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6 **OKLEVUEHA NATIVE AMERICAN CHURCH,**
SAUL A. GARCIA and SCOTT RICHARD BATES

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 **OKLEVUEHA NATIVE AMERICAN**
12 **CHURCH; SAUL A. GARCIA, an**
13 **individual; and SCOTT RICHARD BATES,**
an individual,

14 **Plaintiffs,**

15 **v.**

16 **SONOMA COUNTY, a California municipal**
17 **corporation; SONOMA COUNTY**
18 **SHERIFF'S DEPARTMENT; EDMUND G.**
19 **BROWN, JR., in his capacity as Governor of**
the State of California; THE STATE OF
CALIFORNIA; and DOES 1 to 10,

20 **Defendants.**

No.:

VERIFIED COMPLAINT FOR
VIOLATION OF 42 U.S.C. § 1983,
THE RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS
ACT, THE CALIFORNIA AND
FEDERAL CONSTITUTIONS;
AND INJUNCTIVE RELIEF

22 Come now Plaintiffs **OKLEVUEHA NATIVE AMERICAN CHURCH, SAUL**
23 **A. GARCIA and SCOTT RICHARD BATES** to complain of violations of
24 constitutional and statutory rights by the above-named Defendants as follows:

25 **JURISDICTION AND VENUE**

26 1. Plaintiffs seek relief for violations of the United States Constitution and
27 damages under 42 U.S.C. §§ 1983 and 42 U.S.C. 2000cc, *et seq.*, providing this court
28 with subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338. The state

1 law claims for relief are within the supplemental jurisdiction of the Court, pursuant
2 to 28 U.S.C. § 1367.

3 2. Venue is proper in this Judicial District because this is where the injury
4 occurred and where the Defendants are located.

5
6 **PARTIES**

7 3. Plaintiff OKLEVUEHA NATIVE AMERICAN CHURCH (“CHURCH”)
8 is a Native American Church based in the State of Utah. A branch of CHURCH operates
9 in Sonoma County, California.

10 4. Plaintiffs SAUL A. GARCIA (“GARCIA”) and SCOTT RICHARD
11 BATES (“BATES”) are individuals and members of CHURCH who reside in Sonoma
12 County, California.

13 5. Defendant SONOMA COUNTY (“COUNTY”) is a municipal corporation,
14 organized and existing under the Constitution of the state of California.

15 6. Defendant SONOMA COUNTY SHERIFF’S DEPARTMENT
16 (“SHERIFF’S DEPARTMENT”) is a governmental entity operating as part of COUNTY.

17 7. Defendant STATE OF CALIFORNIA (“STATE”) was admitted to the
18 Union on September 9, 1850. STATE is subject to the provisions of the Constitution and
19 laws of the United States of America pursuant to its admission as a state. STATE is
20 further subject to the due process and equal protection provisions of the Fourteenth
21 Amendment to the Constitution.

22 8. Defendant EDMUND G. BROWN, JR. (“BROWN”) is the elected
23 Governor of the State of California and is sued solely in his capacity as such.

24 9. The true names or capacities, whether individual, corporate, associate, or
25 otherwise, of the Defendants named herein as “DOE” are unknown to Plaintiff, who
26 therefore sues those Defendants by fictitious names. Plaintiffs will request leave to
27 amend this Complaint to show the true names or capacities of these Defendants once they
28 have been ascertained.

1 Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota,
2 Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New
3 Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont,
4 Washington, and Wisconsin, to prevent such States from implementing their own
5 State laws that authorize the use, distribution, possession, or cultivation of medical
6 marijuana.”

6 14. In 2015, Congress voted to reauthorized Sec. 538 for fiscal 2016.

7 15. In November, 1996, California voters approved the Compassionate Use Act
8 (“CUA”). Ca. Prop. 215 [1996]; Ca. Health and Safety Code § 11362.5. The CUA in-
9 part provides that the state should implement a safe and affordable distribution system
10 that provides for all seriously-ill Californians in need of medical marijuana. Ca. Health
11 and Safety Code § 11362.5(B)(1)(c). In 2003, the California Legislature approved the
12 Medical Marijuana Program Act (“MMPA”). Stats. 2003, Ch. 875; enacted 2003,
13 effective 1/1/2004; Ca. Health and Safety Code § 11362.7, *et seq.* The enacting language
14 in the MMPA refers to the distribution system included by the voters in §
15 11362.5(B)(1)(c) of the CUA. Part of the MMPA, Ca. Health and Safety Code §
16 11362.775, implements that system.

17 16. As of the filing of this Complaint, thirty-four (34) states and the District of
18 Columbia have enacted some form of cannabis legislation for patients suffering from
19 severe illness and disability; (B) Congress enacted Sec. 538 restricting the use of funds
20 by the federal Department of Justice against implementation of medical cannabis laws in
21 32 states; (C) in January, 2013, the National Cancer Institute, part of the federal
22 government’s *National Institutes of Health*, reported cannabis reduces the size of
23 cancerous tumors; (D) in 2003, the United States obtained a patent titled, “The
24 Antioxidant and Neuroprotective benefits of Cannabinoids;” (E) multiple scientific
25 studies and reports show cannabis is the only medication effective in treating severe
26 childhood epilepsy; and (F) numerous scientific articles report cannabis is effective in
27 treating a myriad of human health ailments.

28 17. As a result of: (A) Congress’s enactment of Sec. 538; (B) the enactment of

1 California’s medical marijuana laws; (C) the publication of numerous studies showing
2 cannabis is safer than alcohol; (D) the use of sacramental wine by other religious groups;
3 (E) numerous actions taken by the Article II Branch restricting the use of resources for
4 purposes of federal marijuana prosecutions; (F) the many respected medical studies
5 showing the health benefits provided by cannabis; and (G) the hundreds of years of
6 traditional use of cannabis and the federally allowed use of peyote and other natural
7 plants by Native Americans in their religious practices, there is no longer even a *rational*
8 *basis* justifying the state law used by COUNTY as a basis for its action to confiscate and
9 destroy cannabis plants used by CHURCH for its religious practices and ceremonies.

10 18. Through “emerging awareness,” the members of CHURCH who use
11 cannabis as part of Native American religious ceremony and practices that integrate into
12 CHURCH’s religious beliefs the concept of medicine-men, healing and being one with
13 the Earth have a fundamental right to do so to alleviate and treat physical and mental
14 conditions from which they suffer. *Lawrence v. Texas*, 539 U.S. 558, 578, 123 S.Ct.
15 2472, 156 L.Ed.2d 508 (2003); *Raich v. Gonzales*, 500 F.3d 850, 864-66 (2007).

16 19. Under the *Religious Land Use and Institutionalized Persons Act* (RLUIPA),
17 42 U.S.C. §§ 2000cc, *et seq.*, “No government shall impose or implement a land use
18 regulation in a manner that imposes a substantial burden on the religious exercise of a
19 person, including a religious assembly or institution, unless the government demonstrated
20 that imposition of the burden on that person, assembly, or institution, (A) is in
21 furtherance of a governmental interest; and (B) is the least restrictive means of furthering
22 that compelling governmental interest. CHURCH is a religious assembly or institution
23 for purposes of the RLUIPA. Plaintiffs BATES and GARCIA are both “persons” for
24 purposes of RLUIPA.

