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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OCEANSIDE ORGANICS;
OCEANSIDE FARM TO TABLE, INC.;
ALAN SHELTON; JUSTINE SHELTON;
RON MIROLLA; LISA RIGG;
MICHAEL WINKLEMAN; SARAH
DYAL; ANTHONY CARBONNE;
RICHARD DAVIS; DAVID SNYDER;
DUANE LEWIS; SANDRA LEWIS;
WAYNE LARSON; SHAWN SMITH;
KYLE SNELLER; BUCK
HUTCHERSON; LOGAN PIERCE;
BROOK BISHOP; RON BOCIAN,

Plaintiffs,

v.

COUNTY OF SAN DIEGO, SAN
DIEGO COUNTY SHERIFF'S
DEPARTMENT; WILLIAM GORE; TIM
CLARK; MATT STEVENS; and DOES
1-10 inclusive,

Defendants.

Case No.: 15-CV-854 JLS (MDD)

**ORDER GRANTING MOTION TO
DISMISS PLAINTIFFS' SECOND
AMENDED COMPLAINT**

(ECF No. 33)

Presently before the Court is Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint. ("MTD," ECF No. 33.) Also before the Court is Plaintiffs' Response

1 in Opposition to, (“Opp’n,” ECF No. 35), and Defendants’ Reply in Support of, (“Reply,”
2 ECF No. 37), the MTD. Having considered the parties’ arguments and the law, the Court
3 **GRANTS** Defendants’ MTD and **DISMISSES WITHOUT PREJUDICE** Plaintiffs’
4 Second Amended Complaint (“SAC”).

5 **BACKGROUND**

6 Plaintiff Oceanside Organics is a “closed loop marijuana collective” operating in
7 San Diego County, California. (SAC ¶ 19, ECF No. 32.) The other plaintiffs are Oceanside
8 Organics’ eighteen individual members and a corporation formed to purchase the property
9 upon which Oceanside Organics grows its medical marijuana. (*Id.* ¶¶ 3–18, 20.)

10 Plaintiffs agreed to contact local law enforcement to ensure the legality and
11 compliance of their collective. (*Id.* ¶ 28.) In mid-July 2014, Plaintiffs’ counsel contacted
12 Defendant Tim Clark, a Deputy Sheriff with the San Diego County Sheriff’s Department.
13 (*Id.* ¶¶ 22, 29.) In the course of their correspondence, Plaintiffs’ counsel provided to
14 Defendant Clark “copies of all valid recommendations” for medical marijuana. (*Id.* ¶ 30.)
15 Plaintiffs also “acquired state medical marijuana cards as requested by [D]eputy Clark.”
16 (*Id.*) According to Plaintiffs’ counsel, “Deputy Clark repeatedly indicated to [Plaintiffs’
17 counsel] that no legal action would be taken against the collective operation and that
18 nobody at the cultivation site would be subject to arrest.” (*Id.*)

19 Nevertheless, “Deputy Clark conspired with [D]eputy Stevens[, another Deputy
20 Sheriff with the San Diego County Sheriff’s Department,] to have an illegal search warrant
21 issued which was based on a knowingly false affidavit.” (*Id.* ¶¶ 23, 31.) Specifically,
22 Defendants “falsely sw[ore] under oath that the marijuana was being cultivated illegally,
23 despite the knowledge of both [Defendants] that the marijuana was being cultivated
24 legally.” (*Id.* ¶ 31.) On September 12, 2014, Plaintiffs’ property was raided, (*id.* ¶¶ 29, 32),
25 and Plaintiffs Shawn Smith and Kyle Sneller were arrested by Defendants Clark and
26 Stevens “without probable cause,” (*id.* ¶¶ 14, 15, 29, 32, 50, 55). “At the time of the
27 raid . . . , there were over 20 valid members of the collective and 31 medical marijuana
28 plants on site.” (*Id.* ¶ 32.)

1 As a result of Defendants’ actions, Plaintiffs “suffered loss of illegally confiscated
2 medical marijuana, intentional infliction of emotional distress, negligent infliction of
3 emotional distress, false arrest, [and] violation of civil rights under the Constitution of the
4 United . . . States and the State of California.” (*Id.* ¶ 33.) Plaintiffs further allege that

5 The County of San Diego, through the actions of the Board of
6 Supervisors, the District Attorney’s Office and the Sheriff’s
7 Department maintain a custom, policy and practice of violating
8 the legal rights of valid medical marijuana patients in San Diego
9 County by failing to properly train and supervise deputies
10 regarding the obligation of the deputies to follow the statutory
11 scheme created by the citizens of the State of California to allow
12 cultivation of marijuana in California for medical use, by
13 creating and allowing an enviroment [sic] in which deputies are
14 encouraged and allowed to violated their oath to uphold the laws
15 of the State of California, by creating and allowing an
16 environment in which deputies are encouraged and allowed to
17 violate the laws of the State of California, by creating and
18 allowing an environment in which illegal searches, false search
19 warrant affidavits, false arrests and false criminal prosecutions
20 are encouraged and allowed, by ratifying this illegal conduct of
21 their deputies and by creating and allowing an environment in
22 which deputies are encouraged and allowed to violate the
23 guidelines of the Attorney General for the State of California
24 regarding the security and non-diversion of marijuana grown for
25 medical use in the State of California as well as encouraged to
26 violate prohibitions of the Constitution of the United States
27 against false arrest without probable cause and illegal search and
28 siezue [sic] through knowingly false search warrant affidavits.

