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GARY CORDOVA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GARY CORDOVA,

Plaintiff,

vs.

MENDOCINO COUNTY SHERIFF'S,
OFFICE, COUNTY OF MENDOCINO,
TIMOTHY DEL FIORENTINO, and
DOES 1-50

Defendants.

) CASE NO.:
)
) **COMPLAINT FOR DAMAGES FOR**
) **VIOLATION OF CIVIL RIGHTS**
) **AND FOR DAMAGES FOR**
) **CONVERSION AND TRESPASS**

) **DEMAND FOR JURY TRIAL**

I. INTRODUCTION

1. Within this immediate action, Plaintiff seeks damages connected to the unlawful search and seizure, and subsequent destruction of his lawful cannabis, and associated property. Plaintiff also seeks other damages resulting from the search and seizure.

2. In the instant case, law enforcement sought to enforce county regulations on Indian Country. The Adult Use of Marijuana Act allows local governments to reasonably regulate the cultivation of marijuana for personal use. Local matters in Indian Country are governed by Indian law. The activities which were occurring in the instant case, were authorized under Indian law, and as such there was no probable for the search. Officer Del Fiorentino omitted from his warrant affidavit the fact that the observed activities were

1 governed by the Round Valley Tribe, and that they observed activities conformed to Tribal
2 law. Therefore, Officer Del Fiorentino, engaged in an unlawful search and seizure of
3 Plaintiff's property, and in doing so, seized, damaged, and destroyed Plaintiff's property, to the
4 damage of Plaintiff.

5 **II. GENERAL PROCEDURAL ALLEGATIONS**

6 3. Plaintiff, GARY CORDOVA, is an individual and at all times relevant herein is
7 and was a resident of the County of Mendocino, State of California and a citizen of the United
8 States.

9 4. Defendant, COUNTY OF MENDOCINO, is a County in the State of California,
10 and a public entity as defined by California Government Code section 811.2.

11 5. Defendant, MENDOCINO COUNTY SHERIFF'S OFFICE, is a law
12 enforcement agency of the COUNTY OF MENDOCINO.

13 6. Defendant, TIMOTHY DEL FIORENTINO, in his individual and official
14 capacity, is employed by defendants MENDOCINO COUNTY, and the MENDOCINO
15 COUNTY SHERIFF'S OFFICE. In doing the acts as herein alleged defendant was acting
16 within the scope of that employment, and in doing other acts as herein alleged was acting in his
17 individual capacity, and at all times herein alleged was acting under color of law and authority,
18 to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the
19 State of California and defendants COUNTY OF MENDOCINO, and MENDOCINO
20 COUNTY SHERIFF'S OFFICE.

21 7. At all times herein mentioned, Defendants Does ONE through TWENTY FIVE,
22 inclusive, were agents of defendants COUNTY OF MENDOCINO and acting within the
23 course and scope of such employment with permission and consent of their co-defendants, and
24 were acting under color of law and authority as agents of COUNTY OF MENDOCINO,
25 MENDOCINO COUNTY SHERIFF'S OFFICE, or other California enforcement officers.
26 Plaintiff is informed and believes that each of these fictitiously named defendants is
responsible in some manner for the damages suffered by Plaintiff. The true names of these
defendants are currently unknown by Plaintiff, and Plaintiff will seek leave of this Court to

1 amend the Complaint when such names become known.

2 8. The true names and capacities of defendants sued as Does TWENTY SIX
3 through FIFTY are unknown to Plaintiff, and Plaintiff will seek leave to amend this complaint
4 when said names and capacities become known. Plaintiff is informed and believes that each of
5 these fictitiously named defendants is responsible in some manner for the damages suffered by
6 Plaintiff. At all times relevant hereto, each defendant was the agent and/or employee of every
7 other defendant, and performed some of the acts and omissions herein alleged within the
8 course and scope of such, agency and employment.

9 **III. JURISDICTION**

10 9. This action arises under the Civil Rights Act of 1871 (42 U.S.C. Sections 1983
11 and 1988) and the Fourth and Fourteenth Amendments to the Constitution of the United States.
12 This Court has jurisdiction of the federal claims under 28 U.S.C. Sections 1331, 1332, 1343(3),
13 1343(4), 2201, and 2202. This Court has pendent jurisdiction over the state law claims.