25 20. The *American Indian Religious Freedom Act*, 42 U.S.C. § 1996 (“AIRFA”)
26 protects and preserves the traditional religious rights and cultural practices of American
27 Indians, Eskimos, Aleuts, and Native Hawaiians. These rights include, but are not
28 limited to, access to sacred sites, freedom to worship through ceremonial and traditional

1 rights, and use and possession of objects considered sacred. AIRFA was amended in
2 1994 to specifically protect the sacramental use of peyote by Native Americans.
3 CHURCH is an “Indian religion” as defined by AIRFA.

4 21. The *No Discrimination Clause* (“NDC”) of art. 1, sec. 4 of the California
5 Constitution guarantees the “[f]ree exercise and enjoyment of religion without
6 discrimination or preference.” “In guaranteeing free exercise of religion ‘without
7 discrimination or preference,’ the plain language of the clause suggests ... that the intent
8 is to ensure that free exercise of religion is guaranteed regardless of the nature of the
9 religious belief professed, and that the state neither favors nor discriminates against
10 religion.” *East Bay Asian Dev’t Corp. v. State of California*, 102 Cal.Rptr.2d 280, 299,
11 24 Cal.4th 693, 13 P.3d 1122 (2000). The NDC provides greater protection of religious
12 rights than the Federal constitution. *Sands v. Morongo Unified School Dist.*, 53 Cal.3d
13 863, 883, 281 Cal.Rptr. 34, 809 P.2d 809 (1991). By taking the actions complained of
14 herein, the Defendants violated the NDC by impermissibly discriminating against
15 CHURCH and its members.

16 22. In *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S.
17 418 (2006) the U.S. Supreme Court held the federal *Controlled Substances Act* (CSA), 21
18 U.S.C. § 801 *et seq.* does not meet the as applied “strict scrutiny” standard expressed in
19 the *Religious Freedom Restoration Act of 1993* (RFRA), 107 Stat. 1488, as amended, 42
20 U.S.C. § 2000bb *et seq.* Under the anti-discrimination provisions of the NDC, the same
21 “strict scrutiny” test applies to California’s marijuana prohibition laws in respect to
22 CHURCH and its members. Under a “strict scrutiny” analysis, the California Health &
23 Safety Code provisions relied upon by the Defendants in acting against CHURCH and its
24 members are not the least restrictive means of furthering a compelling government
25 interest.

26 23. At the outset, searches or seizures “without a warrant are presumptively
27 unreasonable.” *Groh v. Ramirez*, 540 U.S. 551, 559 (2004). “A warrantless entry to
28 search” for “contraband is unconstitutional even when a felony has been committed and

1 there is probable cause to believe that incriminating evidence will be found within.” *Id.*

2 24. The Fourth Amendment guarantees that no warrant will issue to
3 search/seize property unless a judicial officer first determines from reviewing the four
4 corners of the affidavit that there exists a substantial probability that contraband, or
5 evidence of a crime, will be located at a particular place.

6 25. The affidavit in support of a search warrant under state law must contain
7 facts demonstrating a substantial probability that contraband or evidence of a crime under
8 state law will be located in a particular place. An affidavit based on mere suspicion or
9 drawing conclusions without supporting facts is insufficient.

10 26. “In determining whether an affidavit establishes probable cause for the
11 issuance of a search warrant, the court limits its review to the data contained within the
12 four corners of the affidavit.” *Ewing v. City of Stockton*, 588 F.3d 1218, 1225 n.8 (Cir
13 2009). Consequently, the requirement that a warrant not issue but upon probable cause,
14 supported by an affidavit, would be reduced to a nullity if a police officer was able to
15 deliberately omit relevant facts to demonstrate probable cause.

16 27. “The Fourth Amendment is violated when a facially valid search warrant
17 contains deliberate or reckless omissions of facts that tend to mislead.” *Garcia v. County*
18 *of Merced*, 639 F.3d 1206, 1212 (9th Cir 2011). “Just as the Fourth Amendment prohibits
19 warrantless searches generally, so too does it prohibit a search conducted pursuant to an
20 ill-begotten or otherwise invalid warrant.” *Bravo v. City of Santa Maria*, 665 F.3d 1076,
21 1083 (9th Cir 2011). “Even when only a portion of a search warrant is invalid, the
22 subject of the search suffers a constitutional violation.” *Millender v. County of Los*
23 *Angeles*, 620 F.3d 1016, 1024 (9th Cir. 2010) (en banc).

24 28. A “judicial deception” claim exists if “the warrant affidavit contained
25 misrepresentations or omissions material to the finding of probable cause” and “the
26 misrepresentations or omissions were made intentionally or with reckless disregard for
27 the truth.” *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir 2011).

28 29. “The Fourth Amendment is violated when a facially valid search warrant

1 contains deliberate or reckless omissions of facts that tend to mislead.” *Garcia v. County*
2 *of Merced*, 639 F.3d 1206, 1212 (9th Cir 2011). Plaintiffs “had a constitutional right to
3 not be searched and arrested as a result of judicial deception.” *Chism v. Washington*, 661
4 F.3d 380, 393 (9th Cir 2011).

5 30. Whether the “judicial deception” was “by material false statements or
6 material omissions is of no consequence. . . . by reporting less than the total story, an
7 affiant can manipulate the inferences a magistrate will draw. To allow a magistrate to be
8 misled in such a manner could denude the probable cause requirement of all real
9 meaning.” *Liston v. Cty of Riverside*, 120 F.3d 965, 973 (9th Cir 1997). “Governmental
10 employees are not entitled to qualified immunity on judicial deception claims.” *Chism v.*
11 *Washington*, 661 F.3d 380, 393 (9th Cir 2011).

12 **FACTUAL ALLEGATIONS**

13 31. CHURCH was established in April of 1997 in Gunnison, Utah by James
14 Mooney, the progeny of Native Americans, and by his wife Linda, also of Native
15 American descent (“MOONEYS”). James Mooney is a descendant of Osceola (1804-
16 1838), an influential leader of the Seminole Indian Tribe in Florida. (See Exhibit 1,
17 *Oceola, Cherokee and Creek Indian Reservation Tribal Card*.) James Mooney continues
18 to serve as the leader of CHURCH, which in 2007 was recognized and serves the
19 federally recognized Oglala Sioux Tribe of Pine Ridge as the *Oklevueha Lakota Sioux*
20 *Nation Native American Church*. (See Exhibit 2, *Articles of Formation*, incorporated by
21 this reference.) CHURCH is also recognized by the Lakoda Sioux Rosebud Tribe of
22 South Dakota.

23 32. CHURCH has thousands of members in the United States, Canada, Mexico,
24 South America and Africa.

25 33. Part of Plaintiff CHURCH’s religious practices includes Native American
26 “medicine men.” The integration into its religion of nature, natural health and the
27 “medicine men” is a core principal and part of the CHURCH’s ongoing Native American
28 practices that have been part of Native American culture and religious practice for

1 hundreds of years. Along with peyote, cannabis and various other natural herbs and
2 plants are used in the sacramental processes by CHURCH medicine men and members.

3 34. In 2000, CHURCH became affiliated with the Huichol tribe, an indigenous
4 people of Sonora, Mexico. The proclamation between CHURCH and the Huichol tribe is
5 included as Exhibit 3 with this Complaint and incorporated by this reference.

