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William Bills-Plaintiff in Pro Se
2 Glen Burgin-Plaintiff in Pro Se
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4 *Plaintiffs In Pro Se*

5
6 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA
7

8 **WILLIAM BILLS, an individual dba**
9 **FREE SPIRIT ORGANICS NAC**
10 **ROGER JAMES AGAJANIAN dba**
11 **AMERICAN STATES UNIVERSITY**
12 **RAYMOND DABNEY dba CANNABIS**
13 **SCIENCE**
GLEN BURGIN dba HRM FARMS

14 **Plaintiffs,**

15
16 **v.**

17 **SAN JOAQUIN COUNTY SHERIFF;**
MICHAEL EASTIN
18 **DOES 2-10, INCLUSIVE,**

19
20 **Defendants.**
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Case No. 2:17-CV-02271-KJM-EFB

**PLAINTIFFS' SUPPLEMENTAL
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

**MEMORANDUM OF POINTS AND
AUTHORITIES**

**DECLARATIONS OF ROGER
AGAJANIAN; WILLIAM BILLS;
GLEN BURGIN AND RAYMOND
DABNEY**

EXHIBITS 1-11

Date: September 25, 2020

Time: 10:00 AM

Room: 3 (15th floor)

Judge: Hon. Kimberly J. Mueller

Hearing Requested:

Proposed Date: _____

Proposed Time: _____

Department: _____

Chief D.C. Judge Katherine Mueller

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1 7. In the event that Plaintiff's succeed on this sole issue, Plaintiffs will do whatever
2 procedurally to sustain their cause of action including:

3 A. Filing a Substitution of Counsel following proper time constraints.

4 B. Seeking Leave to Amend to add Michael Eastin.

5 C. Filing a one [1] count Complaint only addressing the Search.

6 D. Pursuing timely Discovery directed only at the legitimacy of the search
7 warrant so as to obtain an answer to the following; none of which have been
8 presented to this Court due to Counsel's inadequacies, which is why a hearing
9 is respectfully requested including:

10 (1) Plaintiffs would seek to obtain answers to questions such as: Who is that
11 magistrate who allegedly signed the Search Warrant since the name is
12 scribbled and no printing of his or her name is set forth? Who would even
13 sign a search warrant on a misdemeanor search warrant? Misdemeanor
14 Search Warrants are as rare as "*hen's teeth*." Who created that search
15 warrant document and gave it to Agent Michael Eastin? What judge
16 would issue a Misdemeanor search warrant at 10:00 pm at night? What is
17 the urgency? If the alleged acts were so serious and severe, why would a
18 Prosecutor create a Nuisance on a 26+acre grow?

19 (2) What is most damaging is that it was not just the eradication of the crop; it
20 was the manner in which they Defendant's did it. Each of the 22,500
21 plants were individually wrapped with plastic to maintain the water,
22 moisture and nutrients. Yet Defendant's brought in earth movers to plow
23 under the plants and plastic into the ground. Now some 4 years later, that
24 plot of land still cannot be organically farmed due to the huge
25 contamination by the Defendant's. This specific set of acts literally drove
26 Plaintiffs companies into the ground making the land useless for organic
27 farming. Now, there are acts of contamination that not only impacts the
28

1 Plaintiffs; but also the community at large. Plaintiffs expect the
2 Environmental Protection Agency to become involved in the future.

3 (3) Plaintiffs are not unmindful of the procedural hurdles that must be
4 scaled. Yet it is also important to address and expose the largest
5 contamination violation in San Joaquin County in many, many years.

6 **Statement of the Case**

7 Specifically, the Court stated This Supplemental Opposition to the Defendant’s Motion
8 to Dismiss is directed to the sole issue before this Court to wit: *“The court finds at this*
9 *stage on this record that plaintiffs state a claim for unlawful seizure on this point only.”*
10 [Judge’s Order page 16, Lines 20-21 hereinafter JO pg.16 ln. 21]. Plaintiffs intend to
11 only address this sole remaining issue.