14 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

15 10. On, September 14, 1994, the Constitution of the Round Valley Tribes was
16 approved by the United States Bureau of Indian Affairs, and the Round Valley Tribes became a
17 sovereign nation. A copy of the Constitution of the Round Valley Tribes, and its supporting
18 documents, are attached hereto and incorporated herein at Exhibit 1.

19 11. On August 1, 2013, the Round Valley Tribal Council amended the Round Valley
20 Indian Tribes Compassionate Use Ordinance of the Round Valley Indian Tribes 2006. A copy
21 of the Round Valley Indian Tribes Compassionate Use Ordinance is attached hereto and
22 incorporated herein at Exhibit 2.

23 12. On, or about, April 19, 2019, Oralee Cordova inherited all rights to the property
24 located at 78140 Crawford Road, Covelo, California 95428. A true and correct copy of probate
25 records concerning the property are attached hereto and incorporated herein at Exhibit 3.

26 13. On, or about, June 7, 2019, property rights to the property were assigned, in part,
to Gary Cordova. A true and correct copy of the United States Department of the Interior
Bureau of Indian Affairs Title Status Report concerning the subject property is attached hereto

1 and incorporated herein at Exhibit 4.

2 14. During the month of March, 2021, all of the other parties that held an interest in
3 the property located at 78140 Crawford Road, Covelo, gave consent to lease their interest in the
4 property to Gary Cordova. A true and correct copy Residential Lease Forms concerning the
5 subject property are attached hereto and incorporated herein at Exhibit 5.

6 15. Gary Cordova leased the entire Allotment No: 540-6 on, or about, July 15, 2022,
7 entitling Gary Cordova to a possessory right to said parcel. A copy of the lease and consents
8 are attached hereto and incorporated herein at Exhibit 6.

9 16. In summary, Gary Cordova, held a possessory right to the property located at
10 78140 Crawford Road, Covelo, California 95428 on June 7, 2019. He held an exclusive
11 possessory right on July 15, 2022.

12 17. On July 8th, 2022, a search warrant was issued for the search of:

13 Location #01: The property located at 78140 Crawford Road, Covelo, California
14 95428. The search is to include, but not limited to all outbuildings, sheds, barns, tents,
15 plastic style greenhouses, vehicles, and travel trailers. The specific APN# associated
16 with the property is, [032-460-33-00]. The property has the listed owner being, Lester
17 Treppa 5/150 and Vacant 145/150 with a listed mailing address of 425 Lake
18 Mendocino Drive in Ukiah Ca. 95482.

19 [The] Driving directions to the locations are as follows: From the intersection of
20 Biggar Lane and Crawford Road in Covelo Ca. Continue north on Crawford Road for
21 approximately 2000 feet. At this point, The paved roadway of Crawford Road turns to
22 the left (West) and becomes Refuse Road. At the corner of Crawford Road and Refuse
23 Road continue north off of the paved road onto a dirt road leading thought the dry
24 creek bed. After crossing the dry creek bed, follow the red dirt road to the north for
25 approximately 400 feet where the entrance into the marijuana cultivation site is
26 located. The marijuana cultivation site is located at GPS coordinates [N-39.81945 W-
123.26599],

27 A copy of the search warrant and supporting affidavit is attached hereto and incorporated
28 herein at Exhibit 7.

29 18. APN 032-460-33-00 is seen in the Assessor's Map attached hereto and
30 incorporated herein at Exhibit 8.

31 19. The location of GPS coordinates [N 39.81945, W -123.26599] is seen in the

1 Google Earth view attached hereto and incorporated herein at Exhibit 9.

2 20. A Parcel Viewer report showing APN 032-460-33-00 is attached hereto and
3 incorporated herein at Exhibit 10.

4 21. The aerial photograph of the property to be searched, which was attached to the
5 warrant affidavit at Exhibit 7, is attached hereto and incorporated herein at Exhibit 11.