6 35. The Huichol are a deeply religious people that have a belief structure which
7 encompasses every aspect of life and includes ceremonies from pre-Colombian
8 mythology that places special emphasis on the deer, corn plant, and the peyote plant, a
9 small, spineless, flowering cactus plant which is used as a hallucinogen before and during
10 religious ceremonies. For hundreds of years, the Huichol have, as a part of their spiritual
11 ceremonies, used a common form of hemp called *mariguana* or *rosa maria* (*Cannabis*
12 *sativa*) in their religious ceremonies.

13 36. Since its inception, CHURCH has followed traditional Native American
14 religious ceremonies including those of the indigenous people and tribes with which it is
15 affiliated.

16 37. Since 1997, numbers of branches of CHURCH have been established
17 around the United States, including a branch located at 1142 Lawndale Road in
18 Kenwood, Sonoma County, California (“BRANCH”). Each CHURCH branch is blessed
19 by James Mooney and conducts the Native American religious ceremonies and rituals of
20 CHURCH using peyote, cannabis and other plants.

21 38. In or around 1999, the State of Utah wrongfully arrested the MOONEYS
22 and charged them as well as CHURCH with violating the Utah Controlled Substances
23 Act (“UCSA”).

24 39. In 2004, the Utah Supreme Court held the religious peyote provisions of 42
25 U.S.C. § 1996a protected the MOONEYS and CHURCH from prosecution for the
26 religious use of peyote under the UCSA. As a result of the state’s highest court’s
27 decision, charges against CHURCH and the MOONEYS were dismissed. *State of Utah*
28 *v. Mooney*, 2004 UT 49 (2004).

1 40. BATES and GARCIA serve as leaders of CHURCH’s BRANCH in
2 Sonoma County, California. Both BATES and GARCIA have been blessed by James
3 Mooney as has the BRANCH in Sonoma County. Both BATES and GARCIA prepare
4 the sacraments used by CHURCH members pursuant to their religious beliefs including
5 but not limited to cannabis. Sacramental cannabis grown by BRANCH is used by
6 members of BRANCH as well as other branches of CHURCH.

7 41. In or around August, 2015, officials from COUNTY entered onto the
8 property where CHURCH’s BRANCH is located in Sonoma County and notified BATES
9 and GARCIA that BRANCH was in an improper land use zone and that a COUNTY
10 business license was required for CHURCH to operate. The COUNTY inspector also
11 notified BATES and GARCIA that a sign displaying CHURCH’s name required a permit
12 from COUNTY. Thereafter, COUNTY’s inspector demanded that CHURCH cease and
13 desist from use of the property where BRANCH is located unless and until its business
14 license, zoning and signage ordinances were complied with.

15 42. At approximately 10 a.m. on the morning of September 14, 2015, deputies
16 from SHERIFF’S DEPARTMENT entered onto the property of CHURCH’s BRANCH
17 in Sonoma County and served a search warrant as well as detained CHURCH member
18 GARCIA. Upon learning of the entry onto the CHURCH’s property, CHURCH member
19 BATES, who was not at the BRANCH location, contacted the CHURCH’s California
20 attorney.

21 43. Deputies remained on the property of the BRANCH for hours without
22 arresting GARCIA while he was detained by them. During the morning and early
23 afternoon, deputies detained GARCIA and remained on the CHURCH’s property without
24 damaging, confiscating or destroying sacramental cannabis being cultivated for many of
25 CHURCH’s members. At approximately 4 p.m., deputies began destroying CHURCH’s
26 sacramental cannabis plants.

27 44. During the period of time deputies were on the property and prior to their
28 destruction of sacramental cannabis plants, CHURCH’s attorney made multiple phone

1 calls to the SHERIFF'S DEPARTMENT. The CHURCH's attorney also prepared and
2 sent a letter via facsimile to the SHERIFF'S DEPARTMENT at least two (2) hours
3 before deputies arrested the church official and thereafter destroyed sacramental cannabis
4 plants. A copy of the letter sent to the SHERIFF'S DEPARTMENT by CHURCH's
5 attorney is included as Exhibit 4 with this Complaint.

6 45. A search warrant ("WARRANT") served by deputies alleged activities on
7 the subject property violated sections 11358, 11359, 11360 and 11361 of California's
8 Health & Safety Code which prohibit marijuana cultivation, distribution and possession.

9 46. Plaintiffs are informed and believe and based upon such information and
10 belief allege the WARRANT's affidavit did not identify the BRANCH as part of
11 CHURCH nor did it provide any factual information about the nature of the property, the
12 background of the church, that COUNTY officials were aware the property was part of
13 CHURCH or any other information necessary for a state judicial officer to properly
14 consider the law, including federal protections for Native American religion, prior to
15 WARRANT's issuance and execution.

16 47. Plaintiffs are informed and believe and based upon such information and
17 belief allege that deputies of SHERIFF'S DEPARTMENT knew the property subject to
18 WARRANT was the worship location of BRANCH and failed to disclose such
19 information in the affidavit submitted in support of WARRANT.

20 48. Plaintiffs are informed and believe and based upon such information and
21 belief allege that one or more employees or officers of COUNTY were aware CHURCH
22 was protected by state and federal law including but not limited to RLUIPA, AIRFA,
23 RFRA and art.1, sec.4 of the state constitution and that such information was material to
24 determining whether probable cause existed for WARRANT. Plaintiffs further allege
25 that at the direction of these same employees and officers or independently, the
26 WARRANT affiant intentionally or recklessly withheld such information from the state
27 judicial officer who issued WARRANT.

28 49. Plaintiffs are informed and believe and based upon such information and

1 belief allege that COUNTY and SHERIFF’S DEPARTMENT had received the letter
2 from CHURCH’s attorney, included as Exhibit 4, after initiating execution of the search
3 warrant, had knowledge of the status of CHURCH and protections afforded it under
4 federal law and continued execution of the warrant with full knowledge the actions taken
5 by them were premised on omissions made to the issuing judicial officer. Plaintiffs
6 further allege that employees and officers of the Defendants discriminated against
7 Plaintiffs based upon pre-conceived notions that Native American religions are “bogus”
8 and simply a cover for illegal drug dealing.

9 50. Several hours after serving the warrant and after receiving and being made
10 aware of the letter sent by CHURCH’s attorney, deputies destroyed all of the live
11 sacramental cannabis plants in various stages of cultivation and confiscated property of
12 BRANCH.

13 51. Several hours after serving the warrant and after receiving and being made
14 aware of the letter sent by CHURCH’s attorney, deputies arrested CHURCH member
15 GARCIA, who they had detained for violating the aforementioned provisions of the
16 California Health & Safety Code, more specifically provisions prohibiting marijuana.

17 52. Despite receiving the letter faxed to them and despite multiple calls to
18 deputies during the raid and prior to their destruction of cannabis plants, deputies
19 destroyed the property of and have prohibited any continued use by BRANCH of the
20 property in Sonoma County.

21 53. Plaintiffs are informed and believe and based upon such information and
22 belief allege CHURCH member GARCIA who was arrested by SHERIFF’S
23 DEPARTMENT has now been charged with multiple felony violations of state anti-
24 marijuana laws by COUNTY. GARCIA has been required to appear in Court or face
25 revocation of his bond as well as arrest and detainment.

26 54. CHURCH member GARCIA was jailed for a period of more than 30-hours
27 and was required to pay bail to get out of jail. He is currently subject to release
28 conditions imposed by COUNTY that violate his Constitutional rights and rights

1 guaranteed him by various provisions of federal and state law, including restrictions on
2 his right to practice his religion.

