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9 BRIAN CHAPLIN

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 FOR THE COUNTY OF NEVADA

14 BRIAN CHAPLIN,) Case No. CU18-083391
15)
16 Plaintiff,) **PLAINTIFF’S SECOND AMENDED**
17) **VERIFIED COMPLAINT FOR**
18 v.) **DECLARATORY RELIEF,**
19) **INJUNCTIVE RELIEF AND**
20) **DAMAGES**
21 COUNTY OF NEVADA, NEVADA COUNTY) **JURY TRIAL DEMANDED**
22 SHERIFF’S OFFICE, SGT. JUSTIN MARTIN, in)
23 his individual and official capacities, DEPUTY)
24 MACKEY, in his individual and official capacities,)
25 and DOES 1-10,)
26)
27)
28 Defendants.)

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30 **I. INTRODUCTION**

31 1. Proving yet again that no good deed goes unpunished, defendants in this action,
32 defendants County of Nevada (“Nevada County”), the Nevada County Sheriff’s Office
33 (“NCSO”), Deputy Mackey (“Mackey”) and Sgt. Justin Martin (“Martin”) (collectively
34 “Defendants”), turned the tables on Plaintiff Chaplin (“Chaplin”) by punishing this innocent
35 victim of a crime by investigating *him*, rather than the culprits who committed the heinous crime.
36 Because Chaplin acted as a responsible citizen and called the police to report the violent crime,
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1 the NCSO, in particular, defendant Mackey, turned the tables on Chaplin and helped obtain an
2 unlawful search warrant against him, omitting facts he and the other defendatns knew that
3 proved the lawfulness of the medical marijuana cultivation under California law, to obtain a
4 search warrant against *him*, rather than the actual criminals.

5 2. The unfortunate series of events unfolded in the wee hours of November 11-12,
6 2017, when four to five masked gunmen came to Plaintiff’s property, held the medical marijuana
7 cultivators at gunpoint, bound their wrists and ankles with zip-ties, and stole approximately forty
8 (40) pounds of marijuana, as well as a very expensive marijuana manicuring machine, which was
9 being cultivated for medical use pursuant to California law.

10 3. When one of the bound cultivators freed himself from the zip-ties, he called
11 Plaintiff Chaplin to tell him what had happened, which prompted Chaplin to report the violent
12 crime to the Nevada County Sheriffs Office. However, rather than investigate the actual crime,
13 the NCSO turned its attention on Chaplin and, later, obtained a search warrant against him, based
14 on what they observed from the crime scene, omitting the details that were necessary to
15 demonstrate that it was a lawful grow under California law, to wit, the patient records that were
16 conspicuously posted at the cultivation site.

17 4. The punitive measures taken against Chaplin by law enforcement officers
18 entrusted to protect against violent crime, rather than legitimate California activity, caused this
19 innocent victim of a crime to be victimized a second time, this time by the very people who are
20 supposed to “protect and serve” him. Their actions violate the Fourth Amendment to the United
21 States Constitution; Article I, Section 7 of the California Constitution, California Civil Code
22 Section 52.1, and other state laws.

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II. JURISDICTION AND VENUE

4. Plaintiff Chaplin brings this action to redress the deprivation of his civil rights under the State laws described above, as well as 42 U.S.C. § 1983.

5. This Court has subject matter jurisdiction over this matter pursuant to Article VI, Section 10 of the California Constitution, Cal. Code of Civil Procedure Section 88, and Cal. Civil Code Section 52.1.

6. This Court has personal jurisdiction over each of the defendants, as they operate or reside within the County of Nevada, which is within this judicial district.

7. On May 8, 2018, plaintiff Chaplin filed an administrative claim with the County of Nevada, in compliance with California Government Code Sections 910 *et seq.* That claim was rejected by the County by letter, dated June 20, 2018. The original complaint in this action was filed on December 18, 2018, so this action is timely.

8. Venue is proper in this judicial district because the events giving rise to the complaint occurred in the County of Nevada, which is in this judicial district. (See Code of Civil Procedure, Sections 392, 394 & 395).

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III. THE PARTIES

A. Plaintiff

9. Plaintiff BRIAN CHAPLIN (“Chaplin”) is a resident of Nevada County, California. Chaplin is a qualified medical marijuana patient under state law who is a member-cultivator of two medical marijuana collectives. All of the marijuana he cultivated was destined for seriously ill people, most notably children who suffer from multiples sclerosis and the epileptic seizures that this entails.