6 22. The aerial photograph of the property to be searched, which was attached to the
7 warrant affidavit at Exhibit 7 shows five home sites. Each home site has a residence and each
8 home site is clearly associated with three greenhouses within the aerial photograph. (See
9 Exhibit 11)

10 23. On July 15, 2022, Mendocino County Sheriff's Deputies served the search
11 warrant on the property and destroyed 113,361 cannabis plants, destroyed structures and other
12 property. (See second page of Exhibit 7.)

13 24. At the time of the raid/search Gary Cordova owned an interest in the Crawford
14 Ranch Property. (See Exhibit 4)

15 25. At the time of the July 15, 2022, raid/search two medical recommendations for
16 the medical use of marijuana were posted at the gate. One was for Gary Cordova. The other
17 was for his wife, Carolyne Cordova. A true and correct photograph of the respective medical
18 recommendations posted on the gate is attached hereto and incorporated herein at Exhibit 12.

19 26. At the time of the July 7, 2022, observation of the cannabis cultivation, declared
20 in the warrant, only two of the home sites were operational, with cannabis growing within the
21 green houses. A total of six greenhouses were being used.

22 **A. STATEMENT OF PROBABLE CAUSE WITHIN THE WARRANT**

23 27. The affidavit provides in relevant part:

24 On 07/07/22, Sgt. Wyant with the Mendocino County Sheriffs Office County of
25 Mendocino Marijuana Enforcement Team (C.O.M.M.E.T.), with the assistance of
26 Special Agent Rowan, conducted an over flight in the area of Covelo California. During
the over flight, Sgt. Wyant and Agent Rowan observed a large marijuana cultivation
site located at 78140 Crawford Road. Sgt. Wyant observed no less than nine hoop style
greenhouses on the property and observed green growing marijuana within at least six
of the greenhouses. Sgt. Wyant estimated no less than 400 growing marijuana plants

1 were observed within the hoop style greenhouses, but stated he believed there to be
2 over 1,000 marijuana plants in total on the property.

3 On 07/08/22, 1 contacted Department of Cannabis Control (DCC) Special Investigator
4 Jaime Masuda regarding the parcel. Special Investigator Masuda confirmed the
5 property did not have a valid permit or current license through the State of California
6 for the purpose of cultivating more than six marijuana plants.

7 Based on my investigation and Sgt. Wyant's observation of growing marijuana plants
8 within the greenhouses on 07/07/22, it appears unknown subjects on the properties are
9 cultivating more than six marijuana plants in violation of section 11358(c) H&S.

10 (See Exhibit 7)

11 **B. LOCAL ORDINANCE GOVERNING THE PROPERTY**

12 28. The Round Valley Indian Tribes Compassionate Use Ordinance of the Round
13 Valley Indian Tribes 2006 provides in relevant part:

14 Section 2 - DEFINITIONS

15 2.16 "Tribal Notification" shall mean Tribal Police Notification.

16 2.17 "Legal Home Site" shall mean persons who holds a legal lease or assignment for a
17 home, this shall not apply to persons who are interest holders, squatting with no legal
18 lease, assignment and other related legal documentation.

19 2.18 "Indoor Grow / Greenhouse" shall mean a twenty five hundred (2500) square foot or
20 30'X80' structure used to cultivate small marijuana plants.

21 Section 3 - FINDINGS - The Council Finds that:

22 3.18 Whereas, Mendocino County's Medical Marijuana Cultivation Regulation,
23 Mendocino Cty. Code 9.31.010, et seq., is civil regulatory and land use ordinance,
24 because Pub. L. 280 does not grant the State or Mendocino County any general civil
25 regulatory or land use power over Round Valley Indian Country, the Council finds it
26 necessary for the Tribe to enact its own Compassionate Use Ordinance that
will civilly regulate medical marijuana cultivation.

3.19 Whereas, in particular, Mendocino County's land use restrictions for indoor or
outdoor cultivation of more than twenty-five (25) marijuana plants per legal parcel of
land, Mendocino Cty. Code 9.31.050, is impractical in Round Valley Indian Country
given the assignment land parcels; the range in Indian Land parcel acreage, ranging from
partial acre to in excess of seventy acres; and the fact that multiple Tribal families might
occupy a particular Indian Land parcel.