(*Id.* ¶ 25.) “As a proximate result of the custom, policy and practice of the County of San
Diego an illegal warrant was issued, [and the] illegal raid . . . t[ook] place” (*Id.* ¶ 39.)

On April 17, 2015, Plaintiffs filed their original Complaint, setting forth six causes
of action against Defendants Stevens and Clark or “all Individual Defendants” under both
42 U.S.C. § 1983 (“Section 1983”) and California law. (ECF No. 1 ¶¶ 40–64.) Plaintiffs
also alleged a separate cause of action under Section 1983 against Defendants County of
San Diego and the San Diego County Sheriff’s Department. (*Id.* ¶¶ 35–39.) The Complaint

1 also named Sheriff William Gore as a defendant, alleging only that he “is the chief
2 policymaker and decision maker for the San Diego County Sheriff’s Department on all
3 issues regarding proper police training.” (*Id.* ¶ 21.)

4 The County Defendants filed their MTD on June 22, 2015 (ECF No. 5), and
5 Plaintiffs filed their Request for Preliminary Injunction on June 25, 2015, (ECF No. 7). On
6 November 30, 2015, the Court granted the County Defendants’ MTD and denied Plaintiffs’
7 Request for Preliminary Injunction. (ECF No. 22.)

8 Plaintiffs filed a First Amended Complaint (“FAC”) on February 17, 2016 (ECF No.
9 23), and Defendants filed a MTD on March 2, 2016. (ECF No. 25.) The Court granted
10 Defendants’ MTD in its entirety on October 20, 2016. (ECF No. 31.)

11 Plaintiffs filed a Second Amended Complaint on November 4, 2016. (ECF No. 32.)
12 Defendants filed the instant MTD on November 18, 2016. (ECF No. 33.)

13 MOTION TO DISMISS

14 I. Legal Standard

15 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the
16 defense that the complaint “fail[s] to state a claim upon which relief can be granted,”
17 generally referred to as a motion to dismiss. The Court evaluates whether a complaint states
18 a cognizable legal theory and sufficient facts in light of Federal Rule of Civil Procedure
19 8(a), which requires a “short and plain statement of the claim showing that the pleader is
20 entitled to relief.” Although Rule 8 “does not require ‘detailed factual allegations,’ . . . it
21 [does] demand more than an unadorned, the-defendant-unlawfully-harmed-me
22 accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
23 *Twombly*, 550 U.S. 544, 555 (2007)). In other words, “a plaintiff’s obligation to provide
24 the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and
25 a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S.
26 at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A complaint will not suffice
27 “if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Iqbal*, 556 U.S.
28 at 677 (citing *Twombly*, 550 U.S. at 557).

1 In order to survive a motion to dismiss, “a complaint must contain sufficient factual
2 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
3 *Twombly*, 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially plausible
4 when the facts pled “allow the court to draw the reasonable inference that the defendant is
5 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at
6 556). That is not to say that the claim must be probable, but there must be “more than a
7 sheer possibility that a defendant has acted unlawfully.” *Id.* Facts “‘merely consistent with’
8 a defendant’s liability” fall short of a plausible entitlement to relief. *Id.* (quoting *Twombly*,
9 550 U.S. at 557). Further, the Court need not accept as true “legal conclusions” contained
10 in the complaint. *Id.* This review requires context-specific analysis involving the Court’s
11 “judicial experience and common sense.” *Id.* at 678 (citation omitted). “[W]here the well-
12 pleaded facts do not permit the court to infer more than the mere possibility of misconduct,
13 the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’”
14 *Id.*

15 Where a complaint does not survive 12(b)(6) analysis, the Court will grant leave to
16 amend unless it determines that no modified contention “consistent with the challenged
17 pleading . . . [will] cure the deficiency.” *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655,
18 658 (9th Cir. 1992) (quoting *Schriber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d
19 1393, 1401 (9th Cir. 1986)).

20 **II. Analysis**

21 ***A. First Cause of Action: Violation of Civil Rights (Section 1983) Against County*** 22 ***Defendants (Monell Theory of Liability)***

23 Plaintiffs’ first cause of action claims violation of civil rights under Section 1983
24 against Defendants County of San Diego and San Diego County Sheriff’s Department,
25 (collectively, the “County Defendants”). A government entity may not be held liable
26 under Section 1983 unless a policy, practice, or custom of the entity can be shown to be a
27 moving force behind a violation of constitutional rights. *Monell v. Dep’t of Soc. Servs. of*
28 *the City of N.Y.*, 436 U.S. 658, 694 (1978). To establish liability for governmental entities

1 under *Monell*, a “plaintiff must show: (1) that [the plaintiff] possessed a constitutional
2 right of which [s]he was deprived; (2) that the municipality had a policy; (3) that
3 this policy amounts to deliberate indifference to the plaintiff’s constitutional right; and, (4)
4 that the policy is the moving force behind the constitutional violation.” *Plumeau v. Sch.*
5 *Dist. No. 40 Cty. of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997) (alterations in original)
6 (quoting *Oviatt ex rel. Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992)) (internal
7 quotation marks omitted).

