16 17 18 19 20 21 22	COUNTY OF MENDOCINO, MATTHEW KENDALL, THOMAS ALLMAN, DARREN BREWSTER, JAMES WELLS, and DOES 1-10,  Defendants.	PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS  Date: January 13, 2021 Time: 2:00 p.m. Location: U.S. District Court, 1301 Clay Street, Oakland, California  Honorable Saundra Brown Armstrong United States Senior District Judge	
23 24 25 26 27 28	Plaintiffs Andres Rondon and Skunkworx Pharms, LLC have brought this action seeking damages based on the destruction of their cannabis plants and damage to personal property during the execution of a search warrant on Plaintiffs' cannabis farm. Plaintiffs previously brought an earlier action in state court seeking damages for the same injuries under COUNTY OF MENDOCINO DEFENDANTS' REPLY TO PLAINTIFFS'		
		IOTION TO DISMISS 17013-SBA]	

California's Ban Act. That action resulted in a judgment for defendants. Consequently, Defendants have moved to dismiss the Complaint, inter alia, on the grounds that this action is barred by the doctrine of res judicata.

In their Opposition, Plaintiffs now assert that Plaintiff Skunkworx Pharms, LLC was dismissed from the prior action before a judgment was rendered and that their federal claims for these events are sufficiently distinct to prevent the application of res judicata. As set forth more fully herein, these arguments lack merit, because the pleadings clearly establish that Plaintiffs are in privity and because Plaintiffs are erroneously applying the wrong standard to a California judgment.

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## II. <u>LEGAL ARGUMENT</u>

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## A. The Dismissal of Skunkworks Pharms from the Prior Action Would not Bar Application of Res Judicata

In opposition to the Motion to Dismiss, Plaintiffs have argued that res judicata should

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prior state court action or ruling . . ." Opposition [3:6-7]. Plaintiffs acknowledge that the

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company was a party at the inception of the case, but assert that "Skunkworx was omitted as a

not bar the claims by Skunkworks Pharms, LLC, because that company was "not a party in the

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plaintiff on the first amended complaint . . . " Opposition [3:25-28]. Plaintiffs do not assert,

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however, that a dismissal of Skunkworks was ever requested or entered with the Court. Cal.

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Code of Civ. P. § 581.<sup>2</sup> Regardless of whether such a dismissal actually occurred, however, it is clear that the judgment from the prior action is equally binding on Skunkworks Pharms,

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LLC, because it is plain from the Complaint that Plaintiff Skunkworx Pharms, LLC privity

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with Plaintiff Rondon.

The preclusive effect of res judicata does not apply just to the named parties in a prior

proceeding, but also to those in privity with those parties.

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<sup>&</sup>lt;sup>1</sup> The current action refers to "Skunkworx Pharms, LLC," whereas the prior action was brought by "Skunkworks Pharms, LLC." This discrepancy, however, appears to merely be a spelling error. The Opposition does not dispute that these are the same company. Opposition [3:25-28].

<sup>&</sup>lt;sup>2</sup> In California, dismissal is typically accomplished by the filing and serving of a Judicial Council form Civ-110. Defendants have not located such a dismissal in their own records.

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The concept of privity for the purposes of res judicata or collateral estoppel refers to a mutual or successive relationship to the same rights of property, or to such an identification in interest of one person with another as to represent the same legal rights . . .

Citizens for Open Access etc. Tide, Inc. v. Seadrift Ass'n, 60 Cal. App. 4th 1053, 1069-70, 71 Cal. Rptr. 2d 77 (1998) (internal modifications omitted). "Privity' as used in the context of res judicata or collateral estoppel, does not embrace relationships between persons or entities, but rather it deals with a person's relationship to the subject matter of the litigation." Cal Sierra Dev., Inc. v. George Reed, Inc., 14 Cal. App. 5th 663, 674 (2017) (quoting Manning v. S.C. Dep't of Highway & Pub. Transp., 914 F.2d 44, 47 (4th Cir. 1990).); see also Mooney v. Caspari, 138 Cal. App. 4th 704, 705 (2006) (broker was in privity with developer because broker's rights were derivative of the developers).