1 3.20 Whereas, a May 7, 2010 letter from the Bureau of Indian Affairs (BIA) Pacific
2 Regional Office to the Tribal Council President, confirming that "California medical
3 marijuana laws do not apply on Federal lands within the State", such as Round Valley
4 Indian Country, but declaring that "criminal laws of the State (and those related to drug
5 distribution) are applicable" therein, has only served to confuse the state of medical
6 marijuana law in Round Valley Indian Country.

7 3.21 Whereas, the Council concurs with the United States Congress' findings to the Tribal
8 Law and Order Act of 2010.

9 The complicated jurisdictional scheme that exists in Indian Country . . . has a significant
10 negative impact on the ability to provide public safety to Indian communities,... has been
11 increasingly exploited by criminals; and . . . requires a high degree of commitment and
12 cooperation among tribal, Federal, and State law enforcement officials . . .
13 (Pub. L No. 111-211, & 202,124 Stat. 2262 (2010)).

14 3.24 Whereas, the Council agrees with the State Governor Edmund G. Brown Jr.'s
15 directive that "every state agency and department... shall encourage communication and
16 consultation with California Indian Tribes . . . to discuss state policies that may affect
17 tribal communities." (Cal. Executive Order B-10-11 (Sept. 19, 2011)).

18 3.25 Whereas, in the guiding rasp of State v. Cummings, 679 NW.2d.484, 487 (S.D.
19 2004), it was held that "the state cannot extend its jurisdiction into the boundaries of the
20 Tribe's Reservation without consent of the Tribe or a tribal-state compact."

21 3.26 THEREFORE, to ensure the health, safety, and welfare of all persons within Round
22 Valley Indian Country and the protection of the natural environment therein, the Round
23 Valley Tribal Council is obligated to clearly define the Tribe's civil regulations as they
24 relate to cultivation, possession, and use of marijuana for medical purposes, through this
25 Compassionate Use Ordinance.

26 Section 4 - REGULATIONS

4.3 It shall be legal for a patient in possession of a State Pre-identification Card or to a
patient's primary caregiver in possession of a State Pre-identification Card to possess or
cultivate marijuana for personal medical purposes of the patient in possession of a State
Pre-Identification Card under Tribal guidelines.

4.5 The introduction, cultivation, and possession of marijuana shall be lawful within the
boundaries of the Round Valley Reservation under the jurisdiction of the Round Valley
Tribal Council; provided that such introduction, cultivation, or possession is in conformity
with the laws of the State of California.

4.6 Pursuant to the State's Compassionate Use Act of 1996, Cal. Health & Safety Code
11362.5(d), neither Cal. Health & Safety Code 11357, relating to the possession of

1 marijuana, nor Cal. Health & Safety Code 11358, relating to the cultivation of marijuana,
2 shall apply to a patient, or to a patient's primary caregiver, who possesses or cultivates
3 marijuana for the personal medical purposes of the patient upon the written or oral
4 recommendation or approval of a physician and in compliance with this Ordinance.

5 4.6.1 Although no person may be found in violation of this Ordinance for failing to do so,
6 it is recommended that physician recommendations and/or other supporting
7 documentation be conspicuously posted at growing and cultivation sites, and that such
8 documentation or a copy of the documentation be carried with the patient and caregiver at
9 all times. Failure to post and carry such documentation may result in unnecessary legal
10 fees and costs and/or criminal prosecution.

11 4.6.2 The Council recognizes that under Cal. Health & Safety Code 11362.5, an
12 individual may qualify as a patient by an oral recommendation. However, a prompt and
13 noninvasive determination of whether cultivation and/or possession is legal or illegal is
14 best accomplished with a written recommendation. Therefore, the Council recommends
15 that patients and caregivers obtain written recommendations. Failure to carry such
16 documentation may result in unnecessary legal fees and costs and/or criminal prosecution.

17 4.7 It is declared to be unlawful for any person owning, leasing, occupying, or having
18 charge or possession of any parcel of land within Round Valley Indian Country to cause
19 or allow such parcel of land to be used for the outdoor or indoor cultivation of marijuana
20 plants for medical purposes in excess of limitations imposed within this section.