8 [T]here are three ways to show a policy or custom of a
9 municipality: (1) by showing “a longstanding practice or custom
10 which constitutes the standard operating procedure of the local
11 government entity”; (2) “by showing that the decision-making
12 official was, as a matter of state law, a final policymaking
13 authority whose edicts or acts may fairly be said to represent
14 official policy in the area of decision”; or (3) “by showing that
an official with final policymaking authority either delegated that
authority to, or ratified the decision of, a subordinate.”

15 *Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d 950, 964 (9th Cir. 2008) (quoting *Ulrich*
16 *v. City of S.F.*, 308 F.3d 968, 984–85 (9th Cir. 2002)). “A plaintiff cannot prove the
17 existence of a municipal policy or custom based solely on the occurrence of a single
18 incident of unconstitutional action by a non-policymaking employee.” *Davis v. City of*
19 *Ellensburg*, 869 F.2d 1230, 1233 (9th Cir. 1989) (emphasis removed) (citing *City of Okla.*
20 *City v. Tuttle*, 471 U.S. 808, 823–24 (1985) (plurality opinion)). Although “[p]reviously,
21 the Ninth Circuit held that a *Monell* claim was sufficient to withstand a motion to dismiss
22 even if the claim was based on ‘nothing more than a bare allegation that the individual
23 officers’ conduct conformed to official policy, custom, or practice,’ *Warner v. Cty. of San*
24 *Diego*, No. 10CV1057 BTM BLM, 2011 WL 662993, at *3 (S.D. Cal. Feb. 14, 2011)
25 (quoting *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 624 (9th Cir. 1988)), “since
26 then, *Twombly* and *Iqbal* have made it clear that conclusory allegations that merely recite
27 the elements of a claim are insufficient for 12(b)(6) purposes,” *id.*

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1 Defendants move to dismiss the SAC because Plaintiffs fail to show an underlying
2 constitutional deprivation and to state any plausible *Monell* claim under any of the three
3 mandatory elements to establish liability. (MTD 14–20,¹ ECF No. 33.) Plaintiffs
4 “acknowledge that there is no federal right to access . . . medical marijuana,” but argue that
5 they are “protected under the Fourth Amendment from illegal arrest and illegal seizure [sic]
6 of property and from the custom, policy[,] and practice of a governmental entity that allows
7 illegal police conduct.” (Opp’n 4–5, ECF No. 35.) Plaintiffs again allege that *Monell*
8 liability may be imposed for a failure to properly train and supervise deputies. (SAC ¶ 37,
9 ECF No. 31.)

10 In particular, Plaintiffs allege that

11 the County of San Diego, through the actions of the Board of
12 Supervisors, the District Attorney’s Office and the Sheriff’s
13 Department[,] maintain[s] a custom, policy and practice of
14 violating the legal rights of the citizens of San Diego County by
15 failing to properly train and supervise deputies regarding the
16 obligation of the deputies to follow the statutory scheme created
17 by the citizens of the State of California to allow cultivation of
18 marijuana in California for medical use, by failing to properly
19 train their deputies to honor the laws of the State of California
20 and the Constitution of the United States prohibiting false search
21 warrant affidavits and illegal searches and arrests, by creating
22 and allowing an environment [sic] in which deputies are
23 encouraged and allowed to violate[] their oath to uphold the laws
24 of the State of California and the Constitution of the United
25 States, by creating and allowing an environment in which
26 deputies are encouraged and allowed to violate the laws of the
27 State of California, by creating and allowing an environment in
28 which illegal searches, false search warrant affidavits, false
arrests and false criminal prosecutions are encouraged, despite
the knowledge of defendants, and each of them, that said conduct
is in violation of the laws of the State of California and the
Constitution of the United States and by creating and allowing
an environment in which deputies are encouraged and allowed to

¹ Pin citations to docketed material refer to the CM/ECF numbers electronically stamped at the top of each page.

1 violate the guidelines of the Attorney General for the State of
2 California regarding the security and non-diversion of marijuana
3 grown for medical use in the State of California.

4 (*Id.*) Plaintiffs add that Defendant “GORE is the chief policymaker and decision maker for
5 the San Diego County Sheriff’s Department on all issues regarding proper police training
6 for the San Diego County Sheriff’s Department.” (*Id.* ¶ 21 (emphasis in original).) And
7 Plaintiffs supply a new allegation that “Defendant Clark admitted to attorney Callaway that
8 it is the position of the San Diego Sheriff[’]s Department that nomedical [sic] marijuana
9 cultivation is permitted by the Sheriff[’]s Deptarment [sic], despite the laws of the State of
10 California permitting such cultivation.”² (*Id.* ¶ 37.)

11 The Court finds that at least some of these allegations are non-conclusory, and thus
12 sufficient at this stage to plausibly suggest the existence of a municipal custom.
13 Specifically, Plaintiffs allege that the County of San Diego (1) fails “to properly train and
14 supervise deputies regarding the obligation of the deputies to follow the statutory scheme
15 created by the citizens of the State of California to allow cultivation of marijuana in
16 California for medical use”; and (2) “creat[es] and allow[s] an environment in which
17 deputies are encouraged and allowed to violate the guidelines of the Attorney General for
18 the State of California regarding the security and non-diversion of marijuana grown for
19 medical use in the State of California.” These allegations, taken as true, are sufficient to
20 give the County Defendants fair notice of the allegedly unlawful policies and practices in

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24 ² The Court agrees with Defendants that this allegation is unintelligible. (*See* MTD 17 n.5, ECF No. 33.)
25 Perhaps Plaintiffs meant to say that the Sheriff’s Department’s position is that marijuana cultivation is not
26 permitted, despite contrary California law, which is what Plaintiffs appear to argue in their Opposition.
27 (*See* Opp’n 4, ECF No. 35.) But this allegation does not appear in the SAC. *See Schneider v. Cal. Dep’t*
28 *of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (“In determining the propriety of a Rule 12(b)(6)
dismissal, a court *may not* look beyond the complaint to a plaintiff’s moving papers, such as a
memorandum in opposition to a defendant’s motion to dismiss.”) (emphasis in original)). While Plaintiffs’
inattention to detail in their pleading, such as myriad spelling and grammatical errors, does not generally
affect the Court’s analysis, in this case, it does.