1 **B. Defendants**

2 10. Defendant THE COUNTY OF NEVADA (“Nevada County”) is a municipal
3 corporation located in the County of Nevada.

4 11. Defendant NEVADA COUNTY SHERIFF’S OFFICE (“NCSO”) is a municipal
5 corporation located in the County of Nevada.

6 12. Defendant SGT. MACKEY (“Royal”) is a Deputy Sheriff with Nevada County.
7 He is sued in his official and individual capacities.

8 13. Defendant SGT. JUSTIN MARTIN (“Martin”) is a Deputy Sheriff with Nevada
9 County. He is sued in his official and individual capacities.

10 14. Plaintiff is ignorant of the true names or roles of defendants sued herein as DOES
11 1 through 10, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff
12 will amend his complaint to allege their true names when ascertained. Plaintiff is informed and
13 believe and therefore allege that each of the Doe defendants is legally responsible for the injuries
14 and damages hereinafter set forth, and that each of the said defendants proximately caused said
15 injuries and damages by reason of their violations of constitutional, statutory and common law
16 rights.
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18 15. Each of the defendants caused and is responsible for the below-described
19 unlawful conduct and resulting injuries by, among other things: personally participating in the
20 unlawful conduct or acting jointly or conspiring with others who did so by acquiescing or setting
21 into motion plans or actions that led to the unlawful conduct. Defendants Nevada County and
22 the NCSO are liable under the doctrine of respondeat superior. (See Cal. Gov’t Code Section
23 815.2).
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1 16. Defendants’ acts were reckless, willful, wanton, malicious and oppressive and
2 done with conscious disregard and deliberate indifference to Chaplin’ rights, thereby justifying
3 the award of exemplary and punitive damages.

4 **IV. FACTS APPLICABLE TO ALL CAUSES OF ACTION**

5 17. Plaintiff Brian Chaplin (“Chaplin”) is a qualified medical marijuana patient who
6 cultivated marijuana in accordance with California law. See Cal. Health & Saf. Code Section
7 11362.5 & 11362.775). Pursuant to these state laws, Chaplin cultivated marijuana for others, as
8 these laws intended. In particular, Chaplin cultivated for the Caladrius Network, which serves
9 the needs of medical marijuana patients with catastrophic illnesses, as well as for the members of
10 his own medical marijuana collective.

11 18. On November 11-12, 2017, several people who were working at the marijuana
12 cultivation site were brutalized by masked gunmen armed with AR-15s (assault rifles). They
13 bound the wrists of the workers and hog-tied them with zip ties, as they stole an expensive
14 marijuana manicuring machine and several dozen pounds of marijuana.

15 19. When Chaplin was informed by one of the bound workers that they had been
16 robbed by four to five masked gunmen armed with assault rifles, Chaplin immediately notified
17 the NCSO of the violent crime, as any responsible person should have done.

18 20. The first law enforcement officer to arrive at the scene was defendant Mackey
19 who was expressly notified by Chaplin that he was performing legitimate cultivation of medical
20 marijuana, in accordance with California law, as he was cultivation marijuana for two medical
21 marijuana collectives.

1 21. Rather than make any apparent attempt to go after the violent thieves, the
2 Defendants turned their investigative attention on Chaplin and the workers, since they found
3 what they considered a large quantity of marijuana on the premises.

4 22. Although they knew full well from Chaplin's statements and the prominently
5 displayed patient records revealed that the cultivation they discovered was medical marijuana
6 cultivation, the Defendants sought a search warrant against *him*, instead of investigating the
7 armed robbers, in the wee hours of November 11-12, 2017.

8 23. In doing this, the Defendants omitted the crucial fact of the patient records, which
9 makes it impossible to determine whether the cultivation was legal, since this requires a division
10 of the amount of marijuana cultivated by the number of patients. They also omitted Chaplin's
11 statement to Mackey that this was legitimate medical marijuana cultivation. These material
12 omissions were recklessly and maliciously made and require the invalidation of the search
13 warrant.
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15 24. Worse still, Chaplin was prevented by defendant officer Mackey from entering his
16 own property, which would have allowed him to further explain the legitimacy of his medical
17 marijuana cultivation of marijuana under California law before the officers sought a search
18 warrant.
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20 25. Defendants, then, destroyed all, or nearly all, of the medical marijuana they seized
21 from Chaplin without notice and an opportunity to be heard about the legitimacy of his medical
22 marijuana cultivation, which violates due process.
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24 26. They also, inexplicably, cited a statute that had been repealed in their search
25 warrant application.
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SECOND CAUSE OF ACTION

Violation of California Constitution, article 1, § 7, subdivision (a)

33. Plaintiff realleges and incorporates by reference paragraphs 1 through 32 of this complaint as though fully set forth herein.