21 4.7.1 The cultivation of more than twenty five (25) outdoor marijuana plants per one (1)
22 person in possession of a lawfully issued State Pre-identification Card within Round
23 Valley Indian Country, regardless of whether the person(s) growing the marijuana is/are a
24 "qualified patient," "primary caregiver," or "collective," is hereby prohibited. Any
25 qualified patient, person with an identification Card, or primary caregiver may not
26 cultivate outdoor marijuana in excess of the amount reasonably related to the current
medical needs of the patients or persons with identification cards for whom the marijuana
is being cultivated, either individually or collectively, but in no case more than twenty
five (25) total outdoor plants per one (1) person in possession of lawfully issued State
Pre-identification Card.

4.7.2 The use of light assistance for the outdoor cultivation of marijuana shall be less than
or equal to twenty five hundred (2,500) square feet or 30'X80' within a structure with a
maximum of three (3) structures on a legal home site lease or assignment. Due to the
small size of indoor plants, there shall be no limit on number of plants to be grown within
each structure. Property owners may allow a maximum of two garden caretakers, with
proper access to toilet facilities, to maintain the grow site if the owner(s) is/are utilizing
more than one green house. Property owners shall be responsible for the actions of their
caretakers.

4.7.5 All marijuana grown outdoors must be within a secured fence that fully encloses the

1 immediate garden area.

2 4.7.7 Indoor cultivation of marijuana shall be less than or equal to twenty five hundred
3 (2500) square feet or 30'X80" within a structure with a maximum of three (3) structures
4 on a legal home site lease or assignment. Note: this does not apply to interest holders or
squatters. Due to the small size on indoor plants, there shall be no limit on number of
plants to be grown within a structure.

5 4.8 It is declared to be unlawful for any person within Round Valley Indian Country to
6 possess marijuana plants or processed marijuana for medical purposes in excess of the
limitations imposed within this section 4.8

7 Section 5 - ENFORCEMENT OF ORDINANCE

8 5.9.3 Governmental taking without due process and compensation is generally prohibited.
9 Therefore, if any Tribal or State officer(s) believe marijuana cultivation and/or possession
10 is pursuant to Cal. Health & Safety Code 11362.5, but that the cultivation and/or
11 possession exceeds this Ordinance, the officer(s) should only seize that amount in excess
of the guidelines. Marijuana should not be destroyed or disposed of until an order from
the Council and/or Tribal Court is issued.

12 Section 6 - JURISDICTION/POLICE PROCEDURES

13 6.2 When a tribal member is situated on Indian Country trust land, a State officer's civil
14 regulatory authority extends only so long as that officer does not circumvent or
15 contravene governing, tribal procedure. Because of the likelihood that State Officers will
16 seek to enforce State marijuana laws upon persons in Round Valley Indian Country, State
Police Officers shall give reasonable advance tribal notification prior to entrance into
Round Valley Indian Country if it is reasonably likely that said entrance will result in the
enforcement of State marijuana laws.

17 6.3 In order to effect any search, arrest or extradition warrant or investigation relative to
18 State marijuana laws, against any tribal member in Round Valley Indian Country, State
19 Police Officers shall not only provide that reasonable advanced tribal notification required
20 by section 6.2, but shall also consult, communicate, and coordinate any such search,
21 arrest, extradition, or investigation activities, with Tribal
22 Police. Should the Tribal Police elect to cooperate in the execution of any search, arrest or
extradition warrant or any investigation, State Police officers shall not frustrate such
cooperation by any dispatched Tribal Police officer.

23 6.4 For purposes of any search, arrest or extradition warrant or investigation relative to
24 State marijuana laws, against any tribal member in Round Valley Indian Country, Tribal
25 Police shall be allowed access to, and allowed to share with State Police officers, any
26 land records from the tribal Realty and/or enrollment department for the purpose of
determining whether any person alleged to have violated State marijuana laws is a tribal
member, or any other relevant information. It is the Tribe's expectation that State Police

1 officers will reciprocate in sharing with Tribal Police any or all such documentation or
2 information.

3 6.5 The Tribal codified procedures concerning any search, arrest or extradition warrant or
4 investigation activities relative to any enforcement of State marijuana laws in Round
5 Valley Indian Country, set forth in section 6.2, 6.3 and 6.4, are mandatory.

