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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES MICHAEL BENNO, JACOB  
DANIEL BENNO, LOGAN WAYNE  
BENNO, MARCIA JONES, and  
RICHARD YOUNG,

Plaintiffs,

v.

SHASTA COUNTY, CALIFORNIA;  
THOMAS BOSENKO; DALE  
FLETCHER; TOM BARNER; LESTER  
BAUGH; and DOES 1 to 10,

Defendants,

No. 2:16-cv-01110-TLN-DMC

**ORDER**

This matter is before the Court on Defendant Shasta County’s (the “County”) Motion to Dismiss.<sup>1</sup> (ECF No. 32.) Plaintiffs James Benno (“James Benno” or “Benno”), Jacob Benno, Logan Benno, Marcia Jones, and Richard Young (collectively, “Plaintiffs”) opposed the motion. (ECF No. 34.) The County filed a reply. (ECF No. 35.) For the reasons discussed herein, the Court GRANTS the County’s Motion to Dismiss. (ECF No. 32.)

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<sup>1</sup> Plaintiffs additionally bring this action against Defendants Thomas Bosenko, Dale Fletcher, Tom Barner, and Lester Baugh. (See ECF No. 29-1 at 1, 3.) However, these individual Defendants are not represented by the same counsel as the County or represented in the instant motion to dismiss. The Court additionally notes these Defendants were never served process (despite the initiation of this lawsuit on May 20, 2016) and have never appeared in this action.

1           **I.       FACTUAL AND PROCEDURAL BACKGROUND**

2           This action is proceeding on Plaintiffs’ First Amended Complaint (“FAC”), which asserts  
3 the County violated Plaintiff’s constitutional rights under the Fourth and Fourteenth Amendments  
4 when it enacted various land use ordinances regulating marijuana cultivation and when it  
5 conducted raids on Plaintiffs’ properties in Shasta County pursuant to “longstanding County  
6 customs.” (*See generally* ECF No. 29-1.)

7                   A.       Pre-Ordinance Allegations

8           James Benno “has been a vocal medical marijuana advocate in Shasta County” from 1997  
9 to the present. (*Id.* at 7.) Benno alleges he began cultivating medical marijuana on his real  
10 property in Shasta County, California in 1997, and then began “collectively cultivating . . . [it] for  
11 himself and a group of patients” in 2004. (*Id.* at 5.) Former Plaintiffs Jessica Solano, Nicholas  
12 Bolton, and Walter and Jerilyn Carney also began cultivating medical marijuana on property in  
13 Shasta County in 2004 and 2009, respectively.<sup>2</sup> (*Id.*) Plaintiffs allege no facts whatsoever to  
14 describe the manner or conditions in which they cultivated the marijuana, but simply claim it was  
15 done “pursuant to” the Compassionate Use Act of 1996 (the “CUA”), Cal. Health & Safety Code  
16 § 11362.5, and the Medical Marijuana Program (the “MMP”), Cal. Health & Safety Code §§  
17 11362.7–11362.85. (*See id.*)

18                   B.       2011 Ordinance

19           On December 13, 2011, the County enacted an ordinance permitting indoor and outdoor  
20 cultivation of marijuana, subject to certain restrictions (“2011 Ordinance”).<sup>3</sup> (ECF No. 9 at 4–

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21           <sup>2</sup> When this action was initiated, Jessica Solano, Nicholas Bolton, Jerilyn Carney and  
22 Walter Carney (additional purported property owners who cultivated medical marijuana in Shasta  
23 County); Josh Hancock, Charles McIntosh, and Jessica Benno (residents of Shasta County);  
24 Dennis Peron (a San Francisco resident); and Brian Monterrozo (a resident of Dupont, Colorado)  
25 were also named Plaintiffs in this action. (*See* ECF No. 1 at 2–3, 5.) On January 14, 2021,  
26 however, these Plaintiffs filed a “Notice of Partial Dismissal” (ECF No. 30), in which they  
27 dismissed their claims as asserted against all Defendants and were dismissed from this action.