1 place. *See, e.g., Johnson v. Shasta Cty.*, 83 F. Supp. 3d 918, 931 (E.D. Cal. 2015) (finding
2 similar allegations sufficient at the pleading stage).

3 Nevertheless, because Plaintiffs fail to adequately plead an underlying constitutional
4 violation, *see* Part II.B., *infra*, Plaintiffs’ *Monell* claim necessarily fails. Consequently, the
5 Court **GRANTS** Defendants’ MTD and **DISMISSES WITHOUT PREJUDICE**
6 Plaintiffs’ first cause of action.

7 ***B. Second Cause of Action: Conspiracy to Violate Civil Rights (Section 1983)***
8 ***Against All Individual Defendants***

9 With respect to their second cause of action for conspiracy to violate civil rights,
10 Plaintiffs similarly allege that “all individual named defendants herein acted in concert and
11 conspired to intentionally have plaintiffs subjected to false arrest, illegal police conduct
12 and illegal and false confiscation of legally grown medical marijuana.” (SAC ¶ 41, ECF
13 No. 32.) Plaintiffs further allege that “the conduct of all individual defendants herein was
14 motivated by evil motive and intent” (*id.* ¶ 43), and that “all individual defendants named
15 herein exhibited reckless and callous indifference to the plaintiffs[’] rights under the Fourth
16 and Fourteenth Amendments to the U.S. Constitution and the Constitution of the State of
17 California,” (*id.* ¶ 44).

18 The Ninth Circuit has explained that “[c]onspiracy is not itself a constitutional tort
19 under § 1983. . . . It does not enlarge the nature of the claims asserted by the plaintiff, as
20 there must always be an underlying constitutional violation.” *Lacey v. Maricopa Cty.*, 693
21 F.3d 896, 935 (9th Cir. 2012) (citing *Cassettari v. Nev. Cty.*, 824 F.2d 735, 739 (9th Cir.
22 1987) (“The insufficiency of these allegations to support a section 1983 violation precludes
23 a conspiracy claim predicated upon the same allegations.”)).

24 The Court again concludes that Plaintiffs have failed to sufficiently allege an
25 underlying constitutional violation and thus their conspiracy claim must fail. Specifically,
26 Plaintiffs allege that

1 Deputy Clark conspired with deputy Stevens to have an illegal
2 search warrant issued which was based upon a knowingly false
3 affidavit in support of the warrant. At all times mentioned herein,
4 both defendants Clark and Stevens were aware that the collective
5 members were operating legally. Defendants Clark and Stevens
6 conspired to have defendant Stevens willfully and intentionally
7 deceive the issuing magistrate by falsely swearing under oath
8 that the marijuana was being cultivated illegally, despite the
9 knowledge of both defendants Clark and Stevens that the
10 marijuana was being cultivated legally. Both defendants Clark
11 and Stevens were aware at all times that no probable cause
12 existed to issue the warrant or conduct the illegal search, that
13 plaintiffs had contacted defendant Clark and provided him with
14 proof of the legal nature of the cultivation site, that defendant
15 Clark had visited the site and indicated to attorney Callaway that
16 the plaintiffs were in compliance with the laws of the State of
17 California and that no legal action would be taken against the
18 plaintiffs.

19 (SAC ¶ 31, ECF No. 32.)

20 As before, this paragraph is a litany of conclusions. The crux of these allegations is
21 that Defendants Clark and Stevens “knew” that Plaintiffs’ collective was “legal.” But that
22 is simply a conclusion that the Court cannot credit. Plaintiffs’ conclusory statement that it
23 operates “a legally established medical marijuana collective” does not plausibly establish
24 that fact. (*Id.* ¶ 27.) And neither Plaintiffs’ “willingness . . . to ensure legal compliance,”
25 (*id.* ¶ 28), nor Plaintiffs’ communications with Defendant Clark “to ensure that the
26 collective cultivation operation was in full compliance with all applicable state laws,” (*id.*
27 ¶¶ 29, 30), plausibly demonstrate that Plaintiffs were, in fact, compliant with applicable
28 state laws and thus in lawful possession of the marijuana.