3 55. The aforementioned actions have forced closure of BRANCH which has
4 remained unable to provide for the religious ceremonies and rituals of its member since
5 September 14, 2015.

6 56. The legal status of CHURCH and its members under state and federal law,
7 discriminatory beliefs of COUNTY employees and officers that CHURCH was
8 illegitimate and policy of COUNTY to eliminate all medical marijuana activities within
9 its border eliminated any probable cause for WARRANT and the state judicial officer
10 who issued it did so without the aforementioned material facts, was deceived by the
11 intentional or reckless omission of material facts by COUNTY and was improperly led to
12 believe probable cause existed for the issuance of WARRANT. Plaintiffs further allege
13 the execution of WARRANT by deputies aware of the omitted material facts was illegal
14 and that execution by those deputies who became aware of the omitted material facts
15 during the raid became illegal as each was made aware of such facts.

16 57. The aforementioned enforcement by COUNTY, SHERIFF'S
17 DEPARTMENT, STATE and GOVERNOR of the state's anti-marijuana law has resulted
18 in a denial of use of the property where BRANCH is located.

19 **FIRST CLAIM FOR RELIEF**

20 ***(Religious Land Use and Institutionalized Persons Act (RLUIPA),***
21 **42 U.S.C. §§ 2000cc, et seq. – Against All Defendants)**

22 58. Plaintiffs re-allege and incorporate the allegations included in paragraphs 1-
23 57 of this Complaint.

24 59. In October, 2015, following the August visit by COUNTY personnel citing
25 zoning, business licensing and signage violations by BRANCH, BRANCH personnel
26 went to the COUNTY offices in Santa Rosa, California to obtain a business license.
27 COUNTY personnel refused to accept any paperwork from CHURCH, BRANCH,
28 BATES or GARCIA.

1 60. BRANCH is located in an appropriate location that does not infringe on or
2 interfere with any other property near or around it.

3 61. The action of COUNTY in prohibiting CHURCH’s use of the property in
4 Sonoma County by ordering BRANCH to cease and desist purportedly based on zoning,
5 business licensing and signage requirements places a substantial burden on BRANCH.

6 62. COUNTY’s continuing prohibition of BRANCH is in-part based on land
7 use provisions of the Sonoma County Code and state decisional law related to land use
8 (*City of Riverside v. Inland Empire Health and Wellness*).

9 63. Plaintiffs are informed and believe and based upon such information and
10 belief allege that COUNTY and SHERIFF’S DEPARTMENT have, over the last
11 approximately five (5) years, taken action against medical marijuana patients and that
12 such actions are discriminatory in nature demonstrating a “Not In My Back Yard”
13 (“NIMBY”) pattern in Sonoma County with respect to any marijuana activities. Indeed,
14 the actions taken by COUNTY against non-religious entities engaged in state sanctioned
15 medical marijuana activities are based upon a California Supreme Court case holding that
16 counties and cities can, under their inherent land use powers, prohibit all medical
17 marijuana collective activities (*City of Riverside v. Inland Empire Health and Wellness*).
18 As such, the intent of COUNTY and SHERIFF’S DEPARTMENT in taking the
19 aforementioned actions against the Plaintiffs was done as part of the same pattern and
20 practice aimed at eliminating all marijuana land use activities in Sonoma County.

21 64. Plaintiffs are informed and believe and based upon such information and
22 belief allege that when COUNTY was unable to force cessation of BRANCH operations
23 after visiting and ordering BRANCH to cease and desist in August, 2015, SHERIFF’S
24 DEPARTMENT deputies thereafter obtained WARRANT to force closure of BRANCH.

25 65. Plaintiffs are informed and believe and based upon such information and
26 belief allege the actions of SHERIFF’S DEPARTMENT and COUNTY in obtaining and
27 executing WARRANT were intended to stop CHURCH from operating on the property
28 where branch is located in Sonoma County rather to enforce any purported criminal

1 statutes related to marijuana.

2 66. BRANCH is now closed and is unable to operate based on fear of
3 continuing enforcement actions by the Defendants, their demand that BRANCH cease
4 operation and the immediate danger of enforcement of local zoning and state criminal
5 laws against CHURCH, BRANCH and its members.

6 67. In light of Congress’s enactment of Sec. 538, actions by the Article II
7 branch providing for medical and recreational marijuana use, research showing marijuana
8 is safer than alcohol, evidence showing there has not been a death caused by overdose of
9 the cannabis plant, laws in 32 states and the District of Columbia providing for medical
10 marijuana, laws in 4 states providing for recreational marijuana, Congress’s action as the
11 plenary power over the District of Columbia in allowing medical marijuana in that
12 federal district and the historical cultural use of cannabis by Native Americans, there is
13 no compelling government interest or any rational basis for the land use actions and
14 related criminal actions seeking to force closure of BRANCH by the Defendants.

15 68. The actions of COUNTY and SHERIFF’S DEPARTMENT as well as the
16 continuing enforcement by STATE, GOVERNOR, SHERIFF’S DEPARTMENT and
17 COUNTY of state and local law against Plaintiffs to divest BRANCH of its land use
18 rights in Sonoma County and force removal of it are not the least restrictive means of
19 furthering a compelling government interest.

20 69. The actions taken by the Defendants and continuing effects of the state laws
21 used against Plaintiffs violate applicable provisions of RLUIPA and are invalid. As such,
22 Plaintiffs pray for injunctive relief as set forth below.

23 70. The actions taken by the Defendants and continuing effects of the state laws
24 used against Plaintiffs violate applicable provisions of RLUIPA and are invalid. As such,
25 Plaintiffs pray for injunctive relief as set forth below.

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SECOND CLAIM FOR RELIEF

**(Fourth Amendment, 42 U.S.C. § 1983, Warrantless Search and Seizure --
Against Defendants COUNTY and SHERIFF'S DEPARTMENT)**

71. Plaintiffs re-allege and incorporate the allegations included in paragraphs 1-57 of this Complaint.

72. COUNTY has attempted and has actually conducted unlawful searches and seizures of Plaintiffs' property and person, all the while attempting to preclude Plaintiffs the right to adequate, effective, and meaningful access to the courts before taking such actions.

73. Plaintiff is informed and believed and based upon such information and belief alleges that the WARRANT obtained to conduct the raid of BRANCH on September 14, 2015 provided in its overview claims that Plaintiffs are engaged in illegal narcotics activities. The warrant failed to include in its affidavit that CHURCH, BRANCH, BATES and GARCIA were located on the property subject to WARRANT. The warrant failed to disclose CHURCH or that CHURCH is a Native American religion. Plaintiffs are further informed and believe that the WARRANT's affidavit stated probable cause was based on suspected felony narcotics activity and failed to provide any information about the religious use of the property.

74. Plaintiffs are informed and believe and based upon such information and belief allege the WARRANT obtained for the September 14, 2015 raid of BRANCH starts by including conclusions meant to lead a magistrate to believe the property of CHURCH is being used to commit felony drug law violations and refers to use of the land at issue.

75. WARRANT was incomplete, inconsistent, and was recklessly or intentionally written in a deceptive manner which thereby misled the issuing state court judge thus vitiating the probable cause alleged by the WARRANT affiant. Accordingly, the search and seizure conducted by COUNTY and SHERIFF'S DEPARTMENT on September 14, 2015 done without a warrant thereby violating rights of the Plaintiffs

1 protected by the Fourth Amendment.