12 **Statement of Relevant Facts**

13 *“The warrant prohibits night entry, yet at the same time, the Sheriff entered onto the*
14 *subject grow, it was so dark that lights had to be erected.”* TAC 111 [J.O.pg.15, lns. 22-
15 23.] The Declaration of William Bills et.al. state the time of entry to be around 2:00 am.
16 [Dec. of William Bills et.al.] A night search of the property revealed was neither
17 requested by authorities, nor approved of by the magistrate judge. [Search Warrant at
18 5,7] *“Eastin did not request a night search. When signing the warrant at 10:00 pm, on*
19 *October 9, the night before the search, the magistrate clearly checked ‘ No’ in*
20 *response to ‘Night Search Approved’”* [Search Warrant @7] The court notes that the
21 Sheriff completed the search on October 10, 2017, TAC 25, and the sun set at about
22 4:48 pm. In San Joaquin County that day. Sunrise-Sunset San Joaquin County,CA. (web
23 address omitted) [J.O. pg. 16, lns.18-21]

24 **ISSUE I**

25 THE NIGHTTIME SEARCH WITH A DAYTIME MISDEMEANOR SEARCH
26 WARRANT WAS INVALID, WARRANTLESS, UNCONSTITUTIONAL AND A
27 DEPRIVATION OF PLAINTIFFS’ 4TH AMENDMENT RIGHTS OF THE UNITED
28 STATES CONSTITUTION.

1 **Re: Qualified Immunity for the Timing of the Search**, [*Antoine Jones, Appellant-v-*
2 *Steve Kirchner, et.al. Appellees #14-5257*] is a landmark case. “*The district court*
3 *dismissed Jones’s claim regarding the execution of the search warrant at 4:45 AM on*
4 *the ground that the officers are entitled to qualified immunity, the doctrine that ‘protects*
5 *government officials from liability for civil damages insofar as their conduct does not*
6 *violate clearly established statutory or constitutional rights of which a reasonable*
7 *person would have known.’* *Pearson v. Callahan*, 15 555 U.S. 223, 231 (2009)
8 “*Qualified immunity depends upon the answers to two questions: (1) Did the officer’s*
9 *conduct violate a constitutional or statutory right? If so, (2) was that right clearly*
10 *established at the time of the violation? Saucier v. Katz*, 533 U.S. 194, 201 (2001). “*A*
11 *right is ‘clearly established’ if precedent from a controlling authority or “a robust*
12 *consensus of cases of persuasive authority” put the constitutional question beyond*
13 *debate. Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). In *Jones*, “*The district court*
14 *erred in holding there was no constitutional violation. Jones does not allege the timing*
15 *of the search was unlawful merely because it took place at night; he alleges it was*
16 *unlawful because it violated an express limitation on the face of the warrant”.* “ ‘ [T]he
17 *4th Amendment confines an officer executing a search warrant strictly within the*
18 *bounds set by the warrant’.* In this case the magistrate, as clearly indicated on the face
19 of the warrant, affirmatively denied the Defendants permission to search Jones’s house
20 before 6:00 AM. The plaintiff alleges the Defendants nonetheless executed the warrant
21 at 4:45 AM. Just as a warrant is ‘dead,’ and a search undertaken pursuant to that
22 warrant invalid, after the expiration date on the warrant, *Sgro v. United States*, 287
23 U.S. 206, 212 (1932), a warrant is not yet alive, and a search is likewise invalid, if
24 executed before the time authorized in the warrant. If the Defendants executed the
25 warrant when the magistrate said they could not, then they exceeded the authorization
26 of the warrant and, accordingly, violated the 4th Amendment. The Court held that the
27 alleged nighttime entry violated the 4th Amendment. “ ‘ *The warrant requirement*
28 *‘provides the detached scrutiny of a neutral magistrate, which is a more reliable*

1 *safeguard against improper searches than the hurried judgment of a law enforcement*
2 *officer engaged in the often competitive enterprise.’ “ In the case at bar, Agent Eastin*
3 *prevented the magistrate from the ability to make that decision by the acts and*
4 *omissions set forth infra.*

6 **ISSUE II**

7 IN ADDITION TO A DAYTIME SEARCH EXECUTED AT NIGHT, THE
8 TOTALITY OF THE CIRCUMSTANCES IS REQUIRED IN ORDER TO
9 DETERMINE THAT A VIOLATION OF THE 4TH AMENDMENT TO THE UNITED
10 STATES CONSTITUTION OCCURRED.

