

No. 22-15673

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANN MARIE BORGES and CHRIS GURR,
Individually and doing business as GOOSE
HEAD VALLEY FARMS,
Plaintiffs/Appellants,

vs.

COUNTY OF MENDOCINO, et al.,
Defendant/Appellee.

On Appeal from Order
of the United States District Court
for the Northern District of California,
Docket No. 3:20-cv-04537-SI,
The Honorable Susan Illston, Judge

**APPELLEE'S SUPPLEMENTAL EXCERPTS OF RECORD
[VOLUME I OF I, PAGES SER00001 TO SER00209]**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES and CHRIS GURR,
 individually and doing business as GOOSE
 HEAD VALLEY FARMS,

Plaintiffs,

v.

COUNTY OF MENDOCINO, SUE
 ANZILOTTI; JOHN McCOWEN, in his
 official capacity as Supervisor for Mendocino
 County; CARRE BROWN, in her official
 capacity as Supervisor for Mendocino County;
 MASON HEMPHILL; and DOES 1-25
 inclusive,

Defendants.

CASE NO.: 3:20-cv-04537-SI

**DECLARATION OF PAMELA GRAHAM IN
 SUPPORT OF DEFENDANT COUNTY OF
 MENDOCINO'S MOTION FOR SUMMARY
 JUDGMENT**

Date: April 8, 2022
 Time: 10:00 a.m.

[Motion for Summary Judgment; Declaration of
 Kristin Nevedal; Request for Judicial Notice;
 [Proposed] Order, filed concurrently herewith]

FAC Filing Date: October 23, 2020
 Trial Date: May 16, 2022
 Discovery Cut-off: December 17, 2021
 Motion Cut-off: March 4, 2022

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 420 Sierra College Drive, Suite 140
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DECLARATION OF PAMELA K. GRAHAM

I, Pamela K. Graham, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am Senior Counsel to the law firm of Colantuono, Highsmith & Whatley, PC, attorneys of record for the County of Mendocino ("County"). The information in this declaration is true of my own personal knowledge unless stated upon information and belief, and as to any such statements, I believe them to be true. If called upon as a witness, I would testify competently to the facts stated herein.

2. Attached as **Exhibit AA** to this Declaration is a true and correct copy of the Declaration of Diane Curry filed in this Action on November 20, 2020 (Dkt. No. 43-1). My firm obtained a copy of this document by accessing the Case Management / Electronic Case Filing System for the Northern District of California, and then downloading the Declaration.

3. Attached as **Exhibit BB** to this Declaration is a true and correct copy of sections of the transcript for the Deposition of Diane Curry taken on November 10, 2021. My firm obtained a copy of this document by requesting a copy of the transcript from the court reporter.

4. Attached as **Exhibit CC** to this Declaration are true and correct copies of Plaintiff Borges' Response to Defendant's Request for Admissions, Set One, and Plaintiff Gurr's Response to Defendant's Request for Admissions, Set One, served on Defendant by Plaintiff on December 20, 2021. My firm received copies of these documents from Plaintiffs' counsel via electronic mail.

5. Attached as **Exhibit DD** to this Declaration are true and correct copies of Plaintiff Borges' Response to Defendant's Special Interrogatories, Set One, and Plaintiff Gurr's Response to Defendant's Special Interrogatories, Set One, served on Defendant by Plaintiff on December 20, 2021. My firm received copies of these documents from Plaintiffs' counsel via electronic mail.

6. Attached as **Exhibit EE** to this Declaration are true and correct copies of Plaintiff Borges' Supplemental Response to Defendant's Request for Admissions, Set One, and Plaintiff Gurr's Supplemental Response to Defendant's Request for Admissions, Set One, served on Defendant by Plaintiff on February 18, 2022. My firm received copies of these document from Plaintiffs' counsel via electronic mail.

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7. Attached as **Exhibit FF** to this Declaration is a true and correct copy of Plaintiffs' Demand Letter, served on Defendant by Plaintiff on February 22, 2022. My firm received a copy of this document from Plaintiffs' counsel via electronic mail.

8. Attached as **Exhibit GG** to this Declaration is a true and correct copy of Plaintiffs' Settlement Conference Statement, served on Defendant by Plaintiff on February 22, 2022. My firm received a copy of this document from Plaintiffs' counsel via electronic mail.

9. Attached as **Exhibit HH** to this Declaration is a true and correct copy of sections of the transcript for the Deposition of John McCowen taken on December 7, 2021. My firm obtained a copy of this document by requesting a copy of the transcript from the court reporter.

10. Attached as **Exhibit II** to this Declaration are true and correct copies of the Plaintiffs' Request For Production of Documents, Sets One, Two, and Three. My firm received copies of these documents from Plaintiffs' counsel via electronic mail. None of the discovery propounded by Plaintiffs on the Defendant requested information about other applicants in either opt-out zone.

11. Attached as **Exhibit A** to the concurrently filed Request for Judicial notice is a true and correct copy of Mendocino County Ordinance No. 4381. My firm obtained a copy of this document from the Mendocino County Website at https://library.municode.com/ca/mendocino_county/ordinances/code_of_ordinances?nodeId=824167 on March 4, 2022.

12. Attached as **Exhibit B** to the concurrently filed Request for Judicial notice is a true and correct copy of Mendocino County Code Chapter 10A.17. My firm obtained a copy of this document from the Mendocino County Website at https://library.municode.com/ca/mendocino_county/codes/code_of_ordinances?nodeId=MECOCO_TIT10AAG_CH10A.17MECACUOR on March 1, 2022.

13. Attached as **Exhibit C** to the concurrently filed Request for Judicial notice is a true and correct copy of Mendocino County Board of Supervisors Resolution No. 17-042 with Exhibit A. My firm obtained a copy of this document from the Mendocino County Website at <https://www.mendocinocounty.org/home/showpublisheddocument/41658/637520193205500000> on March 2, 2022.

14. Attached as **Exhibit D** to the concurrently filed Request for Judicial notice is a true and correct copy of Mendocino County Cannabis Cultivation Program FAQs. My firm obtained a copy of this document from Mendocino County Counsel and the Mendocino County Website at <https://www.mendocinocounty.org/government/cannabis-cultivation/cannabis-cultivation-faq> on March 3, 2022.

15. Attached as **Exhibit J** to the concurrently filed Request for Judicial notice is a true and correct copy of Mendocino County Board of Supervisors Cannabis Overlay Memorandum. My firm obtained a copy of this document from the Mendocino County Website at <https://www.mendocinocounty.org/government/planning-building-services/public-notice> on March 3, 2022.

16. Attached as **Exhibit K** to the concurrently filed Request for Judicial notice is a true and correct copy of a certified transcript of excerpts from the Mendocino County Board of Supervisors November 16, 2018 Meeting. My firm obtained the audio file used for the transcription from the Mendocino County Website at https://mendocino.granicus.com/MediaPlayer.php?view_id=2&clip_id=139 on February 6, 2022.

17. Attached as **Exhibit L** to the concurrently filed Request for Judicial notice is a true and correct copy of Mendocino County Board of Supervisors November 16, 2018 Agenda Summary for Item No. 5a. My firm obtained a copy of this document from the Mendocino County Counsel on February 25, 2022.

18. Attached as **Exhibit M** to the concurrently filed Request for Judicial notice is a true and correct copy of Mendocino County Ordinance No. 4420. My firm obtained a copy of this document from the Mendocino County Website at https://library.municode.com/ca/mendocino_county/ordinances/code_of_ordinances?nodeId=937890 on February 11, 2022.

19. Attached as **Exhibit N** to the concurrently filed Request for Judicial notice is a true and correct copy of the California Regional Water Quality Control Board, North Coast Region, Order No. 2015-0023. My firm obtained a copy of this document from the Website at

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1 <https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2015/15_0023_Ca
2 nnabis_Order.pdf> on March 1, 2022.

3 I declare under penalty of perjury under the laws of the United States of America and the
4 State of California that the foregoing is true and correct.

5 Executed on this 4th day of March 2022, at Valencia, California.

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7 /s/Pamela K. Graham

8 PAMELA K. GRAHAM
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CERTIFICATE OF SERVICE

Borges et al v. County of Mendocino et al
 United States District Court, Northern District
 Case No. 3:20-cv-04537-SI

I, McCall Williams, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 East Colorado Boulevard, Suite 850, Pasadena, California 91101. My email address is: MWilliams@chwlaw.us. On March 4, 2022, I served the document(s) described as **DECLARATION OF PAMELA GRAHAM IN SUPPORT OF DEFENDANT COUNTY OF MENDOCINO'S MOTION FOR SUMMARY JUDGMENT**, on the interested parties in this action addressed as follows:

☒ **BY ELECTRONIC TRANSMISSION:** I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District by using the CM/ECF system on March 4, 2022. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the USDC, Northern District CM/ECF system.

I declare that I am employed in the offices of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on March 4, 2022, at Pasadena, California.

/s/McCall Williams
 McCall Williams

Colantuono, Highsmith & Whalley, PC
 790 E. COLORADO BLVD., SUITE 850
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EXHIBIT AA

121861.1

SER00012

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17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA
20

21 ANN MARIE BORGES and CHRIS GURR,
22 individually and doing business as GOOSE
23 HEAD VALLEY FARMS,

24 Plaintiffs,

25 v.

26 COUNTY OF MENDOCINO, SUE
27 ANZILOTTI, JOHN McCOWEN, CARRE
28 BROWN, GEORGEANNE CROSKEY,
MASON HEMPHILL and Does 1 – 25
inclusive,

Defendants.

Case No. 3:20-cv-04537-SI

DECLARATION OF DIANE CURRY

DECLARATION OF DIANE CURRY

SER00013

1 I, Diane Curry, declare as follows:

2 1. I am the former Interim Commissioner of the Department of Agriculture for the
3 County of Mendocino. I held that position from 1/2017 to 3/2018.

4 2. I have 23 years total working within the Agricultural Commissioner system in San
5 Joaquin and Mendocino County. I have a B.A. degree in Botany and I started my career as a
6 Agricultural Biologist for San Joaquin Department of Agriculture. I received all of my biologist
7 licenses along with my certification to approve agricultural commodities for export. My career in
8 San Joaquin County consisted of performing the duties of a district biologist which included
9 pesticide use enforcement, commodity certification, grower education and outreach, along with
10 plant pest quarantine. I transferred to Mendocino County Department of Agriculture where I had
11 the same duties as in San Joaquin. I then began to pursue the additional licenses required to
12 become a Deputy and Commissioner/Sealer. In 2012 I became the Interim Assistant Agricultural
13 Commissioner/Sealer where I oversaw the daily activities of the department. I was a direct
14 supervisor to 8 full time employees and 6 seasonal employees. I had direct oversight of eight
15 programs. In January 2017 I was appointed to the position of Interim Agricultural Commissioner
16 Sealer.

17 3. My duties and responsibilities as Interim Commissioner included administering
18 the provisions of the California Food and Agricultural Code Division 2 Local Administration
19 2001 -2344. I had the responsibility of implementing the newly adopted Mendocino County
20 Cannabis Cultivation Ordinance.

21 4. During 2017 I was tasked to interpret and implement the new ordinance allowing
22 qualified applicants to receive permits to cultivate cannabis in the county. After months of
23 meetings and numerous revisions, a new ordinance was passed on April 4, 2017, Ordinance No.
24 4381, referred to as the Medical Cannabis Cultivation Ordinance/Chapter 10A.17. A true and
25 correct copy is attached as Exhibit A to my declaration. This ordinance was in effect beginning
26 May 4, 2017. One of my responsibilities was to interpret and implement the new ordinance. At
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DECLARATION OF DIANE CURRY

1 Section 10A.17.080 it sets forth "Permit Phases and Requirements Specific to each Phase." Phase
2 One commenced in May 4, 2017. It provides that; "Permits will only be issued to applicants who
3 provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of
4 cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who
5 comply with all applicable conditions of this Chapter and Chapter 20.242. Applicants for permits
6 during Phase One shall only be accepted until December 31, 2017. Applicants able to provide
7 proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3)
8 of this section." It was the intent of the county to let our legacy growers be the first to obtain
9 permits. Proof of prior cultivation was to be presented to my office just to verify grower was
10 indeed growing in Mendocino. The proof of prior cultivation was never meant to be retained. It
11 was verified by my staff and returned to applicant. The environmental document stated that the
12 County would not increase acreage already in cultivation, but would allow a current cultivator on
13 an inappropriate site to relocate to a more suitable site.

14 5. The ordinance goes on to identify two categories of applicants: (B)(1) applicants
15 who provide proof of cultivation activities prior to January 1, 2016, and seek a permit to cultivate
16 at the prior cultivation site; and (B)(3) applicants who provide proof of cultivation activities prior
17 to January 1, 2016, at an origin site and apply to relocate their cultivation site to a destination
18 parcel. As to (B)(3) applicants the ordinance further provides that (1) the origin site shall be
19 restored, (2) the applicant provide an agreement, on a form approved by the Agricultural
20 Commissioner and County Counsel, providing that the applicant releases any right to continue or
21 resume cultivation on the origin parcel, and (3) if a person is granted a permit to a destination site,
22 any claims of proof of prior cultivation on the origin site shall be effectively transferred to the
23 destination site. Thus, the ability to claim proof of prior cultivation at the origin site shall be
24 extinguished.

25 6. On May 4, 2017, Ann Marie Borges and Chris Gurr submitted an application for a
26 permit pursuant to paragraph (B)(3) of the ordinance. They submitted an application together with
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1 proof of prior cultivation at a cultivation site in the county prior to January 1, 2016. Based on
2 staff review of the application, an "Application Receipt" for the site located at 1181 Booneville
3 Road, Ukiah, California was issued. A true and correct copy of the Application Receipt is
4 attached hereto as Exhibit B. This is essentially a temporary permit that determined "the garden
5 at this site is considered to be in compliance, or working toward compliance, until such time as a
6 permit is issued or denied." My staff conducted a site inspection of the Gurr property and found
7 it to be in compliance with the ordinance, but I also wanted Fish and Wildlife to inspect the
8 property because the well was close to a seasonal creek. At about this time it was brought to my
9 attention that the neighbors around the Gurr property did not want a permitted cannabis grow near
10 their properties. I was accustomed to people complaining about agricultural activities close to
11 their homes, but this was agriculture on agricultural zoned property. I instructed my staff to move
12 forward with the approval process. As with all the County cultivators it was implied that as long
13 as you submitted your application and we're moving toward compliance that you could move
14 forward with your cultivation for 2017 which Borges and Gurr did. The County was fully aware
15 that the compliance process would take time, but as long as an applicant was moving toward
16 compliance and was considered in good standing the applicant could commence cultivation
17 subject to complying with all conditions that applied to (B)(3) applicants.

18 7. Sometime after being made aware of the Gurr neighbor complaint I was in a
19 meeting that was also attended by Deputy County Counsel, Matthew Kiedrowski. I knew that
20 County Counsel was aware of the neighbor issue with regard to the Gurr permit. Mr. Kiedrowski
21 informed me that Supervisor John McCowen would never allow Borges and Gurr to be approved
22 for a permit. Mr. Kiedrowski said that Supervisor McCowen was the one who came up with the
23 idea that coastal property did not meet the requirement regarding proof of prior cultivation. The
24 newly created environmental document was only for the inland portion of Mendocino County.
25 Since the proof of prior information was not kept by our office, I don't know how Supervisor
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1 McCowen knew of the coastal property that was the initial proof of prior cultivation submitted by
2 Ms. Borges and Mr. Gurr.

3 8. Sometime in August 2017, Ms. Borges and Mr. Gurr supplemented their
4 application to include an inland site in Willits to satisfy the proof of prior cultivation requirement.
5 Based on my review of the of this new information, I was satisfied that the new site met the proof
6 of prior cultivation requirement of the ordinance and I instructed my staff to move forward with
7 issuing a permit to Borges and Gurr. I informed Borges and Gurr of this decision in September
8 2017. They scheduled an appointment to pick up the permit at my office.

9 9. I informed Matthew Kiedrowski that my office was going to issue the permit to
10 Gurr and Borges. Mr. Kiedrowski requested that I wait to issue the permit because he wanted
11 more documentation with regards to the Willits property. He requested that Borges and Gurr, as
12 (B)(3) applicants, had to comply with Chapter 10A.17.080(B)(3), Subsection (e), by providing an
13 agreement, approved by County Counsel, stating that the applicant releases any right to continue
14 or resume cultivation on the origin site. This was the only obstacle brought to my attention that
15 would prevent or delay the permit from being issued.

16 10. I was informed that Mr. Kiedrowski would be coordinating with an attorney for
17 the applicants to satisfy this remaining requirement. I was provided with a copy of the
18 "Agreement Not to Resume Cannabis Cultivation" attached here as Exhibit C. It was my
19 understanding that once this agreement was approved by County Counsel the permit would issue.
20 I was never informed by anyone that applicants Borges and Gurr did not qualify for a permit, nor
21 am I aware of any reason the permit I approved should not have been issued to Borges and Gurr
22 upon receipt of the agreement.

23 11. As Acting Commissioner of the Department of Agriculture during Phase One
24 (between May 2017 through December 31, 2017) my staff approved numerous (B)(3)
25 applications for permits that involved proof of prior cultivation at an origin site prior to January 1,
26 2016. Ann Marie Borges and Chris Gurr were able to show proof of prior cultivation and were in
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1 a desired location for the cultivation of cannabis. Pending the determination of Fish and Wildlife
2 with regards to the well, I saw no reason not to issue the permit, knowing that Gurr and Borges
3 were moving toward compliance.

4 I declare under penalty of perjury the foregoing is true and correct. Executed this 20th day
5 of November, 2020, at Willits, California.
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8 Diane Curry
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Exhibit A

ORDINANCE NO. 4381

**ORDINANCE ADOPTING CHAPTER 10A.17 – MEDICAL CANNABIS CULTIVATION
ORDINANCE AND CHAPTER 20.242 – MEDICAL CANNABIS CULTIVATION SITE**

The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

Section 1. Chapter 10A.17 is hereby added to the Mendocino County Code to read as follows:

Chapter 10A.17 – Medical Cannabis Cultivation Ordinance

Section 10A.17.010	Title, Purpose and Intent
Section 10A.17.020	Definitions
Section 10A.17.030	Cultivation Permit Required; Exemptions
Section 10A.17.040	General Limitations on Cultivation of Medical Cannabis
Section 10A.17.050	Medical Marijuana Collectives
Section 10A.17.060	Permit Types
Section 10A.17.070	Requirements for All Permits
Section 10A.17.080	Permit Phases and Requirements Specific to Each Phase
Section 10A.17.090	Cultivation Permit Application and Zoning Review
Section 10A.17.100	Permit Review and Issuance
Section 10A.17.110	Performance Standards
Section 10A.17.120	Certifications
Section 10A.17.130	Third Party Inspectors
Section 10A.17.140	Cultivation Site Inspections: Violations and Penalties
Section 10A.17.150	Administrative Order to Show Cause
Section 10A.17.160	Enforcement and Declaration of Public Nuisance
Section 10A.17.170	Attorneys' Fees
Section 10A.17.180	Confidential nature of medical cannabis information – legislative intent
Section 10A.17.190	Severability

Section 10A.17.010 – Title, Purpose and Intent

This Chapter is known and may be cited as the Medical Cannabis Cultivation Ordinance ("MCCO"). Chapter 20.242 of the Mendocino County Code, titled Medical Cannabis Cultivation Site, is complementary to this Chapter and together the chapters may be cited as the Medical Cannabis Cultivation Regulation ("MCCR").

It is the purpose and intent of this Chapter, together with complementary regulations found in Chapter 20.242 of the Mendocino County Zoning Code, to regulate the cultivation of cannabis intended exclusively for medical use (which may also be referred to herein as medical cannabis) within the unincorporated areas of Mendocino County in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within those areas by balancing the needs of medical patients and their caregivers for enhanced access to medical cannabis, the needs of neighbors and communities to be protected from public safety and nuisance impacts, and the need to limit harmful environmental impacts that are sometimes associated with cannabis cultivation.

Adoption of this Chapter will protect the public health, safety and welfare of the residents of the County of Mendocino by adopting a local permitting structure that will operate in conformance with State licensing requirements for the cultivation of medical cannabis, once state licenses

become available.

All cultivation of cannabis for medical use within the County of Mendocino shall comply with the provisions of the MCCR, as well as all applicable state and local laws, regardless of whether the cultivation site existed or occurred prior to the adoption of the MCCR.

Nothing in this Chapter is intended, nor shall it be construed, to 1) allow persons to engage in conduct that endangers others or causes a public nuisance, 2) allow the use or diversion of cannabis for nonmedical purposes, or 3) allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State law.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of cannabis for medical use from compliance with all other applicable Mendocino County zoning and land use regulations, as well as other applicable provisions of the County Code, or compliance with any applicable state laws.

Nothing in this Chapter is intended, nor shall it be construed, to confer upon qualified patients and their primary caregivers the right to create or maintain a public nuisance in the course of cultivating cannabis plants for medical purposes.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of cannabis for medical use, as defined herein, from any and all applicable local and state construction, grading, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

Nothing in this Chapter is intended, nor shall it be construed, to preclude a landlord or property owner from limiting or prohibiting the cultivation of cannabis for medical use.

All persons operating facilities and conducting activities associated with the cultivation of cannabis for medical use, as defined in this Chapter, are subject to possible federal prosecution, regardless of the protections provided by state or local law.

Section 10A.17.020 - Definitions

As used herein the following definitions shall apply:

"Agricultural Commissioner" or "Agricultural Commissioner's Office" or the "Department of Agriculture" means the Mendocino County Department of Agriculture or the authorized representatives thereof.

"Attorney General's Guidelines" means the document titled "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use issued by the California State Attorney General in August 2008.

"Cannabis" means all parts of the plant Cannabis sativa, Cannabis indica, or Cannabis ruderalis, or any other strain or varietal of the genus Cannabis that may hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food

and Agricultural Code or Section 11018.5 of the Health and Safety Code.

"Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

"Clone" means a portion of a stem that is cut from a parent plant and induced to form roots by chemical, mechanical, or environmental manipulation.

"Collective" means a medical marijuana collective, as defined below.

"Cultivation cycle" means each individual cycle where cannabis plants are grown to maturity from seeds, clones or nursery starts.

"Cultivation of cannabis for medical use" means the planting, growing, harvesting, drying or processing at a cultivation site of cannabis plants or any part thereof.

"Cultivation site" means one or more locations or facilities on one legal parcel subject to a single approved Permit where medical cannabis is planted, grown, harvested, dried, cured, graded, trimmed, processed or packaged for transport, or that does all or any combination of those activities. One or more areas of cannabis cultivation may exist on the legal parcel used for that purpose.

"Dwelling unit" means a legal residential structure providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and having only one (1) kitchen.

"Greenhouse" means a completely enclosed structure whose structural members are made of pre-formed, rigid construction materials. The walls, roof, and ends are typically covered using a transparent material, often glass, that is fixed in place, and which allows solar radiation to penetrate the surface and affect the growing environment of the plants inside.

"Hoop House" means a structure with structural members are made of flexible and somewhat rigid construction materials, typically PVC pipe or similar material. The ends may be covered or left open and the material covering the structural members is readily removable and is typically removed and re-affixed frequently.

"Identification card" shall have the same definition as California Health and Safety Code section 11362.5 et seq., and as may be amended.

"Indoors" means within a fully enclosed and secure structure that complies with the California Building Code, as adopted by the County of Mendocino, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one (1) or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" x 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

"Legal parcel" or "Parcel" means a lot of real property which was created pursuant to the Subdivision Map Act prior to January 1, 2016, or for which a certificate of compliance was recognized and recorded prior to January 1, 2016; provided, however, for real property within

Industrial zoning districts, subdivisions or certificates of compliance may be recognized and recorded after January 1, 2016

"Licensee" means a person issued a state license under the MCRSA to engage in commercial cannabis activity.

"Medical marijuana collective" means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by written agreement, or form a cooperative in accordance with Section 12300 of the Corporations Code within the unincorporated area of the County in order to collectively or cooperatively cultivate, store, and/or dispense cannabis for medical purposes, as provided in Health and Safety Code Section 11362.775. The term collective shall include "cooperative" unless the context clearly indicates otherwise.

"Mixed light" means the use of both natural and artificial or supplemental lighting sources during the growing cycle to cultivate cannabis for medical use. Included in this definition is the process of solely manipulating natural light to cultivate cannabis for medical use.

"Nursery producer" means a Permittee that produces vegetative immature medical cannabis plants, through cloning, seed germination, or tissue culture. A nursery producer may also apply to be a "seed producer" as defined herein.

"Outdoors" means any cultivation site that uses no artificial or supplemental lighting to cultivate cannabis for medical use. Use of supplemental lighting to maintain vegetative starts or immature plants prior to transplanting outdoors shall be considered consistent with this definition.

"Park" means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth. State or Federal designated parks and forestlands as recognized within the Mendocino County General Plan are not included within this definition.

"Permit" means a permit to cultivate medical cannabis in Mendocino County pursuant to this Chapter.

"Permittee" means a Person issued a permit to cultivate medical cannabis in Mendocino County pursuant this Chapter.

"Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

"Person with an identification card" means an individual who is a qualified patient who has applied for and obtained a valid identification card pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 *et seq.*).

"Plant canopy" or "square footage" or "total square footage of plant canopy" or "cultivation area" means the cumulative total of square footage occupied by growing cannabis plants as calculated by the Agricultural Commissioner's Office but does not include aisles or other open areas outside the canopy area of growing cannabis plants.

"Primary caregiver" means the individual, designated by a qualified patient or by a person with

an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as defined in Health and Safety Code section 11362.7(d).

"Processing" means to harvest, dry, cure, grade, trim, or package for transport medical cannabis.

"Publically traveled private road" means a private roadway easement or access easement which serves, or has the potential to serve, more than four (4) lots or parcels. Such easement shall be considered a street as defined in Mendocino County Code section 20.008.052 (26).

"Qualified patient" or "Patient" means a person who is entitled to the protections of section 11362.5 of the Health and Safety Code, but who does not have an identification card issued pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 *et seq.*).

"Residential treatment facility" means a State licensed residential facility that provides treatment for drug and/or alcohol dependency.

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed child day care or preschool facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

"Seed producer" means a permitted nursery producer that has applied for and been approved to grow medical cannabis plants for the expressed purpose of producing specific breeds or varieties of cannabis seeds or to develop unique strains or varieties.

"Sheriff" or "Sheriff's Office" means the Sheriff's Office of the County of Mendocino or the authorized representatives thereof.

"Third party inspector" means an individual that has been approved by the Agricultural Commissioner to conduct compliance consultations with permittees to assess compliance with this section.

"Track and Trace" means a monitoring system providing traceability throughout the production and distribution lifecycle of permitted cannabis utilizing a unique identifier pursuant to section 11362.777 of the Health and Safety Code to assist government with enforcing regulations and preventing the illegal diversion of medical cannabis.

"Unique identifier" or "Unique ID" means individual, non-repeating identification issued to a permittee and attached to the base of each medical cannabis plant permitted at a cultivation site during the cultivation period or otherwise utilized in connection with an approved Track and Trace system.

"Wildlife exclusionary fence" means fencing that is designed to prevent the access of wild animals to the cultivation area by incorporating exclusionary measures designed to prevent the surface digging of wild animals under the upright portion of the fencing, the scaling of the fencing itself, and intrusion over the fencing. A number of methods are available to develop such fencing, including but not limited to: use of "no climb" wire fencing, addition of electrified

"hot" wire(s) to the exterior of a solid fence, height extensions to a standard fence (where permissible) using hot wire or barbed wire strung between the extensions, etc.

"Youth-oriented facility" means an elementary school, middle school, high school, public park, or any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

Section 10A.17.030 – Cultivation Permit Required; Exemptions

- (A) Except as provided for by paragraph (B) of this Section, cultivation of cannabis for medical use shall be allowed only following the issuance of a Permit pursuant to the provisions of this Chapter, and the issuance of a permit pursuant to the provisions of Chapter 20.242 of the Mendocino County Zoning Code, if required. Chapter 20.242 authorizes the cultivation of cannabis for medical use only in specifically enumerated zoning districts, as determined by permit type, subject either to a zoning clearance, administrative permit or minor use permit.
- (B) Qualified patients, persons with an identification card or primary caregivers cultivating medical cannabis are exempt from the permit requirements of paragraph (A) of this Section, subject to the following requirements:
 - (1) Registration with the Agricultural Commissioner on an annual basis and maintaining such registration.
 - (2) Compliance with the provisions of Section 10A.17.040.
 - (3) Any and all cannabis cultivated by a qualified patient or person with an identification card shall be for the sole and exclusive use by the patient only; such cannabis may not be provided, donated, sold or distributed to any other person. A maximum of 100 square feet of medical cannabis may be cultivated by a qualified patient.
 - (4) Any and all cannabis cultivated by a primary caregiver shall be for the sole and exclusive use of up to a maximum of two (2) patients which have provided written designation to the primary caregiver to provide those services; the primary caregiver may not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Health and Safety Code section 11362.765. A maximum of 100 square feet of cultivation area of medical cannabis may be cultivated by a primary caregiver for each patient they are cultivating for, up to a maximum total of 200 square feet.

Section 10A.17.040 – General Limitations on Cultivation of Medical Cannabis

The following limitations shall apply to all cultivation of cannabis for medical use in Mendocino County, whether pursuant to a Permit issued under this Chapter or the exemption provided for in Section 10A.17.030. Cultivation of cannabis for medical use shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

- (A) The cultivation of medical cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
- (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any church or residential treatment facility as defined herein.
 - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
 - (4) In any location where the cannabis plants are visible from the public right of way or publicly traveled private roads.
 - (5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
 - (b) The cultivation of cannabis for medical use within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164 – Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis for medical use in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis for medical use shall only be allowed on the same parcel as the dwelling unit, if required.

The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(g), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest boundary line of the property on which the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs is located. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required

in section 10A.17.040(G) to the nearest exterior wall of the residential structure.

Applicants may seek a reduction in the setback described in paragraph (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242.

- (B) The outdoor, indoor or mixed light cultivation of medical cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.
- (C) The use of light assistance for the indoor or mixed light cultivation of medical cannabis shall not exceed a maximum of 35 watts of lighting capacity per one square foot of growing area. The indoor or mixed-light cultivation of medical cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation of medical cannabis shall not rely on a generator as a primary source of power.
- (D) All lights used for the indoor or mixed light cultivation of medical cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.
- (E) All activities associated with the cultivation of medical cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (F) All cultivation of medical cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of medical cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (G) All medical cannabis grown in Mendocino County (excluding indoor growing) must be within a secure, wildlife exclusionary fence of at least six (6) feet in height that fully encloses the immediate garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (H) All buildings where medical cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (I) Prohibition on Tree Removal. Removal of any commercial tree species as defined by California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus sp.*) or Tan Oak (*Notholithocarpus sp.*) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not

include the pruning of any such trees for maintenance, or the removal of such trees if necessary to safety or disease concerns.