2 76. COUNTY's and SHERIFF'S DEPARTMENT's actions in obtaining and
3 executing WARRANT violated the civil rights of Plaintiffs secured to them via the 4th
4 Amendment to the U.S. Constitution, and are a source of injury, loss, and harm to the
5 Plaintiffs. Plaintiffs are therefore entitled to a judgment for such violations as set forth
6 below and for damages in an amount to be proven at trial.

7 **THIRD CLAIM FOR RELIEF**

8 **(Fifth Amendment, 42 U.S.C. § 1983, Improper Taking --**
9 **Against Defendants COUNTY and SHERIFF'S DEPARTMENT)**

10 77. Plaintiffs re-allege and incorporate the allegations included in paragraphs 1-
11 76 of this Complaint.

12 78. CHURCH was the rightful owner of the property seized and plants
13 destroyed by Defendants COUNTY and SHERIFF'S DEPARTMENT.

14 79. The cannabis plants seized and destroyed by Defendants COUNTY and
15 SHERIFF'S DEPARTMENT were part of the bona fide operations, ceremonies and
16 practices of CHURCH and as such were not contraband under state or federal law.

17 80. The seizure and destruction of cannabis plants as well as seizure of other
18 property taken by COUNTY and SHERIFF'S DEPARTMENT on September 14, 2015
19 constituted takings without just compensation by the Defendants in violation of the Fifth
20 and Fourteenth Amendments to the Constitution and are a source of injury, loss and harm
21 to the Plaintiffs. As such, Plaintiffs are entitled to judgment for such violations in an
22 amount to be proven at trial.

23 **FOURTH CLAIM FOR RELIEF**

24 **(First Amendment, 42 U.S.C. § 1983, Freedom of Association --**
25 **Against All Defendants)**

26 81. Plaintiffs re-allege and incorporate the allegations included in paragraphs 1-
27 70 of this Complaint.

28 82. In enforcing the aforementioned local and state laws against Plaintiffs,

1 which by operation necessarily terminate CHURCH’s land use and religious practices in
2 Sonoma County and which aim to entirely foreclose the ability of CHURCH members to
3 associate for the purposes of practicing their religion, the Defendants have acted to
4 restrict the Plaintiffs’ and CHURCH’s members of the constitutionally protected right of
5 freedom of association in the organization of their choice, which right is secured to them
6 by the First Amendment.

7 83. In taking the actions complained of herein, COUNTY is using its zoning
8 powers to arbitrarily and capriciously and without rational basis prevent CHURCH’s
9 members from meeting to participate in the bona fide religious ceremonies and practices,
10 including associating for spiritual purposes, and is denying them their constitutionally
11 protected right to choose which organization with which they associate. In enforcing the
12 local and state laws at issue herein without due process, the Defendants have and are
13 continuing to unlawfully stifle the Plaintiffs’ and CHURCH’s members’ right to
14 assembly and association and thereby restrict communication, spiritual ceremonies, and
15 religious practice which is enhanced and effected by virtue of CHURCH’s and
16 BRANCH’s existence. “It is beyond debate that freedom to engage in association for the
17 advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the
18 Due Process Clause.” *NA.A.C.P. v. Alabama*, 357 U.S. 449, 460 (1958); see also, *e.g.*,
19 *Healy v. James*, 408 U.S. 169, 181 (1972) [“While the freedom of association is not
20 explicitly set out in the Amendment, it has long been held to be implicit in the freedoms
21 of speech, assembly and petition”].

22 84. CHURCH’s members assemble to practice their religious beliefs and
23 depend on CHURCH through BRANCH to provide the necessary teaching, guidance and
24 materials to conduct religious ceremonies. The current restrictions upon and ultimate
25 termination of their right to associate at and express themselves within BRANCH, and
26 Plaintiffs’ concomitant right to organize and facilitate association of members, is and will
27 continue to be the cause of substantial pain and hardship to CHURCH and its members.

28 85. City’s actions have violated the civil rights of Plaintiffs secured to them via

1 the 1st Amendment to the U.S. Constitution, and are a source of injury, loss, and harm to
2 the Plaintiffs. As such, Plaintiffs are entitled to a judgment for such violations in an
3 amount to be proven at trial as well as for injunctive relief as set forth below.

4 **FIFTH CLAIM FOR RELIEF**

5 **(Inverse Condemnation, California Constitution --**
6 **Against All Defendants)**

7 86. Plaintiffs re-allege and incorporate the allegations included in paragraphs 1-
8 70 of this Complaint.

9 87. Article 1, section 19, clause (a) of the California Constitution permits
10 private property to be “taken or damaged for a public use ... only when just
11 compensation ... has been paid to, or into court for, the owner.”

12 88. Plaintiffs have a valid leasehold interest in the property located at 1142
13 Lawndale Road in Kenwood, Sonoma County, California giving it the exclusive right of
14 use and possession to said property.

15 89. Defendants by way of the actions of COUNTY and the laws of both
16 COUNTY and STATE as complained of herein, have substantially interfered and
17 prevented Plaintiffs from their right to possess and benefit from the real property
18 described above, resulting in a taking in violation of the California Constitution.

19 90. The Defendants’ actions have violated the civil rights of Plaintiffs secured
20 to them via the California Constitution, and are the cause of economic loss and other
21 damages to the Plaintiffs. As such, Plaintiffs are entitled to a judgment for such
22 violations in an amount to be proven at trial.

23 **SIXTH CLAIM FOR RELIEF**

24 **(Art. 1, Sec. 4, No Discrimination Clause, California Constitution --**
25 **Against All Defendants)**

26 91. Plaintiffs re-allege and incorporate the allegations included in paragraphs 1-
27 57 of this Complaint.

28 92. The religious practices of Native Americans are an integral part of their

1 culture, tradition, and heritage, such practices forming the basis of Native American
2 identity and value systems.

3 93. California has traditionally rejected the concept of a government denying
4 individuals the right to practice their religion, and as a result, has benefited from a rich
5 variety of religious heritages.

6 94. In the past, local and state governments as well as the federal government
7 have denied Native Americans access to particular sites and interfered with religious
8 practices and customs where such use conflicted with laws and regulations. In many
9 instances, the officials responsible for the enforcement of these laws and regulations were
10 unaware of the nature of traditional native religious practices and, consequently, of the
11 degree to which government interfered with such practices.

12 95. The no preference and no discrimination provisions in art. 1, sec. 4 of the
13 California Constitution provide broader guarantees than does the federal free exercise
14 clause and are more protective of those principles than the federal Constitution. *Sands v.*
15 *Morongo Unified School Dist.*, 53 Cal.3d 863, 883, 281 Cal.Rptr. 34, 809 P.2d 809
16 (1991).

17 96. In guaranteeing free exercise of religion “without discrimination or
18 preference,” the plain language of the No Discrimination Clause of art.1, sec.4 of the
19 state constitution ensures that free exercise of religion is guaranteed regardless of the
20 nature of the religious belief professed, and that the state neither favors nor discriminates
21 against religion. *East Bay Asian Dev’t Corp. v. State of California*, 102 Cal.Rptr.2d 280,
22 299, 24 Cal.4th 693, 13 P.3d 1122 (2000).

23 97. Given the more protective provisions of California’s free exercise clause,
24 the holding in *Employment Div. Dep’t of Human Resources v. Smith*, 494 U.S. 872 (1990)
25 is not dispositive when analyzing whether a California local or state law violates the No
26 Discrimination Clause of the California Constitution. The plain language of the part of
27 the state’s free exercise clause prohibiting discrimination requires elevated scrutiny for a
28 local or state law that interferes with a religious right.