6 Section 10 - EFFECTIVE DATE

7 This Ordinance shall take effect immediately upon passage, and shall have retroactive
8 application to June 19, 2012 (Previously Amended: June 12, 2007; June 19, 2012;
9 Amendments Approved: August 1, 2013.

10 STATE LICENSING

11 6.1 This Ordinance shall fall within the inherent jurisdiction of the Round Valley Indian
12 Tribes, which includes civil regulatory jurisdiction overall persons, member or non-
13 member, while in Round Valley Indian Country, and over all Indians while upon any
14 Reservation or Indian Country lands. Nothing about this Ordinance shall be construed to
15 cause the Tribe to accede to any State civil regulatory or land use jurisdiction in Round
16 Valley Indian Country, particularly the application of State marijuana laws and
17 regulations. The Council hereby disclaims any application or enforcement of State civil
18 regulatory or land use laws in Round Valley Indian Country, particularly any State
19 marijuana laws and regulations unless adopted by reference herein.

20 (See Exhibit 2.)

21 **C. STATE JURISDICTION FOR CRIMINAL MATTERS IN INDIAN 22 COUNTRY**

23 29. Under 18 USCS § 1162, also known as Public Law 280, the State (including the
24 county sheriffs) has concurrent jurisdiction over criminal offenses committed by or against
25 Indians in the areas of Indian country. The State (including the county sheriffs) also has
26 concurrent jurisdiction over criminal offenses committed by non-Indians in the areas of Indian
country.

30. Tribal Council has the power to enact local ordinances that govern Tribal lands,
defined as "Indian Country."

31. "Indian Country" means:

- (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or

1 subsequently acquired territory thereof, and whether within or without the limits of
2 a state, and (c) all Indian allotments, the Indian titles to which have not been
3 extinguished, including rights-of-way running through the same. (18 USC § 1151)

4 32. The property located at 78140 Crawford Road, Covelo, California 95428 is
5 "Indian Country." The legal description of the property is Allotment 540-6, which is located in
6 South 1/2 of Lot 56, of Section 25, township 23N Range 13 W, Mount Diablo Meridian. (See
7 Exhibit 6, pg 25) The South 1/2 of Lot 56, of Section 25, township 23N Range 13 W, Mount
8 Diablo Meridian, is APN Number 032-460-33-00. (See Exhibit 8)

9 **D. STATEMENT OF PROBABLE CAUSE FOR THE WARRANT**

10 33. The statement of probable cause within search warrant affidavit provides in
11 part: Sgt. Wyant observed nine greenhouses on the property during an over flight on July 7,
12 2022. He observed a cannabis grow within six of the nine greenhouses. (See Exhibit 7)

13 34. The statement of probable cause within search warrant affidavit provides in
14 part: Timothy H. Del Fiorentino followed up on the investigation with an online parcel search
15 and a contact with the Department of Cannabis Control. (See Exhibit 7)

16 35. Deputy Del Fiorentino does not report any attempts to contact the Round Valley
17 Tribal Police. (See Exhibit 7)

18 36. The statement of probable cause within search warrant affidavit provides in
19 part: Del Fiorentino concluded "Based on [his] investigation and Sgt. Wyant's observation of
20 growing marijuana plants within the greenhouses on 07/07/22, it appears unknown subjects on
21 the properties are cultivating more than six marijuana plants in violation of section 11358(c)
22 H&S."

23 37. All of the officers failed to disclose that the property was governed by the
24 Round Valley Tribes.

25 38. All of the officers failed to disclose that the cannabis cultivation on the property
26 was within the limits allowed by the Round Valley Tribes.

E. UNLAWFUL SEARCH AND SEIZURE

39. In the case of *Liston v. County of Riverside*, 120 F.3d 965 (9th Cir. 1997), the
court discussed the standard, The court states at page 973 "Put another way, 'the showing

1 necessary to get to a jury in a 1983 action is the same as the showing necessary to get an
2 evidentiary hearing under *Franks*.’ *Id.* (citing *Snell v. Tunnell*, 920 F.2d 673, 698 (10th Cir
3 1990)); see also *Lombardi v. City of El Cajon*, 117 F.3d 1117 (9th Cir 1997).” See also *Liston*
4 *v. County of Riverside*, 120 F.3d 965, 972 (9th Cir 1997) confirming that the standard for
5 qualified immunity in a civil rights action is governed by the *Franks* standard - a defendant
6 has the right to an evidentiary hearing if he makes a showing of deliberate or reckless disregard
7 for the truth in a search warrant affidavit and additionally demonstrates that but for the
8 dishonesty, the affidavit would not support a finding of probable cause. *Franks* 438 U.S. 154,
171-172 (1978).