Section 10A.17.050 - Medical Marijuana Collectives

Until such time as State law provides otherwise, medical marijuana collectives operating pursuant to Health and Safety Code section 11362.775 shall obtain any Permit or other approval required by the MCCR and shall also comply with the following:

- (A) Operate on a non-profit basis as set forth in Section IV B.1. of the Attorney General's Guidelines.
- (B) Employ only persons who are at least twenty one (21) years of age and comply with all applicable state and federal requirements relating to the payment of payroll taxes including federal and state income taxes and/or contributions for unemployment insurance, state workers' compensation and liability laws.
- (C) Follow the membership and verification guidelines as set forth in Section IV B.3. of the Attorney General's Guidelines, except that wherever "should" appears it shall be replaced with "shall".
- (D) Require all prospective members to complete and sign a written membership application acknowledging and agreeing to abide by all the rules of the collective and all applicable requirements of this Section.
- (E) Prohibit sales to non-members as set forth in Section IV B.5. of the Attorney General's Guidelines. Allow reimbursements and allocations of medical cannabis as set forth in Section IV B.6. of the Attorney General's Guidelines.
- (F) Possess cannabis only in amounts consistent with the medical needs of the members of the collective; and only cultivate cannabis consistent with the limits set forth in this Ordinance.
- (G) Exterior signage shall not indicate or advertise the presence or availability of medical cannabis.

Section 10A.17.060 - Permit Types

The cultivation Permits that may be applied for under this Chapter are for the production of flowering medical cannabis plants and for nursery and seed production, as defined in section 10A.17.020. A Permittee producing flowering medical cannabis plants may maintain an area scaled appropriately for their operation where they may propagate their own starts through cloning, seed germination or tissue culture. Starts produced in this manner shall be for the exclusive and personal use of the permittee only and the sale, trade, barter, etc. of such starts is prohibited. The square footage of cultivation area dedicated to propagation of starts will be included in measuring the cumulative total square footage allowed under a given Permit.

The following medical cannabis cultivation Permit types may be applied for and granted provided the applicant and the legal parcel that contains the cultivation site are determined to be in compliance with all applicable conditions of this Chapter and Mendocino County Code Chapter 20.242.

- (1) "Type C" for small outdoor cultivation using no artificial lighting not to exceed a maximum of 2,500 square feet of total plant canopy.
- (2) "Type C-A" for small indoor cultivation using exclusively artificial lighting not to exceed a maximum 2,500 square feet of total plant canopy within a structure or structures.
- (3) "Type C-B" for small mixed light cultivation (using a combination of natural and supplemental artificial lighting) not to exceed a maximum of 2,500 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle.
- (4) "Type 1" for medium outdoor cultivation using no artificial lighting of 2,501 to a maximum of 5,000 square feet of total plant canopy on one legal parcel not less than five (5) acres in size.
- (5) "Type 1A" for medium indoor cultivation using exclusively artificial lighting of 2,501 to a maximum of 5,000 square feet of total plant canopy within a structure or structures.
- (6) "Type 1B" for medium mixed light cultivation (using a combination of natural and supplemental artificial lighting) of 2,501 to a maximum of 5,000 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one legal parcel not less than five (5) acres in size.
- (7) "Type 2" for large outdoor cultivation using no artificial lighting of 5,001 to a maximum of 10,000 square feet of total plant canopy on one legal parcel not less than ten (10) acres in size.
- (8) "Type 2A" for large indoor cultivation using exclusively artificial lighting of 5,001 to 10,000 square feet of total plant canopy on one legal parcel.
- (9) "Type 2B" for mixed light cultivation (using a combination of natural and supplemental artificial lighting) of 5,001 to a maximum of 10,000 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one legal parcel not less than ten (10) acres in size.
- (10) "Type 4" for the cultivation of medical cannabis nursery stock and/or seed production which shall not exceed a maximum of 22,000 square feet of total plant canopy on one legal parcel, subject to the limitation of paragraph (C) below regarding seed production Nursery stock and/or seed production may only be sold to a Permittee, a qualified patient, person with an identification card or a primary caregiver. The nursery product may take the form of vegetative and non-flowering plant starts or may also be in the form of seeds, if the applicant also applies and is approved as a seed producer under this type of Permit. The legal parcel shall not be less than ten (10) acres in size, provided, however, that legal parcels in industrial zoning districts are not subject to this parcel size restriction. Additional requirements for Type 4 Permits are as follows:

- (A) The Permittee shall produce only vegetative immature medical cannabis plants through cloning, seed termination or tissue culture starts for the planting, propagation and cultivation of medical cannabis, provided, however, with the approval of the Agricultural Commissioner, plants may be grown to maturity for the purpose of verifying genetic expression. The Agricultural Commissioner's approval shall include a square footage limitation and the plants shall be included within the Track and Trace system. No consumable medical cannabis product of any kind shall be derived from the plants being cultivated.
- (B) If plant starts are tiered vertically in racks during their growing phase, the maximum allowed power usage shall be 35 watts per shelf.
- (C) A maximum of 5,000 square feet of plant canopy may be dedicated to medical cannabis seed production if the Permittee applies and is approved as a seed producer. The square footage of plant canopy dedicated to seed production shall be counted towards the maximum square footage allowed under this type of permit and shall be entered into the approved Track and Trace system.
- (D) Any on-site sales of nursery products which were produced on and occur on a parcel within the Timberland Production, Rangeland or Forestland zoning districts shall be limited to permitted cultivators only.
- (E) At the time of sale, the nursery shall generate a manifest stating the date and time, nursery name, address, permit number (and license number, when applicable), buyers name, cultivation address, and permit number (and license number, when applicable). A copy of this manifest shall be retained by the purchaser and serve as a transport document for the purchaser to proceed directly from the nursery to the intended cultivation site. If the nursery is transporting nursery products to the cultivator's location, this manifest shall be filled-out and in possession of the nursery operator, their employee or their designated transporter during transport. Both the nursery and the buyer shall retain these records for a period of two (2) years.
- (F) The permittee shall agree to abide by the Mendocino Cannabis Nursery and Seed Manual established by the Mendocino County Agricultural Commissioner.

Section 10A.17.070 - Requirements for All Permits

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Zoning Districts. Cultivation of cannabis for medical use shall only be permitted on legal parcels that comply with the applicable zoning districts and parcel sizes as provided in Chapter 20.242.
- (B) Indoor Cultivation Permits. The use or conversion of habitable space (i.e., kitchen, bedrooms, bathrooms, living room or hallways) in any structure shall not

be allowed for the indoor cultivation of medical cannabis.

- (C) Cultivation of cannabis for medical use is not permitted within any required parking space.
- (D) Persons may apply for and obtain a maximum of two (2) Permits listed in section 10A.17.060 at any given time. Permits shall be granted at a maximum density of one (1) Permit per applicant per legal parcel; provided, however, that a Person may obtain two (2) separate Permits of different Permit types on a single legal parcel if the total square footage of the two Permits does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district.
- (E) Dwelling Unit Requirement. Legal parcels with a cultivation site are also required to have a dwelling unit; provided, however, that this requirement shall not apply to legal parcels within the following zoning districts: Upland Residential (U-R), Agricultural (A-G), Rangeland (R-L), Forest Land (F-L), Timberland Production (TPZ), Limited Industrial (I-1), General Industrial (I-2) Pinoleville Industrial (P-I). In addition, legal conforming parcels in Rural Residential, lot size ten (10) acres (R-R:L-10), shall also be exempt from the dwelling unit requirement of this paragraph, upon issuance of an administrative permit pursuant to Chapter 20.242.
- (F) Generators. The indoor or mixed-light cultivation of medical cannabis shall not rely on a generator as a primary source of power. If no grid power source is available and there is not an alternative power source supporting both any required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: (1) the permittee shall install an alternative power source that will meet at least one-half of the combined power requirements by the expiration of twelve months from the date of initial application for a permit pursuant to this Chapter and (2) it will be a condition of the re-issuance of a permit that the cultivator commit, in writing, to expand their alternative power source to fully meet the combined needs of the cultivation operations and any required legal dwelling unit by the end of the second permitted year. See also section 10A.17.090 regarding application requirements related to generators.
- (G) Permittees shall be required to enroll in and comply with all requirements of any Track and Trace system adopted and implemented by the County to track the production and distribution of cannabis for medical use. Permittees shall obtain and use unique identifies from an approved source, maintain them in a readable state, comply with all data entry requirements (including, but not limited to, harvest dates, harvest data, and distribution or other disposition information), and pay all required Track and Trace fees. Non-compliance with Track and Trace requirements shall constitute a violation of the terms of the Permit.
- (H) Fees: An annual application fee shall be paid at the time an application is submitted to the Agricultural Commissioner for initial review and prior to any annual renewal of the application. An annual Permit fee shall be paid prior to issuance of any Permit. No Permit shall issue without payment of the initial application fee or renewal fee.

- (1) Fees prescribed by this Chapter shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations and the County's Master Fee Policy. Any fee prescribed by this Chapter shall be paid to the County Treasurer/Tax Collector and is non-refundable. A receipt for payment of the required fee shall be provided to the Agricultural Commissioner prior to the initial review and issuance or annual renewal of any application, permit or other program described herein where a fee has been established, including for required inspections.
- (I) Inspections by Agricultural Commissioner. All applicants shall be subject to and shall facilitate an initial on-site pre-permit inspection and all Permittees shall be subject to and facilitate at least one annual on-site compliance inspection (Type 4 Permits shall be subject to two on-site compliance inspections annually), with additional inspections as required by this Chapter or as deemed necessary by the Agricultural Commissioner. All inspections will be scheduled with at least 24 hours advance notice to the applicant or Permittee, and shall be conducted during regular business hours. Cancellation of scheduled inspections without notice to the Agricultural Commissioner shall result in the Permittee being invoiced for the actual travel time and mileage incurred by the Agricultural Commissioner.
- (1) All site inspections conducted prior to issuance of a Permit for any indoor or mixed-light cultivation Permit shall include a representative from the Department of Planning and Building Services to confirm that the structure(s) used for the Permit complies with the requirements stated in the definitions of "indoor" and "mixed-light" found in Section 10A.17.020 and is suitable for support of the proposed cultivation activity.
- (J) Third Party Inspectors. Permittees shall engage the services of a third party inspector approved by the Agricultural Commissioner, who shall conduct a minimum of one (1) consultation inspection at approximately the midpoint of each cultivation cycle; provided that Type 2, Type 2A, and Type 2B Permittees shall be subject to a minimum of two (2) consultation inspections conducted at approximately uniform intervals during each cultivation cycle, and Type 4 Permittees shall be subject to one (1) consultation inspection for each six-month period or operation.
- (K) Non-Transferability of Permits. All Permits are non-transferable to another person, except that the Permittee may transfer the Permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, provided the trust existed on or before January 1, 2016, which transfer shall not be deemed a change in ownership for purposes of this Chapter.

Section 10A.17.080 - Permit Phases and Requirements Specific to each Phase

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following three phases:

- (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2017. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
 - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type 1A and Type 2A Permits for indoor cultivation in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required.
 - (3) Phase Three: Starting January 1, 2020, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.
- (B) Requirements specific to Phase One Permits.
- (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been in compliance with the provisions of section 10A.17.040. Evidence shall include:
 - (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that

cannabis was cultivated for medical use prior to January 1, 2016.

- (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
 - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) **Zoning Districts; Exceptions.** Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
 - (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
 - (b) **Sunset Provision for Residential Districts.** Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size][R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]), as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:
 - (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date.
 - (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) **Relocation.** Persons able to show proof of prior cultivation pursuant to

paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:

- (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter.
- (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:
 - (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.
- (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:
 - (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
 - (ii) Remove illegal dams, ponds or other in-stream water storage to restore material stream flows, unless such features will continue in use;
 - (iii) Remove or compost agricultural wastes;
 - (iv) Remove trash and other debris; and
 - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
- (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.

- (e) Prior to the issuance of the Permit to cultivate cannabis for medical use at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of medical cannabis on the origin parcel.
 - (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
 - (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
 - (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons residing in separate habitable dwelling units on that legal parcel. Each owner may individually apply for a Permit to cultivate cannabis for medical use, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.
- (C) Requirements specific to Phase Three Permits.
- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
 - (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.
 - (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.

- (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

Section 10A.17.090 – Cultivation Permit Application and Zoning Review

Any person or entity that wishes to engage in the cultivation of cannabis for medical use shall submit an application for a Permit to the Agricultural Commissioner's Office. Applications for Permits shall be made upon such forms and accompanied by such plans and documents as may be prescribed by the Agricultural Commissioner's Office. The application shall be reviewed by the Agricultural Commissioner's office and other agencies as described herein and renewed annually. Any referral to or consultation with an agency other than the County of Mendocino shall state that a response must be returned within thirty (30) days of the date of the referral.

The Agricultural Commissioner's Office shall refer each application to the Department of Planning and Building Services for a determination pursuant to Chapter 20.242 as to what type of clearance or permit is required. No application for a Permit shall be approved without clearance or final permit approval as required by Chapter 20.242.

The Agricultural Commissioner's Office shall consult with the Mendocino County Air Quality Management District (MCAQMD) prior to the issuance of the Permit to determine if a permit or other approval by the MCAQMD is necessary. The applicant shall obtain all approvals and permits required by the MCAQMD pursuant to state and federal laws, MCAQMD regulations, adopted air quality plans, MCAQMD policies and other applicable statutes prior to the issuance of a Permit. The required consultation with MCAQMD may be eliminated if MCAQMD authorizes County to determine when a permit or other approval by the District is necessary based on an objective set of criteria developed by MCAQMD for such purposes.

Applicants for a Permit shall provide the following information on, or as an attachment to, the application:

- (A) The name, business and residential address, and phone number(s) of the applicant.
- (B) If the applicant is not the record title owner of the legal parcel, written consent from the owner allowing the cultivation of medical cannabis on their property by the applicant with original signature of the record title owner.
- (C) Written evidence that each person applying for the permit and any other person who will be engaged in the cultivation of cannabis for medical use is at least twenty-one (21) years of age.
- (D) Site plan showing the entire legal parcel configuration with Assessor's Parcel Number(s), acreage, site address, including the location of (1) easements (access and utility and all roadways public and private); (2) streams, springs, ponds and other surface water features, including the location of any flood plain or floodways; (3) the location and area of the cultivation site on the legal parcel, with dimensions of the area for cultivation of cannabis for medical use and showing that all setbacks required by section 10A.17.040 are being met; (4) all

areas of ground disturbance or surface water disturbance associated with cultivation of medical cannabis activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features; (5) all structures, which shall be clearly labeled; and (6) all septic systems, leach fields and water wells.

- (E) Applications submitted for any Permit during Phase One shall include proof of prior cultivation pursuant to section 10A.17.080
- (F) A cultivation and operations plan which includes elements that meet or exceed the minimum legal standards for the following: water storage, conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides and other regulated products to be used on the legal parcel. Any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. The plan will also provide a description of cultivation activities including, but not limited to, permit type, cultivation area, soil/media importation and management, the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season.

If a generator is proposed to support any aspect of the cultivation site or related operations, the cultivation and operations plan shall identify any containment structure and dimensions necessary to contain any leak or spill that may develop or occur as a result of relying on any generator for backup power generation. The plan shall also include a maintenance plan for the generator, detailing how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of the generator will be handled, including fuel storage and delivery systems.

- (G) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.
- (H) An irrigation plan and projected water usage for the proposed cultivation activities, as well as a description of legal water source, if not covered by item (G).
- (I) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board (NCRWQCB) demonstrating enrollment in and compliance with (or proof of exemption from) Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (J) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to section 1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the

Department of Fish & Wildlife.

- (K) If the source of water is a well, a copy of the County well permit, if available; applicant shall provide documentation showing the approximate date of installation.
- (L) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in cultivation of cannabis for medical use.
- (M) Evidence that the applicant or any individual engaged in the management of, or employed by, the cultivator has not been convicted of a violent felony as defined in Penal Code section 667.5(c) within the State of California, or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed in the State of California and is not currently on parole or felony probation. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- (N) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft.
- (O) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of the Articles of Incorporation or a statement listing the members of the partnership shall be attached to the application.
- (P) The applicant shall provide proof, by way of a written agreement or agreements, that the applicant is authorized by one or more medical marijuana dispensing collectives or processors to produce medical marijuana for the use of the members of said collective(s) or processor(s).
- (Q) A copy of a Board of Equalization Seller's Permit if applicant intends to sell directly to qualified patients or primary caregivers.
- (R) Written consent for an onsite pre-permit inspection of the legal parcel pursuant to section 10A.17.070 by County officials or other appropriate agency representatives at a prearranged date and time in consultation with the applicant prior to the approval of a permit to cultivate medical cannabis, and at least once annually thereafter.
- (S) For all indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes. Also, provide documentation that addresses the handling of waste discharge from the grow location of items including, but not limited to nutrients, spent growing media, un- used containers and other associated hardware, supplies, and garbage.

- (T) If the application would include the conversion of timberland as defined under Public Resources Code section 4526, in order to create or expand a cultivation site, a copy of a less-than-3-acre conversion exemption or timberland conversion permit, approved by the California Department of Forestry and Fire Protection ("CalFire"). Alternately, for existing operations occupying sites created through prior unauthorized conversion of timberland, the applicant must provide evidence that environmental impacts have been mitigated, to the extent feasible, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW.
- (U) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 and any implementing regulations.
- (V) For activities that involve construction and other work in Waters of the United States, that are not otherwise exempt or excluded, including streams and wetlands, the application shall include a copy of a federal Clean Water Act (CWA) Section 404 permit obtained from the Army Corps of Engineers and a CWA Section 401 water quality certification from the NCRWQCB.
- (W) Projects that disturb one (1) or more acres of soil or projects that disturb less than one acre but that are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.
- (X) The results of a "Cortese List" database search for sites known to be contaminated with hazardous materials. If the site is listed on the "Cortese List", the application shall include sufficient information to demonstrate that the cultivation is in compliance with any cleanup and/or abatement order that is established for the site.
- (Y) If water or sewer services to the cultivation site will be provided by a community provider, a will-serve letter from the provider indicating adequate capacity to serve the cultivation site.

The Agricultural Commissioner is authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

Section 10A.17.100 – Permit Review and Issuance

The Agricultural Commissioner's Office shall issue a Permit pursuant to this Chapter only:

- (A) Following the referral to and clearance or permit approval pursuant to Chapter 20.242; and
- (B) Following review by qualified County staff and/or qualified third party inspectors

to review proposed permit locations and identify where habitat suitable for sensitive species may exist. The County shall consult with the California Department of Fish and Wildlife ("CDFW") to evaluate if there is a possibility for presence or habitat suitable for sensitive species on the parcel with a proposed Permit location. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy. During Phase 3 all applications will be referred to CDFW; and

- (C) After the Agricultural Commissioner's Office, and other County and State agency staff, as appropriate, have reviewed the application and performed a pre-permit site inspection to confirm adherence to the requirements established in the MCCO; and
- (D) Following receipt of evidence of payment of the required permit fee, pursuant to Section 10A.17.070.

As a condition of approval for any cultivation permit, the owner or permittee shall indemnify and hold harmless the County of Mendocino and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the commercial cultivation of cannabis for medical use and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cultivation of cannabis for medical use.

If, during the pre-permit site inspection, violations of any building or other health, safety or other state or county statute, ordinance, or regulation are discovered, the applicant shall be required to submit a written plan to remediate, abate, or cure the violations at the earliest feasible date, but in no event more than one (1) year after the date of issuance of the Permit; said plan shall be signed by the applicant, approved by the relevant enforcement agency or agencies, and compliance with said plan shall be a condition of the Permit.

Track & Trace unique identifiers will only be made available following the issuance of a Permit by the Agricultural Commissioner's Office. The Permittee will have 72 hours to register with the County track & Trace system. Upon Track & Trace system registration, the system will provide unique identifiers. The unique identifiers shall be affixed to the individual plants within 72 hours of being provided to the Permittee.

Permits shall remain valid for one (1) year from the date of issuance, subject to any enforcement action or other action that may result in earlier suspension or revocation.

Section 10A.17.110 – Performance Standards

All Cultivation Permits issued by the Agricultural Commissioner's Office shall obligate the

permittee to comply with the following performance standards:

- (A) Cultivation shall be located as shown on the approved application site plan and in compliance with all provisions of this Chapter and any permit issued pursuant to Chapter 20.242.
- (B) Once they become available, possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MCRSA, and regulations promulgated thereunder covering a similar cannabis activity.
- (C) A unique identifier for compliance with the County's Track & Trace system shall be affixed to each permitted medical cannabis plant cultivated in Mendocino County. It shall be the responsibility of the permittee to ensure complete and accurate entry of information into the Track & Trace system within 72 hours of the reportable activity occurring.
- (D) Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board, Division of Water Rights, including obtaining and complying with any applicable and approved permit, license or registration or the annual filing of a statement of diversion and use of surface water from a stream, river, underground stream, or other watercourse required by Water Code Section 5101.
- (E) If a generator is used to support any aspect of the permitted cultivation operations, (excluding the conditions set forth in section 10A.17.070(F)), it shall be as a secondary or back-up power source. The use of the generator is only allowed when the primary alternative power source is unable to provide its normal output and generate sufficient power to meet the needs of the cultivation operation and the legal dwelling unit. The Owner's Manual and/or Operation Manual (or operational fact sheet) providing the operational characteristics and maintenance schedule for the generator shall be on-site and available for review.

If a generator is being used pursuant to the conditions set forth in section 10A.17.070(F), the Permit shall be conditioned on the conducting of an analysis of the noise levels produced by the generator at full operational speed, performed by an accredited acoustical engineer, and such analysis shall show compliance with Mendocino County General Plan Policies DE100, 101 and 103. All generators shall be, at a minimum, equipped with the manufacturer's specified muffler; if compliance with Policies DE100, 101 and 103 requires additional measures, the generator shall be equipped with such measures, which may include a hospital-grade muffler and/or a structure to enclose the generator designed for sound suppression.

Any electrical wiring associated with the generator shall be of sufficient capacity and installed in such a way as to provide for the minimum installation and safety standards for the electrical service provided by that generator.

- (F) Establish and maintain enrollment in Tier 1, 2 or 3 with the North Coast Regional Water Quality Control Board (NCRWQB) Order No. 2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the

County of Mendocino or other responsible agency.

- (G) For cultivation areas for which no enrollment pursuant to NCRWQB Order No. 2015- 0023 is required, the site shall comply with the standard conditions set forth in that Order, as well as the applicable "Best Management Practices for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects" as presented in Appendix B of the Water Board Order.
- (H) Maintain the applicable "Defensible Space" protocols and distances, as established by the California Department of Forestry and Fire Protection around structures located on the legal parcel.
- (I) Comply with the terms of any applicable Streambed Alteration Permit obtained from the California Department of Fish & Wildlife.
- (J) All weighing and measuring devices shall be type approved by the California Department of Food and Agriculture, Division of Measurement Standards and issued either a California Type Evaluation Program (CTEP) Certificate of Approval (COA) or a National Type Evaluation Program (NTEP) Certificate of Conformance (CC) before commercial use. All weighing and measuring devices shall be registered and inspected by the Agricultural Commissioner in accordance with Mendocino County Code Chapter 10A.16.
- (K) Consent to the minimum prescribed number of visits by an approved Third Party Inspector, and at least one (1) annual on-site compliance inspection by the Agricultural Commissioner's office, as more specifically provided for in section 10A.17.070.
- (L) Any guard dog(s) or guard animals kept at the cultivation site shall be restrained to a fixed point or contained in some manner to facilitate the inspections performed by any entity necessitating inspect as required by this Chapter. Animals considered family pets will be kept on a leash at all times and under control when any entity is performing a required inspection.
- (M) All buildings, including greenhouses, used for the cultivation of medical cannabis pursuant to an "artificial light" permit (generally Type C-A, Type 1-A, Type 2-A and Nursery as applicable), shall be equipped with filtered ventilation systems, permitted by the Mendocino County Air Quality Management District (MCAQMD) which rely on Activated Carbon Filtration, Negative Ion Generation, Ozone Generation or other odor control mechanism demonstrated to be effective in reducing cannabis odors.
- (N) Any use of pesticide products shall be consistent with State law and regulations enforced by the California Department of Pesticide Regulation and the Agricultural Commissioner's Office. All agricultural use pesticides and concentrated fertilizers, amendments, and similar materials shall be stored in a locked, hard-faced enclosure to prevent unauthorized entry by humans, to exclude large animals that may be attracted by odors, and to ensure that they will not enter or be released into surface or ground waters.

- (O) Fuel shall be stored and handled in compliance with applicable state and local laws and regulations and in such a way that no spillage occurs.
- (P) Comply with any conditions that may apply as a result of an administrative or conditional use permit approved pursuant to Chapter 20.242, or with a written remediation plan required by Section 10A.17.080(B)(3).

Section 10A.17.120 - Certifications

Permittees who demonstrate compliance with all of the requirements set forth in this Chapter and the additional guidelines to be established by the Agricultural Commissioner in a Mendocino Sustainably Farmed Operations Manual will be issued a "Certified Mendocino County Grown" certificate through the Agricultural Commissioner's Office. Cannabis labeled with this certification shall be produced following production standards used in the production of crops labeled as organic according to United States Department of Agriculture, National Organic Program. This certification shall be valid for one (1) year from the date of issuance and shall be renewed annually thereafter following annual inspection(s) of the registered cultivation site and continued compliance with all requirements. An annual fee shall be paid for participation in this certification program, pursuant to the provisions set forth in Section 10A.17.070(H)(1).

Section 10A.17.130 – Third Party Inspectors

The Agricultural Commissioner's Office is authorized to allow third party inspectors to assist medical cannabis cultivators in complying with the provisions of this Chapter. The County shall develop policies in consultation with CDFW to determine required qualifications of third party inspectors. By performing field checks with the cultivators, identifying potential or real points of concern, and working with the cultivators to correct the issues(s) at hand, while communicating with the Agricultural Commissioner's office, adherence to the standards established by this Chapter will be greatly enhanced and the possibility of enforcement actions being initiated by the County will be reduced.

Any third party inspector must receive approval by the Agricultural Commissioner's Office in order to serve individual permittees and to be recognized as credible and ensuring compliance with the requirements of this Chapter. The Agricultural Commissioner shall have the authority to approve or deny any application to operate as a third-party inspector based on experience, qualifications, education, incomplete applications, and insufficient detail/scope of proposed work, conflicts of interest, and ability to perform. To ensure that a third party inspector is qualified to assist cannabis cultivators with the implementation of this Chapter, individuals desiring to be third party inspectors must submit an application/ proposal to the Agricultural Commissioner's Office and successfully pass an oral appraisal interview. An annual application fee will be due at the time the application is submitted for initial review or prior to any annual renewal of the application, and paid pursuant to the provisions set forth in Section 10A.17.070(H)(1).

Third party proposals shall include, at a minimum, the following:

- (A) Program Purpose: Statement of the functions which the third party proposes to fulfill, including procedures to implement the proposed functions/roles.
- (B) Technical experience and qualifications of the third party program necessary for implementation of technical functions/roles.

- (C) Demonstration of organizational capacity and funding mechanisms to administer the program.
- (D) Framework for filing consultation reports, photo-documentation, etc. with the Agricultural Commissioner's Office within 24 hours of an inspection.
- (E) Sample liability waiver that demonstrates that the responsibility falls to the landowner/operator of the site to meet the stated terms and conditions of the MCCO.
- (F) Framework for confirmation of adherence to standard conditions and developed plans and addressing non-compliance(s) by individual permittees.
- (G) Ability to provide proof of current and valid insurance for any vehicle used in the performance of Third Party Inspector duties.
- (H) If a third party application/proposal is approved, the Agricultural Commissioner will send an approval letter. All approved third party programs will be listed on the Mendocino County Department of Agriculture website. The approval is conditional and subject to a probationary period. Approvals for third party inspector status expire one year from the date of issuance and may be renewed, subject to a positive evaluation based on performance, by the Agricultural Commissioner.

The Agricultural Commissioner may establish additional criteria for third party programs and inspectors and may request any other information deemed reasonably related to verification of the qualifications of the third party program and/or inspector.

Successful candidates to become a Third Party Inspector will be required to sign an agreement letter with the County committing to certain conditions as part of being an approved Third Party Inspector.

All consultation inspection information and outcomes from Third Party Inspectors shall be forwarded to the Agricultural Commissioner's office within 24 hours of the completion of the inspection. Any dispute regarding findings or outcomes of Third Party inspections will be handled through the process established in the Third Party Inspector Program guidance and procedures manual.

Section 10A.17.140 – Cultivation Site Inspections: Violations and Penalties

If the Third Party inspector determines that the site does not comply with the requirements established by this Chapter, the inspector shall serve notice to the permit holder and the Agricultural Commissioner with a written statement identifying the items not in compliance and identifying a time frame in which the permit holder has to correct the items out of compliance. This statement may also suggest action(s) that the permit holder may take to cure the non-compliance(s). Personal delivery or mailing the written statement to the mailing address listed on the application by regular mail, plus three (3) days after date of mailing, shall constitute delivery. The time frame allowed for the permit holder to take appropriate actions to cure the non-compliance will be the shortest feasible time frame as determined by the inspector. The Agricultural Commissioner's office may amend the time frame if deemed appropriate. A re-

inspection by the Third Party inspector will be required to confirm and document the curative measure(s) taken by the permit holder. It is the responsibility of the permit holder to schedule the above mentioned re-inspection by the end of the timeframe identified in the notice of non-compliance. Failure to request and schedule re-inspection by the Third Party inspector and cure the items of non-compliance identified in the notice of non-compliance prior to the expiration of the time permitted in the notice of non-compliance shall prompt an un-scheduled compliance inspection from the Department of Agriculture. Inspection fees shall be charged to the permittee for any additional compliance inspections required beyond those regularly scheduled and enumerated in Section 10A.17.070. All additional inspection fees shall consist of the hourly rate for an inspector from the Department of Agriculture for the travel and inspection time plus the standard IRS mileage rate for travel distance. The fees shall be paid and paid pursuant to the provisions set forth in Section 10A.17.070(H)(1).

If any non-compliance(s) identified in the notice of non-compliance are substantiated during the un-scheduled compliance inspection above, the Department of Agriculture may issue an administrative citation pursuant to Mendocino County Code Chapter 1.08 against the permittee for a violation of the specific portion of this Chapter constituting the non-compliance and notify other public agencies or County departments, including the Department of Planning and Building Services, of these findings. The cultivation permit issued pursuant to this Chapter shall be in temporary "alert status" for possible action against the permit, pending a final compliance re-inspection from the Department of Agriculture within ten (10) days. If the permit holder desires additional time to cure any non-compliance(s) identified in the notice of non-compliance, it is the responsibility of the permit holder to request an extension of time from the Agricultural Commissioner prior to final re-inspection. The Agricultural Commissioner is not obligated to grant the requested extension, but may do so if deemed appropriate. No request for additional time to cure will be considered if requested during the final re-inspection, unless the Agricultural Commissioner determines that the request practicably could not have been made prior to the final re-inspection and that such extension is otherwise appropriate. This final re-inspection will be to determine whether or not the permit holder has cured all issues of noncompliance. Failure to request and schedule this final re-inspection and cure any items of non-compliance shall result in the issuance of a "Notice to Terminate Permit". The permit shall be terminated upon the final determination after the hearing on the order to show cause pursuant to Section 10A.17.150.