1 98. In or around August, 2015, COUNTY and SHERIFF’S DEPARTMENT
2 became aware BRANCH was part of a Native American church.

3 99. On September 14, 2015 during the raid of BRANCH when BATES and
4 GARCIA spoke with deputies from SHERIFF’S DEPARTMENT, both were told by
5 deputies that CHURCH was not a “real religion.” GARCIA was told by a deputy that
6 “Indian” marijuana and peyote activities were drug dealing and had nothing to do with
7 religion. He overheard deputies laughing and commenting that Indians cannot handle
8 liquor and that it will be worse now that they’re using marijuana and peyote.

9 100. On September 14, 2015 during the raid of BRANCH when a staff member
10 of CHURCH’s attorney spoke with SHERIFF’S DEPARTMENT he was told by a deputy
11 that CHURCH is not a “real religion” and is a “bogus” front for narcotics trafficking.

12 101. Plaintiffs are informed and believe and based upon such information and
13 belief allege that SHERIFF’S DEPARTMENT and COUNTY personnel knew CHURCH
14 was a Native American religion. However, based on stereotypes about Native Americans
15 and lack of knowledge about the religious ceremonies, practices and spirituality of
16 CHURCH members concluded on their own that CHURCH was illegitimate.

17 102. COUNTY and SHERIFF’S DEPARTMENT have not raided branches of
18 the Catholic Church for preparing, storing and distributing sacramental wine nor have
19 they raided those Catholic Church branches based on rituals and ceremonies conducted
20 by members of that church.

21 103. The aforementioned actions of COUNTY and SHERIFF’S
22 DEPARTMENT were taken despite the bona fide Native American religious beliefs and
23 practices of CHURCH and thus were discriminatory in violation of the No
24 Discrimination Clause of art.1,sec.4 of the California Constitution.

25 104. In light of Congress’s enactment of Sec. 538, actions by the Article II
26 branch providing for medical and recreational marijuana use, research showing marijuana
27 is safer than alcohol, evidence showing there has not been a death caused by overdose of
28 the cannabis plant, laws in 32 states and the District of Columbia providing for medical

1 marijuana, laws in 4 states providing for recreational marijuana, Congress’s action as the
2 plenary power over the District of Columbia in allowing medical marijuana in that
3 federal district and the historical cultural use of cannabis by Native Americans, there is
4 no compelling government interest or any rational basis for the California Health &
5 Safety Code’s absolute prohibition of marijuana activities that provide no legal
6 exceptions to criminal liability under state law.

7 105. As applied, the general provisions of the aforementioned California Health
8 & Safety Code used as the basis for WARRANT, the arrest of and charges against
9 GARCIA and the actions taken by COUNTY and SHERIFF’S DEPARTMENT on
10 September 14, 2015 are not the least restrictive means of furthering any compelling
11 government interest related to marijuana.

12 106. The Defendants’ actions have violated the civil rights of Plaintiffs secured
13 to them via art.1,sec.4 of the California Constitution and the Plaintiffs seek injunctive
14 relief as set forth below.

15 **SEVENTH CLAIM FOR RELIEF**

16 **(Fourteenth Amendment, 42 U.S.C. § 1983, Substantive Due Process --**
17 **Against All Defendants)**

18 107. Plaintiffs re-allege and incorporate the allegations included in paragraphs 1-
19 106 of this Complaint.

20 108. Both substantive and procedural due process rights are guaranteed by the
21 Fourteenth Amendment to the United States Constitution, which applies directly to the
22 states.

23 109. Substantive and procedural due process rights of citizens are also protected
24 through provisions of the California Constitution.

25 110. Like some non-Western religions, Native American religious beliefs are
26 integrated with health and medical well-being, treatment and healing. The right to take
27 care of one’s body and to participate in the spiritual health, healing and medicine
28 ceremonies and traditions of Native Americans is deeply rooted in notions of liberty and

1 justice.

2 111. More than thirty-two (32) states and the District of Columbia have enacted
3 medical marijuana laws. A majority of Americans are now covered by state medical
4 marijuana laws.

5 112. In January, 2013, the federal *National Cancer Institute* at the *National*
6 *Institutes of Health* reported that cannabis can reduce the size of breast cancer tumors
7 and various other cancerous tumors.

8 113. Since 2001, numerous reports have provided the cannabis is effective in
9 treating the symptoms of Alzheimer’s disease, Parkinson’s disease, AIDS dementia,
10 cancer, glaucoma, severe childhood epilepsy, Multiple Sclerosis and various other
11 disabilities and serious illnesses.

12 114. Congress has plenary authority over the federal District of Columbia. (Art.
13 1, sec. 8, cl. 17, U.S. Constitution.) In December, 2009, the President signed the
14 *Omnibus Appropriations Act of 2010* in which Congress allowed the District of Columbia
15 to implement its *Legalization of Marijuana for Medical Treatment* law. District of
16 Columbia laws must be passed to Congress for review prior to enactment. The
17 *Legalization of Marijuana for Medical Treatment* law was twice sent to Congress and
18 both times approved by it. Medical marijuana dispensaries and cultivation facilities are
19 now operating in the federal District of Columbia.

20 115. In 2014, Congress enacted and the President signed the appropriations law
21 that included Sec.538 prohibiting expenditure of funds by the federal Justice Department
22 that would interfere with or impede the implementation of state medical marijuana laws.

23 116. Awareness of the safety as well as benefits of cannabis have emerged so as
24 to make the right of CHURCH members to access cannabis as part of the spiritual and
25 religious healing and treatment beliefs and practices of CHURCH in order to alleviate,
26 treat and heal excruciating pain a right that is fundamental thus requiring any law
27 restricting such right be narrowly tailored to address a compelling government interest.
28 *Lawrence v. Texas*, 539 U.S. 558 (2003); *Raich v. Gonzales*, 500 F.3d 850, 864-66

1 (2007).

2 117. Given the right to access marijuana for health and medical purposes as part
3 of Native American religious practice that incorporates healing, medicine and treatment,
4 STATE’s marijuana prohibition laws which were used as the basis for WARRANT, the
5 arrest and charging of GARCIA as well as the actions taken against the Plaintiffs on
6 September 14, 2015 are not “narrowly tailored” laws that addresses a “compelling
7 government interest.” Accordingly, the aforementioned state laws complained of herein
8 violate the Fourteenth Amendment to the United States Constitution and are invalid and
9 unenforceable. Moreover, the same state laws violate due process provisions of the
10 California Constitution and are invalid and unenforceable. As such, the remedies
11 provisions of Ca. Civil Code § 52, *et seq.* form a basis for the Plaintiffs to recover
12 damages from the Defendants in this case.

13 118. The aforementioned violation of state and federal civil rights are the direct
14 and legal cause of damages suffered by Plaintiffs in an amount to be proven at time of
15 trial. The aforementioned continuing and threatened violation of state and federal civil
16 rights constitute irreparable harm for purposes of injunctive relief as set forth below.

17
18 **BASIS FOR INJUNCTIVE RELIEF**

19 Fed. Rule Civ. P. 65 & 65(b)(1)(A)

20 119. Pursuant to Rule 65, this is a Verified Complaint. The Complaint and facts
21 contained in it have been verified through declarations signed under penalty of perjury by
22 James Warren Mooney, an officer of Plaintiff CHURCH and Plaintiffs BATES and
23 GARCIA.