11 **Points, Authorities & Argument**

12
13 This lawsuit is focused on the legitimacy of the search warrant that occurred in the
14 nighttime in violation of and contravention of the Magistrate who specifically directed
15 the search to be in the daytime. An intentional set of acts, if you will. Since the search
16 warrant legitimacy depends on numerous factors that constitute the required “*totality of*
17 *the circumstances*”. For example, law enforcement and County Counsel both were
18 notified in writing, on numerous occasions prior to the seizure that the crop was Hemp.

19 Those factors included:

- 20
21 1. The Crop was Hemp, not Marijuana: The Prosecutor was advised on numerous
22 occasions that the crop consisted of Hemp; not Marijuana. [Exhibit 3-Letter to
23 S.J.C.C.-Erin Sakata 09-08-2017] & [Exhibit 4-C.D.F.A. Letter 01-05-2018]
- 24 2. Laboratory Proof of Hemp initiated by Prosecutor and Law Enforcement: The
25 Prosecutor and law enforcement also was presented ordered two analysis to the
26 University of Mississippi indicating it was Hemp. [Declaration of William Bills]
27
- 28 3. Laboratory Proof of Hemp instituted by Plaintiffs: Analysis by Steep Hill [Exhibit 1]

1 and Konocti Analysis [Exhibit 2] were presented to the Prosecutor prior to the seizure
2 and eradication that the crop was Hemp.

3 4. Hemp is De-criminalized: The law was changed in 2014 when President Obama
4 signed into the law the *Farm Act* which de-criminalized Hemp taking it out of the
5 Department of Justice and placing it with the Department of Agriculture. [Exhibit 3
6 & 4]

7
8 1. Regarding the search and subsequent of Plaintiffs' 26.19 acre Hemp crop; a search
9 Warrant was obtained by Officer Michael Eastin, a duly appointed San Joaquin County
10 Deputy Sheriff on October 10, 2017.

11 2. In reviewing the validity of the search warrant, the Magistrate is limited to the four
12 corners of the search warrant and underlying affidavit in support of the search warrant.
13 [*Illinois-v-Gates* 462 U.S. 213 @ 238] The duty of the reviewing court is simply to
14 ensure that the Magistrate had a substantial basis for concluding that probable cause
15 exists. *Id*

16
17 3. Plaintiffs contend that probable cause did not exist and that the search warrant and its
18 accompanying affidavit are in violation of Plaintiffs' 4th Amendment rights to be
19 free from unreasonable searches and seizures. The specific contentions are set forth as
20 follows:

21
22 A. A night search of the subject property was neither requested by authorities; nor,
23 authorized by the magistrate. [Warrant @ 5 & 7 Search.]

24 B. The search warrant was for the Misdemeanor allegations of Nuisance; which can be
25 a Tort or Crime depending on the decision of the San Joaquin County Counsel.

26 C. The warrant prohibits night entry, yet at the time that the Sheriff entered the grow, it
27 was so dark that lights had to be erected. [TAC 111] (B) "*California Penal Code*
28

1 1534 (b)(7) states: “*As used in this section, ‘daytime’ means the hours between 6*
2 *a.m. and 10 p.m. according to local time.*”

3 D. “*Daytime*” means the hours between 6:00 a.m. and 10:00 p.m. according to local
4 time. *Federal Rules of Criminal Procedure Rule 41 (a)(2)(B)*

5
6 E. *People-v-Watson* 75 Cal.App.3rd 595 was also a case wherein “*the sole issue is*
7 *‘good cause’ was shown to the magistrate to support a direction for night service of*
8 *a search warrant as authorized by Penal Code section 1533....*” In *Watson*, unlike
9 the case at bar, ‘*good cause*’ was not shown; but *Watson* did set the standard for
10 ‘*good cause*’ in a search warrant affidavit when the Court opined, “*We also define*
11 *the proper standard to be used by a magistrate in determining the existence of good*
12 *cause for night service of a search warrant. Finally, we hold that the good cause*
13 *must be set forth in affidavit form the same as the showing for probable cause to*
14 *issue the warrant under Penal Code sections 1525 and 1526.*” Whether daytime or
15 nighttime, it is Plaintiffs position that Defendants omitted crucial and material
16 information for the issuance of a search warrant. For example. What is the urgency
17 for the issuance of a Misdemeanor search warrant for Nuisance; with mitigating
18 factors such as abatement or attempt to abate the alleged Nuisance. Additionally,
19 Exhibits 1-11 provides evidence which mitigates and presents both sides of the story
20 such as:
21

22 (1) Steep Hill Analysis

23 (2) Nodocki Analysis

24 (3) Sheriff’s own test results from the University of Mississippi

25 (4) Measurements Report

26 (5) Commodities Reports
27
28

1 (6) Letters to County Counsel

2 (7) Appearance before the County Board of Supervisors.