The County shall additionally notify any state license authority, as defined by the MCRSA, whenever the County cultivation permit has been terminated.

Section 10A.17.150 – Administrative Order to Show Cause

- (A) Issuance of Order to Show Cause. At the same time as issuance of a Notice to Terminate Permit, or as soon as practicable thereafter, the Agricultural Commissioner's Office shall also issue a notice and order to show cause why the permit in question should not be terminated. Issuance may be completed by personal delivery, or by first class mail, postage prepaid and return receipt requested. The notice and order to show cause shall:
- (1) Identify the permittee and the permit in question;
 - (2) Contain a statement describing the violations that caused the issuance of a Notice to Terminate Permit;

- (3) Contain a description of the actions required to abate the violations;
 - (4) Notify the permittee that unless the owner or occupant abates the conditions, a hearing will be held to determine whether there is any good cause why the permit in question should not be terminated, which will be heard before a Hearing Officer, the Agricultural Commissioner, or the Commissioner's authorized designee within the Agricultural Commissioner's Office who did not also issue the Notice to Terminate Permit;
 - (5) Specify the date, time and location of the hearing to be held, or state that the date, time and location of the hearing will be specified in a subsequent notice, which will not be set for a date earlier than 5 days after personal delivery, or 10 days after mailing, of the notice specifying the date, time and location of the hearing;
 - (6) State that the permittee will be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether there is any good cause why the permit in question should not be terminated;
 - (7) Contain a statement that, unless the permittee abates the conditions causing the violations, or shows good cause why the conditions should not be abated, the permit in question shall be terminated.
- (B) Use of Hearing Officers. Whenever the Agricultural Commissioner issues an order to show cause why a permit issued pursuant to this Chapter should not be terminated, the Agricultural Commissioner is authorized to use the services of a Hearing Officer pursuant to Mendocino County Code Chapter 2.76. Such use of a Hearing Officer shall be made whenever a Hearing Officer is available, and the Agricultural Commissioner shall coordinate with County Counsel to appoint and maintain at least one Hearing Officer to the extent possible. In the event that a Hearing Officer is unavailable, the duty to hear the appeal shall remain with the Agricultural Commissioner.
- (C) Hearing Procedure.
- (1) The Hearing Officer shall hold an administrative hearing to determine whether the violations identified in the Notice to Terminate Permit created a sufficient basis on which to terminate the permit in question. The hearing shall be held at the date, time and location indicated on the notice to permittee, which shall be no less than five (5) calendar days after personal service, or no less than ten (10) calendar days after mailing of all the notices required by this section.
 - (2) Parties may choose to be represented by an attorney; however, formal rules of evidence or procedure shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Nonetheless, any failure to make a timely objection to offered evidence constitutes a waiver of the objection. The Hearing Officer has discretion to exclude

evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

- (3) The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter who has been certified as an interpreter by either the State of California or the County of Mendocino.
- (4) The person who issued the Notice to Terminate Permit shall first describe the acts or conditions constituting the violations identifying in the Notice to Terminate Permit and present evidence to demonstrate how the identified violations form a basis for terminating the permit in question. Thereafter, the permittee shall be given an opportunity at the hearing to present and elicit testimony and other evidence to show good cause why the permit should not be terminated.
- (5) In the event that the permittee does not appear and present evidence at the hearing, the Hearing Officer may base his or her decision solely upon the evidence submitted by the person issuing the Notice to Terminate Permit.
- (D) Determination after Hearing. The Hearing Officer shall consider the evidence presented by the parties, and shall issue a written decision and order that either affirms or reverses the determination to terminate the permit in question. Such decision shall be delivered to the permittee by personal delivery or by first class mail, postage prepaid and return receipt requested. The decision shall become effective when signed by the Hearing Officer and on the day the decision is personally delivered to the permittee, or five (5) days after the decision is mailed to the permittee.

Section 10A.17.160 – Enforcement and Declaration of Public Nuisance

- (A) All of the remedies provided for in this Chapter, or elsewhere in the law, shall be cumulative and not exclusive for violations of this Chapter. Violations of this Chapter include, but are not limited to failure to obtain and maintain in good standing any permit required by this Chapter, compliance with any required element on which a permit was issued pursuant to this Chapter, or any violation of the provisions of this Chapter where a permit is not required, such as a violation of section 10A.17.040 when a person is otherwise exempt pursuant to section 10A.17.030. The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.
- (B) The cultivation of cannabis with a valid permit pursuant to this Chapter shall not be declared a public nuisance under County Code Chapter 8.75 or 8.76. Any cultivation of cannabis in the absence of a permit issued pursuant to this Chapter is a public nuisance and may be abated by the County as a public nuisance in accordance with the provisions of either County Code Chapter 8.75 or 8.76 unless such cultivation either: is exempt pursuant to County Code section 10A.17.030; is otherwise in compliance with State Proposition 64 and all

regulations adopted by the County related to cannabis for adult use pursuant to Proposition 64; or is being cultivated by an entity whose application for a permit pursuant to this Chapter has been submitted, accepted and is currently pending, and who has also submitted a sworn affidavit to the Agricultural Commissioner on a form prepared by the Agricultural Commissioner that includes, but is not limited to, an affirmation that they have met the requirements to obtain a permit or are actively in the process of fulfilling the requirements.

Section 10A.17.170 – Attorneys' Fees

Pursuant to Government Code Section 25845(c), in any action, administrative proceeding, or matter commenced by the County to abate a nuisance, or to collect the cost of abatement or any penalty or fee related thereto, the prevailing party shall recover its attorneys' fees. The recovery of attorneys' fees under this Section is limited to those actions, administrative proceedings, or matters in which the County chooses at the initiation of the action, administrative proceeding, or matter to seek the recovery of its own attorneys' fees. In no event shall an award of attorneys' fees under this Section exceed the reasonable amount of attorneys' fees incurred by the County in the action or proceeding.

Section 10A.17.180 - Confidential nature of medical cannabis information – legislative intent

To the fullest extent authorized by State and Federal law, all use information received by and/or generated by the operation of this Chapter or prior iterations of cannabis cultivation ordinances of the County has always been intended to be treated and held by the County as confidential information. Notwithstanding the foregoing, information provided to the county may be released as required by law, judicial order, or subpoena, and could be used in criminal prosecution.

Section 10A.17.190 – Severability

If any provision of this Chapter, or the application thereof, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provisions or application; and to this end, the provisions or application of this Section are severable.

Section 2. Chapter 20.242 is hereby added to the Mendocino County Code to read as follows:

Chapter 20.242 Medical Cannabis Cultivation Site

Section 20.242.010	Intent
Section 20.242.020	Application
Section 20.242.030	Definitions
Section 20.242.040	Existing Medical Cannabis Cultivation Sites
Section 20.242.050	New Medical Cannabis Cultivation Sites Located in Industrial Zoning Districts
Section 20.242.060	New Medical Cannabis Cultivation Sites
Section 20.242.070	Planning Approval Required to Cultivate Medical Cannabis

Section 20.242.010 - Intent

This Chapter 20.242 ("Chapter") is intended to provide land use regulations for the County of

Mendocino where medical cannabis may be cultivated, subject to the limitations established in this Chapter and the provisions of Mendocino County Code Chapter 10A.17, the Medical Cannabis Cultivation Ordinance (MCCO). The objective of this Chapter is to allow the cultivation of medical cannabis in locations that are consistent with the intent of the base zoning district and to help ensure that its cultivation and related activities will not create adverse impacts to the public health, safety, and welfare of the residents of the County of Mendocino.

Section 20.242.020 – Application

The cultivation of medical cannabis is prohibited in all zoning districts in Mendocino County, except as allowed by this Chapter or by Chapter 10A.17.

Section 20.242.030 – Definitions

Unless otherwise defined in this Chapter, the terms and phrases used herein shall have the same definitions as provided in Chapter 10A.17, or as provided in this Title 20.

Section 20.242.040 Existing Medical Cannabis Cultivation Sites

- (A) Referrals of applications to the Department for review related to existing cultivation sites shall include the Agriculture Commissioner's determination that the cultivation site existed prior to January 1, 2016, unless the Agricultural Commissioner requests the assistance of the Department in making this determination as part of the referral to the Department.
- (B) Cultivation sites, in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit as required for the zoning district in which the cultivation site is located and as listed in Table 1.

TABLE 1
Zoning Permit Requirement for Existing Medical Cannabis Cultivation by Zoning District and
Medical Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type	C Small Outdoor	C-A Small Indoor, Artificial Light		C-B Small, Mixed Light	1 Medium Outdoor	1-A Medium Indoor, Artificial Light	1-B Medium Mixed Light	2 Large Outdoor	2-A Large Indoor, Artificial Light	2-B Large Mixed Light	4 Nursery
Min Parcel Area (ac)	NA	NA		NA	5	5	5	10	10	10	10
Cultivation Area Limit (sf)	2,500	500	501 - 2,500	2,500	2,501- 5,000	2,501- 5,000	2,501- 5,000	5,001- 10,000	5,001- 10,000	5,001- 10,000	22,000
Zoning District	RR 5*	ZC	AP	UP	ZC	ZC	--	ZC	--	--	--
	RR 10	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	AG	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	UR	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	RL**	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	FL**	ZC	AP	UP	ZC	AP	--	AP	AP	--	AP
	TPZ**	ZC	AP	UP	ZC	AP	--	AP	AP	--	AP
	I1	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	I2	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	PI	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC

-- = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

* Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

** Existing cultivation sites in the FL, TPZ and RL zoning districts are permitted subject to limitations of this section. Expansion of existing cultivation sites in the FL, TPZ and RL zoning districts is permitted, subject to the issuance of an Administrative Permit.

- (C) An existing cultivation site located in a zoning district not listed in Table 1 of this section may continue subject to the requirements of Chapter 10A.17 and the following planning permit requirements for a Zoning Clearance, Administrative Permit or Minor Use Permit.

(1) Planning Permit Requirements:

- (a) Outdoor Cultivation (pursuant to a MCCO Type C Permit) not exceeding 2,500 square feet requires an approved Zoning Clearance.
- (b) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) not exceeding 500 square feet requires an approved Administrative Permit.
- (c) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) between 501 and 2,500 square feet requires an approved

Minor Use Permit.

- (d) Mixed Light Cultivation (pursuant to a MCCO Type C-B Permit) not exceeding 2,500 square feet requires an approved Zoning Clearance.
- (2) Any future lapse or revocation of the MCCO permit will extinguish the permittee's ability to obtain a future permit from the Department to continue or resume an existing cultivation site that is not within a zoning district listed in Table 1 of this section.
- (D) An existing cultivation site, which qualifies for a MCCO permit, may continue within the FL (Forest Land), the TPZ (Timber Production Zone), or the RL (Rangeland) zoning districts not to exceed 2,500 square feet of cultivation with a Zoning Clearance, Administrative Permit or Minor Use Permit as listed in Table 1. The existing cultivation site may be expanded to a MCCO Outdoor or Mixed-Light permit type that allows up to 10,000 square feet of cultivation in conformance with all applicable MCCO requirements and conditions and with an approved Administrative Permit or Use Permit as listed in Table 1.
- (E) Transferability of Permits. Permits issued pursuant to this Section shall not be transferable to another person, except that the permittee may transfer the permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, which shall not be deemed a change in ownership for purposes of this Chapter.

Section 20.242.050 New Medical Cannabis Cultivation Sites Located in Industrial Zoning Districts

Establishment of a new medical cannabis cultivation site in the I-1 (Light Industrial), I-2 (General Industrial), and Pinoleville Industrial (P-I) zoning districts, for Type 1A and 2A MCCO permits, issued on or after January 1, 2018, may be permitted subject to the requirements of Section 20.242.060.

Section 20.242.060 New Medical Cannabis Cultivation Sites

- (A) Except as provided in Section 20.242.050, on or after January 1, 2020, new medical cannabis cultivation sites may only be permitted in accordance with this section.
- (B) All new medical cannabis cultivation sites shall be consistent with the General Limitations on Cultivation of Medicinal Cannabis, Section 10A.17.040; provided, however, that an applicant may seek a reduction in the setback requirements as stated in paragraph (D) of this section.
- (C) Cultivation sites, operated in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit, as required for the zoning district in which the cultivation site is located and listed in Table 2.

TABLE 2

Zoning Permit Requirement for New Medical Cannabis Cultivation by Zoning District and Medical Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type		C Small Outdoor	C-A Small Indoor, Artificial Light		C-B Small Mixed Light	1 Medium Outdoor	1-A Medium Indoor, Artificial Light	1-B Medium Mixed Light	2 Large Outdoor	2-A Large Indoor, Artificial Light	2-B Large Mixed Light	4 Nursery
Min Parcel Area (ac)		2	2		2	5	5	5	10	10	10	10
Cultivation Area Limit (sf)		2,500	500	501 - 2,500	2,500	2,501-5,000	2,501-5,000	2,501-5,000	5,001-10,000	5,001-10,000	5,001-10,000	22,000
Zoning District	RR 5*	ZC	AP	UP	ZC	ZC	--	ZC	--	--	--	--
	RR 10	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	AG	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	UR	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	I1	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC
	I2	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC
	PI	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC

-- = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

* Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

- (D) Setback Reduction. A reduction in the setback from a legal parcel line required by Section 10A.17.040 may be allowed with an Administrative Permit, approved according to Section 20.242.070(C), provided that the approved setback reduction is 50 feet or greater from an adjoining property under separate ownership or access easement, whichever is most restrictive and the location of the medical cannabis cultivation site continues to comply with the required setback from an occupied legal residential structure.

Section 20.242.070 - Planning Approval Required to Cultivate Medical Cannabis

- (A) Planning Approval Procedure. Each proposed medical cannabis cultivation site is subject to one of the following planning review processes that correspond to the applicable zoning district and Chapter 10A.17 permit as specified by Table 1 or Table 2 in this Chapter.

The Agricultural Commissioner's Office shall refer applications for cultivation permits pursuant to Chapter 10A.17 to the Department, which shall review the application to determine which of the following processes applies. If the application needs only a Zoning Clearance, the Department will provide a zoning clearance approval to the Agricultural Commissioner's Office. If the application requires either an Administrative Permit or a Minor Use Permit,

the Department will notify the Agricultural Commissioner's Office and the applicant that planning approval is required.

- (B) Zoning Clearance. The Department shall review the MCCO permit application to confirm the medical cannabis cultivation site is allowed in the zoning district, subject to the applicable requirements of this chapter, and confirm the legal parcel on which the cultivation site is located. The Department shall additionally provide any information as requested by the Agricultural Commissioner's Office to confirm compliance with any of the provisions of Chapter 10A.17.
- (C) Administrative Permit. In accordance with the Administrative Permit review procedure listed in Chapter 20.192, the Zoning Administrator shall approve, conditionally approve or deny an Administrative Permit medical cannabis cultivation sites based on the following special findings.
 - (1) The medical cannabis cultivation site is allowed in the zoning district and it is in compliance with the provisions of Chapter 10A.17.
 - (2) There is no other environmentally superior cultivation site located on the same parcel; the location and operation of the medical cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceeding 15%, prime soil, oak woodland, and timber resources.
 - (3) The medical cannabis cultivation site will avoid or minimize odor and light impact on residential uses.
 - (4) For any new medical cannabis cultivation site established after January 1, 2020 and that is not located in the AG (Agriculture) Zoning District, the submitted MCCO permit application contains evidence that demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; (2) the cultivation site has received a Clean Water Act Section 404 permit from the Army Corps of Engineers or a Clean Water Act Section 401 permit from the North Coast Regional Water Quality Control Board, as applicable, and a General Permit for Discharges of Storm Water from the State Water Resources Control Board.
 - (5) The Administrative Permit granted for the medical cannabis cultivation site shall be limited to a period not to exceed 10 years. The Administrative Permit shall expire at the end of this period unless it is renewed prior to the end of 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.
 - (6) An Administrative Permit may be applied for and granted for an exception to the dwelling unit requirement of Chapter 10A.17 for parcels in the Rural Residential, lot size ten (10) acres (R-R:L-10) zoning district with the additional finding that the applicant shall demonstrate that the cultivation site and any associated infrastructure (roads, buildings, water storage, etc.) does not preclude the development of the parcel with a residence in the future. For parcels that will need on-site sewage disposal systems to

be developed, making this finding may require the identification of a primary and reserve leach field to be identified in order to issue the Administrative Permit.

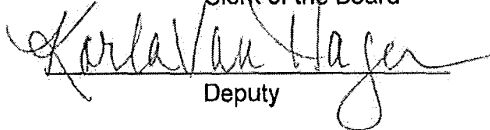
- (D) Minor Use Permit. In accordance with the Use Permit review procedure listed in Chapter 20.196, the Zoning Administrator or the Planning Commission shall approve, conditionally approve, or deny a Minor Use Permit for a medical cannabis cultivation site based on findings in Section 20.196.020 and the following special findings:
- (1) The proposed medical cannabis cultivation site is in compliance with the provisions of Chapter 10A.17.
 - (2) In cases where there is no other environmentally superior cultivation site located on the same parcel, the location and operation of the medical cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceed 15%, prime soil, oak woodland, and timber resources.
 - (3) The proposed medical cannabis cultivation site will avoid or minimize odor and light impact on residential uses.
 - (4) For any new medical cannabis cultivation site established after January 1, 2020 and that is not located in the AG (Agriculture) Zoning District, the submitted MCCO permit application contains evidence that demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; (2) the cultivation site has received a Clean Water Act Section 404 permit from the Army Corps of Engineers or a Clean Water Act Section 401 permit from the North Coast Regional Water Quality Control Board, as applicable, and a General Permit for Discharges of Storm Water from the State Water Resources Control Board.
 - (5) The Use Permit granted for the medical cannabis cultivation site shall be limited to a period not to exceed 10 years. The Administrative Permit shall expire at the end of this period unless it is renewed prior to the end of 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 4th day of April, 2017, by the following roll call vote:

AYES: Supervisors Brown, McCowen and Gjerde
NOES: None
ABSENT: None
RECUSED: Supervisor Hamburg

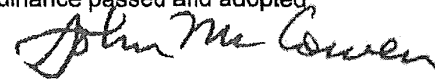
WHEREUPON, the Chair declared the Ordinance passed and adopted, and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT,
County Counsel





JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

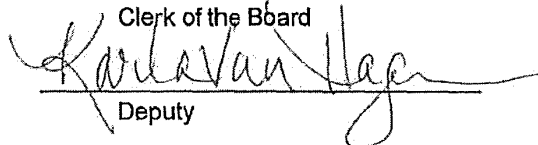

Deputy

Exhibit B



Mendocino County
Department of Agriculture
890 N. Bush St.
Ukiah CA 95482
(707) 234-6830

File No: AG_2017-0069
Cultivation site: 1181 BOONVILLE RD, UKIAH, CA 95482
Permit Type: 2B LARGE MIXED LIGHT
Date: 5/4/2017

Application Receipt

This receipt, when signed and embossed, certifies that the Department of Agriculture is in receipt of an application to cultivate cannabis at the above listed address. The garden at this site is considered to be in compliance, or working towards compliance until such time as a permit is issued or denied.

Receipt issued to: GOOSE HEAD VALLEY CO.
GURR CHRISTEN
1181 BOONVILLE RD, UKIAH, CA 95482

Signed: Diane C. Curry
Diane Curry, Interim Agricultural Commissioner



Exhibit C

Agreement Not to Resume Cannabis Cultivation

This Agreement Not to Resume Cannabis Cultivation ("Agreement") is entered into by and between Mendocino County ("County") and Ann Marie Borges ("Borges") on November 01, 2017 ("Effective Date") to satisfy Mendocino County Code section 10A.17.080(e).

Recitals

WHEREAS, Borges previously cultivated cannabis on the real property commonly known as 26500 Reynolds Highway in Willits, California ("Original Site");

WHEREAS, Borges submitted an application to cultivate cannabis at 1181 Boonville Road in Mendocino County in 2017 ("Destination Site");

WHEREAS, all of Borges' cannabis cultivation activities at the Original Site have permanently ceased and the Original Site was restored by: (i) removing all equipment and trash or debris related to cannabis cultivation and restoring the relevant portion of the Original Site as is shown in the image attached hereto **Exhibit A**. No dams, ponds or streams were used in cannabis cultivation and no vegetation was removed because the cannabis was cultivated in pots;

WHEREAS, Borges and the County enter into this Agreement to satisfy Mendocino County Code section 10A.17.081(e).

Agreement

WHEREFORE, the County and Borges agree as follows:

1. Release of Right to Cultivate Cannabis at the Original Site. In consideration of obtaining a permit to cultivate cannabis at the Destination Site, Borges agrees to permanently relinquish any and all rights she may have to cultivate cannabis at the Original Site.
2. Prohibition on Cultivation at the Original Site. By entering into this Agreement, Borges acknowledges and agrees that she is permanently prohibited from cultivating cannabis on the real property commonly known as 26500 Reynolds Highway.
3. Transfer of Cultivation Ability. The County authorizes the transfer of Borges' ability to cultivate on the Original Site to the Destination Site. This transfer permanently extinguishes Borges' ability to claim proof of prior cultivation at the Original Site.
4. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated by this reference.
5. Incorporation of Exhibits. All exhibits to this Agreement are incorporated as if fully set forth herein by this reference.

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6. Modification. Any modifications to this Agreement must be written and signed by every party to the Agreement.

7. Nontransferrability. This Agreement does not run with the land and may not be transferred or assigned.

DATED:

MENDOCINO COUNTY

By: _____

Its:

DATED:

ANN MARIE BORGES

10/31/17

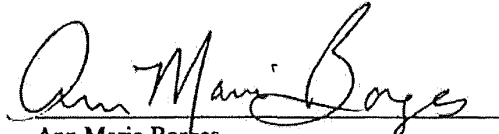

Ann Marie Borges

EXHIBIT BB

In the Matter Of:

BORGES vs COUNTY OF MENDOCINO

3:20-cv-04537-SI

DIANE CURRY

November 10, 2021



ESQUIRE
DEPOSITION SOLUTIONS

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SER00063

DIANE CURRY
BORGES vs COUNTY OF MENDOCINO

November 10, 2021

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES and CHRIS
GURR, individually and doing
business as GOOSE HEAD VALLEY
FARMS,

Plaintiffs,

vs.

No. 3:20-cv-04537-SI

COUNTY OF MENDOCINO, et al.,

Defendants.

VIDEOCONFERENCE DEPOSITION OF
DIANE CURRY

November 10, 2021
10:05 a.m.

Willits, California

LYNN E. DARLING, CSR NO. 6825



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SER00064

DIANE CURRY
BORGES vs COUNTY OF MENDOCINO

November 10, 2021
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1 A. It's just east of Stockton, if you're familiar
2 with that, or east of San Francisco.

3 Q. Okay. Well --

4 A. It's a rural community.

5 Q. Fair enough.

6 I've been to Stockton. I've actually tried
7 cases in Stockton, so I'm familiar with that part of the
8 world.

9 And after you graduated from high school, did
10 you get any additional formal education?

11 A. Yes, I went to San Joaquin Delta College and
12 then I went to Humboldt State, where I obtained a BA in
13 botany.

14 Q. And when did you obtain your BA in botany, when
15 did you get that degree?

16 A. I graduated in 1984 with my bachelor's in
17 botany.

18 Q. I guess you're in Arcata for that; correct?

19 A. Correct.

20 Q. And did you receive additional formal education
21 after you got your bachelor's degree?

22 A. No.

23 Q. Okay. And can you summarize for me your work
24 history after you graduated from Humboldt State.

25 A. In 1991 I started with the San Joaquin County



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DIANE CURRY
BORGES vs COUNTY OF MENDOCINO

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1 Department of Agriculture as a biologist and I was there
2 until 2007, where I transferred up to Mendocino County
3 Department of Agriculture, and I was there until March
4 of 2018.

5 Q. And you graduated from Humboldt State in 1984
6 and you started working for the San Joaquin Department
7 of Agriculture in 1991; is that correct?

8 A. Correct.

9 Q. And did you have any full-time employment
10 between 1984 and 1991?

11 A. No, I was a -- I had children. I had children
12 I was raising.

13 Q. Fair enough.

14 And can you just briefly summarize for me your
15 career at San Joaquin Department of Agriculture in terms
16 of the positions you had and any promotions.

17 A. I actually started there part time as a
18 detection trapper and then --

19 Q. A what trapper?

20 A. A detection trapper.

21 Q. What is that?

22 A. That is someone who places traps out in the
23 community to look for pests that are possible invasions
24 of California, so to protect agriculture, we actively
25 trap for pests.



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DIANE CURRY
BORGES vs COUNTY OF MENDOCINO

November 10, 2021
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1 first: when were you made the interim director of the
2 Department of Agriculture?

3 A. I was made interim commissioner in February of
4 2017.

5 Q. And who appointed you to that position?

6 A. The board of supervisors.

7 Q. And what do you know about that process?

8 A. Well, the commissioner is appointed by the
9 board of supervisors in the counties.

10 Q. All right. And were you involved in any
11 process that you're aware of or you just learned that at
12 a certain point, the board of supervisors voted to
13 appoint you as the interim commissioner?

14 A. With Chuck leaving, he supported me moving into
15 the interim position. So based on that, the board made
16 the decision to promote me to interim commissioner until
17 they decided whether or not they wanted to recruit for a
18 commissioner/sealer.

19 Q. All right. And at that time, when you were
20 appointed the interim commissioner, what were your
21 primary duties and responsibilities?

22 A. Everything I was doing as assistant, along with
23 overseeing the department and the programs and assuring
24 that they were getting done, because I didn't have an
25 assistant at the time. And, also, I was put into the



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DIANE CURRY
BORGES vs COUNTY OF MENDOCINO

November 10, 2021
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1 MR. SCOTT: Q. Okay. But you pronounce it
2 "Kedrowski"?

3 A. Kedrowski.

4 Q. Kedrowski. All right. Fair enough.

5 Did you have contact, communications with
6 anyone from county counsel other than Mr. Kedrowski?

7 A. Not that I can recall.

8 Q. Okay. Now, you mentioned Finance. What did
9 you understand to be the function of the Finance
10 Department for the county?

11 A. Well, they would take the money for the
12 permits.

13 Q. All right. Did you understand that in addition
14 to money for permits -- let me ask it this way: once
15 the ordinance was passed, were there any taxes or fees
16 involved in the process that would go to the county?

17 A. Yes.

18 Q. Okay. And the ordinance, once it was passed,
19 what did you understand to be the sources of income for
20 the county from the program?

21 A. Well, the cannabis cultivators that wanted to
22 participate -- and we, my office dealt with the
23 cultivators, not necessarily the processors or the
24 transportation, we just dealt with the cultivation. And
25 in order to get a cultivation permit, you had to pay a



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DIANE CURRY
BORGES vs COUNTY OF MENDOCINO

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1 fee to the county tax collector.

2 Q. And did you understand under the ordinance,
3 that persons with permits who were growing legally,
4 would be regulated in terms of how and where they could
5 sell the marijuana and whether it would be taxed by the
6 state or the county or any other agency --

7 A. Yeah.

8 MR. ABACI: I'm going to object, counsel, as to
9 compound and leading.

10 MR. SCOTT: All right.

11 Q. Go ahead.

12 A. I was going to say, yes, but our department did
13 not deal with those taxes.

14 Q. Okay. Fair enough.

15 And you also mentioned the county treasurer
16 being involved in the process. What did you understand
17 to be the function of the county treasurer?

18 A. Just the agency that would accept the money for
19 the permits.

20 Q. Okay. And when you were involved in developing
21 the ordinance, was the -- were any law enforcement
22 agencies involved in that process?

23 MR. ABACI: I'm going to object, counsel, as to
24 asked and answered.

25 The witness did give all of the departments



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1 A. Yes, after the program went live, which was May
2 of 2017, that Memorial Day weekend some raids took place
3 by the task force for cannabis, and the raid had taken
4 place on people who were trying to get into the program;
5 they had submitted an application. And so after that,
6 Tom and I had conversations about how we could avoid
7 that situation.

8 Q. And what do you recall about those
9 conversations?

10 A. Well, Tom's suggestion was to have a list, and
11 I informed Tom that because his undersheriff, Randy
12 Johnson, had access to the list that we all had, we
13 were -- we had a very set-up system by Planning and
14 Building that we used to input all the information from
15 the cultivators who were trying to get into the program.
16 So we had a list of those individuals, which the
17 sheriff's department had access to, but apparently that
18 didn't get communicated to Tom.

19 So there was -- we had a communication problem,
20 which we were trying to fix.

21 Q. And in terms of sharing -- is this a list of
22 people who had applied for permits?

23 A. Correct.

24 Q. Okay. And what was -- did you as the
25 commissioner, interim commissioner, have a position in



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1 terms of who should -- who you should share the list
2 with?

3 MR. ABACI: Objection. Vague.

4 A. Yes, we had -- we were meeting with the
5 agencies that would be involved, and one of those
6 agencies, of course, was the sheriff. So, again, Randy
7 Johnson was attending meetings and we made it -- we
8 decided that, yes, the sheriff's office should be -- you
9 know, the information should be shared with them.

10 Q. Did you have concerns about sharing that
11 information?

12 A. No.

13 MR. ABACI: I'm going to object at this point
14 to relevance. This seems far afield of any issues in
15 this case, and I'd ask for a continuing objection to
16 this entire line of questioning regarding the sheriff
17 and discussions regarding following raids or any lists
18 that were involved. It has nothing to do with the
19 ordinance or the ordinance provisions or permits.

20 MR. SCOTT: Counsel, I'll stipulate you can
21 have a continuing objection as to all questions. If you
22 want to supplement at any time, that's fine, but you're
23 certainly not waiving any objections.

24 Now -- well, it looks like we've been going a
25 little over an hour, so for the court reporter's sake,



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1 I'd like to take at least a five- or ten-minute break.

2 Madam Reporter, how long would you like?

3 THE REPORTER: Five minutes is fine.

4 MR. SCOTT: Counsel, Ms. Curry, does five
5 minutes work for you?

6 THE WITNESS: Fine.

7 MR. ABACI: Fine.

8 MR. SCOTT: Looks like it's about 11:13. Let's
9 try to get back at, say, 11:20. So we'll reconvene at
10 about 11:20.

11 (Recess taken)

12 MR. SCOTT: Q. You were talking about a list
13 of applicants. Are you with me so far?

14 A. Yes

15 Q. All right. My question is are these applicants
16 who had received provisional permits or did it include
17 applicants who had not yet received provisional permits?

18 MR. ABACI: Objection as to vague, provisional
19 permits.

20 MR. SCOTT: Q. Go ahead.

21 A. The process was -- that we put together was you
22 came to apply and at the time you applied, you had
23 documents that you had to submit. And we had a
24 checklist, and if you had those things, we would give
25 you -- we would give you an embossed piece of paper that



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1 you would take over to the treasurer's office and pay
2 your -- your fee and then you were considered
3 provisionally in the process of becoming -- getting a
4 permit. But you were not given the final permit until
5 you had -- you had all these other documents. So we
6 knew that was going to be a process.

7 Q. All right. Would it be fair to say that there
8 were applicants who didn't meet all the necessary
9 requirements to get a provisional permit?