It is clear from the face of the pleadings that Skunkworx Pharms, LLC and Mr. Rondon have a privity of interest. "Skunkworkx Pharms, LLC is a California limited liability company owned by Plaintiff Rondon . . ." Complaint ¶ 4. The company is "owned solely by him . . ." Complaint ¶ 11. The farm in question was "operated" by Rondon, and the workers on the farm were "his employees . . ." Complaint ¶¶ 11-12. The Complaint refers to the property seized as "plaintiffs' property . . ." with no effort to distinguish the assets of the company from Mr. Rondon's own assets. Complaint ¶¶ 18-19. More significantly, for the purposes of res judicata, Plaintiff Rondon claims all the injuries and damages that Skunkworx Pharms, LLC claims. See Complaint ¶¶ 22-24. These injuries and damages match the same claims which Plaintiff Rondon pursued in the State Court matter after he asserts that the company was dismissed. See RJN #1. Consequently, having previously attempted to recover these damages in his own name, Plaintiff is not free to simply try again in the name of his corporation.

## B. Plaintiffs Apply the Wrong Standard in Analyzing the Preclusive Effect of the State Court Judgment

In arguing that res judicata should not apply in this context, Plaintiffs cite *Silberstein v.*Fox Entm't Grp., Inc. and Turtle Island Restoration Network v. United States Dep't of State for

1	a four factor analysis determining whether claims are "identical." Opposition [3:13-22]; 732 F
2	App'x 517, 518 (9th Cir. 2018); 673 F.3d 914, 916 (9th Cir. 2012). These cases, however, have
3	no bearing to the motion at bench, because neither addressed the preclusive effect of a
4	California judgment. Silberstein v. Fox Entm't Grp., Inc. dealt with a judgment from a New
5	York State Court and Turtle Island Restoration Network v. United States Dep't of State dealt
6	with a judgment from the Court of International Trade. The standard articulated by these cases
7	although used by other jurisdictions, is simply not applicable here. Instead, the preclusive
8	effect of a judgment from a California Court is determined California law and its primary right
9	theory. Sosa v. DIRECTV, Inc., 437 F.3d 923, 927 (9th Cir. 2006); Manufactured Home
10	Cmtys., Inc. v. City of San Jose, 420 F.3d 1022, 1031 (9th Cir. 2005).
11	Under California law, it is clear that res judicata bars a second suit for the same injurie
12	under a different legal theory. See Mycogen Corp. v. Monsanto Co., 28 Cal. 4th 888 at 904
13	(2002); Crowley v. Katleman, 8 Cal. 4th 666 at 682 (1994). In this case, Plaintiffs have not an
14	cannot argue that the injuries alleged in the current action are distinct from those raised in the
15	prior case. They "acknowledge that generally the complaint here arises from the same facts
16	and circumstances as the prior state case." Opposition [4:25-26]. Instead, they have argued
17	that "the constitutional rights asserted here are different from the state law rights and injuries
18	asserted in the state case" Opposition [4:18-20]. Notably, the two actions actually assert
19	the same constitutional injuries, they merely claim a separate statutory basis for recovery
20	(California's Bane Act in the state case versus 42 USC § 1983 in this proceeding).
21	Consequently, under California's primary right analysis, the new action is barred by the prior
22	judgment.
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1	III. <u>CONCLUSION</u>	
2	For the reasons stated herein, Defendants request that the Motion to Dismiss be granted	
3	and that leave to amend be denied.  Respectfully submitted,	
4	Dated: December 28, 2020 CHRISTIAN CURTIS, County Counsel	
5	by /s/ Christian M. Curtis	
6	CHRISTIAN M. CURTIS, County Counsel	
7	Attorneys for County Defendant	
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