

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GARY CORDOVA,
Plaintiff,

v.

MENDOCINO COUNTY SHERIFF'S
OFFICE, et al.,
Defendants.

Case No. 23-cv-03830-RFL

**ORDER GRANTING MOTION TO
DISMISS WITH LEAVE TO AMEND**

Re: Dkt. No. 15

Gary Cordova brings this action for violation of his civil rights, conversion, and trespass after the Mendocino County Sheriff's Office ("MCSO") conducted a search of his property located on tribal land and destroyed over 100,000 of his cannabis plants, greenhouses, and other property pursuant to a search warrant. The MCSO, the County of Mendocino, and Timothy Del Fiorentino move to dismiss Cordova's complaint for failure to state a claim. The motion to dismiss is **GRANTED WITH LEAVE TO AMEND**. This ruling assumes the reader is familiar with the facts, the applicable legal standard, and the arguments made by the parties.

Cordova's first cause of action for unlawful search and seizure under 42 U.S.C. § 1983 fails to state a claim. His Section 1983 claim against the MSCO and the County is not adequately pleaded because the complaint does not allege the specific policy, practice, or custom pursuant to which Del Fiorentino's challenged conduct was undertaken. *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658, 694 (1978)) ("A government entity may not be held liable under 42

U.S.C. § 1983, unless a policy, practice, or custom of the entity can be shown to be a moving force behind a violation of constitutional rights.”).

As for the Section 1983 claim against Del Fiorentino, the complaint does not adequately allege that he obtained the search warrant through deception. To state a claim for judicial deception, the plaintiff must allege “(1) a misrepresentation or omission (2) made deliberately or with a reckless disregard for the truth, that was (3) material to the judicial decision.” *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1147 (9th Cir. 2021). Cordova alleges that Del Fiorentino should have included the following information in his affidavit in support of the warrant:

(1) Cordova’s property was located on tribal land; (2) Cordova’s cannabis cultivation was governed by tribal ordinances, and “[t]he State of California does not govern cannabis cultivation on Round Valley Tribal lands”; and (3) there were two medical recommendations for the use of cannabis posted at the gate of the property. (Compl. ¶¶ 41–42.) The complaint lacks any allegations that these omissions were either intentional or reckless. Cordova does not allege that Del Fiorentino knew of the omitted information at the time he applied for the warrant, or that he either deliberately failed to include the information or acted with reckless disregard for the truth by failing to obtain the information.

In any event, the alleged omissions would not have been material to the finding of probable cause. The California statutes identified by Cordova limit the personal cultivation of cannabis to six plants at a single private residence, Cal. Health & Saf. Code § 11362.2(a)(3), and local governments may “enact and enforce *reasonable* regulations to regulate” the possession, planting, cultivation, harvesting, drying, or processing of “not more than six living cannabis plants.” *Id.* at §§ 11362.1(a)(3), 11362.2(b)(1) (emphasis added). The plain language of Section 11362.2(b)(1) does not give local governments the unlimited power to authorize large scale marijuana cultivation as Cordova suggests; rather, the statute allows local governments to regulate the personal cultivation of up to six cannabis plants. Thus, the Round Valley Tribe’s implementation of its own marijuana ordinances does not change the maximum number of plants that may be lawfully cultivated under state law.

The cultivation of over 100,000 cannabis plants (or even over 1,000 as asserted in the affidavit) at a single residence would fall outside the lawful use prescribed by the Health and Safety Code, and Cordova does not dispute that California’s “criminal laws . . . have the same force and effect” within tribal lands in the state under Public Law 280. 18 U.S.C. § 1162; *see also id.* at § 1360. Therefore, inclusion of information about the Round Valley Tribe’s ordinances and the location of Cordova’s property on tribal land would not have precluded a finding of probable cause to support the warrant.

Nor would the information about the two medical recommendations allegedly posted on the property have precluded a finding of probable cause. California’s medical marijuana law “protects the possession of marijuana only in an amount reasonably related to the user’s current medical needs.” *Littlefield v. Cnty. of Humboldt*, 218 Cal. App. 4th 243, 252–53 (2013). Where “the sheer quantity of marijuana under cultivation” belies personal medical use, the presence of a medical marijuana recommendation does not negate probable cause. *Id.* at 253. Here, Cordova does not allege that the cultivation of over 1,000 cannabis plants is within an amount that could be reasonably related to the medical recommendations at issue.

Accordingly, Cordova fails to state a claim for unlawful search and seizure against any of the defendants under either Section 1983 or 42 U.S.C. § 1985. *Caldeira v. County of Kauai*, 866 F.2d 1175, 1182 (9th Cir. 1989) (“[T]he absence of a Section 1983 deprivation of rights precludes a Section 1985 conspiracy claim predicated on the same allegations.”). It seems unlikely that Cordova would be able to amend his complaint to allege that the omissions upon which he relies were material to the magistrate’s finding of probable cause. However, the claims are dismissed with leave to amend out of an abundance of caution and because Cordova has not yet had an opportunity to amend. As Cordova’s federal claims have all been dismissed, the Court declines to exercise supplemental jurisdiction over his remaining state law claims at this time and dismisses them without prejudice.

If Cordova wishes to amend, he shall file a first amended complaint correcting the deficiencies identified in this order no later than **February 16, 2024**. If Cordova does not file an amended complaint by that date, his complaint will remain dismissed, and the case will be closed.

IT IS SO ORDERED.

Dated: February 2, 2024



RITA F. LIN
United States District Judge