10 A. Yes.

11 Q. And define what you mean by "provisional
12 permit."

13 A. Well, again, you would have to -- well,
14 provisional, just that you were in the process of trying
15 to get compliant and you were -- you were working toward
16 getting your finalized permit.

17 Q. In order to comply with the process, were there
18 certain requirements that had to be met?

19 A. Yes.

20 Q. And what were they?

21 A. So you had to show proof of prior cultivation
22 in Mendocino County, you had to give us a description of
23 the site you were going to cultivate at; that's with,
24 you know, buildings and everything that you were going
25 to be using.



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1 persons who had met the at least preliminary
2 requirements and were in the process of getting
3 themselves a permit?

4 A. Yes.

5 Q. All right. And did you ever have any
6 conversations with Undersheriff Randy Johnson regarding
7 this list?

8 MR. ABACI: Objection. Relevance, no relevance
9 to this case. Appears to be for discovery in a separate
10 case and, therefore, is not calculated to lead to any
11 admissible evidence.

12 MR. SCOTT: Q. Go ahead.

13 A. Yes. Randy was -- we were -- again, the
14 agencies that were involved would meet to discuss the
15 process. So Randy was aware of the list and had access
16 to that list.

17 Q. I think you mentioned Memorial Day weekend
18 after the -- in May of 2017 when the program started to
19 roll out, there were raids on people who had submitted
20 applications.

21 A. Correct.

22 Q. And did you discuss that with Mr. Allman?

23 MR. ABACI: Objection. Relevance. Also,
24 official information privilege at this point. If it is
25 a discussion they were having that's confidential



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1 again, it was trust, but it was also us working out the
2 process.

3 We just were trying to figure out how we could
4 prevent this in the future.

5 MR. SCOTT: Q. And did you take steps to try
6 to prevent that from happening in the future?

7 A. Yes, with communication again and coming up
8 with a list of applicants that was available to the
9 sheriff's office so they could -- if there was a
10 complaint or something, that they had a list to go to.
11 And we were trying to open up lines of communication
12 between departments so that, you know, maybe a phone
13 call could be made so that we were kind of all on the
14 same page as to, you know, we've got a complaint about
15 this site; is this person, you know, in the process of
16 getting a permit.

17 Q. All right. And did this issue become resolved
18 with the sheriff's office in terms of sharing the list
19 and how people who had come forward and become
20 applicants would be dealt with if there was an issue?

21 A. I felt like we were getting a system worked
22 out, yes.

23 Q. Okay. Why do you say that?

24 A. Well, because raids didn't -- you know, the --
25 raids didn't happen necessarily with the sheriff's



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1 department after that.

2 Q. All right. And was it your understanding that
3 you had an understanding with the sheriff that he would
4 not seek search warrants or try to take any action
5 himself against people on the list?

6 A. I don't know that we had that agreement, but we
7 were trying to, yes. And people who were on the list
8 would have been under the ordinance, so basically
9 enforcement would have been done by Planning and
10 Building, the code enforcement team

11 Q. Can you explain what you mean by that.

12 A. Well, once the ordinance was in place, the --
13 if there were any violations to the ordinance, that that
14 was to go through the code enforcement team with
15 Planning and Building, not necessarily the sheriff, if
16 people were in -- trying to get -- that were applying to
17 be in the ordinance.

18 Q. And did that appear to be what happened going
19 forward?

20 A. Yes, yes.

21 Q. And so --

22 A. In fact, at that time, the board of supervisors
23 asked for weekly updates from code enforcement about the
24 actions that they were taking.

25 Q. Are you talking about Building and Planning



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1 enforcement team, I don't know. I don't know what their
2 communication process was because they had biologists on
3 the ground and then they have their enforcement
4 component.

5 Q. And you were communicating -- were you
6 communicating with the biologists on the ground?

7 A. Correct.

8 Q. And what, if anything, did you do in response
9 to learning about the raids that occurred on the
10 Borges-Gurr property by Fish and Wildlife?

11 A. I did reach out to Steve White of the
12 enforcement team to get more information about why that
13 occurred.

14 Q. And what did he tell you?

15 A. There was -- again, we had communication issues
16 with Fish and Wildlife and the enforcement team and
17 their policy on how they dealt with cannabis and that
18 ensued.

19 We weren't the only county having issues with
20 that. So that ensued a meeting with the Fish and
21 Wildlife director to find out how we can prevent these
22 from going forward. So Humboldt, Trinity was also
23 having issues with Fish and Wildlife enforcement teams.

24 Q. And how did you become aware of that?

25 A. Through the commissioners.



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1 Q. And which commissioners are you referring to?

2 A. The commissioner in Humboldt County and then --
3 mainly through Humboldt County. Then I learned that
4 Trinity County was also having problems with Fish and
5 Wildlife raids.

6 Q. And this is from the agriculture commissioners
7 in those counties?

8 A. Correct.

9 Q. Okay. And at some point, if I understood you
10 correctly, the -- you had a meeting with the director of
11 Fish and Wildlife?

12 A. Correct.

13 Q. And where did that --

14 A. Senator McGuire, and Chuck Bonham is the
15 director of Fish and Wildlife. I don't know if he still
16 is. We had a meeting about how we can -- because, of
17 course, Senator McGuire wanted the program to succeed
18 throughout California and we needed -- we needed
19 coordination of efforts.

20 Q. And you said the director was Chuck Bonham; is
21 that correct?

22 A. Yes. Don't ask me how to spell it.

23 Q. All right. I won't. I won't.

24 I think you told me -- I didn't write it
25 down -- where did that meeting take place?



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1 A. In Sacramento at the capital.

2 Q. Okay. And who was present at that meeting?

3 A. Oh, gosh. Senator McGuire and his aid; myself;
4 there were people on the phone; John McCowen from our
5 county was on the phone. I believe there was a
6 representative from Humboldt and Trinity; Director
7 Bonham and his aid I believe were present at that
8 meeting.

9 Q. And were you present in person?

10 A. Yes.

11 Q. All right. And you said Mr. McCowan from the
12 board of supervisors was on the phone?

13 A. Yes.

14 Q. Anyone else from Mendocino County?

15 A. I don't recall, no. I don't recall.

16 Q. Okay. And what did you understand to be the
17 purpose of the meeting?

18 A. To discuss how we would prevent future raids by
19 Fish and Wildlife, how we were going to coordinate on
20 that so that we didn't have people concerned and not
21 coming forward to get compliant.

22 Q. And why were you concerned about that?

23 A. Well, again, you know, the purpose of the
24 program was to get individuals to come forward and, you
25 know, if they thought they were going to be raided, they



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1 weren't going to come forward. So, you know, again, it
2 put a negative light on becoming legal in the cannabis
3 world.

4 Q. Did it appear to you that there was an effort
5 to undermine or sabotage the process?

6 MR. ABACI: Objection. Leading, argumentative.

7 A. It was a -- you have to understand that these
8 agencies -- you know, this was very -- a lot of agencies
9 didn't have time to develop policy towards cannabis.
10 Their policy -- you know, they were just falling back to
11 what they knew. So I think that's -- you know, at the
12 state level, that was something that wasn't really
13 addressed.

14 So I think, you know, again, because this
15 program was being rolled out so quickly, that these
16 things were happening in real time instead of giving
17 departments an opportunity to kind of figure out how
18 they were going to deal with this in the future.

19 Q. And this meeting had to do with the role of
20 Fish and Wildlife and enforcing whatever they were going
21 to enforce in relation to persons who had applied?

22 A. Well, they -- again, Fish and Wildlife had
23 not -- we had not included them in the equation of you
24 have access to this list of applicants, but how were we
25 going to communicate with them and how were we going to



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1 let them know who was in the program.

2 So that was one of the issues Humboldt,
3 Trinity, and us were coming up with, to determine a way
4 to allow Fish and Wildlife to have access to that
5 information.

6 Q. When did this meeting take place?

7 A. Oh, gosh. Maybe July of 2017. I don't know
8 for sure. I would have to look back through my notes.

9 Q. Okay. But probably July or perhaps as late as
10 August?

11 A. Possibly, yes.

12 Q. Do you recall if it happened before or after
13 you learned that the Borges-Gurr farm had been raided?

14 A. It was after that.

15 Q. Okay. And I'll represent to you that was
16 August 10.

17 A. Okay. So, yes, it was after that.

18 Q. Okay. And was there anything in particular
19 that triggered that meeting or was it just a combination
20 of things?

21 A. Just, again, you know, we had Fish and Wildlife
22 kind of making raids. Trinity was really -- Trinity
23 County was really having a problem, we were. And so we
24 wanted Senator -- we made Senator McGuire aware of the
25 situation and wanted to coordinate this meeting to



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1 hopefully get a way so that we could communicate and not
2 have those raids happen.

3 Q. And approximately how long did that meeting
4 last?

5 A. Oh, gosh. Maybe an hour and a half.

6 Q. And did Mr. Bonham have a position that he was
7 taking in regards to the issue of trying to protect
8 applicants from -- who were in the process of getting a
9 permit from being raided?

10 A. Yes, he -- he wanted to cooperate. And, again,
11 you know, his mandate is protecting Fish and Wildlife
12 and yet, you know, he wanted the program to -- he wanted
13 to -- that program to be successful. And so, yes, he
14 was very cooperative. In fact, at that meeting, he gave
15 me his -- his direct line so that if I had problems in
16 the future, I could call him directly.

17 Q. And did you leave that meeting with an
18 understanding that there were going to be some changes
19 in policies or practices?

20 A. Yes, I was hopeful that that was going to
21 happen. I felt like it was a productive meeting.

22 Q. And why did you believe it was productive?

23 A. Again, because Director Bonham was very
24 cooperative and wanted to make, you know, the necessary
25 changes to make sure that future raids weren't going to



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1 happen on our applicants.

2 Q. And did he indicate to you that he was going to
3 take steps in that regard?

4 A. Yes.

5 Q. Did he say what steps he planned on taking?

6 A. Well, I know that I wasn't involved in this,
7 but he had -- there was a -- the Fish and Wildlife
8 branch up in Humboldt County was working with the board
9 of supervisors there, along with John McCowan from here,
10 to come up with a policy, and I was not involved in
11 that.

12 I sat in on one meeting with that but,
13 otherwise, they were -- Humboldt was kind of the lead
14 agency. Humboldt was the lead to come up with that
15 policy.

16 Q. To your knowledge, was a policy ever formally
17 adopted?

18 A. That, I do not know.

19 Q. All right. And you said Mr. Bonham gave you
20 his phone number if you needed to contact him in the
21 future. Did you have reason to contact him in the
22 future after that meeting?

23 A. I did not.

24 Q. Okay. Did you have any concerns arise after
25 that meeting in terms of future raids by Fish and



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1 Wildlife?

2 A. As I recall, we didn't have any more raids from
3 Fish and Wildlife after that meeting.

4 Q. All right. Do you know an applicant named
5 William Knight?

6 MR. ABACI: Objection. William Knight is a
7 plaintiff in a separate lawsuit than this lawsuit. The
8 witness has already testified that the meeting with Fish
9 and Wildlife and the so-called raids ended after the
10 Borges-Gurr -- any Borges Gurr incident that would be
11 the subject of this lawsuit; therefore, there is no
12 relevance, counsel, and it appears that you're just
13 looking to get information for a separate lawsuit, when
14 that information would have -- not lead to any
15 admissible evidence regarding the permit or the
16 ordinance as I understand is the subject of your -- of
17 the challenge in this case.

18 So this whole line of questioning at this point
19 is entirely irrelevant and so far afield, that it's not
20 calculated in any way to lead to information in this
21 case.

22 MR. SCOTT: Counsel, I'd like to remind you
23 that you removed the recent case from state court to
24 federal court and you filed a motion saying,
25 representing to the court that the two cases were



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1 A. Yes.

2 Q. How did you become aware of those complaints?

3 A. They were made to me. There was a meeting to
4 be set with the neighbors about the Gurr property.

5 Q. Where did that meeting occur?

6 A. At the office, the ag office.

7 Q. Who attended that meeting, as best you can
8 recall?

9 A. Sue Anzilotti; Aaron Nederman I think his name
10 is; and there was another gentleman there and I don't
11 know who -- I don't recall his name; and then myself,
12 and Matt Dougherty, one of my biologists.

13 Q. And what complaints did they bring to your
14 attention?

15 A. The fact that cannabis was going to be grown
16 close to their houses and in their neighborhood. But
17 when I say "neighborhood," it's more that that land was
18 zoned agricultural 40 so there were vineyards in there
19 and there were, you know -- they're big pieces of
20 property. So they didn't want cannabis grown in their
21 neighborhood, in close proximity.

22 Q. And what, if any, action did you take in
23 response to their complaints?

24 A. My action was that, you know, we -- just
25 because -- it was zoned properly for cannabis



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1 production, so unless they had other issues -- and,
2 again, the Gurr-Borges, they were trying to get
3 compliant, so I didn't really have a reason to deny a
4 permit from being -- to being issued there.

5 But, again, we still had hurdles to get over
6 before we were at a permit for the Gurr-Borges property.

7 Q. And, to your knowledge, was their property
8 inspected by the county?

9 A. Yes, it was inspected by our department twice,
10 and I know they were working with Planning and Building
11 on their hoop structure. They had to redesign that, so
12 they were in the process of getting everything
13 compliant.

14 Q. And were there any compliance issues, to your
15 knowledge?

16 A. They did have compliance issues with their
17 structure but, again, it was something that they could
18 mitigate, as far as I was concerned. I had -- I knew
19 that Fish and Wildlife had done an inspection and I had
20 not gotten the report back from the biologist. But
21 according to Mr. Gurr, that -- you know, they had
22 options about what they could do on that property. That
23 was his understanding.

24 Q. Did you ever ask Ms. Borges and Mr. Gurr if you
25 could use their farm as an example of how the program



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1 So, you know, we verified that they had been
2 growing in this county, that was the main thing, so --
3 and, again, it was an ag 40 location. That's where we
4 would like all cannabis to be in this county, in ag
5 land.

6 So, you know, then I wondered how -- how the
7 board knew about the proof of prior since we hadn't --
8 you know, that was not something we kept.

9 Q. And was that issue resolved?

10 A. I felt like it was resolved, again, because it
11 was ag 40. They were cultivators in this county. They
12 had grown in multiple locations.

13 Q. All right. And after they submitted their
14 application, do you believe that they were cooperating
15 with -- with your department and people in your
16 department towards gaining compliance?

17 A. Yes.

18 Q. Did you meet with Ms. Borges and Mr. Gurr after
19 the raid on August 10?

20 A. Yes.

21 Q. And where did that meeting take place?

22 A. At their property.

23 Q. How soon was it to the date of the raid?

24 A. That I don't recall. It was probably within at
25 least a month of the raid. It was soon after the raid.



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1 A. Yes.

2 Q. What were those?

3 A. They had a certified scale.

4 Q. Certified scale for what?

5 A. For weighing their product.

6 Q. Did you perform those duties while you were
7 with the county?

8 A. Yes, I did.

9 Q. And was that a large proportion of the work you
10 did with cannabis cultivation while you were with the
11 county?

12 A. It was significant.

13 Q. Okay. You spoke of -- and you did correct
14 yourself at one point -- that you wouldn't call it a
15 provisional permit. Is the title of the document you
16 were referring to an application receipt?

17 A. Correct. Thank you for that.

18 Q. All right. The application receipt -- I'm
19 trying to find one -- certifies the Department of
20 Agriculture is in receipt of an application to cultivate
21 cannabis; is that correct?

22 A. Correct.

23 Q. And states that the garden at the site is
24 considered to be in compliance or working towards
25 compliance?



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1 A. Correct.

2 Q. That is until such time as a permit is issued
3 or denied; is that correct?

4 A. Correct.

5 Q. So when a permit is issued or denied, the
6 application receipt says that the consideration that the
7 site is in compliance no longer applies; is that right?

8 A. Correct.

9 Q. Okay. Thank you for that.

10 And that is the embossed piece of paper that
11 you referred to as being taken to the county office with
12 a fee; is that correct?

13 A. Correct.

14 Q. Okay. And that then gives the applicant the
15 rights that are in that application receipt, for lack of
16 a better term; is that right?

17 A. Yes.

18 Q. Which include that compliance is no longer
19 considered to be in effect when a permit decision is
20 made; is that right?

21 A. Well, I would say that when a permit is issued,
22 that compliance has been completed.

23 Q. And if a permit is denied, then compliance was
24 not completed; is that -- that also correct?

25 A. Well, that means that they couldn't be



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REPORTER'S CERTIFICATION

I, Lynn E. Darling, Certified Shorthand
Reporter, in and for the State of California, do hereby
certify:

That the foregoing witness was by me duly
sworn; that the deposition was then taken before me at
the time and place herein set forth; that the testimony
and proceedings were reported stenographically by me and
later transcribed into typewriting under my direction;
that the foregoing is a true record of the testimony and
proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name
this 19th day of November, 2021.



Lynn E. Darling, CSR No. 6825

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DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the ____ day of _____,
2021.

DIANE CURRY



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EXHIBIT CC

SER00092

Plaintiff Borges' Responses to Defendant's
Request for Admissions, Set One

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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ANN MARIE BORGES and CHRIS GURR,
20 individually and doing business as GOOSE
21 HEAD VALLEY FARMS,

22 Plaintiffs,

23 v.

24 COUNTY OF MENDOCINO, et al., and
25 Does 1-25 inclusive,

26 Defendants.

Case No. 3:20-cv-04537-SI
(Related to Case No. 3:21-cv-07031-SI)

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S REQUEST FOR
ADMISSIONS, SET ONE**

27 PROPOUNDING PARTY: Defendant COUNTY OF MENDOCINO

28 RESPONDING PARTY: Plaintiff ANN MARIE BORGES

SET: ONE

RECITAL

Pursuant to Federal Rules of Civil Procedure Rule 36, Plaintiff, Ann Marie Borges, hereby responds and objects to Defendant County of Mendocino's First Set of Requests for Admissions to Plaintiff Ann Marie Borges.

All of the responses contained herein are only upon such information and documents as are presently available to and specifically known to this responding party and disclose only those contentions which presently occur to such responding party.

It is possible that further discovery, independent investigation, legal research, and analysis may supply additional entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the contentions herein set forth.

Except for explicit facts admitted herein, no incidental or implied admissions are intended hereby. The fact that respondent has answered any request for admission should not be taken as an admission that respondent accepts or admits the existence of any facts set forth or assumed by such request for admission, or that such response constitutes admissible evidence. The fact that respondent has answered part or all of any request for admission is not intended and shall not be construed to be a waiver by respondent of all or any part of any objection to any request for admission made by respondent.

The following responses are given without prejudice to responding party's right to produce evidence of any subsequently discovered fact or facts which this responding party may later recall. Responding party accordingly reserves the right to change any and all responses herein as additional facts are ascertained, analyses are made, legal research is completed, and contentions are made. The responses contained herein are made in a good-faith effort to supply as much factual information and as much specification of legal contentions as are presently known, but should in no way be to the prejudice of this responding party in relation to further discovery, research, or analysis.

1 Plaintiffs request the opportunity to meet and confer with defense counsel regarding
2 interrogatories that relate to requests for admission, in part, because many of the requests for
3 admission are vague, compound and/or subject to interpretation. For example, many of the
4 requests for admission ask the plaintiffs to speculate in terms of how an ordinance was interpreted
5 by them, Diane Curry, County Counsel or others during 2017 and early 2018. The Plaintiffs
6 relied on Diane Curry, County Counsel and/or their own attorney to interpret what steps they had
7 to take to qualify as (B)(3) applicants. This included an "Agreement Not to Resume Cannabis
8 Cultivation" (See Ex. D to the FAC) requested by County Counsel and prepared by Plaintiffs
9 attorney, at the request of County Counsel, for purposes of having their permit approved. The
10 County's ultimate decision to deny their permit because they did not qualify as (B)(1) applicants
11 cannot be explained by the Plaintiffs. Plaintiffs are asked to "pin the tail" on a moving and/or
12 different donkey.

13 Diane Curry has provided a declaration and deposition testimony regarding these
14 issues. It appears the County chose to "move the goalposts" after Diane Curry was replaced and
15 is now asking the Plaintiffs to explain her thinking or reasoning, and her successors, in terms of
16 the interpretation and implementation of the Ordinance. Accordingly, the Plaintiffs are unable to
17 admit or deny certain requests for admission. Plaintiffs also base many responses on their (and
18 their attorneys) numerous contacts with the Diane Curry, her staff and Matthew Kiedrowski from
19 County Counsel's office. Some of those contacts are alleged in the complaint and supported by
20 documents.

21 The County's attempts to have the Plaintiffs admit to facts that are not consistent with
22 their experience is transparent and non-productive. The factual basis for many of their responses
23 to requests for admission relate to their experience, while it appears the County is engaging in
24 Monday morning quarterbacking and/or a post hoc change in how the Ordinance should have
25 been interpreted and implemented by the County when Diane Curry was Interim Commissioner.
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1 As to the Opt-Out Ordinance the Plaintiffs participated in some aspects of the “process”
2 but were excluded from others. Notably the Plaintiffs are not making a procedural due process
3 claim, rather, their “class of one” and substantive due process claims allege they were the only
4 AG/40 residents in the County, and in the permit process, who had their zoning changed in 2018
5 to prohibit them from cultivating cannabis. If you have evidence to rebut this claim it could be
6 helpful in resolving this case.

7 **RESPONSES TO REQUESTS FOR ADMISSIONS**

8 **REQUEST FOR ADMISSIONS NO. 1:**

9 Admit that YOUR cultivated cannabis at 438 25 Crispin Lane, Manchester, California to
10 26500 Reynolds Highway, Willits, California beginning in 1986 and ending in 1987.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 1:**

12 Denied.

13 **REQUEST FOR ADMISSIONS NO. 2:**

14 Admit that YOU began cultivationg cannabis at 1181 Boonville Road, Ukiah, California
15 in May of 2017.

16 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 2:**

17 Admit.

18 **REQUEST FOR ADMISSIONS NO. 3:**

19 Admit that YOU did not begin cultivationg cannabis at 1181 Boonville Road, Ukiah,
20 California, before May of 2017.

21 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 3:**

22 Admit.

23 **REQUEST FOR ADMISSIONS NO. 4:**

24 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
25 worksheet, dated June 19, 2017, YOU did not provide proof of prior cannabis cultivation at 1181
26 Boonville Road, Ukiah, California.

1 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 4:**

2 Unable to admit or deny.

3 **REQUEST FOR ADMISSIONS NO. 5:**

4 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
5 worksheet, dated around August 17, 2017, YOU did not provide proof of prior cannabis
6 cultivation at 1181 Boonville Road, Ukiah, California.

7 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 5:**

8 Unable to admit or deny.

9 **REQUEST FOR ADMISSIONS NO. 6:**

10 Admit that in YOUR cannabis cultivation permit application, the location used as proof of
11 prior cultivation was not the same address as the planned location for current cultivation.

12 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 6:**

13 Admit.

14 **REQUEST FOR ADMISSIONS NO. 7:**

15 Admit that in YOUR June 19, 2017 cannabis cultivation permit application extinguish and
16 transfer worksheet, YOU originally used 43825 Crispin Lane, Manchester, California as the
17 location for proof of prior cultivation.

18 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 7:**

19 Unable to admit or deny.

20 **REQUEST FOR ADMISSIONS NO. 8:**

21 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
22 worksheet, dated around August 14, 2017, YOU changed the location for proof of prior
23 cultivation from 43825 Crispin.

24 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 8:**

25 Unable to admit or deny.

1 **REQUEST FOR ADMISSIONS NO. 9:**

2 Admit that YOU are unaware of any Mendocino cannabis cultivation permit application(s)
3 who received a permit to cultivate cannabis where the applicant's prior cultivation site and
4 current cultivation site were different addresses.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 9:**

6 Denied.

7 **REQUEST FOR ADMISSIONS NO. 10:**

8 Admit that YOU are unaware of any Mendocino cannabis cultivation permit applicant(s)
9 who received a permit even though their application did not meet the conditions of Section
10 10A.17.080(B)(1) under the Mendocino County Code.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 10:**

12 Denied.

13 **REQUEST FOR ADMISSIONS NO. 11:**

14 Admit that YOU are unaware of any Mendocino cannabis cultivation permit applicant(s)
15 who received a permit even though their application did not meet the conditions of Section
16 10A.17.080(B)(3) under the Mendocino County Code.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 11:**

18 Admit.

19 **REQUEST FOR ADMISSIONS NO. 12:**

20 Admit that YOU were not treated differently from other Mendocino County cannabis
21 cultivation permit applicants.

22 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 12:**

23 Denied.

1 **REQUEST FOR ADMISSIONS NO. 13:**

2 Admit that YOU did not receive a different cannabis cultivation permit application from
3 other Mendocino County cannabis cultivation permit applicants.

4 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 13:**

5 Unable to admit or deny.

6 **REQUEST FOR ADMISSIONS NO. 14:**

7 Admit that YOU were aware that on the Mendocino County cannabis cultivation permit
8 application, the proof of prior cultivation site must be the same site as the current cultivation site.

9 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 14:**

10 Denied.

11 **REQUEST FOR ADMISSIONS NO. 15:**

12 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(1)(a),
13 which requires "photographs of any cultivation activities that existed on the legal parcel prior to
14 January 1, 2016."

15 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 15:**

16 Unable to admit or deny.

17 **REQUEST FOR ADMISSIONS NO. 16:**

18 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(1)(b),
19 which requires "photographs of any cultivation activities that currently exist on the legal parcel."

20 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 16:**

21 Unable to admit or deny.

22 **REQUEST FOR ADMISSIONS NO. 17:**

23 Admit that YOU were aware of Mendocino County Section 10A.17.080(B)(3).

24 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 17:**

25 Admit.

1 **REQUEST FOR ADMISSIONS NO. 18:**

2 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(3),
3 which allows that “[p]ersons able to show proof of prior cultivation pursuant to paragraph (B)(1)
4 above may apply” for a relocation permit.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 18:**

6 Unable to admit or deny.

7 **REQUEST FOR ADMISSIONS NO. 19:**

8 Admit that YOU were provided or aware of resources RELATING to the cannabis
9 cultivation permit and permit process on the Mendocino County website, including a list of
10 Cannabis Cultivation Program FAQs.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 19:**

12 Denied.

13 **REQUEST FOR ADMISSIONS NO. 20:**

14 Admit that during the time YOU applied for YOUR cannabis cultivation permit
15 application, YOU were aware of resources RELATING to the cannabis cultivation permit and
16 permit process on the Mendocino County website.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 20:**

18 Denied.

19 **REQUEST FOR ADMISSIONS NO. 21:**

20 Admit that YOU are unaware of the contents of other applicants’ Mendocino County
21 cannabis cultivation permit applications except for YOUR own application.

22 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 21:**

23 Admit.
24
25
26
27

1 **REQUEST FOR ADMISSIONS NO. 22:**

2 Admit that YOU were not excluded from the cannabis zoning overlay process.

3 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 22:**

4 Denied.

5 **REQUEST FOR ADMISSIONS NO. 23:**

6 Admit that YOU were not excluded from the cannabis zoning overlay process working
7 groups.

8 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 23:**

9 Denied.

10 **REQUEST FOR ADMISSIONS NO. 24:**

11 Admit that YOU participated in the cannabis zoning overlay process.

12 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 24:**

13 Unable to admit or deny.

14 **REQUEST FOR ADMISSIONS NO. 25:**

15 Admit that YOU participated in the cannabis zoning overlay process working groups.

16 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 25:**

17 Admit.

18 **REQUEST FOR ADMISSIONS NO. 26:**

19 Admit that YOU communicated with Mendocino County staff about the cannabis zoning
20 overlay process.

21 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 26:**

22 Admit.

23 **REQUEST FOR ADMISSIONS NO. 27:**

24 Admit that YOU communicated with Mendocino County Councilmembers about the
25 cannabis zoning overlay process.

1 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 27:**

2 Admit.

3 **REQUEST FOR ADMISSIONS NO. 28:**

4 Admit that You participated in the Mendocino County cannabis zoning overlay working
5 groups.

6 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 28:**

7 Admit.

8 **REQUEST FOR ADMISSIONS NO. 29:**

9 Admit that YOU participated in the Mendocino County cannabis zoning overlay process
10 initial discussions.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 29**

12 Admit.

13 **REQUEST FOR ADMISSIONS NO. 30:**

14 Admit that YOUR application did not meet the permit application requirements in
15 Mendocino County Code Section 10A.17.080(B)(3).

16 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 30:**

17 Denied.

18 **REQUEST FOR ADMISSIONS NO. 31:**

19 Admit that YOUR application did not meet the permit application requirements in
20 Mendocino County Code Section 10A.17.080(B)(1).

21 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 31:**

22 Unable to admit or deny.

23 **REQUEST FOR ADMISSIONS NO. 32:**

24 Admit that YOU do not know if there existed qualified Mendocino County cannabis
25 cultivation permit applicatns who were prohibited from cultivationdue to the DEERWOOD
26 CANNABIS OPT-OUT OVERLAY DISTRICT.

1 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 32:**

2 Admit.

3 **REQUEST FOR ADMISSIONS NO. 33:**

4 Admit that YOU were not aware, from the period of January 1, 2016 to January 2019, of
5 qualified Mendocino County cannabis cultivation permit applicants in the Deerwood area.

6 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 33:**

7 Admit.

8 **REQUEST FOR ADMISSIONS NO. 34:**

9 Admit that there were no qualified applicants who were denied a permit because their
10 cultivation site was located in the DEERWOOD CANNABIS OPT-OUT OVERLAY DISTRICT.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 34:**

12 Unable to admit or deny.

13 **REQUEST FOR ADMISSIONS NO. 35:**

14 Admit that there were no qualified applicatns who were denied a permit because their
15 cultivationsite was located in the WOODGLEN/BOONVILLE CANNABIS OPT-OUT
16 OVELAY DISTRICT.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 35:**

18 Denied.

19 **REQUEST FOR ADMISSIONS NO. 36:**

20 Admit that YOU do not know whether there existed or exists qualified Mendocino County
21 cannabis cultivation permit applicants who were prohibited from cultivation due to the
22 WOODGLEN/BOONVILLE CANNABIS OPT-OUT OVERLY DISTRICT.

23 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 36:**

24 Denied.

1 **REQUEST FOR ADMISSIONS NO. 37:**

2 Admit that YOU were not aware, from the period of January 1, 2016 to January 1, 2019,
3 of qualified Mendocino County cannabis cultivation permit applicants in the
4 Woodyglen/Boonville are.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 37:**

6 Denied.

7 **REQUEST FOR ADMISSIONS NO. 38:**

8 Admit that the temporary license provided by the Interim Director of the Agricultural
9 Commission was not the same as a Mendocino County Code Section 10.17.080 cannabis
10 cultivation permit.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 38:**

12 Unable to admit or deny.

13 **REQUEST FOR ADMISSIONS NO. 39:**

14 Admit that YOU knew during the cannabis cultivation permit application process that the
15 County required the prior cannabis cultivation site must be the same location as the site for
16 current cannabis cultivation.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 39:**

18 Denied.

19 **REQUEST FOR ADMISSIONS NO. 40:**

20 Admit that there are no other Mendocino County cannabis cultivation permit applicants
21 whose site used for proof of prior cultivation was not the same as their site for proof of current
22 cultivation that received a Mendocino County cannabis cultivation permit.