28           <sup>3</sup> The Court previously granted Defendants’ request to judicially notice the at-issue Shasta  
County Ordinances, No. SCC 2011-05 (2011) and No. SCC 2014-02 (2014) (ECF No. 9 at 4–14,  
16–28) and herein incorporates those documents as referenced by the instant motion. (*See* ECF  
No. 27 at 3 n.3 (citing Fed. R. Evid. 201(b)(2); *Chew v. City & Cnty. of San Francisco*, No. 13-  
CV-05286-MEJ, 2016 WL 631924, at \*1 (N.D. Cal. Feb. 17, 2016), *aff’d*, 714 F. App’x 687 (9th

1 14.) Prior to the 2011 Ordinance, the County had no regulations specifically addressing the  
2 cultivation of medical marijuana in Shasta County. (*Id.* at 4.)

3 The County's intent in creating the 2011 Ordinance was to regulate medical marijuana  
4 cultivation (as permitted under the CUA and MMP) and "to accommodate the needs of Qualified  
5 Patients and their Primary Caregivers" while mitigating potential adverse effects on surrounding  
6 areas and persons. (ECF No. 9 at 5–6.) To that end, the 2011 Ordinance incorporated definitions  
7 set forth under several code sections, including the CUA and MMP, and restricted marijuana  
8 cultivation to the legal residences of qualified patients and/or their primary caregivers.<sup>4</sup> (ECF No.  
9 9 at 8–9.) With respect to permitted cultivation sites, the Ordinance further set forth regulations  
10 pertaining to the location and size of the cultivation site; type of property on which cultivation  
11 was permitted; fencing and other structural and security requirements; and prohibitions of  
12 cultivation sites located near certain premises (such as schools, public parks, child care centers,  
13 churches, the property lines of neighboring private residences, and areas where the cultivation  
14 would be visible to the public). (*Id.* at 9–12.) The 2011 Ordinance additionally cautioned that it  
15 was "not [to] be construed to protect Qualified Patients, Primary Caregivers or any other person  
16 from prosecution pursuant to any laws that may prohibit the Cultivation, sale, distribution,  
17 possession and/or use of controlled substances, or to authorize conduct that is unlawful under  
18 state or federal law," and expressly noted the cultivation, sale, possession, distribution, and use of  
19 marijuana remained unlawful under federal law. (*Id.* at 12.) Finally, the 2011 Ordinance

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21 Cir. 2017); *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th  
22 Cir. 2006)).)

23 <sup>4</sup> Definitions incorporated by the 2011 Ordinance include "Cultivation," "Enforcing  
24 Officer," "Fence," "Indoors," "Legal Parcel," "Marijuana," "Medical Marijuana," "Medical  
25 Marijuana Collective," "Outdoors," "Premises," "Primary Caregiver," and "Qualified Patient."  
26 (See ECF No. 9 at 8–9.) As relevant here, a "Qualified Patient" is a person who has applied for  
27 and received a valid identification card for medical marijuana use, a person with a valid  
28 prescription in place, or a caretaker or guardian of someone with a serious medical condition who  
was prescribed medical marijuana. See Cal. Health & Safety Code § 11362.7. A "Primary  
Caregiver" is an individual designated by a qualified patient, who is responsible for the housing,  
health, or safety of that patient (such as a designated health care facility or family member). *Id.*  
An "Identification Card" is issued by the State Department of Public Health pursuant to the  
recommendation of a licensed physician. *Id.*

1 provided that any marijuana cultivation not in conformance with the Ordinance’s provisions  
2 would be declared a public nuisance and abated “by any means available by law to prevent public  
3 nuisances.” (*Id.* at 9.)

4 “[I]n reliance on the existence of the 2011 Ordinance,” James Benno purportedly  
5 relocated in early 2013 to a property on Hopekay Lane in unincorporated Shasta County to  
6 establish an outdoor marijuana cultivation. (ECF No. 29-1 at 5, 10.) Plaintiffs allege Benno  
7 “expended significant money, time and labor” leasing property and preparing the site for outdoor  
8 cultivation, “including, but not limited to: i) clearing all debris from the rented property[;] ii)  
9 purchasing materials and constructing a 6 foot wood fence (100 x 150 ft) and affixing a 2 x 8  
10 fiberglass barrier atop; iii) purchasing materials and constructing 4 x 4 wood pallets; iv)  
11 purchasing and preparing planting pots; [and] v) relocating 100 yards of soil [Benno] prepared for  
12 growing the medical marijuana plants.” (*Id.* at 10.)

13 Plaintiffs identify two raids executed in Shasta County after enactment of the 2011  
14 Ordinance which they allege were performed without valid warrants:

- 15 1) In or around September 2013, unidentified employees of the Shasta County Sheriff’s  
16 Department (“Sheriff’s Department”) and Code Enforcement ordered the removal of  
17 approximately 68 medical marijuana plants from the Shasta County property on which  
18 Jessica Solano and Nicholas Bolton were cultivating medical cannabis. (*Id.* at 3, 6.)
- 19 2) In or around September 2013, unidentified employees of the Sheriff’s Department and  
20 Code Enforcement raided the Shasta County property on which Walter and Jerilyn  
21 Carney were cultivating medical cannabis and destroyed approximately 96 medical  
22 marijuana plants and unspecified personal property. Walter and Jerilyn Carney were  
23 arrested by unidentified employees and held in jail for three days. (*Id.*)

24 C. 2014 Ordinance

25 On January 28, 2014, finding the provisions of the 2011 Ordinance to be “inadequate to  
26 control the negative impacts of marijuana cultivation” and noting additional risks and adverse  
27 impacts associated with marijuana cultivation, the County enacted a subsequent ordinance  
28 amending the entirety of the 2011 Ordinance and the County Code section pertaining to

1 “accessory buildings and uses,” as well as portions of the County Code section regarding “special  
2 uses” governing properties in Shasta County (“2014 Ordinance”).<sup>5</sup> (ECF No. 9 at 16–28.)  
3 Importantly, the 2014 Ordinance banned all outdoor marijuana cultivation and explicitly limited  
4 cultivation to areas “within a detached residential accessory structure affixed to the real property  
5 (a) that meets the definition of “Indoor,” or “Greenhouse,” (b) that is located on the same  
6 Premises as the Residence of a Qualified Patient(s) or Primary Caregiver(s), and (c) that complies  
7 with all of the provisions of the Shasta County Code relating to accessory structures . . . .” (*Id.* at  
8 22.) As to indoor cultivation, the Ordinance set forth specific requirements regarding the location  
9 of cultivation, screening and security structures, maximum permissible power output, water  
10 sources, filtration and ventilation systems, and the number of marijuana plants pertaining to  
11 permissible indoor cultivation. (*Id.* at 22–27.) Specifically, the 2014 Ordinance limited  
12 cultivation to no more than 12 marijuana plants on any premises, “regardless of the number of  
13 Qualified Patients or Primary Caregivers residing at the Premises or participating directly or  
14 indirectly in the Cultivation.” (*Id.* at 23–24.) Finally, the 2014 Ordinance included a  
15 misdemeanor penalty clause which provided that any person in violation of the Ordinance was  
16 guilty of a misdemeanor. (*Id.* at 25.)

17 After enactment of the 2014 Ordinance, Plaintiffs identify two additional raids executed in  
18 Shasta County which were allegedly performed without valid warrants:

- 19 1) On May 20, 2014, unidentified employees of the Sheriff’s Department and Code  
20 Enforcement raided James Benno’s property. During the raid, approximately 99  
21 medical marijuana plants were seized/destroyed, approximately 100 yards of soil was  
22 removed, and unspecified personal property was damaged and destroyed.  
23 Unidentified employees arrested James Benno, Logan Benno, and Jacob Benno.  
24 James and Logan Benno were held in jail for approximately 60 days and Jacob Benno  
25 was held for approximately 45 days. (ECF No. 29-1 at 5, 7, 9.) Plaintiffs contend  
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27 <sup>5</sup> The Ordinance also incorporated additional definitions from sections of the Shasta County  
28 and California Health and Safety Code such as “Greenhouse,” “Marijuana Plant,” and  
“Residential Accessory Building.” (*See* ECF No. 9 at 19–22.)

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