34. The actions of the Defendants deprived Plaintiff Chaplin of this right through their destruction of his lawfully possessed property under California law without an opportunity to be heard before a neutral magistrate. (See *County of Butte v. Superior Court* (2009) 175 Cal.App.4th 729; see also *Lavan v. City of Los Angeles* (9th Cir. 2002) [homeless plaintiffs had cognizable property interest stored in violation of municipal ordinance].)

35. Plaintiff suffered damages, as described above, as a result of this constitutional deprivation.

THIRD CAUSE OF ACTION

VIOLATION OF 42 U.S.C. § 1983--UNREASONABLE SEARCH AND SEIZURE

36. Plaintiff realleges and incorporates by reference paragraphs 1 through 35 of this Complaint as though fully alleged herein.

37. Based on the Fourth Amendment to the United States Constitution, 42 U.S.C. § 1983 grants all persons civil rights, in particular the right against unreasonable searches and seizures and to an honest search warrant application, which defendants violated through their knowing material omissions.

38. Defendants, and each of them, therefore, violated 42 U.S.C. § 1983 by violating Chaplin’s right to be free from unreasonable searches and seizures based on a pattern, practice or custom.

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SEVENTH CAUSE OF ACTION

MONELL LIABILITY

58. Plaintiff realleges and incorporates by reference paragraphs 1 through 57 of this Complaint as though fully alleged herein.

41. Based on the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983 prevents against the destruction of personal property without due process of law, which defendants violated through their destruction of Chaplin’s property without notice and an opportunity to be heard.

42. Defendants, and each of them, therefore, violated 42 U.S.C. § 1983 by violating Chaplin’s right to due process based on a pattern, practice or custom, as ratified and approved by the supervisory defendants, as described above.

43. As a direct and proximate result of this due process violation, plaintiff Chaplin suffered damages.

EIGHTH CAUSE OF ACTION

EQUITABLE RELIEF UNDER MINSKY AND HOLT

44. Plaintiff realleges and incorporates by reference paragraphs 1 through 43 of this Complaint as though fully alleged herein.

45. Defendants became the bailees for Plaintiff’s lawfully possessed property when they impermissibly seized and destroyed it.

46. By doing the aforesaid acts, seizure and destruction of property that is not proved to be contraband, defendants must be compelled to respond in damages in lieu of the destroyed property. (See *Holt v. Kelly* (1978) 20 Cal.3d 560, 565, fn. 4.)

V. RELIEF SOUGHT

WHEREFORE, plaintiff, on behalf of himself and others similarly situated, seeks the following relief:

1. A declaration that the defendants' actions are unlawful and unconstitutional;
2. A permanent injunction enjoining defendants from engaging in the unlawful conduct described above;
3. Damages and punitive (or exemplary) damages, according to proof at trial;
4. Costs and attorneys fees incurred in this action; and
5. Such other and further relief as may be just and proper.

DATED: October 30, 2019

Respectfully submitted,



JOSEPH D. ELFORD
Counsel for Plaintiff

VERIFICATION

I declare that my offices are located in the County of San Francisco, which is not the same county as the named plaintiff, Chaplin, so I verify this Complaint on his behalf.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of October, 2019, in San Francisco, California.

DATED: October 30, 2019

Respectfully submitted,



JOSEPH D. ELFORD
Counsel for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff Chaplin hereby demands a jury trial of this action.

DATED: October 30, 2019

Respectfully submitted,



JOSEPH D. ELFORD
Counsel for Plaintiff

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CERTIFICATE OF SERVICE

I am a resident of the State of California over the age of eighteen years and not a party to this action. My business address is 600 Fell Street #101, San Francisco, CA 94102. On October 9, 2019, I served the within document:

STIPULATION TO FILE THIRD AMENDED COMPLAINT

via first-class mail upon:

Jaime L. Hogenson
Deputy County Counsel
Office of the County Counsel
950 Maidu Avenue, Suite 240
Nevada City, CA 95959

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on this 1st day of November, 2019, in San Francisco, California.



Joseph D. Elford