23 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 40:**

24 Denied.

1 **REQUEST FOR ADMISSIONS NO. 41:**

2 Admit that YOU applied for a cannabis cultivation permit during Phase 1 of the
3 Mendocino County Cannabis permit program.

4 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 41:**

5 Admit.

6 **REQUEST FOR ADMISSIONS NO. 42:**

7 Admit that at the time YOU submitted YOUR cannabis cultivation permit application to
8 the County, YOU were not cultivating cannabis on any site other than 1181 Boonville Road,
9 Ukiah, California.

10 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 42:**

11 Admit.

12 **REQUEST FOR ADMISSIONS NO. 43:**

13 Admit that YOU were not cultivating cannabis at 1181 Boonville Road prior to January
14 1, 2016.

15 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 43:**

16 Admit.

17 **REQUEST FOR ADMISSIONS NO. 44:**

18 Admit that at the time YOU submitted YOUR cannabis cultivation permit application,
19 YOU were not cultivating cannabis on any site in the County of Mendocino.

20 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 44:**

21 Admit.

22 **REQUEST FOR ADMISSIONS NO. 45:**

23 Admit that YOU were not cultivating cannabis at any location other than 1181 Boonville
24 Road, Ukiah, California and 43825 Crispin Lane, Manchester, California between 2010 and 2021.
25

1 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 45:**

2 Denied.

3 **REQUEST FOR ADMISSIONS NO. 46:**

4 Admit that YOU were not cultivatinog cannabis at 1181 Boonville Road, Ukiah,
5 Californiaprior to January 1, 2016.

6 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 46:**

7 Admit.

8 **REQUEST FOR ADMISSIONS NO. 47:**

9 Admit that YOU were trying to establish a new cultivation site at the time YOU were
10 applying to the County for a cannabis cultivation license, incliuding but not limited to the time
11 period from January 1, 2016 to December 5, 2019.

12 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 47:**

13 Admit.

14 **REQUEST FOR ADMISSIONS NO. 48:**

15 Admit that the 26500 Reynolds Highway, Willits, California site was absndoned by YOU
16 as a site of cultivation prior to January 1, 2016.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 48:**

18 Admit.

19 **REQUEST FOR ADMISSIONS NO. 49:**

20 Admit that YOU are unaware of any cannabis cultivation permit applicatns whose
21 applications were denied on the basis of that they did not meet Mendocino County Code section
22 10A.17.080 (B)(1) requirements.

23 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 49:**

24 Admit.

1 **REQUEST FOR ADMISSIONS NO. 50:**

2 Admit that YOU were aware of the conditions of receive a cannabis cultivation permit set
3 forth in the Mendocino County Cannabis Cultivation Ordinance during the preparation and
4 submission of YOUR cannabis cultivation permit application.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 50:**

6 Unable to Admit or deny.

7 **REQUEST FOR ADMISSIONS NO. 51:**

8 Admit that YOU did not cultivate cannabis at any other location in the County of
9 Mendocino between the time when YOU cultivated at the 43825 Crispin Lane, Manchester,
10 California site and at the 1181 Boonville Road, Ukiah, California.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 51:**

12 Denied.

13 **REQUEST FOR ADMISSIONS NO. 52:**

14 Admit that YOU did not cultivate cannabis at any other location in the County of
15 Mendocino between the time YOU cultivated at the 26500 Reynolds Highway, Willits, California
16 site and at the 43825 Crispin Lane, Manchester, California site.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 52:**

18 Denied.

19 **REQUEST FOR ADMISSIONS NO. 53:**

20 Admit that YOU did not participate in a permit program pursuant to Mendocino County
21 Code chapter 9/31 in previous years.

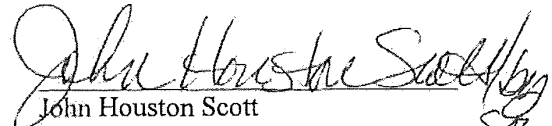
22 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 53:**

23 Admit.

1 Dated: December 20, 2021

Respectfully submitted,

2 **SCOTT LAW FIRM**

3
4
5 
6 John Houston Scott
Attorney for Plaintiffs

Plaintiff Gurr's Response to Defendant's
Request for Admissions, Set One

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15 Attorney for the Plaintiffs ANN MARIE BORGES and
16 CHRIS GURR

17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ANN MARIE BORGES and CHRIS GURR,
20 individually and doing business as GOOSE
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**PLAINTIFF'S RESPONSE TO
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ADMISSIONS, SET ONE**

27 PROPOUNDING PARTY: Defendant COUNTY OF MENDOCINO

28 RESPONDING PARTY: Plaintiff CHRIS GURR

SET: ONE

1 Pursuant to Federal Rules of Civil Procedure Rule 36, Plaintiff, Chris Gurr, hereby
2 responds and objects to Defendant County of Mendocino's First Set of Requests for Admissions
3 to Plaintiff Chris Gurr.

4 All of the responses contained herein are only upon such information and documents as
5 are presently available to and specifically known to this responding party and disclose only those
6 contentions which presently occur to such responding party.

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8 may supply additional entirely new factual conclusions and legal contentions, all of which may
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4 requests for admission ask the plaintiffs to speculate in terms of how an ordinance was interpreted
5 by them, Diane Curry, County Counsel or others during 2017 and early 2018. The Plaintiffs
6 relied on Diane Curry, County Counsel and/or their own attorney to interpret what steps they had
7 to take to qualify as (B)(3) applicants. This included an “Agreement Not to Resume Cannabis
8 Cultivation” (See Ex. D to the FAC) requested by County Counsel and prepared by Plaintiffs
9 attorney, at the request of County Counsel, for purposes of having their permit approved. The
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11 cannot be explained by the Plaintiffs. Plaintiffs are asked to “pin the tail” on a moving and/or
12 different donkey.

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14 issues. It appears the County chose to “move the goalposts” after Diane Curry was replaced and
15 is now asking the Plaintiffs to explain her thinking or reasoning, and her successors, in terms of
16 the interpretation and implementation of the Ordinance. Accordingly, the Plaintiffs are unable to
17 admit or deny certain requests for admission. Plaintiffs also base many responses on their (and
18 their attorneys) numerous contacts with the Diane Curry, her staff and Matthew Kiedrowski from
19 County Counsel’s office. Some of those contacts are alleged in the complaint and supported by
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21 The County’s attempts to have the Plaintiffs admit to facts that are not consistent with
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23 to requests for admission relate to their experience, while it appears the County is engaging in
24 Monday morning quarterbacking and/or a post hoc change in how the Ordinance should have
25 been interpreted and implemented by the County when Diane Curry was Interim Commissioner.

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2 but were excluded from others. Notably the Plaintiffs are not making a procedural due process
3 claim, rather, their “class of one” and substantive due process claims allege they were the only
4 AG/40 residents in the County, and in the permit process, who had their zoning changed in 2018
5 to prohibit them from cultivating cannabis. If you have evidence to rebut this claim it could be
6 helpful in resolving this case.

7 **RESPONSES TO REQUESTS FOR ADMISSIONS**

8 **REQUEST FOR ADMISSIONS NO. 1:**

9 Admit that YOUR cultivated cannabis at 438 25 Crispin Lane, Manchester, California to
10 26500 Reynolds Highway, Willits, California beginning in 1986 and ending in 1987.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 1:**

12 Denied.

13 **REQUEST FOR ADMISSIONS NO. 2:**

14 Admit that YOU began cultivationg cannabis at 1181 Boonville Road, Ukiah, California
15 in May of 2017.

16 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 2:**

17 Admit.

18 **REQUEST FOR ADMISSIONS NO. 3:**

19 Admit that YOU did not begin cultivationg cannabis at 1181 Boonville Road, Ukiah,
20 California, before May of 2017.

21 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 3:**

22 Admit.

23 **REQUEST FOR ADMISSIONS NO. 4:**

24 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
25 worksheet, dated June 19, 2017, YOU did not provide proof of prior cannabis cultivation at 1181
26 Boonville Road, Ukiah, California.

1 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 4:**

2 Unable to admit or deny.

3 **REQUEST FOR ADMISSIONS NO. 5:**

4 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
5 worksheet, dated around August 17, 2017, YOU did not provide proof of prior cannabis
6 cultivation at 1181 Boonville Road, Ukiah, California.

7 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 5:**

8 Unable to admit or deny.

9 **REQUEST FOR ADMISSIONS NO. 6:**

10 Admit that in YOUR cannabis cultivation permit application, the location used as proof of
11 prior cultivation was not the same address as the planned location for current cultivation.

12 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 6:**

13 Admit.

14 **REQUEST FOR ADMISSIONS NO. 7:**

15 Admit that in YOUR June 19, 2017 cannabis cultivation permit application extinguish and
16 transfer worksheet, YOU originally used 43825 Crispin Lane, Manchester, California as the
17 location for proof of prior cultivation.

18 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 7:**

19 Unable to admit or deny.

20 **REQUEST FOR ADMISSIONS NO. 8:**

21 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
22 worksheet, dated around August 14, 2017, YOU changed the location for proof of prior
23 cultivation from 43825 Crispin.

24 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 8:**

25 Unable to admit or deny.

1 **REQUEST FOR ADMISSIONS NO. 9:**

2 Admit that YOU are unaware of any Mendocino cannabis cultivation permit application(s)
3 who received a permit to cultivate cannabis where the applicant's prior cultivation site and
4 current cultivation site were different addresses.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 9:**

6 Denied.

7 **REQUEST FOR ADMISSIONS NO. 10:**

8 Admit that YOU are unaware of any Mendocino cannabis cultivation permit applicant(s)
9 who received a permit even though their application did not meet the conditions of Section
10 10A.17.080(B)(1) under the Mendocino County Code.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 10:**

12 Denied.

13 **REQUEST FOR ADMISSIONS NO. 11:**

14 Admit that YOU are unaware of any Mendocino cannabis cultivation permit applicant(s)
15 who received a permit even though their application did not meet the conditions of Section
16 10A.17.080(B)(3) under the Mendocino County Code.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 11:**

18 Admit.

19 **REQUEST FOR ADMISSIONS NO. 12:**

20 Admit that YOU were not treated differently from other Mendocino County cannabis
21 cultivation permit applicants.

22 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 12:**

23 Denied.

1 **REQUEST FOR ADMISSIONS NO. 13:**

2 Admit that YOU did not receive a different cannabis cultivation permit application from
3 other Mendocino County cannabis cultivation permit applicants.

4 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 13:**

5 Unable to admit or deny.

6 **REQUEST FOR ADMISSIONS NO. 14:**

7 Admit that YOU were aware that on the Mendocino County cannabis cultivation permit
8 application, the proof of prior cultivation site must be the same site as the current cultivation site.

9 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 14:**

10 Denied.

11 **REQUEST FOR ADMISSIONS NO. 15:**

12 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(1)(a),
13 which requires "photographs of any cultivation activities that existed on the legal parcel prior to
14 January 1, 2016."

15 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 15:**

16 Unable to admit or deny.

17 **REQUEST FOR ADMISSIONS NO. 16:**

18 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(1)(b),
19 which requires "photographs of any cultivation activities that currently exist on the legal parcel."

20 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 16:**

21 Unable to admit or deny.

22 **REQUEST FOR ADMISSIONS NO. 17:**

23 Admit that YOU were aware of Mendocino County Section 10A.17.080(B)(3).

24 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 17:**

25 Admit.

1 **REQUEST FOR ADMISSIONS NO. 18:**

2 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(3),
3 which allows that "[p]ersons able to show proof of prior cultivation pursuant to paragraph (B)(1)
4 above may apply" for a relocation permit.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 18:**

6 Unable to admit or deny.

7 **REQUEST FOR ADMISSIONS NO. 19:**

8 Admit that YOU were provided or aware of resources RELATING to the cannabis
9 cultivation permit and permit process on the Mendocino County website, including a list of
10 Cannabis Cultivation Program FAQs.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 19:**

12 Denied.

13 **REQUEST FOR ADMISSIONS NO. 20:**

14 Admit that during the time YOU applied for YOUR cannabis cultivation permit
15 application, YOU were aware of resources RELATING to the cannabis cultivation permit and
16 permit process on the Mendocino County website.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 20:**

18 Denied.

19 **REQUEST FOR ADMISSIONS NO. 21:**

20 Admit that YOU are unaware of the contents of other applicants' Mendocino County
21 cannabis cultivation permit applications except for YOUR own application.

22 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 21:**

23 Admit.

1 **REQUEST FOR ADMISSIONS NO. 22:**

2 Admit that YOU were not excluded from the cannabis zoning overlay process.

3 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 22:**

4 Denied.

5 **REQUEST FOR ADMISSIONS NO. 23:**

6 Admit that YOU were not excluded from the cannabis zoning overlay process working
7 groups.

8 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 23:**

9 Denied.

10 **REQUEST FOR ADMISSIONS NO. 24:**

11 Admit that YOU participated in the cannabis zoning overlay process.

12 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 24:**

13 Unable to admit or deny.

14 **REQUEST FOR ADMISSIONS NO. 25:**

15 Admit that YOU participated in the cannabis zoning overlay process working groups.

16 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 25:**

17 Admit.

18 **REQUEST FOR ADMISSIONS NO. 26:**

19 Admit that YOU communicated with Mendocino County staff about the cannabis zoning
20 overlay process.

21 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 26:**

22 Admit.

23 **REQUEST FOR ADMISSIONS NO. 27:**

24 Admit that YOU communicated with Mendocino County Councilmembers about the
25 cannabis zoning overlay process.

1 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 27:**

2 Admit.

3 **REQUEST FOR ADMISSIONS NO. 28:**

4 Admit that You participated in the Mendocino County cannabis zoning overlay working
5 groups.

6 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 28:**

7 Admit.

8 **REQUEST FOR ADMISSIONS NO. 29:**

9 Admit that YOU participated in the Mendocino County cannabis zoning overlay process
10 initial discussions.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 29**

12 Admit.

13 **REQUEST FOR ADMISSIONS NO. 30:**

14 Admit that YOUR application did not meet the permit application requirements in
15 Mendocino County Code Section 10A.17.080(B)(3).

16 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 30:**

17 Denied.

18 **REQUEST FOR ADMISSIONS NO. 31:**

19 Admit that YOUR application did not meet the permit application requirements in
20 Mendocino County Code Section 10A.17.080(B)(1).

21 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 31:**

22 Unable to admit or deny.

23 **REQUEST FOR ADMISSIONS NO. 32:**

24 Admit that YOU do not know if there existed qualified Mendocino County cannabis
25 cultivation permit applicatns who were prohibited from cultivationdue to the DEERWOOD
26 CANNABIS OPT-OUT OVERLAY DISTRICT.

1 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 32:**

2 Admit.

3 **REQUEST FOR ADMISSIONS NO. 33:**

4 Admit that YOU were not aware, from the period of January 1, 2016 to January 2019, of
5 qualified Mendocino County cannabis cultivation permit applicants in the Deerwood area.

6 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 33:**

7 Admit.

8 **REQUEST FOR ADMISSIONS NO. 34:**

9 Admit that there were no qualified applicants who were denied a permit because their
10 cultivation site was located in the DEERWOOD CANNABIS OPT-OUT OVERLAY DISTRICT.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 34:**

12 Unable to admit or deny.

13 **REQUEST FOR ADMISSIONS NO. 35:**

14 Admit that there were no qualified applicatns who were denied a permit because their
15 cultivationsite was located in the WOODGLEN/BOONVILLE CANNABIS OPT-OUT
16 OVELAY DISTRICT.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 35:**

18 Denied.

19 **REQUEST FOR ADMISSIONS NO. 36:**

20 Admit that YOU do not know whether there existed or exists qualified Mendocino County
21 cannabis cultivation permit applicants who were prohibited from cultivation due to the
22 WOODGLEN/BOONVILLE CANNABIS OPT-OUT OVERLY DISTRICT.

23 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 36:**

24 Denied.

1 **REQUEST FOR ADMISSIONS NO. 37:**

2 Admit that YOU were not aware, from the period of January 1, 2016 to January 1, 2019,
3 of qualified Mendocino County cannabis cultivation permit applicants in the
4 Woodyglen/Boonville are.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 37:**

6 Denied.

7 **REQUEST FOR ADMISSIONS NO. 38:**

8 Admit that the temporary license provided by the Interim Director of the Agricultural
9 Commission was not the same as a Mendocino County Code Section 10.17.080 cannabis
10 cultivation permit.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 38:**

12 Unable to admit or deny.

13 **REQUEST FOR ADMISSIONS NO. 39:**

14 Admit that YOU knew during the cannabis cultivation permit application process that the
15 County required the prior cannabis cultivation site must be the same location as the site for
16 current cannabis cultivation.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 39:**

18 Denied.

19 **REQUEST FOR ADMISSIONS NO. 40:**

20 Admit that there are no other Mendocino County cannabis cultivation permit applicants
21 whose site used for proof of prior cultivation was not the same as their site for proof of current
22 cultivation that received a Mendocino County cannabis cultivation permit.

23 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 40:**

24 Denied.

1 **REQUEST FOR ADMISSIONS NO. 41:**

2 Admit that YOU applied for a cannabis cultivation permit during Phase 1 of the
3 Mendocino County Cannabis permit program.

4 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 41:**

5 Admit.

6 **REQUEST FOR ADMISSIONS NO. 42:**

7 Admit that at the time YOU submitted YOUR cannabis cultivation permit application to
8 the County, YOU were not cultivating cannabis on any site other than 1181 Boonville Road,
9 Ukiah, California.

10 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 42:**

11 Admit.

12 **REQUEST FOR ADMISSIONS NO. 43:**

13 Admit that YOU were not cultivating cannabis at 1181 Boonville Road prior to January
14 1, 2016.

15 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 43:**

16 Admit.

17 **REQUEST FOR ADMISSIONS NO. 44:**

18 Admit that at the time YOU submitted YOUR cannabis cultivation permit application,
19 YOU were not cultivating cannabis on any site in the County of Mendocino.

20 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 44:**

21 Admit.

22 **REQUEST FOR ADMISSIONS NO. 45:**

23 Admit that YOU were not cultivating cannabis at any location other than 1181 Boonville
24 Road, Ukiah, California and 43825 Crispin Lane, Manchester, California between 2010 and 2021.

1 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 45:**

2 Denied.

3 **REQUEST FOR ADMISSIONS NO. 46:**

4 Admit that YOU were not cultivatinog cannabis at 1181 Boonville Road, Ukiah,
5 Californiaprior to January 1, 2016.

6 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 46:**

7 Admit.

8 **REQUEST FOR ADMISSIONS NO. 47:**

9 Admit that YOU were trying to establish a new cultivation site at the time YOU were
10 applying to the County for a cannabis cultivation license, incliuding but not limited to the time
11 period from January 1, 2016 to December 5, 2019.

12 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 47:**

13 Admit.

14 **REQUEST FOR ADMISSIONS NO. 48:**

15 Admit that the 26500 Reynolds Highway, Willits, California site was absndoned by YOU
16 as a site of cultivation prior to January 1, 2016.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 48:**

18 Admit.

19 **REQUEST FOR ADMISSIONS NO. 49:**

20 Admit that YOU are unaware of any cannabis cultivation permit applicatns whose
21 applications were denied on the basis of that they did not meet Mendocino County Code section
22 10A.17.080 (B)(1) requirements.

23 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 49:**

24 Admit.

1 **REQUEST FOR ADMISSIONS NO. 50:**

2 Admit that YOU were aware of the conditions of receive a cannabis cultivation permit set
3 forth in the Mendocino County Cannabis Cultivation Ordinance during the preparation and
4 submission of YOUR cannabis cultivation permit application.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 50:**

6 Unable to Admit or deny.

7 **REQUEST FOR ADMISSIONS NO. 51:**

8 Admit that YOU did not cultivate cannabis at any other location in the County of
9 Mendocino between the time when YOU cultivated at the 43825 Crispin Lane, Manchester,
10 California site and at the 1181 Boonville Road, Ukiah, California.

11 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 51:**

12 Denied.

13 **REQUEST FOR ADMISSIONS NO. 52:**

14 Admit that YOU did not cultivate cannabis at any other location in the County of
15 Mendocino between the time YOU cultivated at the 26500 Reynolds Highway, Willits, California
16 site and at the 43825 Crispin Lane, Manchester, California site.

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 52:**

18 Denied.

19 **REQUEST FOR ADMISSIONS NO. 53:**

20 Admit that YOU did not participate in a permit program pursuant to Mendocino County
21 Code chapter 9/31 in previous years.

22 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 53:**

23 Admit.

1 Dated: December 20, 2021

Respectfully submitted,

2 SCOTT LAW FIRM

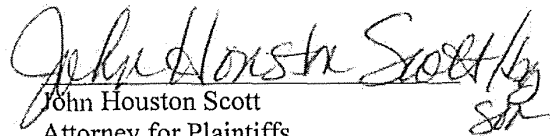
3
4
5 
6 John Houston Scott
Attorney for Plaintiffs

EXHIBIT DD

Plaintiff Borges' Response to Defendant's Special Interrogatories, Set One

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15 Attorney for the Plaintiffs ANN MARIE BORGES and
16 CHRIS GURR

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ANN MARIE BORGES and CHRIS GURR,
20 individually and doing business as GOOSE
21 HEAD VALLEY FARMS,

22 Plaintiffs,

23 v.

24 COUNTY OF MENDOCINO, et al., and
25 Does 1-25 inclusive,

26 Defendants.

Case No. 3:20-cv-04537-SI
(Related to Case No. 3:21-cv-07031-SI)

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S SPECIAL
INTERROGATORIES, SET ONE**

27 PROPOUNDING PARTY: Defendant COUNTY OF MENDOCINO

28 RESPONDING PARTY: Plaintiff ANN MARIE BORGES

SET: ONE

RECITALS

Plaintiff Ann Marie Borges has not completed discovery prior to the date which these responses are due. Consequently, plaintiff's responses are based upon only such information presently available. Plaintiff's responses are given without prejudice to plaintiff's right to produce newly discovered evidence which she may later discover. Plaintiff's responses herein are made in good faith. They should in no way prejudice the plaintiff in the production or introduction of newly discovered evidence.

To the extent that any requests call for information which was prepared in anticipation of litigation or trial or for information or material covered by the work-product doctrine, or which constitutes information which is privileged or related to the privilege of privacy, plaintiff objects to responding to those requests and therefore will not supply any response protected from discovery by virtue of the work-product doctrine, the attorney-client privilege, or the privacy privileges. The fact that plaintiff has answered part or all of any request is not intended and shall not be construed to be a waiver by Defendant of all or part of any objections to any request.

Plaintiff's responses are based solely upon information presently available to Plaintiff. Plaintiff expressly reserves the right to amend or supplement her responses. Plaintiff further reserves the right to introduce such additional facts and documents in evidence at trial. Subject to the above general comments and objections which are incorporated by reference into each of the following responses.

Plaintiffs request the opportunity to meet and confer with defense counsel regarding interrogatories that relate to requests for admission, in part, because many of the requests for admission are vague, compound and/or subject to interpretation. For example, many of the requests for admission ask the plaintiffs to speculate in terms of how an ordinance was interpreted by them, Diane Curry, County Counsel or others during 2017 and early 2018. The Plaintiffs relied on Diane Curry, County Counsel and/or their own attorney to interpret what steps they had to take to qualify as (B)(3) applicants. This included an "Agreement Not to Resume Cannabis

1 Cultivation” (See Ex. D to the FAC) requested by County Counsel and prepared by Plaintiffs
2 attorney, at the request of County Counsel, for purposes of having their permit approved. The
3 County’s ultimate decision to deny their permit because they did not qualify as (B)(1) applicants
4 cannot be explained by the Plaintiffs. Plaintiffs are asked to “pin the tail” on a moving and/or
5 different donkey.

6 Diane Curry has provided a declaration and deposition testimony regarding these
7 issues. It appears the County chose to “move the goalposts” after Diane Curry was replaced and
8 is now asking the Plaintiffs to explain her thinking or reasoning, and her successors, in terms of
9 the interpretation and implementation of the Ordinance. Accordingly, the Plaintiffs are unable to
10 admit or deny certain requests for admission. Plaintiffs also base many responses on their (and
11 their attorneys) numerous contacts with the Diane Curry, her staff and Matthew Kiedrowski from
12 County Counsel’s office. Some of those contacts are alleged in the complaint and supported by
13 documents.

14 The County’s attempts to have the Plaintiffs admit to facts that are not consistent with
15 their experience is transparent and non-productive. The factual basis for many of their responses
16 to requests for admission relate to their experience, while it appears the County is engaging in
17 Monday morning quarterbacking and/or a post hoc change in how the Ordinance should have
18 been interpreted and implemented by the County when Diane Curry was Interim Commissioner.

19 As to the Opt-Out Ordinance the Plaintiffs participated in some aspects of the “process”
20 but were excluded from others. Notably the Plaintiffs are not making a procedural due process
21 claim, rather, their “class of one” and substantive due process claims allege they were the only
22 AG/40 residents in the County, and in the permit process, who had their zoning changed in 2018
23 to prohibit them from cultivating cannabis. If you have evidence to rebut this claim it could be
24 helpful in resolving this case.

SPECIAL INTERROGATORY NO. 1:

Describe when YOU began cultivating cannabis and when YOU stopped cultivating cannabis as the following properties, including specific dates: (a) 1181 Boonville Road, Ukiah, California; (b) 26500 Reynolds Highway, Willits, California; and (c) 43825 Crispin Lane, Manchester, California.

Plaintiff does not recall the exact dates she began and stopped cultivating at these locations. The Plaintiff refers the County to its file regarding the Plaintiffs application for a permit with the Agricultural Commissioner's office.

Identify any and all Mendocino County cannabis cultivation permit applicants whose permits were granted, who failed to provide proof of prior cultivation on the same site as the current cultivation site during Phase 1, and/or who failed to provide proof of prior cultivation on the same site as the current cultivation site during Phase 1, but still received a permit.

Plaintiff does not have this information, however, that information is readily available to the County. The Plaintiff requests that the County share this information with her.

Identify all Mendocino County cannabis cultivation permit applicants who did not meet the prior cultivation site condition explained in Mendocino County Code Section 10A.17.080 (B)(1).

Plaintiff does not have this information, however, that information is readily available to the County. The Plaintiff requests that the County share this information with her.

1 **SPECIAL INTERROGATORY NO. 4:**

2 Identify all Mendocino County cannabis cultivation permit applicants who were in the
3 DEERWOOD CANNABIS OPT-OUT OVERLAY DISTRICT or WOODYGLEN/BOONVILLE
4 CANNABIS OPT-OUT OVERLAY DISTRICT but still received a license.

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

6 Plaintiff does not have this information, however, that information is readily available to
7 the County. The Plaintiff requests that the County share this information with her.

8 **SPECIAL INTERROGATORY NO. 5:**

9 Identify all Mendocino County Phase 1 cannabis cultivation permit applicants who
10 provided proof of cultivation at the same site for both prior cultivation and current cultivation and
11 received a license.

12 **RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

13 Plaintiff does not have this information, however, that information is readily available to
14 the County. The Plaintiff requests that the County share this information with her.

15 **SPECIAL INTERROGATORY NO. 6:**

16 Explain YOUR contention in Paragraph 31 of the COMPLAINT that Plaintiffs were
17 excluded from participating in the Mendocino County cannabis zoning overlay process.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 6:**

19 In 2017 Mendocino County requested volunteers to participate in the county's Overlay
20 Workgroup to which I applied and was approved. The county then decided there were too many
21 people in the main group and they decided to create smaller sub-groups of 5-7 volunteers for the
22 topics of discussion on opt-in, opt-out, and exclusions. My partner, Chris Gurr, volunteered to
23 participate in the opt-out sub group and received written approval to participate. We were
24 scheduled to meet with the consultants the following Monday morning at 8:00AM. The Friday
25 before the scheduled meeting at 5:01PM we received an email from Cassandra Borgna on behalf
26 of CEO Carmel Angelo that a mistake had been made on the selection process for the opt-out sub
27

1 group and the (3) pro cannabis volunteers were being removed from the opt-out sub group. The
2 opt-out sub group went from 7 diverse members to only 4 like minded volunteers who were
3 against cannabis being cultivated in their area. So while Chris and I briefly participated in the
4 main overlay group, we were excluded from participating in the more important opt-out sub
5 group which directly impacted us. However, my neighbor Aaron Niderost, who was against
6 cannabis being cultivated on my property, was allowed to participate in the decision making
7 process and meet with the consultants to make policy which negatively impacted me.

8 **SPECIAL INTERROGATORY NO. 7:**

9 Explain YOUR contention in Paragraph 39 of the COMPLAINT that Plaintiffs were the
10 only qualified applicants prohibited from cultivation cannabis due to the Mendocino County
11 cannabis zoning overlay.

12 **RESPONSE TO SPECIAL INTERROGATORY NO. 7:**

13 Plaintiff is not aware of any other qualified applicants, zoned AG-40, who were
14 impacted by the Ordinance. Plaintiff welcomes information in the possession of the County on this
15 issue.

16 **SPECIAL INTERROGATORY NO. 8:**

17 Explain YOUR decision, described in Paragraphs 29 and 43 of the COMPLAINT, to
18 change the proof of prior cultivation location for YOUR cannabis cultivation permit application
19 from 43825 Crispin Lane, Manchester, California to 26500 Reynolds Highway, Willits,
20 California.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

22 In May 2017 we met with the Mendocino County Department of Agriculture (DOA) to
23 present our cannabis cultivation application and our proof of prior cultivation. We were joined by
24 our attorney from Rogoway Law Group to participate and help answer any questions pertaining to
25 our application. The DOA reviewed our proof of prior cultivation as well as our completed
26 application and approved both. At some time later the BOS decided that the coastal cultivation
27

1 site at 43825 Crispin Lane in Manchester, CA would not qualify as a proof of prior. The DOA
2 then asked us to provide an alternate cultivation site to meet the proof of prior requirement which
3 we did. Diane Curry personally reviewed the alternate proof of prior cultivation site information
4 from 26500 Reynolds Hwy in Willits and approved it.

5 **SPECIAL INTERROGATORY NO. 9:**

6 Describe all steps that YOU took as part of the Mendocino County cannabis cultivation
7 permit application process from the time YOU began preparing YOUR application to the final
8 denial of YOUR application, including descriptions of all DOCUMENTS prepared or reviewed in
9 the process and all communications regarding the process.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

11 Relevant documents are attached to the complaint as exhibits and the delcartion of Diane
12 Curry. The file maintained by the County should contain additional information in support of this
13 allegation.

14 **SPECIAL INTERROGATORY NO. 10:**

15 Explain YOUR cultivation activities at (a) 1181 Boonsville Road, Ukian, California; (b)
16 26500 Reynolds Highway, Willits, California, and (c) 43825 Crispin Lane, Manchester,
17 California, including a description of the relevant time frame.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

19 I cultivated cannabis at each of these locations. Please refer to Interrogatory #1 response
20 for the relevant time frame response.