9 **i. FRANKS STANDARD.**

10 40. Under the Fourth Amendment,

11 “[a] search warrant, to be valid, must be supported by an affidavit establishing
12 probable cause.” *United States v. Stanert*, 762 F.2d 775, 778 (9th Cir. 1985). In
13 deciding an application for a search warrant, [t]he task of the issuing magistrate is
14 simply to make a practical, common-sense decision whether, given all the
15 circumstances set forth in the affidavit before him, including the "veracity" and
16 "basis of knowledge" of person's supplying hearsay information, there is a fair
probability that contraband or evidence of a crime will be found in a particular
place.

17 *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

18 A warrant is subject to subsequent invalidation if the affidavit contains false
19 statements or omits material information, such that no probable cause would have
20 been found had the false statements or omissions been taken into account. *Franks v.*
21 *Delaware*, 438 U.S. 154, 155-56 (1978). “[A] defendant could challenge a facially
22 valid affidavit by making a substantial preliminary showing that (1) the affidavit
contains intentionally or recklessly false statements, and (2) the affidavit purged of
its falsities would not be sufficient to support a finding of probable cause.” *Stanert*,
762 F.2d at 780 (citation and quotation marks omitted). In addition to affirmative
false statements, a *Franks* challenge could also be based on an allegation that the
affidavit was defective due to "deliberate or reckless omissions of fact that tend to
mislead."

23 *Id.* at 781.

24 41. The fact that the cannabis cultivation project was governed by Round Valley
25 Tribal Ordinances, was omitted from the affidavit.

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42. The following facts were also omitted from the search warrant affidavit:

- 1) 78140 Crawford Road, Covelo, California 95428, is a Round Valley Tribal land, governed by the Round Valley Tribal Council.
- 2) All cannabis cultivation on Round Valley Tribal lands is regulated by the Compassionate Use Ordinance of the Round Valley Indian Tribes.
- 3) The State of California does not govern cannabis cultivation on Round Valley Tribal lands.
- 4) All cannabis cultivation on Round Valley Tribal lands is lawful if it conforms to Compassionate Use Ordinance of the Round Valley Indian Tribes.
- 5) Under Section 4.7 of the Compassionate Use Ordinance of the Round Valley Indian Tribes: It is declared to be unlawful for any person *owning*, leasing, occupying, *or* having charge or possession of any parcel of land within Round Valley Indian Country to cause *or* allow such parcel of land to be used for the outdoor or indoor cultivation of marijuana plants for medicinal purposes in excess of the limitations imposed within this Section 4.7.
- 6) Under Section 4.7.7 Indoor cultivation of marijuana shall be less than or equal to twenty five hundred (2500) square feet or 30'X80" within a structure with a maximum of three (3) structures on a legal home site lease or assignment. Note: this does not apply to interest holders or squatters. Due to the small size on indoor plants, there shall be no limit on number of plants to be grown within a structure.
- 7) 78140 Crawford Road, Covelo, California 95428, includes five Home Sites defined under section 2.17 of the Compassionate Use Ordinance of the Round Valley Indian Tribes. The five home sites are seen within the aerial photograph attached to the warrant affidavit.
- 8) At the time of the observation of cannabis at 78140 Crawford Road, Covelo, cannabis was observed in six green houses. Three of the green houses in use were within a clearly marked home site. The other three green houses in use were within a separate clearly marked home site.
- 9) At the time of the observation of cannabis at 78140 Crawford Road,

1 Covelo, two physician's recommendations for the medical use of cannabis were
2 posted at the gate of the property.

3 10) There were five legal home sites seen on the property located at located at
4 78140. Crawford Road, Covelo. Therefore, fifteen greenhouses may be lawfully
5 used for cultivation of cannabis under the Round Valley Compassionate Use
6 Ordinances, with no limit to the numbers of plants that may be grown within the
7 greenhouses.