To be sure, Plaintiffs allege that “Callaway provided copies of all valid
recommendations to deputy Clark to allow him to confirm the validity of said
recommendations.” (*Id.* ¶ 30.) But this does not plausibly establish that the collective *was*
legal; it does, however, plausibly establish that Plaintiffs believed it to be so and hoped
Defendant Clark would confirm the same. And Plaintiffs further allege that Defendant

1 Clark told attorney Callaway that Plaintiffs were in compliance with state law and that he
2 would not take any legal action against them. (*Id.*) But this alone does not plausibly
3 establish that the collective was legal or any wrongdoing on Defendant Clark’s part for
4 eventually “raiding” the collective; for instance, it is possible that, despite Defendant
5 Clark’s assurances, Plaintiffs were not in compliance with state law. It may well be, as
6 Plaintiffs suggest, that the collective was legally operated. However, without more factual
7 allegations supporting that conclusion, such as the documents Plaintiffs allegedly gave to
8 Defendant Clark, the Court finds implausible Plaintiffs’ conspiracy claim. Consequently,
9 the Court **GRANTS** the County Defendants’ MTD and **DISMISSES WITHOUT**
10 **PREJUDICE** Plaintiffs’ second cause of action.

11 *C. Third Cause of Action: Violation of Civil Rights (Section 1983) Against*
12 *Defendants Clark and Stevens*

13 With respect to their third cause of action, Plaintiffs allege that

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15 Defendants knowingly, maliciously and without probable cause
16 caused an illegal search warrant affidavit to be sworn against
17 plaintiff in a deliberate effort to subvert the magistrate[?]s neutral
18 function in issuing warrants, executed the illegal warrant issued
19 upon said false affidavit and illegally confiscated and converted
20 plaintiffs’ legally grown medical marijuana. Defendants[?] lies
21 and false evidence were in violation of plaintiffs’ rights to due
22 process and to be free from illegal police conduct under the
23 Fourth and Fourteenth Amendments of the Constitution of the
24 United States.

25 (SAC ¶ 46, ECF No. 32.) Plaintiffs further allege that “the conduct of all individual
26 defendants herein was motivated by evil motive and intent.” (*Id.* ¶ 47.)

27 To establish liability under Section 1983, Plaintiffs must show (1) that they were
28 deprived of a right secured by the United States Constitution or a federal law and (2) that
the deprivation was effected “under color of state law.” *Broam v. Bogan*, 320 F.3d 1023,
1028 (9th Cir. 2003) (quoting *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978))
(internal quotation marks omitted). Once again, because Plaintiffs nowhere plead that the

1 alleged deprivations were effected under color of state law, they have failed to state this
2 legal theory along with sufficient facts to support this claim. *See Garcia v. City of Merced*,
3 637 F. Supp. 2d 731, 763 (E.D. Cal. 2008) (“Plaintiff[,] however, does not plead . . . that
4 Defendants effected the deprivation of his right to be free
5 from unreasonable search and seizure ‘under color of law.’” (citing *Broom*, 320 F.3d
6 1028)).

7 Even assuming the officers in question were acting under color of state law,
8 however, Plaintiffs again fail to “state a claim to relief that is plausible on its face” no
9 matter how their claim is construed. *Twombly*, 550 U.S. at 557. Plaintiffs have failed to
10 revise any part of their argument from their original Complaint, despite the Court’s two
11 previous admonitions that Plaintiffs’ theory of liability lacked clarity. (*See* Order Granting
12 MTD 13, ECF No. 22; FAC MTD Order 10, ECF No. 31.) Therefore, the Court presents a
13 similar analysis, although the Court will not address Plaintiffs’ Fourteenth Amendment
14 claim because Plaintiffs have “withdraw[n] that claim.”³ (Opp’n 8, ECF No. 35.)

15 Plaintiffs contend that Defendants are liable for “conspir[ing] to lie to the magistrate
16 and falsely [telling] the magistrate that illegal activity was taking place when they knew,
17 for fact, that it was not” in violation of the Fourth Amendment. (*Id.*) Although Plaintiffs
18 again do not explicitly allege that Defendants violated their right to be free from
19 unreasonable search and seizure, (*see* SAC ¶ 46, ECF No. 23), Plaintiffs do allege the
20 procurement and execution of an “illegal warrant” and the “illegal[] confiscat[ion]” of their
21 medical marijuana plants, (*see id.*). It is therefore possible that Plaintiffs are attempting to
22 state a claim under the Fourth Amendment. Nevertheless, the Court finds that Plaintiffs
23 have failed to invoke judicial deception under the Fourth Amendment:

24 A person who knowingly or with reckless disregard for the truth
25 includes material false statements or omits material facts in an
26 affidavit submitted in support of a warrant application may be

27 ³ The Court notes that Plaintiffs similarly included—and withdrew—this claim in their FAC. (*See* FAC
28 MTD Order 10, ECF No. 31.) This may be another instance of Plaintiffs’ inattention to detail in revising
their pleadings.

1 liable under § 1983 for a Fourth Amendment violation. . . . To
2 state a claim for judicial deception . . . , “a § 1983 plaintiff must
3 show that the investigator ‘made deliberately false statements or
4 recklessly disregarded the truth in the affidavit’ and that the
5 falsifications were ‘material’ to the finding of probable
6 cause.” . . . Facts pled on “information and belief” are sufficient
7 as long as the other *Iqbal-Twombly* requirements are satisfied.