21 **SPECIAL INTERROGATORY NO. 11:**

22 For each response to each request for admission served concurrently with these
23 interrogatories that is not an unqualified admission:

24 (i) state the number of the requests;

25 Vague and ambiguous
26
27

1 (ii) state all facts upon which YOU base YOUR response;

2 Vague and ambiguous

3 (iii) state the names, addresses, and telephone numbers of all PERSONS and/or
4 entitites who have knowledge of those facts; and

5 My lawyer will provide if necessary

6 (iv) identify all DOCUMENTS and other tangible resources that support YOUR
7 response and state the names, addresses, and telephone numbers of all PERSONS and/or entities
8 who have each DOCUMENT or resource.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

10
11 As set forth above, the Plaintiff is unable to respond to this interrogatory and requests an
12 opportunity to meet and confer with Counsel for the County of Mendocino.

13
14 Dated: December 20, 2021

Respectfully submitted,

15 **SCOTT LAW FIRM**

16
17 
18 John Houston Scott
19 Attorney for Plaintiffs

Plaintiff Gurr's Response to Defendant's
Special Interrogatories, Set One

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15 Attorney for the Plaintiffs ANN MARIE BORGES and
16 CHRIS GURR

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ANN MARIE BORGES and CHRIS GURR,
20 individually and doing business as GOOSE
21 HEAD VALLEY FARMS,

22 Plaintiffs,

23 v.

24 COUNTY OF MENDOCINO, et al., and
25 Does 1-25 inclusive,

26 Defendants.

Case No. 3:20-cv-04537-SI
(Related to Case No. 3:21-cv-07031-SI)

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S SPECIAL
INTERROGATORIES, SET ONE**

27 PROPOUNDING PARTY: Defendant COUNTY OF MENDOCINO

28 RESPONDING PARTY: Plaintiff CHRIS GURR

SET: ONE

RECITALS

Plaintiff Chris Gurr has not completed discovery prior to the date which these responses are due. Consequently, plaintiff's responses are based upon only such information presently available. Plaintiff's responses are given without prejudice to plaintiff's right to produce newly discovered evidence which he may later discover. Plaintiff's responses herein are made in good faith. They should in no way prejudice the plaintiff in the production or introduction of newly discovered evidence.

To the extent that any requests call for information which was prepared in anticipation of litigation or trial or for information or material covered by the work-product doctrine, or which constitutes information which is privileged or related to the privilege of privacy, plaintiff objects to responding to those requests and therefore will not supply any response protected from discovery by virtue of the work-product doctrine, the attorney-client privilege, or the privacy privileges. The fact that plaintiff has answered part or all of any request is not intended and shall not be construed to be a waiver by Defendant of all or part of any objections to any request.

Plaintiff's responses are based solely upon information presently available to Plaintiff. Plaintiff expressly reserves the right to amend or supplement her responses. Plaintiff further reserves the right to introduce such additional facts and documents in evidence at trial. Subject to the above general comments and objections which are incorporated by reference into each of the following responses.

Plaintiffs request the opportunity to meet and confer with defense counsel regarding interrogatories that relate to requests for admission, in part, because many of the requests for admission are vague, compound and/or subject to interpretation. For example, many of the requests for admission ask the plaintiffs to speculate in terms of how an ordinance was interpreted by them, Diane Curry, County Counsel or others during 2017 and early 2018. The Plaintiffs relied on Diane Curry, County Counsel and/or their own attorney to interpret what steps they had to take to qualify as (B)(3) applicants. This included an "Agreement Not to Resume Cannabis

1 Cultivation” (See Ex. D to the FAC) requested by County Counsel and prepared by Plaintiffs
2 attorney, at the request of County Counsel, for purposes of having their permit approved. The
3 County’s ultimate decision to deny their permit because they did not qualify as (B)(1) applicants
4 cannot be explained by the Plaintiffs. Plaintiffs are asked to “pin the tail” on a moving and/or
5 different donkey.

6 Diane Curry has provided a declaration and deposition testimony regarding these
7 issues. It appears the County chose to “move the goalposts” after Diane Curry was replaced and
8 is now asking the Plaintiffs to explain her thinking or reasoning, and her successors, in terms of
9 the interpretation and implementation of the Ordinance. Accordingly, the Plaintiffs are unable to
10 admit or deny certain requests for admission. Plaintiffs also base many responses on their (and
11 their attorneys) numerous contacts with the Diane Curry, her staff and Matthew Kiedrowski from
12 County Counsel’s office. Some of those contacts are alleged in the complaint and supported by
13 documents.

14 The County’s attempts to have the Plaintiffs admit to facts that are not consistent with
15 their experience is transparent and non-productive. The factual basis for many of their responses
16 to requests for admission relate to their experience, while it appears the County is engaging in
17 Monday morning quarterbacking and/or a post hoc change in how the Ordinance should have
18 been interpreted and implemented by the County when Diane Curry was Interim Commissioner.

19 As to the Opt-Out Ordinance the Plaintiffs participated in some aspects of the “process”
20 but were excluded from others. Notably the Plaintiffs are not making a procedural due process
21 claim, rather, their “class of one” and substantive due process claims allege they were the only
22 AG/40 residents in the County, and in the permit process, who had their zoning changed in 2018
23 to prohibit them from cultivating cannabis. If you have evidence to rebut this claim it could be
24 helpful in resolving this case.

RESPONSE TO SPECIAL INTERROGATORIES

SPECIAL INTERROGATORY NO. 11:

For each response to each request for admission served concurrently with these interrogatories that is not an unqualified admission:

(i) state the number of the requests;

Vague and ambiguous

(ii) state all facts upon which YOU base YOUR response;

Vague and ambiguous

(iii) state the names, addresses, and telephone numbers of all PERSONS and/or entities who have knowledge of those facts; and

My lawyer will provide if necessary

(iv) identify all DOCUMENTS and other tangible resources that support YOUR response and state the names, addresses, and telephone numbers of all PERSONS and/or entities who have each DOCUMENT or resource.

RESPONSE TO SPECIAL INTERROGATORY NO. 11:

As set forth above, the Plaintiff is unable to respond to this interrogatory and requests an opportunity to meet and confer with Counsel for the County of Mendocino.

Dated: December 20, 2021

Respectfully submitted,

SCOTT LAW FIRM


John Houston Scott
Attorney for Plaintiffs

EXHIBIT EE

Plaintiff Borges' Supplemental Responses
to Defendant's Request for Admission, Set
One

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Attorney for the Plaintiffs ANN MARIE BORGES and
CHRIS GURR

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES and CHRIS GURR,
individually and doing business as GOOSE
HEAD VALLEY FARMS,

Plaintiffs,

v.

COUNTY OF MENDOCINO, et al., and
Does 1-25 inclusive,

Defendants.

Case No. 3:20-cv-04537-SI
(Related to Case No. 3:21-cv-07031-SI)

**PLAINTIFF'S SUPPLEMENTAL
RESPONSE TO DEFENDANT'S REQUEST
FOR ADMISSIONS, SET ONE**

PROPOUNDING PARTY: Defendant COUNTY OF MENDOCINO

RESPONDING PARTY: Plaintiff ANN MARIE BORGES

SET: ONE - SUPPLEMENTAL

RECITAL

Pursuant to Federal Rules of Civil Procedure Rule 36, Plaintiff, Ann Marie Borges, hereby responds and objects to Defendant County of Mendocino's First Set of Requests for Admissions to Plaintiff Ann Marie Borges.

All of the responses contained herein are only upon such information and documents as are presently available to and specifically known to this responding party and disclose only those contentions which presently occur to such responding party.

It is possible that further discovery, independent investigation, legal research, and analysis may supply additional entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the contentions herein set forth.

Except for explicit facts admitted herein, no incidental or implied admissions are intended hereby. The fact that respondent has answered any request for admission should not be taken as an admission that respondent accepts or admits the existence of any facts set forth or assumed by such request for admission, or that such response constitutes admissible evidence. The fact that respondent has answered part or all of any request for admission is not intended and shall not be construed to be a waiver by respondent of all or any part of any objection to any request for admission made by respondent.

The following responses are given without prejudice to responding party's right to produce evidence of any subsequently discovered fact or facts which this responding party may later recall. Responding party accordingly reserves the right to change any and all responses herein as additional facts are ascertained, analyses are made, legal research is completed, and contentions are made. The responses contained herein are made in a good-faith effort to supply as much factual information and as much specification of legal contentions as are presently known, but should in no way be to the prejudice of this responding party in relation to further discovery, research, or analysis.

1 Plaintiffs request the opportunity to meet and confer with defense counsel regarding
2 interrogatories that relate to requests for admission, in part, because many of the requests for
3 admission are vague, compound and/or subject to interpretation. For example, many of the
4 requests for admission ask the plaintiffs to speculate in terms of how an ordinance was interpreted
5 by them, Diane Curry, County Counsel or others during 2017 and early 2018. The Plaintiffs
6 relied on Diane Curry, County Counsel and/or their own attorney to interpret what steps they had
7 to take to qualify as (B)(3) applicants. This included an “Agreement Not to Resume Cannabis
8 Cultivation” (See Ex. D to the FAC) requested by County Counsel and prepared by Plaintiffs
9 attorney, at the request of County Counsel, for purposes of having their permit approved. The
10 County’s ultimate decision to deny their permit because they did not qualify as (B)(1) applicants
11 cannot be explained by the Plaintiffs. Plaintiffs are asked to “pin the tail” on a moving and/or
12 different donkey.

13 Diane Curry has provided a declaration and deposition testimony regarding these
14 issues. It appears the County chose to “move the goalposts” after Diane Curry was replaced and
15 is now asking the Plaintiffs to explain her thinking or reasoning, and her successors, in terms of
16 the interpretation and implementation of the Ordinance. Accordingly, the Plaintiffs are unable to
17 admit or deny certain requests for admission. Plaintiffs also base many responses on their (and
18 their attorneys) numerous contacts with the Diane Curry, her staff and Matthew Kiedrowski from
19 County Counsel’s office. Some of those contacts are alleged in the complaint and supported by
20 documents.

21 The County’s attempts to have the Plaintiffs admit to facts that are not consistent with
22 their experience is transparent and non-productive. The factual basis for many of their responses
23 to requests for admission relate to their experience, while it appears the County is engaging in
24 Monday morning quarterbacking and/or a post hoc change in how the Ordinance should have
25 been interpreted and implemented by the County when Diane Curry was Interim Commissioner.
26

1 As to the Opt-Out Ordinance the Plaintiffs participated in some aspects of the “process”
2 but were excluded from others. Notably the Plaintiffs are not making a procedural due process
3 claim, rather, their “class of one” and substantive due process claims allege they were the only
4 AG/40 residents in the County, and in the permit process, who had their zoning changed in 2018
5 to prohibit them from cultivating cannabis. If you have evidence to rebut this claim it could be
6 helpful in resolving this case.

7 **RESPONSES TO REQUESTS FOR ADMISSIONS**

8 **REQUEST FOR ADMISSIONS NO. 4:**

9 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
10 worksheet, dated June 19, 2017, YOU did not provide proof of prior cannabis cultivation at 1181
11 Boonville Road, Ukiah, California.

12 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 4:**

13 Admit.

14 **REQUEST FOR ADMISSIONS NO. 5:**

15 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
16 worksheet, dated around August 17, 2017, YOU did not provide proof of prior cannabis
17 cultivation at 1181 Boonville Road, Ukiah, California.

18 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 5:**

19 Admit.

20 **REQUEST FOR ADMISSIONS NO. 7:**

21 Admit that in YOUR June 19, 2017 cannabis cultivation permit application extinguish and
22 transfer worksheet, YOU originally used 43825 Crispin Lane, Manchester, California as the
23 location for proof of prior cultivation.

24 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 7:**

25 Admit.

1 **REQUEST FOR ADMISSIONS NO. 8:**

2 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
3 workshhet, dated around August 14, 2017, YOU changed the location for proof of prior
4 cultivation from 43825 Crispin.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 8:**

6 Admit.

7 **REQUEST FOR ADMISSIONS NO. 13:**

8 Admit that YOU did not receive a different cannabis cultivation permit application from
9 other Mendocino County cannabis cultivation permit applicants.

10 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 13:**

11 Admit. Plaintiff assumed she received the same application as other applicants and the
12 same transfer paperwork as other (B)(3) applicants.

13 **REQUEST FOR ADMISSIONS NO. 15:**

14 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(1)(a),
15 which requires "photographs of any cultivation activities that existed on the legal parcel prior to
16 January 1, 2016."

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 15:**

18 Admit.

19 **REQUEST FOR ADMISSIONS NO. 16:**

20 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(1)(b),
21 which requires "photographs of any cultivation activities that currently exist on the legal parcel."

22 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 16:**

23 Admit.

24 **REQUEST FOR ADMISSIONS NO. 18:**

25 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(3),
26

1 which allows that “[p]ersons able to show proof of prior cultivation pursuant to paragraph (B)(1)
2 above may apply” for a relocation permit.

3 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 18:**

4 Admit.

5 **REQUEST FOR ADMISSIONS NO. 24:**

6 Admit that YOU participated in the cannabis zoning overlay process.

7 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 24:**

8 Admit. Plaintiff was allowed to participate in the process at the early states, however, she
9 was excluded from participating in the op-out sub-group.

10 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 31:**

11 Admit.

12 **REQUEST FOR ADMISSIONS NO. 34:**

13 Admit that there were no qualified applicants who were denied a permit because their
14 cultivation site was located in the DEERWOOD CANNABIS OPT-OUT OVERLAY DISTRICT.

15 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 34:**

16 Plaintiff was unable to admit or deny. The Plaintiff does not live in Deerwood, nor does
17 she know anyone who lives in the Deerwood District.

18 **REQUEST FOR ADMISSIONS NO. 38:**

19 Admit that the temporary license provided by the Interim Director of the Agricultural
20 Commission was not the same as a Mendocino County Code Section 10.17.080 cannabis
21 cultivation permit.

22 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 38:**

23 Plaintiff was unable to admit or deny. The Plaintiff does not know what a “temporary
24 license” is in relation to a “cannabis cultivation permit.” Plaintiff was informed by Diane Curry
25 that her provisional permit would foreseeably become final once all licensing criteria was met.
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REQUEST FOR ADMISSIONS NO. 50:

Admit that YOU were aware of the conditions of receive a cannabis cultivation permit set forth in the Mendocino County Cannabis Cultivation Ordinance during the preparation and submission of YOUR cannabis cultivation permit application.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 50:

Admit.

Dated: February 18, 2022

Respectfully submitted,

SCOTT LAW FIRM

/s/ John Houston Scott
John Houston Scott
Attorney for Plaintiff
ANN MARIE BORGES

CERTIFICATE OF SERVICE

(*Ann Marie Borges, et al., v. County of Mendocino, et al.*, Case No. 3:20-cv-04537-SI)
(Related to Case No. 3:21-cv-07031-SI)

I, Sherry Alhawwash, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. My business address is 1388 Sutter Street, Suite 715, San Francisco, California 94109. On February 18, 2022, I served the attached:

PLAINTIFF ANN MARIE BORGES'S SUPPLEMENTAL RESPONSE TO DEFENDANT COUNTY OF MENDOCINO'S REQUEST FOR ADMISSIONS, SET ONE

on the interested party(ies) named below:

Pamela K. Graham
Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945
E-mail: PGraham@chwlaw.us

Christian M. Curtis
Brina Anna Blanton
Office of the County Counsel
501 Low Gap Road, Room 1030
Ukiah, CA 95482
E-mail: curtisc@mendocinocounty.org
blantonb@mendocinocounty.org

I served the attached document(s) in the manner indicated below:

☒ **BY E-MAIL:** I caused a copy(ies) of such document(s) to be transmitted via e-mail. The e-mail to which the document(s) were transmitted is listed above. The e-mail transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed February 18, 2022 at San Francisco, California.

/s/ Sherry Alhawwash
Sherry Alhawwash

CERTIFICATE OF SERVICE

SER00151

Plaintiff Gurr's Supplemental Responses
to Defendant's Request for Admission,
Set One

1 John Houston Scott, SBN 72578
2 **SCOTT LAW FIRM**
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6 Facsimile: (415) 561-9609
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8 William A. Cohan, SBN 141804
9 **WILLIAM A. COHAN, P.C.**
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11 Carlsbad, CA 92010
12 Telephone: (442) 325-1111
13 Facsimile: (442) 325-1126
14 bill@williamacohan.com

15 Attorney for the Plaintiffs ANN MARIE BORGES and
16 CHRIS GURR

17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ANN MARIE BORGES and CHRIS GURR,
20 individually and doing business as GOOSE
21 HEAD VALLEY FARMS,

22 Plaintiffs,

23 v.

24 COUNTY OF MENDOCINO, et al., and
25 Does 1-25 inclusive,

26 Defendants.

Case No. 3:20-cv-04537-SI
(Related to Case No. 3:21-cv-07031-SI)

**PLAINTIFF'S SUPPLEMENTAL
RESPONSE TO DEFENDANT'S REQUEST
FOR ADMISSIONS, SET ONE**

27 PROPOUNDING PARTY: Defendant COUNTY OF MENDOCINO

28 RESPONDING PARTY: Plaintiff CHRIS GURR

SET: ONE - SUPPLEMENTAL

1 Pursuant to Federal Rules of Civil Procedure Rule 36, Plaintiff, Chris Gurr, hereby
2 responds and objects to Defendant County of Mendocino's First Set of Requests for Admissions
3 to Plaintiff Chris Gurr.

4 All of the responses contained herein are only upon such information and documents as
5 are presently available to and specifically known to this responding party and disclose only those
6 contentions which presently occur to such responding party.

7 It is possible that further discovery, independent investigation, legal research, and analysis
8 may supply additional entirely new factual conclusions and legal contentions, all of which may
9 lead to substantial additions to, changes in, and variations from the contentions herein set forth.

10 Except for explicit facts admitted herein, no incidental or implied admissions are intended
11 hereby. The fact that respondent has answered any request for admission should not be taken as
12 an admission that respondent accepts or admits the existence of any facts set forth or assumed by
13 such request for admission, or that such response constitutes admissible evidence. The fact that
14 respondent has answered part or all of any request for admission is not intended and shall not be
15 construed to be a waiver by respondent of all or any part of any objection to any request for
16 admission made by respondent.

17 The following responses are given without prejudice to responding party's right to produce
18 evidence of any subsequently discovered fact or facts which this responding party may later
19 recall. Responding party accordingly reserves the right to change any and all responses herein as
20 additional facts are ascertained, analyses are made, legal research is completed, and contentions
21 are made. The responses contained herein are made in a good-faith effort to supply as much
22 factual information and as much specification of legal contentions as are presently known, but
23 should in no way be to the prejudice of this responding party in relation to further discovery,
24 research, or analysis.

1 Plaintiffs request the opportunity to meet and confer with defense counsel regarding
2 interrogatories that relate to requests for admission, in part, because many of the requests for
3 admission are vague, compound and/or subject to interpretation. For example, many of the
4 requests for admission ask the plaintiffs to speculate in terms of how an ordinance was interpreted
5 by them, Diane Curry, County Counsel or others during 2017 and early 2018. The Plaintiffs
6 relied on Diane Curry, County Counsel and/or their own attorney to interpret what steps they had
7 to take to qualify as (B)(3) applicants. This included an “Agreement Not to Resume Cannabis
8 Cultivation” (See Ex. D to the FAC) requested by County Counsel and prepared by Plaintiffs
9 attorney, at the request of County Counsel, for purposes of having their permit approved. The
10 County’s ultimate decision to deny their permit because they did not qualify as (B)(1) applicants
11 cannot be explained by the Plaintiffs. Plaintiffs are asked to “pin the tail” on a moving and/or
12 different donkey.

13 Diane Curry has provided a declaration and deposition testimony regarding these
14 issues. It appears the County chose to “move the goalposts” after Diane Curry was replaced and
15 is now asking the Plaintiffs to explain her thinking or reasoning, and her successors, in terms of
16 the interpretation and implementation of the Ordinance. Accordingly, the Plaintiffs are unable to
17 admit or deny certain requests for admission. Plaintiffs also base many responses on their (and
18 their attorneys) numerous contacts with the Diane Curry, her staff and Matthew Kiedrowski from
19 County Counsel’s office. Some of those contacts are alleged in the complaint and supported by
20 documents.

21 The County’s attempts to have the Plaintiffs admit to facts that are not consistent with
22 their experience is transparent and non-productive. The factual basis for many of their responses
23 to requests for admission relate to their experience, while it appears the County is engaging in
24 Monday morning quarterbacking and/or a post hoc change in how the Ordinance should have
25 been interpreted and implemented by the County when Diane Curry was Interim Commissioner.
26

1 As to the Opt-Out Ordinance the Plaintiffs participated in some aspects of the “process”
2 but were excluded from others. Notably the Plaintiffs are not making a procedural due process
3 claim, rather, their “class of one” and substantive due process claims allege they were the only
4 AG/40 residents in the County, and in the permit process, who had their zoning changed in 2018
5 to prohibit them from cultivating cannabis. If you have evidence to rebut this claim it could be
6 helpful in resolving this case.

7 **RESPONSES TO REQUESTS FOR ADMISSIONS**

8
9 **REQUEST FOR ADMISSIONS NO. 4:**

10 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
11 worksheet, dated June 19, 2017, YOU did not provide proof of prior cannabis cultivation at 1181
12 Boonville Road, Ukiah, California.

13 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 4:**

14 Admit.

15 **REQUEST FOR ADMISSIONS NO. 5:**

16 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
17 worksheet, dated around August 17, 2017, YOU did not provide proof of prior cannabis
18 cultivation at 1181 Boonville Road, Ukiah, California.

19 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 5:**

20 Admit.

21 **REQUEST FOR ADMISSIONS NO. 7:**

22 Admit that in YOUR June 19, 2017 cannabis cultivation permit application extinguish and
23 transfer worksheet, YOU originally used 43825 Crispin Lane, Manchester, California as the
24 location for proof of prior cultivation.

25 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 7:**

26 Admit.

1 **REQUEST FOR ADMISSIONS NO. 8:**

2 Admit that in YOUR cannabis cultivation permit application extinguish and transfer
3 workshhet, dated around August 14, 2017, YOU changed the location for proof of prior
4 cultivation from 43825 Crispin.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 8:**

6 Admit.

7 **REQUEST FOR ADMISSIONS NO. 13:**

8 Admit that YOU did not receive a different cannabis cultivation permit application from
9 other Mendocino County cannabis cultivation permit applicants.

10 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 13:**

11 Admit. Plaintiff assumed he received the same application as other applicants and the
12 same transfer paperwork as other (B)(3) applicants.

13 **REQUEST FOR ADMISSIONS NO. 15:**

14 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(1)(a),
15 which requires "photographs of any cultivation activities that existed on the legal parcel prior to
16 January 1, 2016."

17 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 15:**

18 Admit.

19 **REQUEST FOR ADMISSIONS NO. 16:**

20 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(1)(b),
21 which requires "photographs of any cultivation activities that currently exist on the legal parcel."

22 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 16:**

23 Admit.

24 **REQUEST FOR ADMISSIONS NO. 18:**

25 Admit that YOU were aware of Mendocino County Code Section 10A.17.080(B)(3),
26
27

1 which allows that “[p]ersons able to show proof of prior cultivation pursuant to paragraph (B)(1)
2 above may apply” for a relocation permit.

3 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 18:**

4 Admit.

5 **REQUEST FOR ADMISSIONS NO. 24:**

6 Admit that YOU participated in the cannabis zoning overlay process.

7 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 24:**

8 Admit. Plaintiff was allowed to participate in the process at the early states, however, he
9 was excluded from participating in the op-out sub-group.

10 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 31:**

11 Admit.

12 **REQUEST FOR ADMISSIONS NO. 34:**

13 Admit that there were no qualified applicants who were denied a permit because their
14 cultivation site was located in the DEERWOOD CANNABIS OPT-OUT OVERLAY DISTRICT.

15 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 34:**

16 Plaintiff was unable to admit or deny. The Plaintiff does not live in Deerwood, nor does
17 he know anyone who lives in the Deerwood District.

18 **REQUEST FOR ADMISSIONS NO. 38:**

19 Admit that the temporary license provided by the Interim Director of the Agricultural
20 Commission was not the same as a Mendocino County Code Section 10.17.080 cannabis
21 cultivation permit.

22 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 38:**

23 Plaintiff was unable to admit or deny. The Plaintiff does not know what a “temporary
24 license” is in relation to a “cannabis cultivation permit.” Plaintiff was informed by Diane Curry
25 that his provisional permit would foreseeably become final once all licensing criteria was met.
26

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1 **REQUEST FOR ADMISSIONS NO. 50:**

2 Admit that YOU were aware of the conditions ot reeive a cannabis cultivation permit set
3 forth in the Mendocino County Cannabis Cultivation Ordinance during the preparation and
4 submission of YOUR cannabis cultivation permit application.

5 **RESPONSE TO REQUEST FOR ADMISSIONS NO. 50:**

6 Admit.

7
8 Dated: February 18, 2022

Respectfully submitted,

9 **SCOTT LAW FIRM**

10
11
12 /s/ John Houston Scott
13 John Houston Scott
14 Attorney for Plaintiff CHRIS GURR

CERTIFICATE OF SERVICE

**(Ann Marie Borges, et al., v. County of Mendocino, et al., Case No. 3:20-cv-04537-SI)
(Related to Case No. 3:21-cv-07031-SI)**

I, Sherry Alhawwash, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. My business address is 1388 Sutter Street, Suite 715, San Francisco, California 94109. On February 18, 2022, I served the attached:

**PLAINTIFF CHRIS GURR'S SUPPLEMENTAL RESPONSE TO DEFENDANT
COUNTY OF MENDOCINO'S REQUEST FOR ADMISSIONS, SET ONE**

on the interested party(ies) named below:

Pamela K. Graham Colantuono, Highsmith & Whatley, PC 420 Sierra College Drive, Suite 140 Grass Valley, CA 95945 E-mail: PGraham@chwlaw.us	Christian M. Curtis Brina Anna Blanton Office of the County Counsel 501 Low Gap Road, Room 1030 Ukiah, CA 95482 E-mail: curtisc@mendocinocounty.org blantonb@mendocinocounty.org
--	---

I served the attached document(s) in the manner indicated below:

☒ **BY E-MAIL:** I caused a copy(ies) of such document(s) to be transmitted via e-mail. The e-mail to which the document(s) were transmitted is listed above. The e-mail transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed February 18, 2022 at San Francisco, California.

/s/ Sherry Alhawwash
Sherry Alhawwash

CERTIFICATE OF SERVICE

SER00160

EXHIBIT FF

SCOTT LAW FIRM

John Houston Scott
john@scottlawfirm.net
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www.scottlawfirmsf.com

Telephone
(415) 561-9600-Main

Facsimile
(415) 561-9609

February 22, 2022

[SENT VIA E-MAIL]

Pamela K. Graham
Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945
Email: PGraham@chwlaw.us;

Re: *Borges, et al., v. County of Mendocino, et al.*, Case No. 3:20-cv-04537-SI;
(Related to Case No. 3:21-cv-07031-SI)

Dear Ms. Graham,

My clients have authorized me to make a demand of \$500,000 each for general damages. In addition, my clients demand that the County amend the Ordinance 4420, Section 11, to remove the Boonville/Woodyglen CP District.

Please also be advised that the Plaintiffs are also withdrawing Ann Marie Borges as an expert witness and Plaintiffs will not oppose the pending motion as to Ms. Borges.

Sincerely,

SCOTT LAW FIRM



John Houston Scott

/jhs

cc: William A. Cohan

EXHIBIT GG

1 John Houston Scott, SBN 72578
2 **SCOTT LAW FIRM**
3 1388 Sutter Street, Suite 715
4 San Francisco, California 94109
5 Telephone: (415) 561-9601
6 Facsimile: (415) 561-9609
7 john@scottlawfirm.net

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Carlsbad, CA 92010
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Facsimile: (442) 325-1126
Email: bill@williamacohan.com

Attorney for the Plaintiffs ANN MARIE BORGES
and CHRIS GURR

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES and CHRIS GURR,
individually and doing business as GOOSE
HEAD VALLEY FARMS,

Plaintiffs,

v.

COUNTY OF MENDOCINO, et al., and
DOES 1-25 inclusive,

Defendants.