24 120. The facts providing a basis for a temporary restraining order and
25 preliminary injunction (Fed. Rule Civ. Proc. 65(b)(1)(A)) are those set forth in paragraph
26 1 through paragraph 118 of this complaint and are more specifically set forth as follows:

27 A. Sometime prior to September 14, 2015, a warrant affidavit was
28 prepared for submission to a state judicial officer by an officer of the

1 Sonoma County Sheriff’s Department in support of a warrant for
2 search and seizure of a property where a branch of the Oklevueha
3 Native American Church operates in Sonoma County, California;

4 B. The warrant affiant failed to provide material information to the state
5 judicial officer and instead the judicial officer was led to believe the
6 affiant was investigating a narcotics-trafficking ring rather than a
7 Native American church;

8 C. Rather than seize the live cannabis plants used in religious
9 ceremonies by church members, deputies cut-down and destroyed
10 the growing cannabis plants used by branch to provide to thousands
11 of Native American church members;

12 D. Defendant Sonoma County has prohibited church members from
13 using the property by ordering the church to cease and desist based
14 on zoning and land use prohibitions for marijuana activities. The
15 church is now closed and ceased operations following the September
16 14, 2015 raid;

17 E. The actions of Sonoma County and the Sonoma County Sheriff’s
18 Departments violate various federal laws protecting the religious
19 rights of Native Americans, provisions of the federal Constitution as
20 well as the California constitution.

21 121. “[A]n alleged constitutional infringement will often alone constitute
22 irreparable harm.” *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997).
23 Indeed, if an individual or entity faces threat of prosecution under an invalid law, the
24 individual or entity suffers irreparable harm. *Morales v. Trans World Airlines, Inc.*, 504
25 U.S. 374, 381 (1992) (a federal court may properly enjoin “state officers ‘who threaten
26 and are about to commence proceedings, either of a civil or criminal nature, to enforce
27 against parties affected an unconstitutional act.”); *New Orleans Pub. Serv., Inc. v.*
28 *Council of New Orleans*, 491 U.S. 350, 366-67 (1989) (suggesting that irreparable injury

1 is an inherent result of the prosecution of an invalid law); *Chamber of Commerce v.*
2 *Edmonson*, 594 F.3d 742, 771 (10th Cir. 2010) (concluding that plaintiff is likely to
3 suffer irreparable injury if enforcement of an invalid state law that is not enjoined); See
4 also *Villas at Parkside Partners v. City of Farmers Branch*, 577 F. Supp. 2d 858, 878
5 (N.D. Tex. 2008) (concluding that there is a likelihood of irreparable injury if
6 enforcement of an invalid city ordinance is not enjoined).

7 122. The City will suffer little, if any hardship, if it is enjoined from enforcing
8 its invalid zoning and land use requirements against Plaintiffs. There is no evidence
9 Plaintiffs have caused any public health, safety, or welfare issue.

10 123. There are numerous constitutional violations set forth by Plaintiffs in this
11 Complaint. The likelihood of Plaintiffs' success on the merits is substantial. As applied
12 to CHURCH, the state laws complained of herein are constitutionally infirm. Moreover,
13 the discriminatory actions of COUNTY and SHERIFF'S DEPARTMENT were
14 discriminatory, invalid and illegal. Accordingly, the balance of hardships that must be
15 weighed by the Court for purposes of injunctive relief weighs heavily in favor of
16 Plaintiffs.

17 **PRAYER FOR RELIEF**

18 Plaintiff prays for relief as follows:

19 A. For the Second, Third, Fourth, Fifth and Seventh Claims for Relief:
20 general, special, and compensatory damages according to proof, for interest on damages
21 as authorized by law, and in addition thereto;

22 B. For all claims for relief: preliminary and permanent injunctions prohibiting
23 Sonoma County and the Sonoma County Sheriff's Department from continuing to
24 discriminate against and prevent Plaintiffs from operating Oklevueha Native American
25 Church in Sonoma County;

26 C. For all claims for relief: preliminary and permanent injunctions prohibiting
27 all the Defendants from enforcing California Health & Safety Code provisions
28 prohibiting marijuana activities against the Plaintiffs for bona fide religious activities

1 conducted by them as part of Oklevueha Native American Church;

2 D. For all claims for relief: preliminary and permanent injunctions prohibiting
3 all the Defendants from enforcing state or local laws or ordinances prohibiting peyote
4 activities against the Plaintiffs for bona fide religious activities conducted by them as part
5 of Oklevueha Native American Church;

6 E. For costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and
7 any other applicable provision of state or federal law; and

8 F. For such other relief the Court may deem just and proper.

9 DATED: 11-19-2015

10 

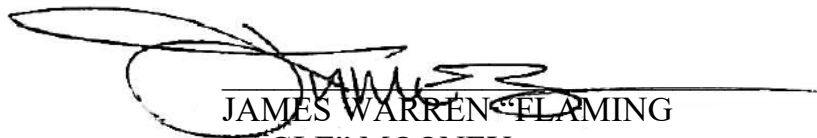
11 _____
12 MATTHEW PAPPAS
13 Attorney for Plaintiffs

VERIFICATION

1
2
3 I, JAMES WARREN “FLAMING EAGLE” MOONEY, am the founder and
4 spiritual leader of the **OKLEVUEHA NATIVE AMERICAN CHURCH**, one of the
5 Plaintiffs in the above-entitled action. I have read the foregoing **VERIFIED**
6 **COMPLAINT** (including each of the Exhibits to the Complaint) and know the contents
7 thereof for the claims and allegations made with respect to the church and to me. I certify
8 that the same is true and correct of my own knowledge for those things that I personally
9 know in my capacity as founder, spiritual leader and officer of the church, except as to
10 those matters stated upon information and belief, and as to those matters I believe them to
11 be true and correct. Also, for those things that took place on September 14, 2015, I was
12 not present in California and so make such allegations on information and belief.

13
14 EXECUTED THIS 19th day of November, 2015 at Salt Lake City, Utah, United States of
15 America.

16
17 I declare under penalty of perjury under the laws of the United States of America
18 that the foregoing is true and correct.

19
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21 
22 JAMES WARREN “FLAMING
EAGLE” MOONEY


VERIFICATION

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I, SAUL GARCIA, am a member of OKLEVUEHA NATIVE AMERICAN CHURCH, and am also a Plaintiff in the above-entitled action. I have read the foregoing VERIFIED COMPLAINT (including each of the Exhibits to the Complaint) and know the contents thereof, and I certify that the same is true and correct of my own knowledge for those things that I personally know in my capacity as a member and branch leader of the church, except as to those matters stated upon information and belief as well as allegations made specifically and verified by another Plaintiff in this case and as to those matters I believe them to be true and correct.