7 *Johnson v. Shasta Cty.*, 83 F. Supp. 3d 918, 925–26 (E.D. Cal. 2015) (citations omitted);
8 *see also KRL v. Moore*, 384 F.3d 1105, 1117 (9th Cir. 2004). Plaintiffs’ claim fails for at
9 least two reasons. First, Plaintiffs fail to allege that any statement was material to the
10 issuing of the warrant.⁴ This alone is fatal to their claim. *See Johnson*, 83 F. Supp. 3d at
11 926 (“[Plaintiffs] have not sufficiently alleged the falsifications were ‘material’ to the
12 finding of probable cause. . . . Accordingly, . . . defendants’ motion to dismiss . . . is
13 GRANTED” (emphasis in original) (citing *Galbraith v. Cty. of Santa Clara*, 307 F.3d
14 1119, 1126 (9th Cir. 2002))). Second, Plaintiffs allege that “Defendants Clark and
15 Stevens . . . falsely sw[ore] under oath that the marijuana was being cultivated illegally,
16 despite [knowing] . . . that the marijuana was being cultivated legally.” (SAC ¶ 31, ECF
17 No. 32.) While this statement might otherwise be sufficient, Plaintiffs, as discussed above,
18 *supra* Part II.B, fail to plausibly demonstrate either that (1) Plaintiffs’ collective was, in
19 fact, legally operated, and (2) Defendants Clark and Stevens knew the same. Plaintiffs
20 therefore fail to plead a Fourth Amendment cause of action arising under a theory of
21 judicial deception.

22 Furthermore, Plaintiffs fail to plead sufficient factual allegations to support any other
23 Fourth Amendment theory, such as the unlawful execution of a search warrant or unlawful
24 seizure of their property. The factual allegations here are similar to those rejected in *Rocha*
25 _____

26 ⁴ Plaintiffs appear to allege materiality in their Opposition. (*See* Opp’n 8, ECF No. 35.) But the Court
27 again reminds Plaintiffs that because these allegations only appear in Plaintiffs’ opposition brief, the Court
28 cannot consider them for purposes of the instant motion to dismiss for failure to state a claim. *See*
Schneider, 151 F.3d at 1197 n.1. In other words, to be considered on a motion to dismiss, such allegations
must appear in the operative complaint.

1 *v. County of Tulare*, No. CV F 13-0796 LJO GSA, 2013 WL 4046373 (E.D. Cal. Aug. 8,
2 2013), in which the district court dismissed plaintiff’s Fourth Amendment claim for failure
3 to state a claim:

4 The gist of the factual allegations are that given [plaintiff]’s
5 recommendation, Deputy [Defendant] and others illegally
6 searched [plaintiff]’s residence and seized marijuana The
7 [complaint] lacks facts to support that Deputy [Defendant] and
8 others made false affidavits, forcibly entered [plaintiff]’s
9 residence, were not entitled to execute the search warrant, and
10 mistreated [plaintiff] [Plaintiff]’s reliance on falsity of
11 statements to support the search warrant are inadequate
12 conclusions. Neither the [complaint] nor [plaintiff] identify the
false statements nor explain their falsity. Merely alleging the
search warrant is based on unidentified false statements is
insufficient An explanation as to falsity is necessary.

13 *Rocha*, 2013 WL 4046373, at *7. More fundamentally, as discussed above, *supra* Part II.B,
14 Plaintiffs fail to plausibly demonstrate that their collective was, in fact, legal, thus raising
15 the specter that the “raid” was somehow unlawful under the Fourth Amendment.
16 Accordingly, the Court finds that Plaintiffs have failed to plead sufficient facts that would
17 allow this claim to be plausible on its face, whether construed as a claim for violation of
18 the Fourth Amendment of the United States Constitution or violation of rights under the
19 California Constitution.⁵ Consequently, the Court **GRANTS** Defendants’ MTD and
20

21
22 ⁵ Plaintiffs’ third cause of action also alleges “violation of plaintiffs’ rights to due process under . . . the
23 Constitution of the State of California.” (SAC ¶ 46, ECF No. 23.) The discussion of Plaintiffs’
24 federal claims resolves both the federal and state constitutional claims. *See L.A. Cty. Bar Ass’n v. Eu*, 979
25 F.2d 697, 705 n.4 (9th Cir. 1992) (“California Constitution provides the same ‘basic guarantee’ as
26 the Fourteenth Amendment.” (citing *Payne v. Superior Court*, 17 Cal. 3d 908, 914 n.3 (1976) (en banc)));
27 *Arroyo v. Tilton*, No. 1:11-CV-01186 DLB PC, 2012 WL 1551655, at *7 (E.D. Cal. Apr. 30, 2012) (“[T]he
28 Article I, Section 1 privacy clause of the California Constitution has not been held to establish a broader
protection than that provided by the Fourth Amendment of the United States Constitution.” (citing *Quon*
v. Arch Wireless Operating Co., 529 F.3d 892, 903 (9th Cir. 2008)); *Sanchez v. Cty. of San Diego*, 464
F.3d 916, 943 (9th Cir. 2006)); *Barsamian v. City of Kingsburg*, 597 F. Supp. 2d 1054, 1065 (E.D. Cal.
2009) (“California’s constitutional ban on unreasonable searches and seizures is ‘similar’ to the Fourth
Amendment’s Thus, it is appropriate to consider Fourth Amendment jurisprudence in analyzing a

1 **DISMISSES WITHOUT PREJUDICE** Plaintiffs’ third cause of action.