Case No. Case No. 3:20-cv-04537-SI (JCS)
(Related to Case No. 3:21-cv-07031-SI)

**PLAINTIFFS' SETTLEMENT
CONFERENCE STATEMENT**

Date: March 8, 2022
Time: 10:00 a.m.
Crtm.: via Zoom Video Conference
Judge: The Hon. Magistrate Joseph C. Spero

PLAINTIFFS' SETTLEMENT CONFERENCE STATEMENT

SER00164

Plaintiffs property was zoned agricultural (AG40) as opposed to residential, commercial, recreational, environmental or other designated purpose. From a zoning perspective the plaintiffs were desirable applicants. On May 1, 2017 plaintiffs completed their application to cultivate medical cannabis. On May 4, 2017 – while accompanied by an attorney – plaintiffs met with Commissioner Diane Curry and Christina Pallman of her staff. Their B-3 application to relocate to a new site was conditionally approved by Commissioner Curry based on the information contained in the application, documents provided, and proof of prior cultivation experience. (FAC ¶ 14)

On or about September 16, 2017 Plaintiffs were contacted by Commissioner Curry and notified their permit application was finally approved. On September 19, 2017 the Plaintiffs went to Commissioner Curry's office to pick up the permit. The anticipated handoff was prevented by Deputy County Counsel Matthew Kiedrowski. He informed the Plaintiffs that in order to receive the (B)(3) permit issued by Commissioner Curry they needed to provide additional proof that the site of prior cultivation in Willits was no longer able to resume cannabis cultivation. No other reason was given for being denied a permit. Plaintiffs hired a local land use attorney, Tina Wallis, to resolve this remaining issue. On or about October 31, 2017 Tina Wallis, on behalf of the Plaintiffs, submitted to Matthew Kiedrowski a signed Agreement Not to Resume Cannabis Cultivation at the prior cultivation site in Willits. See Exhibit D attached. It was anticipated the permit would then be delivered. (FAC ¶ 30)

Beginning on or about November 2017 defendant Sue Anzilotti colluded with her neighbors and conspired with defendants John McCowen, Carre Brown and Georgeanne Croskey to cause the County to create an “opt-out” zone that would change the County zoning plan. It was intended to target the Plaintiffs and preclude them from cultivating cannabis on their property. In January 2018 the County initiated a sham process to create opt-in and opt-out zones in the County regarding the cultivation of cannabis. County officials intentionally excluded plaintiff Chris Gurr

1 from participating in the process as well as other residents who were not opposed to plaintiffs'
2 cultivation of cannabis. (FAC ¶ 31)

3 After completing and submitting CalCannabis applications, on January 23, 2018 the
4 Plaintiffs received a Temporary Cannabis Cultivation License from the California Department of
5 Food and Agriculture. See Exhibit F attached. This was issued following a close examination
6 and inspection of the Plaintiffs' property and water supply by the CDFW, the State Water
7 Resources Control Board, and the State Department of Food and Agriculture. (FAC ¶ 33)

8 On or about March 2018 Diane Curry left her position as Interim Commissioner of the
9 Department of Agriculture. (FAC ¶ 34)

10 On July 9, 2018 the County of Mendocino, Department of Agriculture mailed a letter to
11 the Plaintiffs notifying them that their application to cultivate medical cannabis had been denied
12 because they did not provide evidence of prior and current cultivation on the same parcel as
13 required by paragraph (B)(1) of the local Ordinance/10A.17.080. See Exhibit G attached. This
14 denial was based on a false premise and contrary to the decision of Commissioner Curry. (FAC ¶
15 35)

16 The Plaintiffs never applied for a medical cannabis cultivation permit pursuant to
17 paragraph (B)(1) of the County Ordinance. Rather, Plaintiffs' application was submitted pursuant
18 to paragraph (B)(3) of the Ordinance which expressly allowed for permits to be issued based on
19 "relocation." It provides that; "Persons able to show proof of prior cultivation pursuant to
20 paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the 'origin
21 site') but on a different legal parcel (the 'destination site') subject to the following
22 requirements...". The Plaintiffs met all of the (B)(3) requirements as determined by
23 Commissioner Curry in May and September 2017. (FAC ¶ 36)

24 The Plaintiffs are the only AG40 applicants who complied with all (B)(3) requirements, as
25 determined by Commissioner Curry as the final decisionmaker for the County but were later
26 informed their application had been denied. (FAC ¶ 37)

1 Beginning on or about November 2017, and in furtherance of the conspiracy, John
2 McCowen and Carre Brown participated in a process to create an “opt-out” zone designed to
3 prevent the plaintiffs from cultivating cannabis on their property notwithstanding plaintiffs’
4 permit being approved by Commissioner Curry. (FAC ¶ 45)

5 Commissioner Curry was ultimately succeeded by Harinder Grewal. Commissioner
6 Grewal signed a letter prepared by Matthew Kiedrowski dated July 9, 2018. The letter was sent
7 by the County of Mendocino on or about that date officially notifying the Plaintiffs their
8 application for a permit was denied with the purported reason for the denial. See Exhibit G
9 attached. The reason proffered for the denial is both false and pretextual. (FAC ¶ 47)

10 The “opt-out” amendment included as part of Ordinance No. 4420, (Exhibit H attached),
11 Section 11, at page 24, targeted only two neighborhoods in the entire County. Of the two, the
12 plaintiffs’ property was located in the Boonville/Woodyglen CP District, an area zoned
13 agricultural. This unprecedented political experiment gave a right to plaintiffs’ neighbors to
14 decide whether to “opt-out” of the zoning plan and thus prevent plaintiffs from exercising their
15 right to cultivate cannabis on their property. Plaintiffs were the only qualified persons in an
16 agricultural zone in the County adversely affected by the “opt-out” amendment to the zoning
17 plan. (FAC ¶ 48)

18 In furtherance of the conspiracy, on December 4, 2018 a new ordinance was passed by
19 defendants John McCowen, Carre Brown and Georgeanne Croskey. It created an “opt-out” zone
20 designed to prohibit the plaintiffs from cultivating cannabis on their property. This zoning
21 decision was made for no legitimate reason and was based on impermissible motives. On
22 information and belief, this was the first time a County in the State of California created an opt-
23 out zone in the zoning plan that prevented a property owner from cultivating cannabis based
24 solely on the vote of neighbors. (FAC ¶ 49)

25 The County of Mendocino denied the Plaintiffs’ application for a permit to cultivate
26 medical cannabis for irrational, arbitrary and impermissible reasons in violation of the Equal
27 Protection Clause of the Fourteenth Amendment. Plaintiffs are the only AG40 applicants denied
28

1 a permit who met the necessary requirements under category (B)(3) of the Ordinance and were
2 approved for a permit by Diane Curry acting as the Interim Commissioner of the Department of
3 Agriculture and final decisionmaker for the County. (FAC ¶ 56)

4 In addition, during 2018 the County of Mendocino created an “opt-out” zone that became
5 law on December 4, 2018. Ordinance No. 4420, Section 11, specifically targeted the Plaintiffs as
6 the only qualified applicants in an agricultural area prohibited from cultivating cannabis based on
7 change in zoning. (FAC ¶ 57)

8 Plaintiffs request that this court declare that Section 11 of Ordinance 4420 null and void
9 because it deprives Plaintiffs of their property rights without legal authority and in violation of the
10 Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. The change
11 in zoning, directly impacting the Plaintiffs, was made for no legitimate reason and was the result
12 of impermissible motives. (FAC ¶ 74)

13 **2. Claims and Defenses**

14 The Plaintiffs have two “class of one” Equal Protection claims for which they are seeking
15 general damages including fear, anxiety, humiliation and emotional distress according to proof as
16 well as Declaratory Relief that Section 11 of Ordinance 4420 is null and void.

17 The County of Mendocino contends that the Plaintiffs (1) were not qualified to obtain a
18 permit to relocate to a new site and (2) were not the only persons adversely impacted by the new
19 Ordinance.

20 **3. Key Facts in Dispute**

21 The key facts in dispute are: (1) whether the Plaintiffs were singled out to be denied a permit
22 on the basis that no other persons were allowed to relocate and obtain a (B)(3) permit and (2)
23 whether the Plaintiffs were the only persons zoned agricultural (AG40) specifically targeted to be
24 prohibited from cultivating cannabis. The Plaintiffs have attached the Declaration of Diane Curry
25 (without exhibits). Miss Curry was the former Interim Commissioner of Agriculture for Mendocino
26 County at the time Plaintiffs applied for a permit to cultivate marijuana. (Exhibit A attached)

4. Summary of Proceedings to Date

The defendants brought a motion to dismiss that was granted in part and denied in part in an order dated December 13, 2020. (Document 50) The County of Mendocino also recently brought a discovery motion that was granted in part. (Document 93)

5. Estimate of Cost and Time to be Expended for Summary Judgment, Pre-trial and Trial

The Plaintiffs estimate that the cost and time to be extended for summary judgment, pre-trial preparation and trial could easily exceed \$300,000 in addition to cost and time already devoted to this case.

6. Relief Sought

The Plaintiffs seek general damage, declaratory relief and attorneys' fees and costs should they prevail.

7. Plaintiffs Position on Settlement

There have been no settlement discussions to date. The Plaintiffs recently made a monetary demand of \$500,000 each and a request that the County of Mendocino amend Ordinance 4420 to eliminate the “opt-out” zone which impacts them.

8. Persons Attending Settlement Conference

The Plaintiffs will attend the settlement conference with attorneys John Scott and William Cohan.

Dated: February 22, 2022

Respectfully submitted,

SCOTT LAW FIRM

By: /s/ John Houston Scott
Attorney for Plaintiffs

Exhibit A

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8 William A. Cohan, SBN 141804
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12 Telephone: (858) 832-1632
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14 bill@williamacohan.com

15 Attorney for the Plaintiffs

16
17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA
20

21 ANN MARIE BORGES and CHRIS GURR,
22 individually and doing business as GOOSE
23 HEAD VALLEY FARMS,

24 Plaintiffs,

25 v.

26 COUNTY OF MENDOCINO, SUE
27 ANZILOTTI, JOHN McCOWEN, CARRE
28 BROWN, GEORGEANNE CROSKY,
MASON HEMPHILL and Does 1 – 25
inclusive,

Defendants.

Case No. 3:20-cv-04537-SI

DECLARATION OF DIANE CURRY

DECLARATION OF DIANE CURRY

SER00171

1 I, Diane Curry, declare as follows:

2 1. I am the former Interim Commissioner of the Department of Agriculture for the
3 County of Mendocino. I held that position from 1/2017 to 3/2018.

4 2. I have 23 years total working within the Agricultural Commissioner system in San
5 Joaquin and Mendocino County. I have a B.A. degree in Botany and I started my career as a
6 Agricultural Biologist for San Joaquin Department of Agriculture. I received all of my biologist
7 licenses along with my certification to approve agricultural commodities for export. My career in
8 San Joaquin County consisted of performing the duties of a district biologist which included
9 pesticide use enforcement, commodity certification, grower education and outreach, along with
10 plant pest quarantine. I transferred to Mendocino County Department of Agriculture where I had
11 the same duties as in San Joaquin. I then began to pursue the additional licenses required to
12 become a Deputy and Commissioner/Sealer. In 2012 I became the Interim Assistant Agricultural
13 Commissioner/Sealer where I oversaw the daily activities of the department. I was a direct
14 supervisor to 8 full time employees and 6 seasonal employees. I had direct oversight of eight
15 programs. In January 2017 I was appointed to the position of Interim Agricultural Commissioner
16 Sealer.

17 3. My duties and responsibilities as Interim Commissioner included administering
18 the provisions of the California Food and Agricultural Code Division 2 Local Administration
19 2001 -2344. I had the responsibility of implementing the newly adopted Mendocino County
20 Cannabis Cultivation Ordinance.

21 4. During 2017 I was tasked to interpret and implement the new ordinance allowing
22 qualified applicants to receive permits to cultivate cannabis in the county. After months of
23 meetings and numerous revisions, a new ordinance was passed on April 4, 2017, Ordinance No.
24 4381, referred to as the Medical Cannabis Cultivation Ordinance/Chapter 10A.17. A true and
25 correct copy is attached as Exhibit A to my declaration. This ordinance was in effect beginning
26 May 4, 2017. One of my responsibilities was to interpret and implement the new ordinance. At
27

28 - 1 -

DECLARATION OF DIANE CURRY

SER00172

1 Section 10A.17.080 it sets forth "Permit Phases and Requirements Specific to each Phase." Phase
2 One commenced in May 4, 2017. It provides that; "Permits will only be issued to applicants who
3 provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of
4 cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who
5 comply with all applicable conditions of this Chapter and Chapter 20.242. Applicants for permits
6 during Phase One shall only be accepted until December 31, 2017. Applicants able to provide
7 proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3)
8 of this section." It was the intent of the county to let our legacy growers be the first to obtain
9 permits. Proof of prior cultivation was to be presented to my office just to verify grower was
10 indeed growing in Mendocino. The proof of prior cultivation was never meant to be retained. It
11 was verified by my staff and returned to applicant. The environmental document stated that the
12 County would not increase acreage already in cultivation, but would allow a current cultivator on
13 an inappropriate site to relocate to a more suitable site.

14 5. The ordinance goes on to identify two categories of applicants: (B)(1) applicants
15 who provide proof of cultivation activities prior to January 1, 2016, and seek a permit to cultivate
16 at the prior cultivation site; and (B)(3) applicants who provide proof of cultivation activities prior
17 to January 1, 2016, at an origin site and apply to relocate their cultivation site to a destination
18 parcel. As to (B)(3) applicants the ordinance further provides that (1) the origin site shall be
19 restored, (2) the applicant provide an agreement, on a form approved by the Agricultural
20 Commissioner and County Counsel, providing that the applicant releases any right to continue or
21 resume cultivation on the origin parcel, and (3) if a person is granted a permit to a destination site,
22 any claims of proof of prior cultivation on the origin site shall be effectively transferred to the
23 destination site. Thus, the ability to claim proof of prior cultivation at the origin site shall be
24 extinguished.

25 6. On May 4, 2017, Ann Marie Borges and Chris Gurr submitted an application for a
26 permit pursuant to paragraph (B)(3) of the ordinance. They submitted an application together with
27

1 proof of prior cultivation at a cultivation site in the county prior to January 1, 2016. Based on
2 staff review of the application, an "Application Receipt" for the site located at 1181 Booneville
3 Road, Ukiah, California was issued. A true and correct copy of the Application Receipt is
4 attached hereto as Exhibit B. This is essentially a temporary permit that determined "the garden
5 at this site is considered to be in compliance, or working toward compliance, until such time as a
6 permit is issued or denied." My staff conducted a site inspection of the Gurr property and found
7 it to be in compliance with the ordinance, but I also wanted Fish and Wildlife to inspect the
8 property because the well was close to a seasonal creek. At about this time it was brought to my
9 attention that the neighbors around the Gurr property did not want a permitted cannabis grow near
10 their properties. I was accustomed to people complaining about agricultural activities close to
11 their homes, but this was agriculture on agricultural zoned property. I instructed my staff to move
12 forward with the approval process. As with all the County cultivators it was implied that as long
13 as you submitted your application and we're moving toward compliance that you could move
14 forward with your cultivation for 2017 which Borges and Gurr did. The County was fully aware
15 that the compliance process would take time, but as long as an applicant was moving toward
16 compliance and was considered in good standing the applicant could commence cultivation
17 subject to complying with all conditions that applied to (B)(3) applicants.

18 7. Sometime after being made aware of the Gurr neighbor complaint I was in a
19 meeting that was also attended by Deputy County Counsel, Matthew Kiedrowski. I knew that
20 County Counsel was aware of the neighbor issue with regard to the Gurr permit. Mr. Kiedrowski
21 informed me that Supervisor John McCowen would never allow Borges and Gurr to be approved
22 for a permit. Mr. Kiedrowski said that Supervisor McCowen was the one who came up with the
23 idea that coastal property did not meet the requirement regarding proof of prior cultivation. The
24 newly created environmental document was only for the inland portion of Mendocino County.
25 Since the proof of prior information was not kept by our office, I don't know how Supervisor
26

1 McCowen knew of the coastal property that was the initial proof of prior cultivation submitted by
2 Ms. Borges and Mr. Gurr.

3 8. Sometime in August 2017, Ms. Borges and Mr. Gurr supplemented their
4 application to include an inland site in Willits to satisfy the proof of prior cultivation requirement.
5 Based on my review of the of this new information, I was satisfied that the new site met the proof
6 of prior cultivation requirement of the ordinance and I instructed my staff to move forward with
7 issuing a permit to Borges and Gurr. I informed Borges and Gurr of this decision in September
8 2017. They scheduled an appointment to pick up the permit at my office.

9 9. I informed Matthew Kiedrowski that my office was going to issue the permit to
10 Gurr and Borges. Mr. Kiedrowski requested that I wait to issue the permit because he wanted
11 more documentation with regards to the Willits property. He requested that Borges and Gurr, as
12 (B)(3) applicants, had to comply with Chapter 10A.17.080(B)(3), Subsection (e), by providing an
13 agreement, approved by County Counsel, stating that the applicant releases any right to continue
14 or resume cultivation on the origin site. This was the only obstacle brought to my attention that
15 would prevent or delay the permit from being issued.

16 10. I was informed that Mr. Kiedrowski would be coordinating with an attorney for
17 the applicants to satisfy this remaining requirement. I was provided with a copy of the
18 "Agreement Not to Resume Cannabis Cultivation" attached here as Exhibit C. It was my
19 understanding that once this agreement was approved by County Counsel the permit would issue.
20 I was never informed by anyone that applicants Borges and Gurr did not qualify for a permit, nor
21 am I aware of any reason the permit I approved should not have been issued to Borges and Gurr
22 upon receipt of the agreement.

23 11. As Acting Commissioner of the Department of Agriculture during Phase One
24 (between May 2017 through December 31, 2017) my staff approved numerous (B)(3)
25 applications for permits that involved proof of prior cultivation at an origin site prior to January 1,
26 2016. Ann Marie Borges and Chris Gurr were able to show proof of prior cultivation and were in
27

1 a desired location for the cultivation of cannabis. Pending the determination of Fish and Wildlife
2 with regards to the well, I saw no reason not to issue the permit, knowing that Gurr and Borges
3 were moving toward compliance.

4 I declare under penalty of perjury the foregoing is true and correct. Executed this 20th day
5 of November, 2020, at Willits, California.
6

7 
8 Diane Curry
9

CERTIFICATE OF SERVICE

(Ann Marie Borges, et al., v. County of Mendocino, et al.,
Case No. 3:20-cv-04537-SI (JCS) (Related to Case No. 3:21-cv-07031-SI)

I, Sherry Alhawwash, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. My business address is 1388 Sutter Street, Suite 715, San Francisco, California 94109. On February 22, 2022, I served the attached:

PLAINTIFFS' SETTLEMENT CONFERENCE STATEMENT

on the interested party(ies) named below:

Pamela K. Graham Colantuono, Highsmith & Whatley, PC 420 Sierra College Drive, Suite 140 Grass Valley, CA 95945 E-mail: PGraham@chwlaw.us	Christian M. Curtis Brina Anna Blanton Office of the County Counsel 501 Low Gap Road, Room 1030 Ukiah, CA 95482 E-mail: curtisc@mendocinocounty.org blantonb@mendocinocounty.org
--	---

I served the attached document(s) in the manner indicated below:

- ☒ **BY E-MAIL:** I caused a copy(ies) of such document(s) to be transmitted via e-mail. The e-mail to which the document(s) were transmitted is listed above. The e-mail transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed February 22, 2022 at San Francisco, California.

/s/ Sherry Alhawwash
 Sherry Alhawwash

CERTIFICATE OF SERVICE

SER00177

EXHIBIT HH

In the Matter Of:

BORGES vs COUNTY OF MENDOCINO

3:20-cv-04537-SI

JOHN R. MCCOWEN

December 07, 2021



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SER00179

JOHN R. MCCOWEN
BORGES vs COUNTY OF MENDOCINO

December 07, 2021

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES and) Case No. 3:20-cv-04537-SI
CHRIS GURR, individually)
and doing business as)
GOOSE HEAD VALLEY FARMS,)
Plaintiffs,)
vs.)
COUNTY OF MENDOCINO, SUE)
ANZILOTTI, JOHN MCCOWEN,)
CARRE MASON HEMPHILL, and)
DOES 1-25, inclusive,)
Defendants.)

VIDEOTAPED ZOOM VIDEOCONFERENCE DEPOSITION OF
JOHN ROGER MCCOWEN
UKIAH, CALIFORNIA
DECEMBER 7, 2021

REPORTED BY: MICHAEL CUNDY, CSR 12271



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SER00180

JOHN R. MCCOWEN
BORGES vs COUNTY OF MENDOCINO

December 07, 2021
142

1 my recollection.

2 Q I see.

3 A Ultimately, county staff did agree that
4 cultivation in the coastal zone did not qualify as
5 proof of prior to seek a permit in the inland zoning
6 district.

7 Q Okay. And was that -- was that a policy
8 or -- or how was that being implemented, if you know?

9 A Well, ultimately, it would have been a -- a
10 determination that would have been made, and it might
11 be that at that point -- I -- yeah. So it's a
12 determination.

13 The reason I paused was I know that I was
14 making those points when Nash Gonzales was appearing
15 before the board of supervisors, but the program was
16 still being administered by the ag department at that
17 point, so that confused me a little bit.

18 But anyway, at some point, the determination
19 was made that, in fact, cultivation in the -- in the
20 coastal zone did not qualify as proof of prior that
21 could be used to qualify a permit in the inland zoning
22 district.

23 Q Understood.

24 And did you understand that, if someone had
25 been growing coastally and inland, that inland growing



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JOHN R. MCCOWEN
BORGES vs COUNTY OF MENDOCINO

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1 support creating an opt-out or not.

2 And there was not universal support. There
3 was -- you know, it had to be a minimum of 60 percent
4 in support, and I don't recall the exact number, but
5 there were some people who were opposed to creation of
6 the -- of the Deerwood opt-out.

7 And I think that was true for all of the
8 opt-in and opt-out. There was not unanimity of
9 opinion but there had to be a strong majority.

10 Q In terms of the Boonville/Woody Glen
11 neighborhood, were you aware of anyone who was opposed
12 to the opt-out?

13 A Well, I know the Gurrs specifically were
14 opposed.

15 I think, again, both within the Woody Glen
16 neighborhood, I'm not aware specifically of anyone
17 else who was opposed.

18 In the larger area around it, I think there
19 were probably some people who did vote, if you will,
20 against creation of the opt-out.

21 Q When you say, people voted, how did that
22 work, people voting?

23 A Well, again, the consultant mailed a notice
24 to anyone in the proposed group and also mailed notice
25 to neighbors within some defined perimeter.



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JOHN R. MCCOWEN
BORGES vs COUNTY OF MENDOCINO

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1 And then people were asked to return -- you
2 know, I think they were asked to mail back -- I'm not
3 certain -- indicating that they either supported or
4 didn't support creation of the opt-out or opt-in zone,
5 whichever it was.

6 So vote is kind of a euphemism, but the
7 consultant was tracking, is there 60 percent or more
8 support, which would then be the part of the basis of
9 their recommendations of the board of supervisors.

10 Q All right. And to your knowledge, were there
11 people in the permit process who lived in the Deerwood
12 District or neighborhood who were impacted by the
13 opt-out ordinance?

14 A I don't know.

15 Q Would it be fair to say my clients are the
16 only people you are aware of who were impacted -- at
17 least publicly came out and were in permit process and
18 were impacted by the opt-out ordinance?

19 A Yes. They are the only ones I'm aware of.

20 MR. SCOTT: I have no further questions, and
21 I apologize. We went one hour and two minutes, so
22 forgive me for that. I did my best, but I have no
23 further questions.

24 Your attorney may have some questions,
25 although I doubt it, but I have to give him the



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JOHN R. MCCOWEN
BORGES vs COUNTY OF MENDOCINO

December 07, 2021
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1 STATE OF CALIFORNIA)
2 CITY AND COUNTY OF SAN FRANCISCO) SS:

3

4 I, Michael Cundy, CSR No. 12271, a
5 Certified Shorthand Reporter of the State of
6 California, do hereby certify:

7 That the foregoing proceedings were
8 taken before me at the time and place herein set
9 forth; that any witnesses in the foregoing
10 proceedings, prior to testifying, were placed under
11 oath; that a verbatim record of the proceedings was
12 made by me using machine shorthand which was
13 thereafter transcribed under my direction; further,
14 that the foregoing is an accurate transcription
15 thereof.

16 I further certify that I am neither
17 financially interested in the action nor a relative or
18 employee of any attorney or any of the parties.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

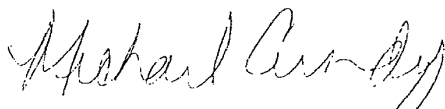
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22 Dated: December 17, 2021

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Michael Cundy, CSR No. 12271



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JOHN R. MCCOWEN
BORGES vs COUNTY OF MENDOCINO

December 07, 2021
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DEPOSITION ERRATA SHEET

Our Assignment No. J7693072

Case Caption: Borges

vs. County of Mendocino

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the captioned matter
or the same has been read to me, and
the same is true and accurate, save and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the _____ day of
_____, 20____.

John Roger McCowen



800.211.DEPO (3376)
EsquireSolutions.com

SER00185

EXHIBIT II

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13 Facsimile: (858) 832-1845
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15 Attorney for the Plaintiffs ANN MARIE BORGES and
16 CHRIS GURR

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ANN MARIE BORGES and CHRIS GURR,
20 individually and doing business as GOOSE
21 HEAD VALLEY FARMS,

22 Plaintiffs,

23 v.

24 COUNTY OF MENDOCINO, et al., and
25 Does 1-25 inclusive,

26 Defendants.

Case No. 3:20-cv-04537-SI

**PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS,
SET ONE**

27 PROPOUNDING PARTY: Plaintiff ANN MARIE BORGES

28 RESPONDING PARTY: Defendant COUNTY OF MENDOCINO

SET: ONE

1 **TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:**

2 Plaintiff ANN MARIE BORGES hereby requests pursuant to Rule 26(b) and Rule 34 of
3 the Federal Rules of Civil Procedure that Defendant COUNTY OF MENDOCINO produce
4 documents listed below. Production is to be made **30** days from service of this request at the Scott
5 Law Firm, 1388 Sutter Street, Suite 715, San Francisco, CA 94109, Telephone: (415) 561-9601.

6 **DEFINITIONS AND INTRODUCTORY COMMENTS**

7 1. The terms "YOU," or "YOURS," refers to Defendant CITY OF MENDOCINO its
8 agents, representatives, officers, directors, and employees.

9 2. The terms "RELAT(E)(ES)(ING) to" are used to mean related to, concerning,
10 referring to, which evidence, which describe, or which incorporate by reference.

11 3. The terms "RELAT(E)(ES)(ING) to" are used to mean related to, concerning,
12 referring to, which evidence, which describe, or which incorporate by reference.

13 4. The term "DOCUMENT" and "DOCUMENTS" as used herein means, without
14 limitation, any handwriting, typewriting, printing, (computer printer or other), photographing,
15 tape recording (both visual and audio), photocopying, computer files and every other means of
16 recording upon any tangible thing. **This request encompasses all forms of electronically sent**
17 **and/or retrieved electronic information, including, but not limited to "e-mail" and "text**
18 **messages."** Also included in this definition are memoranda, reports, correspondence, notes,
19 messages, files, billing records, logs, notebooks, personal diaries, letters, agreements, telegrams,
20 facsimiles, interoffice communications, interoffice communications, emails, minutes or notes of
21 meetings, transcripts, bulletins, circulars, notices, instructions, work assignments, video tapes,
22 audio tapes, advertisements, press releases, literature, photographs, analysis, comparisons,
23 computer disks or records, computer printouts, memoranda of conversations, desk calendars,
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1 appointment books, time sheets, invoices, statements, bills, checks, bank statements, and all
2 copies of aforesaid upon which have been placed any additional markings or notations.

3 5. All DOCUMENTS requested are for documents that have not yet been transmitted
4 to the plaintiff in F.R.C.P. 26 disclosures or subsequent productions. If you have previously
5 produced responsive documents, please identify them by bates number in your response.
6 If you are claiming a privilege as to any particular DOCUMENT, please produce a privilege log
7 and response identifying the privilege by which the DOCUMENT is protected.
8

9 **REQUESTS FOR PRODUCTION**

10 **REQUEST FOR PRODUCTION NO. 1:**

11 The District Attorney's Office file regarding the search and seizure of plaintiff's property
12 on August 10, 2017.
13

14 **REQUEST FOR PRODUCTION NO. 2:**

15 The Complaint Review Form completed by the District Attorney's Office regarding the
16 August 10, 2017 incident.
17

18 **REQUEST FOR PRODUCTION NO. 3:**

19 All written reports in the possession of the District Attorney's Office regarding the August
20 10, 2017 incident.

21 **REQUEST FOR PRODUCTION NO. 4:**

22 All photographs, videos, and physical evidence regarding the execution of the search
23 warrant on August 2017.

24 **REQUEST FOR PRODUCTION NO. 5:**

25 The Destruction Order regarding the 260 plants taken into custody by Fish & Wildlife on
26 August 10, 2017.
27

1 **REQUEST FOR PRODUCTION NO. 6:**

2 All documents that support compliance with Health & Safety Code Section 11479 in this
3 matter.

4 **REQUEST FOR PRODUCTION NO. 7:**

5 All documents prepared by Sgt. Bruce Smith and/or California Department of Fish and
6 Wildlife agents regarding the August 10, 2017 search of the plaintiff's property.

7 **REQUEST FOR PRODUCTION NO. 8:**

8 All documents prepared by agents or employees of the Mendocino County Sheriff's
9 Office regarding the search of the plaintiff's property on August 10, 2017.

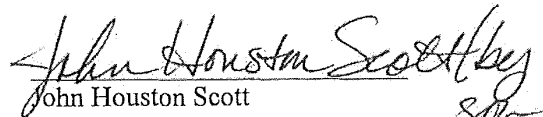
10 **REQUEST FOR PRODUCTION NO. 9:**

11 The chain of custody of the 10 pounds of marijuana taken from the plaintiffs on August
12 10, 2017.

13 Dated: March 31, 2021

14 Respectfully submitted,

15 **SCOTT LAW FIRM**

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17 
18 John Houston Scott
19 Attorney for Plaintiffs
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Attorney for the Plaintiffs ANN MARIE BORGES and
CHRIS GURR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES and CHRIS GURR,
individually and doing business as GOOSE
HEAD VALLEY FARMS,

Plaintiffs,

v.

COUNTY OF MENDOCINO, et al., and
Does 1-25 inclusive,

Defendants.

Case No. 3:20-cv-04537-SI
(Related to Case No. 1:21-cv-07031-SI)

**PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS,
SET TWO**

PROPOUNDING PARTY: Plaintiff ANN MARIE BORGES

RESPONDING PARTY: Defendant COUNTY OF MENDOCINO

SET: TWO

1 **TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:**

2 Plaintiff ANN MARIE BORGES hereby requests pursuant to Rule 26(b) and Rule 34 of
3 the Federal Rules of Civil Procedure that Defendant COUNTY OF MENDOCINO produce
4 documents listed below. Production is to be made **30** days from service of this request at the Scott
5 Law Firm, 1388 Sutter Street, Suite 715, San Francisco, CA 94109, Telephone: (415) 561-9601.

6 **DEFINITIONS AND INTRODUCTORY COMMENTS**

7 1. The terms "YOU," or "YOURS," refers to Defendant CITY OF MENDOCINO its
8 agents, representatives, officers, directors, and employees.

9 2. The terms "RELAT(E)(ES)(ING) to" are used to mean related to, concerning,
10 referring to, which evidence, which describe, or which incorporate by reference.

11 3. The terms "RELAT(E)(ES)(ING) to" are used to mean related to, concerning,
12 referring to, which evidence, which describe, or which incorporate by reference.

13 4. The term "DOCUMENT" and "DOCUMENTS" as used herein means, without
14 limitation, any handwriting, typewriting, printing, (computer printer or other), photographing,
15 tape recording (both visual and audio), photocopying, computer files and every other means of
16 recording upon any tangible thing. **This request encompasses all forms of electronically sent
17 and/or retrieved electronic information, including, but not limited to "e-mail" and "text
18 messages."** Also included in this definition are memoranda, reports, correspondence, notes,
19 messages, files, billing records, logs, notebooks, personal diaries, letters, agreements, telegrams,
20 facsimiles, interoffice communications, interoffice communications, emails, minutes or notes of
21 meetings, transcripts, bulletins, circulars, notices, instructions, work assignments, video tapes,
22 audio tapes, advertisements, press releases, literature, photographs, analysis, comparisons,
23 computer disks or records, computer printouts, memoranda of conversations, desk calendars,
24
25
26
27

1 appointment books, time sheets, invoices, statements, bills, checks, bank statements, and all
2 copies of aforesaid upon which have been placed any additional markings or notations.

3 5. All DOCUMENTS requested are for documents that have not yet been transmitted
4 to the plaintiff in F.R.C.P. 26 disclosures or subsequent productions. If you have previously
5 produced responsive documents, please identify them by bates number in your response.
6 If you are claiming a privilege as to any particular DOCUMENT, please produce a privilege log
7 and response identifying the privilege by which the DOCUMENT is protected.
8

9 **REQUESTS FOR PRODUCTION**

10 **REQUEST FOR PRODUCTION NO. 10:**

11 All DOCUMENTS that relate to contracts or agreements with private property owners to
12 bury or destroy marijuana referred to by Bruce Smith in his deposition at pp. 168-172. (See
13 Exhibit A attached).
14

15 **REQUEST FOR PRODUCTION NO. 11:**

16 All DOCUMENTS that relate to communciations with private property owners, including
17 payments, referred to by Bruce Smith in his deposition at pp. 168-172. (See Exhibit A attached).
18

19 **REQUEST FOR PRODUCTION NO. 12:**

20 All DOCUMENTS that identify the persons who buried or destroyed marijuana delivered
21 by Bruce Smith or other agents of the County of Mendocino for burial or destruction on private
22 property. (See Exhibit A attached).