8 11) If the number of home sites were limited to the number of physician's
9 recommendations posted on the gate at the time of the cannabis observation, then
10 six greenhouses may be lawfully used for cultivation of cannabis under the Round
11 Valley Compassionate Use Ordinances, with no limit to the numbers of plants that
12 may be grown within the greenhouses.

13 43. Had the affiant included the forgoing statements within the affidavit, the warrant
14 would not have issued for lack of probable cause.

15 **F. DESTRUCTION OF PROPERTY**

16 44. The search warrant included the following order:

17 You Are Authorized To: ventilate and alter hoop style greenhouses and any other
18 marijuana cultivation areas, structures, and places, including to remove doors or
19 other building materials from cultivation structures. Additionally, the use of heavy
20 equipment (skid-steer and/or other implements) to assist in the eradication is also
21 authorized, which can result in property damage, or the altering of the erected hoop
22 houses/ greenhouses or other cultivation areas, structures, and/or places that house
23 the illegal growing marijuana plants.

24 45. However, under section 5.9.3 of the Tribal Ordinance, State officer(s) should
25 only seize that amount in excess of the guidelines. Marijuana should not be destroyed or
26 disposed of until an order from the Council and/or Tribal Court is issued. Here, all of the
cannabis was within the guidelines set forth under section 4.7.7 of the Tribal Ordinance.
Therefore none of the cannabis should have been destroyed.

46. An order for the destruction of the cannabis from the Council and/or Tribal
Court was not issued.

1 47. On, or about July 15, 2022, Defendant's served the search warrant, and
2 destroyed approximately 113,361 cannabis plants, greenhouses, and other property.

3 48. After Defendants served the search warrant they failed to secure the property,
4 resulting in the theft of property.

5 49. On January 11, 2023, Plaintiff submitted a NOTICE OF CLAIM AGAINST
6 THE COUNTY OF MENDOCINO, pursuant to Government Code § 910 et seq. A true and
7 correct copy of the government claim is attached hereto and incorporated herein at Exhibit 13.

8 50. On January 30, 2023, the County of Mendocino denied Plaintiff's government
9 claim. A true and correct copy of the denial of claim is attached hereto and incorporated herein
10 at Exhibit 14.

11 **FIRST CAUSE OF ACTION**
12 **(Unlawful Search and Seizure)**

13 51. Plaintiff hereby incorporates the allegations contained within paragraphs 1
14 through 50, inclusive.

15 52. As a direct and proximate result of Defendants' unlawful actions as alleged
16 herein, Defendants deprived Plaintiff of his Fourth Amendment Right to be free from
17 unreasonable search, unreasonable seizure.

18 53. As a further direct and proximate result of Defendants' unlawful actions, which
19 were willful, wanton, malicious and oppressive or negligent as alleged herein, Plaintiff suffered
20 physical, emotional and other damages entitling him to compensation under 42 U.S.C. sections
21 1983 and 1985 according to proof, as well as reasonable attorneys fees incurred in pursuing
22 these claims under 42 U.S.C. Section 1988.

23 **SECOND CAUSE OF ACTION**
24 **(CONVERSION)**

25 54. Plaintiff hereby incorporates the allegations contained within paragraphs 1
26 through 53, inclusive.

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- B. A judgment awarding Plaintiff special damages in an amount to be determined by the trier of fact as sufficient to compensate the plaintiff for the injuries described in this complaint;
- C. An award of punitive damages to plaintiff in an amount to be determined by the trier of fact as sufficient to punish each defendant against whom these damages are awarded and sufficient to deter similar conduct in the future by these defendants;
- D. For interest at the legal rate on the foregoing sum pursuant to Sections 3287 and 3336 of the Civil Code, from and after July 15, 2022;
- E. A judgment awarding Plaintiff reasonable attorneys fees;
- F. A judgment awarding Plaintiff his costs of suit; and
- G. Such other and further relief as the Court deems proper.

Dated: July 31, 2023

/s/ Editte Lerman-----
Editte Lerman
Attorney for Plaintiff
GARY CORDOVA