2 ***D. Fourth and Fifth Causes of Action: False Arrest/Malicious Prosecution (State***
3 ***Law and Section 1983) Brought by Plaintiffs Sneller and Smith Against***
4 ***Defendants Clark and Stevens***

5 Regarding the state law claim, Plaintiffs Sneller and Smith re-allege that
6 “Defendants Clark and Stevens falsely, intentionally and maliciously arrested Plaintiffs
7 Smith and Sneller without probable cause and despite the fact that defendants Clark and
8 Stevens knew at all times that . . . plaintiffs were engaged in legal conduct under the laws
9 of the State of California.” (SAC ¶ 50, ECF No. 32.) Regarding the Section 1983 claim,
10 Plaintiffs similarly allege that “Defendants Clark and Stevens falsely, intentionally and
11 maliciously arrested plaintiffs Smith and Sneller without probable cause and recommended
12 that false criminal charges be filed against them, despite the fact that defendants Clark and
13 Stevens knew at all times that knew that defendant Clark had been contacted by attorney
14 Callaway and had assured attorney Callaway that plaintiffs were engaged in legal conduct
15 under the laws of the State of California.” (*Id.* ¶ 55.) Plaintiffs further allege that these
16 “illegal arrest[s]” “violated plaintiffs’ rights under the laws of the State of California” (*id.*
17 ¶ 51), and “violat[ed] . . . plaintiffs’ rights to due process under the Fourth and Fourteenth
18 Amendments,” (*id.* ¶ 56).

19 False imprisonment “is the unlawful arrest or detention of a person without a
20 warrant, or by an illegal warrant, or a warrant illegally executed.” *Garcia*, 637 F. Supp. 2d
21 at 752 (quoting *Donati v. Righetti*, 9 Cal. App. 45, 48 (1908)); *Mackie v. Ambassador Hotel*
22 *& Inv. Corp.*, 123 Cal. App. 215, 220 (1932)); *see also Ross v. City of Ontario*, 66 F. App’x
23 93, 95 (9th Cir. 2003) (“A claim for unlawful arrest is cognizable under § 1983 as a
24 violation of the Fourth Amendment, provided the arrest was without probable cause or
25 other justification.”) (quoting *Dubner v. City of S.F.*, 266 F.3d 959, 964 (9th Cir. 2001))

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claim that is based on a purported violation of California’s similar constitutional provision.” (citing *People*
v. Celis, 33 Cal. 4th 667, 673 (2004); *Wood v. Emmerson*, 155 Cal. App. 4th 1506, 1514, 1526 (2007)).

1 (internal quotation marks omitted)). Because Plaintiffs have failed to show in their third
2 cause of action that Defendants Clark and Stevens violated Plaintiffs’ civil rights by
3 illegally obtaining or executing the search warrant, Plaintiffs Sneller and Smith have also
4 failed to state specific facts giving rise to plausible Section 1983 and state law claims for
5 false arrest.⁶

6 After dropping their malicious prosecution claim in their FAC pursuant to the
7 Court’s first MTD order, (*see* FAC MTD Opp’n 5, ECF No. 27), Plaintiffs appear to have
8 re-alleged malicious prosecution in their SAC, (*see* SAC ¶¶ 49–53, ECF No. 32). However,
9 Plaintiffs have not argued against dismissing their malicious prosecution claim, (*see*
10 *generally* Opp’n, ECF No. 35), and thus the Court will not further elaborate on the issue
11 beyond what it explained in its Order granting dismissal of the original Complaint. (*See*
12 Order Granting MTD 17–19, ECF No. 22.) Accordingly, Plaintiffs fail to plead sufficient
13 facts to support a plausible claim for relief in their fourth and fifth causes of action under
14 both state law and Section 1983. Consequently, the Court **GRANTS** Defendants’ MTD
15 and **DISMISSES WITHOUT PREJUDICE** Plaintiffs’ fourth and fifth causes of action.

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21 ⁶ The Court further notes that

22 [t]he showing of probable cause is therefore a defense to [plaintiff]’s false
23 arrest claim under § 1983, as well as her common law claim for false arrest
24 and false imprisonment under California law. . . . “Probable cause exists
25 when, under the totality of the circumstances known to the arresting officers
26 (or within the knowledge of the other officers at the scene), a prudent person
would believe the suspect had committed a crime.”

27 *Ross*, 66 F. App’x at 95 (citations omitted). Plaintiffs’ conclusory allegations fail to demonstrate that
28 Defendants Smith and Clark lacked probable cause. *See Barrios v. Cty. of Tulare*, No. 1:13-CV-1665 AWI
GSA, 2014 WL 2174746, at *7 (E.D. Cal. May 23, 2014) (“With respect to the allegation that the warrant
was issued without probable cause, the Complaint does not explain why probable cause is absent.”).

1 ***E. Sixth Cause of Action: Conversion (State Law Claim) Against Defendants***
2 ***Clark and Stevens***

3 In support of their sixth cause of action for conversion, Plaintiffs allege that “[a]ll
4 individual defendants at all times alleged herein owed a duty to plaintiffs to exercise due
5 care towards plaintiffs in the execution of their duties as sworn peace officers and to not
6 illegally confiscate plaintiffs’ property.” (SAC ¶ 59, ECF No. 32.) Plaintiffs’ SAC contains
7 the additional allegation that “[a]ll individual defendants knew, at all times, that the
8 Attorney General’s Guidelines in the State of California precluded them from confiscating
9 plaintiffs’ property but defendants, and each of them, proceeded to illegally confiscate
10 plaintiffs’ property despite the fact that defendants knew at all times that plaintiffs had the
11 full legal right to possess said property.” (*Id.* ¶ 61.)

12 “Conversion is the wrongful exercise of dominion over the property of another.”
13 *Burlesci v. Petersen*, 68 Cal. App. 4th 1062, 1066 (1998); *see also Mindys Cosmetics, Inc.*
14 *v. Dakar*, 611 F.3d 590, 601 (9th Cir. 2010). “The elements of a conversion claim are: (1)
15 the plaintiff’s ownership or right to possession of the property; (2) the defendant’s
16 conversion by a wrongful act or disposition of property rights; and (3) damages.” *Burlesci*,
17 68 Cal. App. 4th at 1066. “Conversion is a strict liability tort” and thus neither “the
18 knowledge nor the intent of the defendant” are generally relevant. *Id.*

19 The Court again agrees with Defendants that Plaintiffs have failed to show they were
20 in lawful possession of the confiscated marijuana. *See supra* Part II.B. And even assuming
21 Plaintiffs were in lawful possession of the marijuana, as discussed above, *supra* Part II.C,
22 Plaintiffs fail to plead that Defendants’ seizure of the marijuana was pursuant to a
23 “wrongful act,” such as executing an illegally obtained warrant. Consequently, the Court
24 **GRANTS** Defendants’ MTD and **DISMISSES WITHOUT PREJUDICE** Plaintiffs’
25 sixth cause of action.

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1 **F. *Seventh Cause of Action: Violation of Rights Under California Civil Code***
2 ***Section 52.1 Against Defendants Clark and Stevens (State Law Claim)***

3 Plaintiffs allege that Defendants

4 owed a duty to plaintiffs to not violate their rights under
5 California Civil Code Section 52.1. Defendants knew at all times
6 that plaintiffs were legally exercising their rights under
7 California law. Defendant Clark admitted that he knew plaintiffs’
8 conduct was lawful. Defendants breached their duty owed to
9 plaintiffs by, inter alia, conspiring to file a false search warrant
10 affidavit illegally lying that probable cause to search and arrest
11 existed when defendants, and each of them, knew that it did not
12 exist, illegally destroying plaintiffs’ property, illegally arresting
 plaintiffs Sneller and Smith and illegally recommending that
 false felony charges be brought against plaintiffs Sneller and
 Smith.

13 (SAC ¶ 63, ECF No. 32.) Plaintiffs additionally allege “[a]s a proximate result of
14 defendants’ conduct[,] plaintiffs’ rights under the laws and Constitution of the State of
15 California were violated and plaintiffs damaged thereby.” (*Id.* ¶ 64.)

16 California Civil Code Section 52.1 “authorizes an action at law, a suit in equity, or
17 both, against anyone who interferes, or tries to do so, by threats, intimidation, or coercion,
18 with an individual’s exercise or enjoyment of rights secured by federal or state law.” *Jones*
19 *v. Kmart Corp.*, 17 Cal. 4th 329, 331 (1998). “The word ‘interferes’ as used in [Section
20 52.1] means ‘violates.’” *Austin B. v. Escondido Union Sch. Dist.*, 149 Cal. App. 4th 860,
21 883 (2007). “The essence” of a Section 52.1 claim is that the defendant, “by the *specified*
22 *improper means* (i.e., ‘threats, intimidation or coercion’), tried to or did prevent the plaintiff
23 from doing something he or she had the *right* to do under the law or to force the plaintiff
24 to do something that he or she was not required to do under the law.” *Id.* (emphasis added).

25 The Court again finds that Plaintiffs have failed to plead sufficient facts to support a
26 plausible claim for relief under their seventh cause of action. In particular, and as discussed
27 above, *supra* Part II.B, Plaintiffs fail to allege that they were in lawful possession of the
28 marijuana such that their possession might qualify as a right secured by state law for

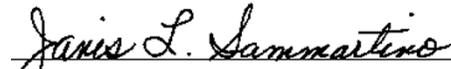
1 purposes of Section 52.1. And even if Plaintiffs had lawful possession of the marijuana,
2 Plaintiffs again fail to plead sufficient facts to support a plausible claim that Defendants
3 illegally procured or executed a search warrant, which might otherwise support a claim that
4 Defendants “interfered” with Plaintiffs’ possession through “coercion.” Nor do Plaintiffs
5 provide any other facts to support their claim that Defendants interfered with their rights—
6 whatever they may be—through “threats, intimidation or coercion.” *Austin B.*, 149 Cal.
7 App. 4th at 883. Consequently, the Court **GRANTS** Defendants’ MTD and **DISMISSES**
8 **WITHOUT PREJUDICE** Plaintiffs’ seventh cause of action.

9 **CONCLUSION**

10 In light of the above, the Court **GRANTS** Defendants’ Motion to Dismiss (ECF No.
11 33). While the Court entertains serious doubts concerning Plaintiffs’ ability to adequately
12 re-plead their causes of action, especially since the Court has given Plaintiffs two
13 opportunities to do so, the Court **DISMISSES WITHOUT PREJUDICE** Plaintiffs’ SAC.
14 Plaintiffs **SHALL FILE** an amended complaint, if any, on or before fourteen (14) days of
15 the date on which this Order is electronically docketed. *Failure to file an amended*
16 *complaint on this date may result in a dismissal of this case with prejudice.*

17 **IT IS SO ORDERED.**

18 Dated: April 18, 2017

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20 Hon. Janis L. Sammartino
21 United States District Judge
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