23 **REQUEST FOR PRODUCTION NO. 13:**

24 All DOCUMENTS that identify the source of the marijuana delivered to private parties to
25 be buried or destroyed on private property. (See Exhibit A attached).
26

1 **REQUEST FOR PRODUCTION NO. 14:**

2 All DOCUMENTS that relate to the chain of custody of the marijuana delivered to private
3 parties to be buried or destroyed on private property. (See Exhibit A attached).

4 **REQUEST FOR PRODUCTION NO. 15:**

5 All DOCUMENTS that identify the weight of the marijuana delivered to private parties to
6 be buried or destroyed on private property. (See Exhibit A attached).

7 **REQUEST FOR PRODUCTION NO. 16:**

8 All DOCUMENTS that identify the person(s) who delivered the marijuana to private
9 parties to be buried or destroyed. (See Exhibit A attached).

10 **REQUEST FOR PRODUCTION NO. 17:**

11 All DOCUMENTS that identify the dates and address marijuana was delivered by agents
12 or employees of the County of Mendocino to private parties for burial or destruction. (See Exhibit
13 A attached).

14 Dated: October 4, 2021

15 Respectfully submitted,

16 **SCOTT LAW FIRM**

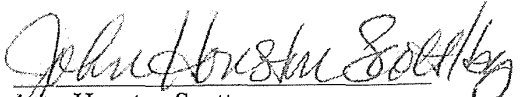
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18 John Houston Scott
19 Attorney for Plaintiffs
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Exhibit A

BRUCE SMITH Vol.II
BORGES V MENDOCINOJuly 13, 2021
49-52

Page 49	Page 51
<p>1 UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF CALIFORNIA</p> <p>3</p> <p>4 ANN MARIE BORGES and) Case No. 3:20-cv-04537-SI</p> <p>5 CHRIS GURR, individually)</p> <p>6 and doing business as)</p> <p>7 GOCSE HEAD VALLEY FARMS,)</p> <p>8)</p> <p>9 Plaintiffs,)</p> <p>10)</p> <p>11 vs.)</p> <p>12)</p> <p>13 COUNTY OF MENDOCINO, SUE)</p> <p>14 ANZILOTTI, JOHN McCOWEN,)</p> <p>15 CARRE MASON HEMPHILL, and)</p> <p>16 DOES 1-25, inclusive,)</p> <p>17)</p> <p>18 Defendants.)</p> <p>19)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 VOLUME II</p> <p>VIDEOTAPED DEPOSITION OF</p> <p>BRUCE ALAN SMITH</p> <p>PAGES 49 THROUGH 215</p> <p>LAKEPORT, CALIFORNIA</p> <p>JULY 13, 2021</p> <p>REPORTED BY: MICHAEL CUNDY, CSR 12271</p>	<p>1 APPEARANCES:</p> <p>2 FOR THE DEPARTMENT OF JUSTICE:</p> <p>3 ATTORNEY GENERAL'S OFFICE</p> <p>4 BY: KYMBERLY E. SPEER, ESQ.</p> <p>5 (Via videoconference)</p> <p>6 1515 Clay Street</p> <p>7 20th Floor</p> <p>8 Oakland, California 94612</p> <p>9 (510) 879-0985</p> <p>10 kymberly.speer@doj.ca.gov</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 CHAD GIVEN</p> <p>VIDEOGRAPHER</p>
Page 50	Page 52
<p>1 DEPOSITION OF BRUCE ALAN SMITH, taken</p> <p>2 at 255 North Forbes Street, Lakeport, California, on</p> <p>3 Tuesday, July 13, 2021, at 10:02 A.M., before Michael</p> <p>4 Cundy, Certified Shorthand Reporter, in and for the</p> <p>5 State of California.</p> <p>6</p> <p>7 APPEARANCES:</p> <p>8 FOR THE PLAINTIFFS:</p> <p>9 SCHWAIGER LAW FIRM</p> <p>10 BY: IZAAK D. SCHWAIGER, ESQ.</p> <p>11 (Via videoconference)</p> <p>12 130 Petaluma Avenue</p> <p>13 Suite 1A</p> <p>14 Sebastopol, California 95472</p> <p>15 (707) 595-4414</p> <p>16 izaak@izaakshwaiger.com</p> <p>17 -and-</p> <p>18 SCOTT LAW FIRM</p> <p>19 BY: JOHN HOUSTON SCOTT, ESQ.</p> <p>20 (Via videoconference)</p> <p>21 1388 Sutter Street</p> <p>22 Suite 715</p> <p>23 San Francisco, California 94109</p> <p>24 (415) 561-9691</p> <p>25 john@scottlawfirm.net</p> <p>FOR THE DEPONENT:</p> <p>COLANTUONO, HIGHSMITH & WHATLEY, PC</p> <p>BY: JOHN POMEROY, ESQ.</p> <p>(Via videoconference)</p> <p>790 East Colorado Boulevard</p> <p>Suite 850</p> <p>Pasadena, California 91101</p> <p>(213) 542-5700</p> <p>jpomeroy@chwlaw.us</p>	<p>1 I N D E X</p> <p>2</p> <p>3 WITNESS: Bruce Alan Smith</p> <p>4</p> <p>5 EXAMINATION: PAGE</p> <p>6 By Mr. Schwaiger 54</p> <p>7</p> <p>8</p> <p>9 INDEX OF EXHIBITS</p> <p>10 EXHIBITS MARKED</p> <p>11 Exhibit 2 Plaintiffs' Re-Notice of 55</p> <p>12 Deposition of Bruce Smith</p> <p>13</p> <p>14 Exhibit 3 Return to Search Warrant, 142</p> <p>15 Evidence Inventory Report,</p> <p>16 and Search Warrant</p> <p>17</p> <p>18 Exhibit 4 Miscellaneous e-mails 190</p> <p>19</p> <p>20 Exhibit 5 Video 203</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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BRUCE SMITH Vol.II
BORGES V MENDOCINO

July 13, 2021
165-168

<p style="text-align: right;">Page 165</p> <p>1 Q Okay.</p> <p>2 A And usually, we put a copy of the order from</p> <p>3 the courts or the D.A.'s office authorizing it into</p> <p>4 our case file so there's some documentation that was</p> <p>5 done.</p> <p>6 Q Now, I have heard of this dump truck before.</p> <p>7 What kind of dump truck is it?</p> <p>8 A It's a Vishay something or something.</p> <p>9 Q How much can it haul at one time?</p> <p>10 A A lot. I don't know. It's probably -- I</p> <p>11 don't know. Every time I guess on things like this,</p> <p>12 I'm wrong, so I don't know what the size is. It's</p> <p>13 pretty big.</p> <p>14 Q I have got a full-sized pickup truck. Could</p> <p>15 I park it in the dump bed?</p> <p>16 A That would be, like, 20 feet, so probably</p> <p>17 not.</p> <p>18 Q But if I was driving a Ford Escort, maybe so?</p> <p>19 A Absolutely.</p> <p>20 Q I want you to know, man to man, that I would</p> <p>21 never actually drive a Ford Escort.</p> <p>22 A Smart man.</p> <p>23 Q All right. So is it someone's job in</p> <p>24 particular to drive the -- the dump truck to the dump</p> <p>25 site, or is it a rotating responsibility?</p>	<p style="text-align: right;">Page 167</p> <p>1 Q And was there a designated location where the</p> <p>2 marijuana was taken for destruction?</p> <p>3 A Yes.</p> <p>4 Q Where was that?</p> <p>5 A I can't tell you.</p> <p>6 MR. SCHWAIGER: Okay. Counsel, do we have a</p> <p>7 protective order in this case?</p> <p>8 MR. POMEROY: We're going to object, Evidence</p> <p>9 Code 1040, official information privilege, and I will</p> <p>10 ask the -- order the witness not to answer.</p> <p>11 MR. SCHWAIGER: Well, hold on. Do we have a</p> <p>12 protective order in this case? I don't know because I</p> <p>13 haven't been on the case since the beginning.</p> <p>14 MS. SPEER: I don't believe so.</p> <p>15 MR. POMEROY: Not to my knowledge.</p> <p>16 MR. SCHWAIGER: I'm just reading section</p> <p>17 1040. Give me a moment. All right.</p> <p>18 Counsel, I understand your objection,</p> <p>19 generally speaking. I was hoping you might be able to</p> <p>20 tell me specifically how you believe the privilege</p> <p>21 applied here.</p> <p>22 MR. POMEROY: Well, the location that was</p> <p>23 asked is private information to law enforcement, and</p> <p>24 it would be against the public interest to disclose</p> <p>25 that location.</p>
<p style="text-align: right;">Page 166</p> <p>1 A Normally --</p> <p>2 MR. POMEROY: Objection. Vague as to time.</p> <p>3 THE WITNESS: It would just depend on the</p> <p>4 situation. Normally, we had a -- the reserve who</p> <p>5 worked with us liked to drive it. He did a lot of it.</p> <p>6 Whatever situation arose, there's times I</p> <p>7 drove it, not very often. There's times the deputy</p> <p>8 assigned to COMET would drive it, less frequently than</p> <p>9 the reserve but more frequently than I did. And</p> <p>10 occasionally, we would let other people from other</p> <p>11 agencies drive it.</p> <p>12 BY MR. SCHWAIGER:</p> <p>13 Q Now, was it customary for one person to be</p> <p>14 responsible for taking the dump truck to the disposal</p> <p>15 site, or was it more than that?</p> <p>16 A It just depended on the situation. If there</p> <p>17 was a couple guys and it was full and it was big</p> <p>18 budded marijuana plants, we would usually run two guys</p> <p>19 or have another vehicle follow, because we routinely</p> <p>20 have people try to run up at a stop sign and grab</p> <p>21 marijuana out of the truck if they could, so we try to</p> <p>22 avoid situations like that.</p> <p>23 If it was just a small load of unbudded, not</p> <p>24 hanging over the thing, sometimes our reserve would do</p> <p>25 it or somebody else, depending on the situation.</p>	<p style="text-align: right;">Page 168</p> <p>1 MR. SCHWAIGER: Right. And why is it against</p> <p>2 the public interest to disclose that location?</p> <p>3 MR. POMEROY: Well, if it was publicly known</p> <p>4 where marijuana was disposed, then it would</p> <p>5 incentivize people to go to that location and try to</p> <p>6 retrieve items from that location. Submitted.</p> <p>7 MR. SCHWAIGER: All right. Thank you.</p> <p>8 BY MR. SCHWAIGER:</p> <p>9 Q Mr. Smith, without telling me the location</p> <p>10 where the marijuana was destroyed, I would like you to</p> <p>11 describe it for me, and by that, what I'm asking is,</p> <p>12 you know, is it a big burn pit someplace? Is it a</p> <p>13 dump? Is it a giant hole in the ground that you fill</p> <p>14 in with a backhoe? Is it a mulching facility? So</p> <p>15 don't tell me the location of it, but do your best to</p> <p>16 describe it to me, please?</p> <p>17 A It is private property where they dig a large</p> <p>18 hole and bury the marijuana.</p> <p>19 Q Is it always the same place?</p> <p>20 A No. We've used several different locations</p> <p>21 over the years.</p> <p>22 Q And is the marijuana mixed in with the dirt,</p> <p>23 or is it just buried? Is it burned? How does that</p> <p>24 work?</p> <p>25 A We -- we've burned it in the past. Normally,</p>



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<p style="text-align: right;">Page 169</p> <p>1 we didn't do it for the last -- the majority of time</p> <p>2 that I was there we never burned any marijuana. It</p> <p>3 was all buried and then covered with dirt.</p> <p>4 Q And the location of this -- of these places</p> <p>5 where you dispose of the marijuana is kept</p> <p>6 confidential by your department; is that right?</p> <p>7 A It is.</p> <p>8 Q And the purpose for keeping it confidential</p> <p>9 is because somebody could come to that location and</p> <p>10 attempt to steal it?</p> <p>11 A Yes, and it's a location where people live</p> <p>12 and would put them in jeopardy of being robbed or</p> <p>13 murdered or injured.</p> <p>14 Q Okay. And is there a practice or policy in</p> <p>15 place that directs a deputy how to destroy the</p> <p>16 marijuana?</p> <p>17 A There is, yes. We have a contract with the</p> <p>18 persons that do the disposal site for us, and the</p> <p>19 marijuana policy was to -- usually larger amounts were</p> <p>20 taken directly there. Smaller amounts were brought to</p> <p>21 our office, temporarily stored until we had a full</p> <p>22 load to go out there, because we paid by the load.</p> <p>23 Q And was the burial done by the property</p> <p>24 owners or their agents, or was it done by law</p> <p>25 enforcement?</p>	<p style="text-align: right;">Page 171</p> <p>1 different locations, two separate people at least, but</p> <p>2 I don't know. There may have been more. It wasn't my</p> <p>3 job assignment to arrange that.</p> <p>4 Q And do you know if it is the County of</p> <p>5 Mendocino that holds that contract specifically or if</p> <p>6 it is the sheriff's office?</p> <p>7 A I don't know that. It's not my job to</p> <p>8 assign. I have no idea.</p> <p>9 Q If you wanted to know, who would you ask?</p> <p>10 MR. POMEROY: Objection. Calling for</p> <p>11 speculation.</p> <p>12 THE WITNESS: I wouldn't know who to ask.</p> <p>13 MR. POMEROY: Answer</p> <p>14 THE WITNESS: Probably the sheriff, Tom.</p> <p>15 BY MR. SCHWAIGER:</p> <p>16 Q Do you know who Sue Anzilotti is?</p> <p>17 A I know the name.</p> <p>18 Q And what do you know about Sue Anzilotti?</p> <p>19 A I don't know anything about her. I know she</p> <p>20 worked for the sheriff's office.</p> <p>21 Q Do you know what capacity she worked in?</p> <p>22 A No. She was not a law enforcement officer, I</p> <p>23 can tell you that.</p> <p>24 Q Have you ever had any communications with Sue</p> <p>25 Anzilotti?</p>
<p style="text-align: right;">Page 170</p> <p>1 A It was done by the property owners or their</p> <p>2 agents while we supervised.</p> <p>3 Q And to your knowledge, was the destruction</p> <p>4 ever videotaped or photographed as it occurred?</p> <p>5 A I don't -- I never did. I don't know that it</p> <p>6 was never done.</p> <p>7 Q Do you know if it ever was?</p> <p>8 A I just said that. I don't know if it ever</p> <p>9 was.</p> <p>10 Q Okay. Thank you.</p> <p>11 Was the contract between the County of</p> <p>12 Mendocino and a private individual?</p> <p>13 A Yes.</p> <p>14 Q Do you know that private individual?</p> <p>15 A I know one of them.</p> <p>16 Q How many are there?</p> <p>17 A There's been different sites over the years,</p> <p>18 so several.</p> <p>19 Q And can you give me an idea of what several</p> <p>20 means?</p> <p>21 A I know of at least two different places where</p> <p>22 we had contracts with them.</p> <p>23 Q But I mean, the people that -- that benefited</p> <p>24 from these contracts?</p> <p>25 A We had contracts with those people at two</p>	<p style="text-align: right;">Page 172</p> <p>1 A I don't know.</p> <p>2 Q Have you ever seen the contracts that you</p> <p>3 were mentioning briefly -- excuse me -- that you</p> <p>4 mentioned just a minute ago?</p> <p>5 A I don't recall if I have or not.</p> <p>6 Q Are you aware of how much money is spent to</p> <p>7 procure these disposal sites?</p> <p>8 A It was a flat fee per dump. I want to say it</p> <p>9 was \$200 per dump load, but I'm not sure that that's</p> <p>10 accurate. It may have gone up.</p> <p>11 Q And how many dumps in a year would you</p> <p>12 participate in or direct?</p> <p>13 A That would vary.</p> <p>14 Q Can you give me an upper, lower limit?</p> <p>15 A No.</p> <p>16 Q Can you give me an estimate?</p> <p>17 A I don't know. It's different every year.</p> <p>18 There was years we were slam-dunked, and there was</p> <p>19 years when we were a lot slower, so I have no idea.</p> <p>20 And we don't always take the marijuana there. If we</p> <p>21 field-destroy, we don't pick it up, and we don't</p> <p>22 dispose of things. We went more that route at the end</p> <p>23 because we went with the chipper and destroying it in</p> <p>24 the field more often.</p> <p>25 Q Why was it being destroyed in the field more</p>

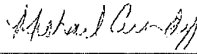


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BRUCE SMITH Vol.II
BORGES V MENDOCINO

July 13, 2021
209-212

<p style="text-align: right;">Page 209</p> <p>1 and I believe that you had said it doesn't refresh 2 your recollection. 3 So the question that I have now is a slightly 4 different question but similar, and that is, do you 5 have any reason to doubt that testimony that I read to 6 you is incorrect? 7 A I don't have any -- 8 MR. POMEROY: Objection. Calling for 9 speculation as to this witness' knowledge of a 10 deposition that he was not a part of. 11 MS. SPEER: Nor has he -- 12 MR. POMEROY: You are asking him whether it 13 was an accurate transcription of previous deposition. 14 MR. SCHWAIGER: No, I'm not. 15 BY MR. SCHWAIGER: 16 Q Go ahead, Mr. Smith. 17 A I don't have any doubt that Lieutenant White 18 or Captain White would tell the truth. I don't know 19 what he said, and it doesn't refresh memory at all. 20 MR. SCHWAIGER: Okay. All right. 21 Counsel -- I will start with Mr. Pomeroy -- 22 any questions for the witness? 23 MR. POMEROY: No, thank you. 24 MR. SCHWAIGER: And Ms. Speer? 25 MS. SPEER: I have no questions.</p>	<p style="text-align: right;">Page 211</p> <p>1 otherwise, I believe we are finished. 2 THE VIDEOGRAPHER: We ask that all 3 participants please stay connected briefly to provide 4 your transcript and video orders. 5 This concludes the videoconference proceeding 6 of Bruce Smith. We are now going off the record. The 7 time is 2:21 P.M. on July 13, 2021. 8 (Whereupon the deposition of Bruce Alan Smith 9 concluded at 2:21 P.M.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 210</p> <p>1 MR. SCHWAIGER: All right. Mr. Smith, I 2 would like to thank you for your time and patience. I 3 know your time is a valuable asset, but I do 4 appreciate you working with us to get this job done 5 here, so thank you very much for that. 6 If there's nothing else, I believe this 7 concludes today's deposition. 8 MR. POMEROY: Thank you. 9 On behalf of the county, we would request one 10 copy of the transcript, please. 11 MS. SPEER: On behalf of Warden Hemphill, we 12 will take an electronic copy of everything. 13 MR. POMEROY: And copies of the exhibits for 14 the county, too. Thank you. 15 THE VIDEOGRAPHER: We ask that -- 16 MR. SCOTT: Hold on. One second. 17 Plaintiff would like one -- one copy of the 18 transcript and a copy of the video. 19 MR. SCHWAIGER: And then, Mr. Cundy, would 20 you be so kind as to maybe send me an e-mail link or 21 an e-mail address so that I can get this video exhibit 22 to you? 23 THE REPORTER: Yes. 24 MR. SCHWAIGER: Thank you. 25 I'll stand by in the chat for that, but</p>	<p style="text-align: right;">Page 212</p> <p>1 STATE OF CALIFORNIA)) SS: 2 CITY AND COUNTY OF SAN FRANCISCO) 3 4 I, Michael Cundy, CSR No. 12271, a 5 Certified Shorthand Reporter of the State of 6 California, do hereby certify: 7 That the foregoing proceedings were 8 taken before me at the time and place herein set 9 forth; that any witnesses in the foregoing 10 proceedings, prior to testifying, were placed under 11 oath; that a verbatim record of the proceedings was 12 made by me using machine shorthand which was 13 thereafter transcribed under my direction; further, 14 that the foregoing is an accurate transcription 15 thereof. 16 I further certify that I am neither 17 financially interested in the action nor a relative or 18 employee of any attorney or any of the parties. 19 IN WITNESS WHEREOF, I have this date 20 subscribed my name. 21 22 Dated: July 23, 2021 23 24  25 Michael Cundy, CSR No. 12271</p>



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SER00199

CERTIFICATE OF SERVICE*(Ann Marie Borges, et al., v. County of Mendocino, et al., Case No. 3:20-cv-04537-SI)*

I, Sherry Alhawwash, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. My business address is 1388 Sutter Street, Suite 715, San Francisco, California 94109. On October 4, 2021, I served the attached:

PLAINTIFFS' REQUEST FOR DOCUMENT PRODUCTION, SET TWO TO COUNTY OF MENDOCINO

on the interested party(ies) named below:

Kymberly E. Speer
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Kymberly.Speer@doj.ca.gov

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Pamela K. Graham
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I served the attached document(s) in the manner indicated below:

☒ **BY E-MAIL:** I caused a copy(ies) of such document(s) to be transmitted via e-mail. The e-mail to which the document(s) were transmitted is listed above. The e-mail transmission was reported as complete and without error.

☒ **BY MAIL:** I caused true and correct copy(ies) of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) named above and, following ordinary business practices, placed said envelope(s) at 1388 Sutter Street, Suite 715, San Francisco, CA 94109, for collection and mailing with the United States Postal Service and there is delivery by the United States Post Office at said address(es). In the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed October 4, 2021 at San Francisco, California.


Sherry Alhawwash

CERTIFICATE OF SERVICE

SER00200

1 John Houston Scott, SBN 72578
2 **SCOTT LAW FIRM**
3 1388 Sutter Street, Suite 715
4 San Francisco, California 94109
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10 Attorney for the Plaintiffs ANN MARIE BORGES and
11 CHRIS GURR

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

16 ANN MARIE BORGES and CHRIS GURR,
17 individually and doing business as GOOSE
18 HEAD VALLEY FARMS,

19 Plaintiffs,

20 v.

21 COUNTY OF MENDOCINO, et al., and
22 Does 1-25 inclusive,

23 Defendants.

Case No. 3:20-cv-04537-SI
(Related to Case No. 3:21-cv-07031-SI)

**PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS,
SET THREE**

24 PROPOUNDING PARTY: Plaintiff ANN MARIE BORGES

25 RESPONDING PARTY: Defendant COUNTY OF MENDOCINO

26 SET: THREE

1 **TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:**

2 Plaintiff ANN MARIE BORGES hereby requests pursuant to Rule 26(b) and Rule 34 of
3 the Federal Rules of Civil Procedure that Defendant COUNTY OF MENDOCINO produce
4 documents listed below. Production is to be made **30** days from service of this request at the Scott
5 Law Firm, 1388 Sutter Street, Suite 715, San Francisco, CA 94109, Telephone: (415) 561-9601.

6 **DEFINITIONS AND INTRODUCTORY COMMENTS**

7
8 1. The terms "YOU," or "YOURS," refers to Defendant CITY OF MENDOCINO its
9 agents, representatives, officers, directors, and employees.

10 2. The terms "RELAT(E)(ES)(ING) to" are used to mean related to, concerning,
11 referring to, which evidence, which describe, or which incorporate by reference.

12 3. The terms "RELAT(E)(ES)(ING) to" are used to mean related to, concerning,
13 referring to, which evidence, which describe, or which incorporate by reference.

14 4. The term "DOCUMENT" and "DOCUMENTS" as used herein means, without
15 limitation, any handwriting, typewriting, printing, (computer printer or other), photographing,
16 tape recording (both visual and audio), photocopying, computer files and every other means of
17 recording upon any tangible thing. **This request encompasses all forms of electronically sent**
18 **and/or retrieved electronic information, including, but not limited to "e-mail" and "text**
19 **messages."** Also included in this definition are memoranda, reports, correspondence, notes,
20 messages, files, billing records, logs, notebooks, personal diaries, letters, agreements, telegrams,
21 facsimiles, interoffice communications, interoffice communications, emails, minutes or notes of
22 meetings, transcripts, bulletins, circulars, notices, instructions, work assignments, video tapes,
23 audio tapes, advertisements, press releases, literature, photographs, analysis, comparisons,
24 computer disks or records, computer printouts, memoranda of conversations, desk calendars,
25

1 appointment books, time sheets, invoices, statements, bills, checks, bank statements, and all
2 copies of aforesaid upon which have been placed any additional markings or notations.

3 5. All DOCUMENTS requested are for documents that have not yet been transmitted
4 to the plaintiff in F.R.C.P. 26 disclosures or subsequent productions. If you have previously
5 produced responsive documents, please identify them by bates number in your response.
6 If you are claiming a privilege as to any particular DOCUMENT, please produce a privilege log
7 and response identifying the privilege by which the DOCUMENT is protected.
8

9 **REQUESTS FOR PRODUCTION**

10 **REQUEST FOR PRODUCTION NO. 18:**

11 All DOCUMENTS relating to settlement agreements between the County of Mendocino
12 and persons who complained about marijuana being taken from their property and/or possession
13 from January 2015 to the present.

14 **REQUEST FOR PRODUCTION NO. 19:**

15 All DOCUMENTS relating to the bidding process and selection of contractor(s) to
16 provide marijuana burial services from January 2015 to the present.

17 **REQUEST FOR PRODUCTION NO. 20:**

18 All 11479 affidavits, destruction orders and/or return of search warrants related to the
19 marijuana disposal on 9-12-2017 identified in document number 000237 recently produced.

20 **REQUEST FOR PRODUCTION NO. 21:**

21 All 11479 affidavits, destruction orders and/or return of search warrants related to the
22 marijuana disposal on 9-13-2017 identified in document number 000237 recently produced.

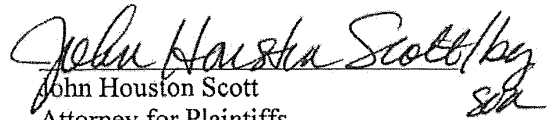
23 **REQUEST FOR PRODUCTION NO. 22:**

24 All 11479 affidavits destruction orders and/or return of search warrants related to the
25 marijuana disposal on 12-12-2017 identified in document number 000237 recently produced.
26

1 Dated: November 9, 2021

Respectfully submitted,

2 **SCOTT LAW FIRM**

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5 John Houston Scott
6 Attorney for Plaintiffs
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PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET THREE

SER00204

CERTIFICATE OF SERVICE

(Ann Marie Borges, et al., v. County of Mendocino, et al., Case No. 3:20-cv-04537-SI)
 (Related to Case No. 1:21-cv-07031-SI)

I, Sherry Alhawwash, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. My business address is 1388 Sutter Street, Suite 715, San Francisco, California 94109. On November 9, 2021, I served the attached:

PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET THREE

on the interested party(ies) named below:

Christian M. Curtis
 Brina Anna Blanton
 Office of the County Counsel
 501 Low Gap Road, Room 1030
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blantonb@mendocinocounty.org

Pamela K. Graham
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Kymberly E. Speer
 Attorney General's Office
 1515 Clay Street, 20th Floor
 P.O. Box 70550
 Oakland, CA 94612-0550
Kymberly.Speer@doj.ca.gov


I served the attached document(s) in the manner indicated below:

- ☒ **BY E-MAIL:** I caused a copy(ies) of such document(s) to be transmitted via e-mail. The e-mail to which the document(s) were transmitted is listed above. The e-mail transmission was reported as complete and without error.
- ☒ **BY MAIL:** I caused true and correct copy(ies) of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) named above and, following ordinary business practices, placed said envelope(s) at 1388 Sutter Street, Suite 715, San Francisco, CA 94109, for collection and mailing with the United States Postal Service and there is delivery by the United States Post Office at said address(es). In the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

CERTIFICATE OF SERVICE

SER00205

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed November 9, 2021 at San Francisco, California.

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6 Sherry Alhawwash
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14 Grass Valley, CA 95945
15 Telephone: (530) 432-7357
16 Facsimile: (530) 432-7356

17 Attorneys for Defendant
18 COUNTY OF MENDOCINO

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 ANN MARIE BORGES and CHRIS GURR,
22 individually and doing business as GOOSE
23 HEAD VALLEY FARMS,

24 Plaintiffs,

25 v.

26 COUNTY OF MENDOCINO, SUE
27 ANZILOTTI; JOHN McCOWEN, in his
28 official capacity as Supervisor for Mendocino
County; CARRE BROWN, in her official
capacity as Supervisor for Mendocino County;
MASON HEMPHILL; and DOES 1-25
inclusive,

Defendants.

CASE NO.: 3:20-cv-04537-SI

**SUPPLEMENTAL DECLARATION OF
KRISTIN NEVEDAL IN SUPPORT OF
DEFENDANT COUNTY OF MENDOCINO'S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Date: April 8, 2022
Time: 11:00 a.m.

[Reply ISO Motion for Summary Judgment,
Declaration of Matthew Kiedrowski, filed
concurrently herewith]

FAC Filing Date: October 23, 2020
Trial Date: May 16, 2022
Discovery Cut-off: December 17, 2021
Motion Cut-off: March 4, 2022

Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945

SUPPLEMENTAL DECLARATION OF KRISTIN NEVEDAL

I, Kristin Nevedal, declare as follows:

1. I am an employee of the County of Mendocino ("County") employed as the Director of the Cannabis Department. The information in this declaration is true of my own personal knowledge unless stated upon information and belief, and as to any such statements, I believe them to be true. If called upon as a witness, I would testify competently to the facts stated herein.

2. Since the beginning of the cannabis cultivation permitting program through Mendocino County Code, chapter 10A.17, there has been an extensive backlog of permit applications. The Mendocino County Cannabis Department continues to struggle to complete review of the applications due to the sheer number of permit applications and consistent difficulties fully staffing the Department.

3. Plaintiffs Ann Marie Borges and Chris Gurr submitted their cannabis cultivation relocation permit application on May 1, 2017.

4. The County has completed review of some applications and is in the process of reviewing the remaining applications. Plaintiffs allege there are six applicants who are similarly situated to Plaintiffs whose applications were not denied. (County Motion for Summary Judgment, Dkt. 97, at pg. 22-23.) These six applications remain under review, in part due to the County's backlog of applications, and partly due to delays in application review caused by the applicants themselves.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on this 25th day of March 2022, at Ukiah, California.

KRISTIN NEVEDAL

CERTIFICATE OF SERVICE

Borges et al v. County of Mendocino et al
United States District Court, Northern District
Case No. 3:20-cv-04537-SI

I, McCall Williams, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 East Colorado Boulevard, Suite 850, Pasadena, California 91101. My email address is: MWilliams@chwlaw.us. On March 25, 2022, I served the document(s) described as **SUPPLEMENTAL DECLARATION OF KRISTIN NEVEDAL IN SUPPORT OF DEFENDANT COUNTY OF MENDOCINO'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, on the interested parties in this action addressed as follows:

☒ **BY ELECTRONIC TRANSMISSION:** I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District by using the CM/ECF system on March 25, 2022. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the USDC, Northern District CM/ECF system.

I declare that I am employed in the offices of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on March 25, 2022, at Pasadena, California.



McCall Williams

Colantuono, Highsmith & Whatley, PC
790 E. COLORADO BLVD., SUITE 850
PASADENA, CA 91101

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 15. Certificate of Service for Electronic Filing

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form15instructions.pdf>

9th Cir. Case Number(s) 22-15673

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

☒ I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

☐ I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*):

Description of Document(s) (*required for all documents*):

APPELLEE'S SUPPLEMENT EXCERPTS OF RECORD

Signature s/McCall Williams

Date October 11, 2022

(*use "s/[typed name]" to sign electronically-filed documents*)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov