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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FREE SPIRIT ORGANICS, NAC, et al.,

Plaintiffs,

v.

SAN JOAQUIN COUNTY BOARD OF
SUPERVISORS, et al.,

Defendants.

No. 2:17-cv-02271-KJM-EFB

ORDER

On October 10, 2017, the San Joaquin County Sheriff entered and seized a hemp crop from a 26.19 acre parcel of land on which plaintiffs owned and operated an industrial hemp operation. On October 27, 2017, plaintiffs initiated this action, claiming this seizure, perpetuated by a number of San Joaquin County officials, deprived them of certain constitutional protections. Defendants have now moved to dismiss the second amended complaint. Having considered the relevant briefing and conducted an evidentiary hearing to address a standing challenge against one of the plaintiffs, the court GRANTS defendants' motion to dismiss on standing grounds.

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1 I. BACKGROUND

2 A. Parties

3 Plaintiffs in this action are as follows.¹ Free Spirit Organics (“FSO”), NAC, is a
4 tribal owned Native American company organized under the laws of the State of Nevada.²
5 Second Am. Compl. (“SAC”) ¶ 3, ECF No. 35. FSO served as the manager and operator of a
6 250-acre plot of land in Stockton, California on which the industrial hemp grow at issue took
7 place. *Id.* American States University (“ASU”) is an institution of higher education, as defined
8 under section 81000 of the California Food and Agricultural Code; ASU is FSO’s business
9 partner in the Stockton hemp grow. *Id.* ¶ 4. HRM Farms, Inc., a California corporation with its
10 principal place of business in Holt, California also was a partner in the grow operation. *Id.* ¶ 5.
11 Cannabis Science, Inc. is a publicly traded company organized under the laws of Nevada, with its
12 principal place of business in Orange County, California. *Id.* ¶ 6. Finally, plaintiff S.G. Farms is
13 a California agricultural research organization based in Marin County, California that contracted
14 with FSO “to assist with the subject grow and to conduct research in connection with the subject
15 grow.” *Id.* ¶ 7.

16 Plaintiffs name several San Joaquin County agencies and officials as defendants in
17 this action. First, plaintiffs name the San Joaquin County Board of Supervisors, including its
18 individual members acting in their official capacity (collectively, “Board”). *Id.* ¶ 10. Those
19 members are Miguel Villapudua, Katherine Miller, Tom Patti, Bob Elliott and Chuck Winn. *Id.*
20 Plaintiffs also name Erin Hiroko Sakata, an attorney working for the San Joaquin County

23 ¹ On January 7 and 8, 2019, the court held an evidentiary hearing to address the issue of
24 standing as to certain plaintiffs. *See* ECF Nos. 90, 91. During that hearing, the following
25 plaintiffs were voluntarily dismissed from this action: Winnemucca Shoshoni, MBS, Gerard
26 Galvez, Bruce Granados, Scott Rayborn, Justin Granados, Glen Burgin, Doreen Morales, Gil
27 Granados and Gil Granados, Jr.

28 ² At the January 8, 2019 evidentiary hearing, the parties stipulated that wherever the
record references the entity Free Spirit Organics, LLC, that reference should be construed to
identify Free Spirit Organics, NAC. ECF No. 91.

1 counsel's office. *Id.* ¶ 11. Finally, plaintiffs name the San Joaquin County Sheriff and Doe
2 defendants.³ *Id.* ¶¶ 12–13.

3 B. Factual Allegations

4 Plaintiffs leased a 250-acre parcel of land in San Joaquin County for the purpose
5 of operating an industrial hemp operation on 26.19 acres of that parcel. *Id.* ¶ 27. Plaintiffs
6 applied for all necessary paperwork to conduct the grow. *Id.* FSO is an industrial hemp
7 cultivator approved by the Nevada Department of Agriculture and HRM is a hemp grower
8 registered with the San Joaquin County Agricultural Commission. *Id.* ¶¶ 28–29. Hoping to
9 produce a yield of the highest quality, plaintiffs also allege they contacted S.G. Farms to provide
10 consultation services regarding the grow. *Id.* ¶¶ 30–32. The parties reached a “cooperative
11 consulting agreement” to achieve that end. *Id.* ¶¶ 31–32. Plaintiffs allege they were authorized to
12 conduct grow operations by way of S.G. Farms' qualifications under California Food and
13 Agricultural Code section 81000(c)(1). *Id.* ¶ 33.

14 In June 2017, plaintiffs began to cultivate the hemp grow. *Id.* ¶ 34. On July 31,
15 2017, the County Agricultural Commission approved the grow operation. *Id.* The Commission
16 identified HRM as a “grower of hemp” on the parcel; S.G. Farms regularly visited the parcel to
17 perform testing and maintenance and Williams Bills (“Chief Bills”), a member of the Native
18 American tribe of Winnemucca Shoshoni, oversaw general grow operations. *Id.* ¶¶ 8, 34.
19 Plaintiffs further allege they tested the hemp to ensure it fell below the 0.3 percent THC
20 [tetrahydrocannabinol] limit permitted for industrial hemp and posted signage on the grow site to
21 ensure it was “unmistakably identified [] as industrial hemp.” *Id.* ¶¶ 35–36.

22 On August 29, 2017, County Counsel Sakata sent plaintiffs a letter claiming that,
23 based on an August 17, 2017 investigation, their “cannabis grow” was prohibited by County law.
24 *Id.* ¶ 37. The letter further demanded plaintiffs produce evidence by September 11, 2017,
25 supporting their claim of being an authorized “research cultivator.” *Id.* On September 11, 2017,
26

27 ³ Plaintiffs also named the San Joaquin County District Attorney as a defendant in this
28 action; however, at the April 20, 2018 motion hearing, the court dismissed the District Attorney
from this action with prejudice.

1 plaintiffs responded to the County's letter, providing a factual and legal basis for their alleged
2 authorization to conduct the grow. *Id.* ¶ 38. Plaintiffs' responsive letter is attached as exhibit B
3 to the second amended complaint. *See id.*, Ex. B at 32–48, ECF No. 36.⁴ On September 12,
4 2017, the County responded by letter, taking the position plaintiffs' letter was non-responsive and
5 did not demonstrate they qualified as an "Established Agricultural Research Institution for the
6 purposes of agricultural or academic research." *Id.* ¶ 39. On September 15, 2017, plaintiffs again
7 replied by letter and provided supporting evidence attempting to substantiate "currently approved
8 [educational] programs" offered by ASU. *Id.* ¶ 40 (alteration in original).

9 On September 26, 2017, the Board of Supervisors passed ordinance no. 4497, an
10 "Interim Urgency Ordinance Declaring a Temporary Moratorium on the Cultivation of Industrial
11 Hemp by 'Established Agricultural Research Institutions' within the Unincorporated Areas of San
12 Joaquin County." *Id.* ¶¶ 41–47; *id.*, Ex. C at 49–56. Thereafter, on September 28, 2017, Sakata
13 sent plaintiffs a letter attaching the ordinance, warning the ordinance was effective immediately,
14 asserting plaintiffs' grow was a public nuisance and demanding abatement. *Id.* ¶ 43; *id.*, Ex. C.
15 On October 3, 2017, in response to Sakata's latest letter, plaintiffs again had their crop tested for
16 THC levels. *Id.* ¶ 44. The test once again revealed THC levels at 0.24%, which plaintiffs allege
17 "clearly designat[ed] it as hemp." *Id.*

18 On October 5, 2017, ASU's Administrative Dean, Roger Agajanian, contacted the
19 Board and requested a hearing be scheduled for October 24, 2017. *Id.* ¶ 45. His request was
20 denied; however, he was informed his matter would be placed on the agenda for the Board's
21 November 7, 2017 meeting. *Id.* The next day, October 6, 2017, Agajanian sent the Board a letter
22 confirming the November 7, 2017 agenda item and summarizing plaintiffs' position regarding the
23 ordinance. *Id.*; SAC, Ex. D at 57–71.

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27 ⁴ The court considers plaintiffs' exhibits as incorporated by reference into the second
28 amended complaint and therefore relies on their contents for purposes of resolving the present
motion. *See* Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading
is a part of the pleading for all purposes.").

1 On October 9, 2017, a law enforcement agent named Michael Eastin obtained a
2 warrant to search the grow property, and, “the next Tuesday, one day after Columbus [D]ay,”⁵ the
3 Sheriff entered the property and seized the hemp crop. *Id.* ¶¶ 46, 52.

4 C. Procedural History

5 Plaintiffs initiated this suit on October 27, 2017, and, on October 30, 2017, filed
6 a first amended complaint as a matter of course. ECF Nos. 1, 7. On November 17, 2017,
7 plaintiffs moved for a temporary restraining order asking the court to temporarily enjoin
8 ordinance no. 4479, stay any pending criminal charges brought by the County and order return of
9 the industrial hemp seized based on the October 9, 2017 search warrant. ECF No. 21. On
10 November 30, 2017, the court heard plaintiffs’ motion for the temporary restraining order and,
11 after considering arguments, denied the motion for failure to show a likelihood of irreparable
12 harm. *See* ECF Nos. 29, 32.

13 On December 25, 2017, as the parties stipulated and the court approved, plaintiffs
14 filed the operative second amended complaint. *See* SAC. The complaint makes the following
15 claims: (1) ordinance no. 4479 is constitutionally preempted; (2) ordinance no. 4479 is
16 unconstitutionally vague; (3) ordinance no. 4479 is an unlawful bill of attainder/ex post facto law;
17 (4) defendants violated the procedural due process clause of the Fifth Amendment; and
18 (5) defendants committed an unlawful seizure under the Fourth Amendment. *See generally id.*

19 On January 16, 2018, defendants moved to dismiss the second amended complaint.
20 Mot., ECF No. 37. Prior to filing an opposition, plaintiffs Free Spirit Organics, NAC, American
21 States University, HRM Farms and Cannabis Science, Inc. (hereinafter “FSO plaintiffs”)
22 substituted Ronda Baldwin-Kennedy as their new counsel of record.⁶ *See* ECF Nos. 46, 48. S.G.
23 Farms is the only remaining plaintiff for which Joseph Salama serves as counsel of record. The

24 ⁵ The second amended complaint describes the significance of this timing given the
25 history of Native American displacement beginning with the arrival of Christopher Columbus in
26 1492. SAC ¶¶ 20–26.

27 ⁶ Plaintiffs William Bills and Glen Burgin also substituted Ms. Baldwin-Kennedy as
28 counsel of record; however, as noted above, those plaintiffs previously were voluntarily
dismissed as parties to this action on January 8, 2019.

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