3 These are not the acts of an alleged multi-acre grower of illegal substances.

4 *Watson* mandates that a Magistrate must be presented with a clear and impartial
5 presentation by the Prosecutor and law enforcement so that he or she can make a
6 clear, impartial and detached decision. The very face of the affidavit reflects that
7 this was not the case. It is these premeditated, willful, intentional and deliberate
8 acts which takes this case from the protection of immunity to the land of
9 everybody else.
10

11 F. Eastin did not request a night search. When signing the warrant at 10:00 pm, on
12 October 9, 2017, the night before the search, the Magistrate clearly checked “No” in
13 response to “*Night Search Approved*” [**Search Warrant @ 7**]
14

15 G. The Sheriff completed the search on October 10, 2017. [**TAC 25**]; and the sun set
16 at about 4:48 pm that day, Sunrise / Sunset San Joaquin County of which this Court
17 took Judicial Notice. [*Federal Rules of Evidence Rule 201(b)(2)*].

18 H. In between October 9, 2017 and October 10, 2017 was when the search and seizure
19 occurred. The Declaration of Glen Burgin and Chief William Bills reflects in *part* “*that*
20 *on the night of October 9, 2017, at approximately 1:00 am, a helicopter, an earth*
21 *mover and several commercial trucks arrived. I asked why they were destroying the*
22 *crop. I was given a copy of the search warrant and affidavit. I asked why we could not*
23 *just harvest the crop since it was hemp. I tried to show them the results of my Steep*
24 *Hill Testing Labs, an industry leader, located in Oakland California, and Nodocki*
25 *Analysis to test another hemp sample. Analysis on that sample found THC at 0.21%, and*
26 *.24% comfortably below the 0.3% limit. Finally, I asked what the results were of Agent*
27
28

1 Eastin's two lab tests he ordered from the University of Mississippi both of which
2 showed hemp. I received no response. They proceeded to plow under the hemp into the
3 ground. Each of the twenty two thousand five hundred plants [22,500] was individually
4 wrapped in plastic to preserve soil content, water, moisture. They are supposed to
5 employ recognized methods of destruction and collection of the plants; such as burying
6 them. Instead, they left the plants and their plastic wrapping plowed under the soil.
7 There were no apologies as to the procedure; nor was there any reference as to the
8 permanent damage this does to the soil. The contamination was so voluminous and
9 great that Glen and Chief could not clean them up themselves. Rather, the land was left
10 contaminated, poisoned and useless to the point where no future crops can be
11 planted." William Bills & Glen Burgin Declaration
12

13
14 4. There are additional considerations that contribute to the "totality of the
15 circumstances"

16 A. If a search conducted based on a warrant exceeds the scope of that warrant, the
17 search violates the Fourth Amendment. [*Horton-v-California* 496 U.S. 128,140].

18 B. The Search Warrant was based on a Misdemeanor? Is there such a thing.

19 C. The search was for a nighttime search on a Misdemeanor charge with no
20 evidence of urgency where the nature of the alleged contraband was not exigent. It
21 even took law enforcement hours and hours to plow under 26.19 acres of hemp
22 grow.
23

24 D. In this case, *United States-v-Jones*, 615 F. 3rd 544, the magistrate, as clearly
25 indicated on the face of the warrant, affirmatively denied the
26 Defendants permission to search Jones's house before 6:00 AM. The plaintiff
27 alleges the Defendants nonetheless executed the warrant at 4:45 AM. Just as a
28

1 warrant is “*dead*,” and a search undertaken pursuant to that warrant invalid, after
2 the expiration date on the warrant, *Sgro v. United States*, 287 U.S. 206, 212 (1932),
3 a warrant is not yet alive, and a search is likewise invalid, if executed before the
4 time authorized in the warrant. If the Defendants executed the warrant when the
5 magistrate said they could not, then they exceeded the authorization of the warrant
6 and, accordingly, violated the *4th Amendment*.

- 7
- 8 5. Plaintiffs have been unable to determine whose magistrate signature appears on the
9 search warrant since there is no written printed name next to or below the unintelligible
10 and unreadable scribble of the search warrants author.
- 11 6. Plaintiffs cannot associate said signature with any first or last name so as to compare it
12 with the list of San Joaquin County Judges.
- 13 7. Plaintiffs leased a wholly tribal owned 250-acre parcel of land in San Joaquin
14 County on a 26.19 acre portion of that land, Plaintiffs’ planned to sow Hemp.
15

16 **Conclusion**

17 Plaintiffs’ contend that when a Magistrate specifically denies a Nighttime authorization
18 which is deliberately ignored by San Joaquin County Agent Michael Eastin in violation
19 of that directive; that premeditated, intentional, deliberate act constitutes a
20 unconstitutional deprivation and violation of Plaintiffs’ *4th and 14th Amendment* Rights.
21

22 **DECLARATION OF CHIEF WILLIAM BILLS**

23 **I, WILLIAM BILLS DECLARE:**

- 24 1. I am one of the Plaintiffs in the above-entitled action.
- 25 2. In approximately June of 2017, my colleague and friend, Glen Burgin decided to plant
26 Hemp on a farm that he leases from his son, Gregg.
- 27 3. In order to comply with the law; and so as to avoid any problems with law enforcement,
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personally did the following:

4. I made available to San Joaquin County Counsel a copy of our license with the State of Nevada. [Exhibit 5- Nevada Department of Agriculture License Approval]
5. I provided a copy of the Measurements Report, a condition precedent to notification to the San Joaquin County Agricultural Commissioner, Tim Pelican of our intent to grow. [Exhibit 6-Measurements Report] along with the Declaration for Certification of Industrial Hemp Production. [Exhibit 8-Hemp Certification]
6. I provided a copy of the Commodities Report, a condition precedent to notification to the San Joaquin County Agricultural Commissioner, Tim Pelican of our intent to grow. [Exhibit 7-Commodities Report]
7. We created signage that the crop was Hemp rather than Marijuana.
8. In June of 2017, plaintiffs began cultivation of hemp on the subject grow. This was known - and on July 31, 2017 it was approved - by the County Agricultural Commission, identifying us as a grower of hemp on that parcel on a maps as "IHEMP."
9. S.G. Farms went onto the parcel regularly - measuring, sampling, testing moisture, adjusting drainage, etc., then would record its findings. Chief Bills, as operator of the location, was responsible to the rest of plaintiffs for overseeing the grow.
10. On July 18, 2017, after overhearing concerns their parcel may contain an illegal grow, plaintiffs retained Steep Hill Testing Labs, an industry leader, located in Oakland California, to test another hemp sample. Analysis on that sample found THC at 0.21%, comfortably below the 0.3% limit. From the date the crop were first planted through August 29, 2017, plaintiffs did not receive one complaint, citation, or any other indication that we were causing injury or hazard to anyone, nor were they informed that there was any legal concern with the subject grow.

1 11. Then on August 29, 2017, Sakata sent plaintiffs a letter referencing an August 17, 2017
2 investigation of a “*cannabis grow*” within the unincorporated area of County, claiming
3 it was prohibited pursuant to County law. The letter further stated that “*signage alone*
4 *is not sufficient to establish an institution’s ability to cultivate industrial hemp for*
5 *agricultural or academic research in San Joaquin County.*” The letter demanded
6 evidence supporting plaintiffs’ claim of being an established research cultivar by
7 September 11, 2017. [Exhibit 9-S.J.C.C.-Erin Sakata Letter 08-29-2017] Because the
8 County can’t quite understand that the word “*Cannabis*” - which may be colloquially
9 used interchangeably with “*Marijuana doesn’t actually mean “Marijuana*”, this letter
10 was on its face confusing.
11

12 12. On September 11, 2017, Plaintiffs responded to the letter addressing the County’s
13 thirty nine [39] assertions by disputing both the factual and legal basis for the County’s
14 letter. [Exhibit 10-Letter to S.J.C.C. Erin Sakata 09-15-2017]
15

16 13. On September 12, 2017, San Joaquin County responded to plaintiffs’ letter,
17 declaring the September 11, 2017 letter non-responsive and insufficient to demonstrate
18 an “*Established Agricultural Research Institution for the purposes of agricultural or*
19 *academic research.*”
20

21 14. On September 15, 2017, plaintiffs again replied offering specific information to
22 support and substantiate, attaching a plethora of documentation as exhibits, including
23 but not limited to: California Bureau for Private Postsecondary Education showing
24 American States University as offering a number of “*currently approved [educational]*
25 *programs.*”
26

27 15. During late June through late September, Roger Agajanian provided a series of
28 documents and letters to San Joaquin Counsel, Erin Sakata that the crop was Hemp, not

1 Marijuana and that we were in compliance; not a Nuisance and no need for urgent
2 action. By this times the crop was six feet tall. [Exhibit 10-Response of S.J.C.C. Erin
3 Sakata 09-15-2017]

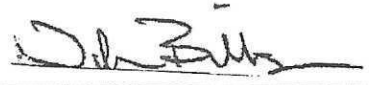
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5 16. On the night of October 9, 2017, at approximately 1:00 am, a helicopter, an earth
6 mover and several commercial trucks arrived. I asked why they were destroying the
7 crop. I was given a copy of the search warrant and affidavit. I asked why we could not
8 just harvest the crop since it was Hemp. I tried to show them the results of my Steep
9 Hill Testing Labs, an industry leader, located in Oakland California, and Nodocki
10 Analysis to test another hemp sample. Analysis on that sample found THC at 0.21%,and
11 .24% comfortably below the 0.3% limit. Finally, I asked what the results were of Agent
12 Eastin's two lab tests he ordered from the University of Mississippi both of which
13 showed Hemp. I received no response. They proceeded to plow under the hemp into
14 the ground. Each of the twenty two thousand five hundred plants [22,500] was
15 individually wrapped in plastic to preserve soil content, water, moisture. They are
16 supposed to employ recognized methods of destruction and collection of the plants;
17 such as burying them.

18
19 Instead, they left the plants and their plastic wrapping plowed under the soil. There
20 were no apologies as to the procedure; nor was there any reference as to the permanent
21 damage this does to the soil. The contamination was so voluminous and great that Glen
22 and Chief could not clean them up themselves. [Exhibit 11-Picture of Contaminated
23 Crop]
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25 17. Rather, the land was left contaminated, poisoned and
26 useless to the point where no future organic crops can be planted.
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I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. EXECUTED THIS 20th DAY OF APRIL 20, 2022 IN GARNERVILLE, NEVADA.



WILLIAM BILLS

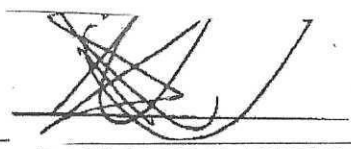
I, GLEN BURGIN, ROGER JAMES AGAJANIAN AND RAYMOND DABNEY DECLARE THAT I HAVE READ THE DECLARATION OF WILLIAM BILLS SUPRA AND ALSO DECLARE IT TO BE TRUE TO THE BEST OF OUR KNOWLEDGE. EXECUTED IN HOLT, CALIFORNIA ON APRIL 20, 2022.



GLEN BURGIN



ROGER AGAJANIAN



RAYMOND DABNEY

EXHIBIT LIST

- Exhibit 1-Steep Hill Analysis
- Exhibit 2-Konocti Analytics
- Exhibit 3-A.S.U. letter to San Joaquin County Counsel
- Exhibit 4-California Dept. of Food & Ag. Letter
- Exhibit 5-Nevada Hemp License Approval letter
- Exhibit 6-Measurements Report
- Exhibit 7-Hemp Certification
- Exhibit 8-Commodities Report
- Exhibit 9-San Joaquin County Counsel letter
- Exhibit 10-A.S.U. letter to San Joaquin County Counsel
- Exhibit 11-Photos of Before & After Eradication Time Stamp 3:41 a.m.
- Exhibit 12-Search Warrant
- Exhibit 13-Cannabis Science collaboration with Harvard University-School of Medicine, Dana Farber Cancer Institute.