EXECUTED THIS 19 day of NOV 2015 at 1142 Lamdale Rd Kenwood
California, United States of America. CA 95452

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


SAUL GARCIA


LAW OFFICE OF MATTHEW PAPPAS
1719 E. BROADWAY
LONG BEACH CA 90802 • (949) 382-1485

EXHIBIT 1

OFFICIAL GOVERNMENT IDENTIFICATION

COX - OSCEOLA, CHEROKEE & CREEK
INDIAN RESERVATION
P.O. BOX 521 - ORANGE SPRINGS, FL. 23670

Roll No. 1320 Crow Clan



See Back For Signature 1/3/44
James Flaming Eagle Mooney

NAME DATE OF BIRTH
James Flaming Eagle Mooney

RESERVATION CHIEF PRINCIPAL CHIEF
James Flaming Eagle Mooney

RETURN POSTAGE GUARANTEED

OFFICIAL GOVERNMENT IDENTIFICATION

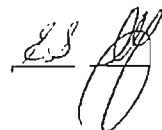
EXHIBIT 2

Oklevueha Lakota Sioux Nation Native American Church

ARTICLES

The undersigned, Richard 'He Who Has the Foundation' Swallow, Chief of the Standing Buffalo Band and Chief of the Eagle Clan of the Oglala Sioux Tribe of the Pine Ridge, United States congressionally recognized American Native Indian Reservation, and James Warren 'Flaming Eagle' Mooney Medicine Man of the Central Seminole People, hereby certify the following:

- A. Oklevueha Lakota Sioux Nation Native American Church is an Allied and Communal Native American Church merging the Lakota Sioux Nation Native American Church and Oklevueha EarthWalks Native American Church of Utah Inc. of the United States.
- B. James Warren 'Flaming Eagle' Mooney and Richard 'He Who Has the Foundation' Swallow are the co-founders of the Oklevueha Lakota Sioux Nation Native American Church.
- C. The Great Spirit that manifests itself with each member as they walk prayerfully is what guides all activities and affairs of the Oklevueha Lakota Sioux Nation Native American Church.
- D. Symbol and/or representative logo for Oklevueha Lakota Sioux Nation Native American Church.
- E. Richard 'He Who Has the Foundation' Swallow of the Lakota Sioux Nation, is the Custodian of the Medicine (Ceremonies, Sacrament or Eucharist) of the Oklevueha Lakota Sioux Nation Native American Church for the remainder of his walk on Mother Earth.
- F. The co-founders acknowledge Oklevueha Lakota Sioux Nation Native American Church Code of Ethics is to be a guide in assisting the activities and growth of Oklevueha Nation Native American Church.
- G. Richard 'He Who Has the Foundation' Swallow, Custodian of the Medicine acknowledges by his passing (meaning to being deceased) should he not have previously appointed a Custodian of the Medicine of the Oklevueha Lakota Sioux Nation Native American Church, the following will take in effect.
- H. We advisors of Oklevueha Lakota Sioux Nation Native American Church acknowledge that Richard 'He Who Has the Foundation' Swallow' has been appointed by the Great Spirit to be the Medicine Custodian of Oklevueha Lakota Sioux Nation Native American Church, and with our signatures we accept to honor all stipulations A – I of these Articles;
- I. Principle Office Agents
 1. Bonnie 'Winyan Waste' Swallow
 2. Eva 'RiverOwl' Fernandez
 3. James Warren 'Flaming Eagle' Mooney
 4. Linda Taylor 'BrightHawk' Mooney
 5. Richard 'He Who Has the Foundation' Swallow

 FLMRS

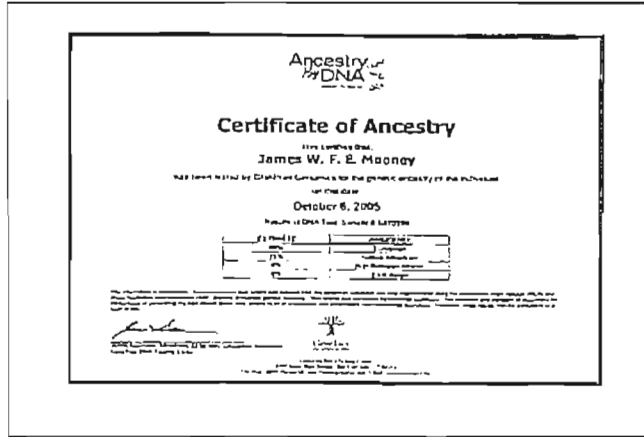
Oklevueha Lakota Sioux Nation Native American Church

ARTICLES – STIPULATIONS

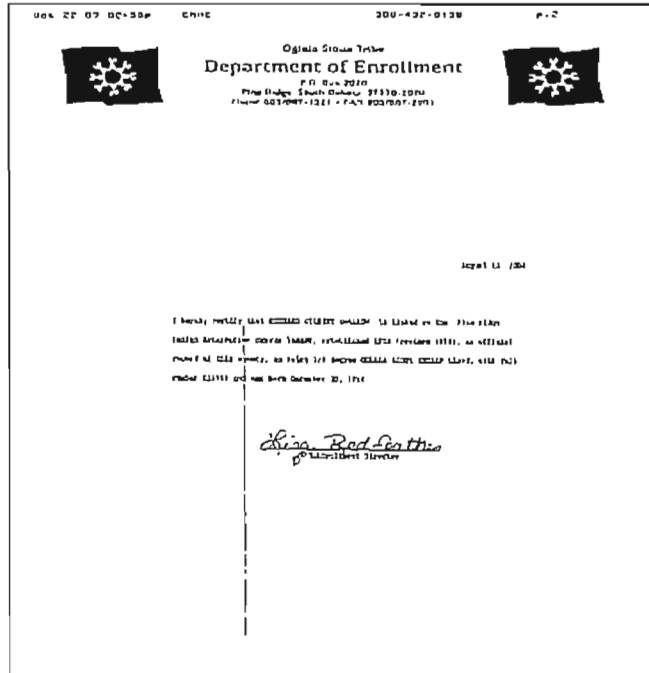
The name of the this Native American Church is Oklevueha Lakota Sioux Nation Native American Church

- A. Oklevueha Lakota Sioux Nation Native American Church is an Allied and Communal Native American Church merging the Lakota Sioux Nation Native American Church and Oklevueha EarthWalks Native American Church of Utah Inc. of the United States. This said Native American Church is also known as Oklevueha Native American Church (Native American Church and / or NAC)
- B. James Warren 'Flaming Eagle' Mooney and Richard 'He Who Has the Foundation' Swallow, Chief of the Standing Buffalo Band and Chief of the Eagle Clan of the Oglala Sioux Tribe are the co-founders of Oklevueha Lakota Sioux Nation Native American Church.

James Warren 'Flaming Eagle' Mooney



Richard 'He Who Has the Foundation' Swallow



[Handwritten signatures]
ESM IMRS

- C. The Great Spirit that manifests itself with each member as they walk prayerfully is what guides all activities and affairs of the Oklevueha Lakota Sioux Nation Native American Church. The daily, weekly, quarterly and yearly affairs of Oklevueha Native American Church are managed in an allied communal manner that is exclusively led by the Great Spirit.
- D. James Warren 'Flaming Eagle' Mooney and Richard 'He Who Has the Foundation' Swallow, Oklevueha Native American Church co-founders acknowledge this symbol to be the representative logo for Oklevueha Lakota Sioux Nation Native American Church



- E. Richard 'He Who Has the Foundation' Swallow of the Lakota Sioux Nation, is the Custodian of the Medicine (Ceremonies, Sacrament or Eucharist) of the Oklevueha Lakota Sioux Nation Native American Church for the remainder of his walk on Mother Earth. Custodian of the Medicine primary responsibility is as follows.
1. Maintain the integrity of all Oklevueha Native American Church Ceremonies
 - a) Oversee all Oklevueha Native American Church ceremonies conducted in Canada, Indian Reservations, Mexico, and the United States of America
 - b) Oversee all teachings of the Oglala Lakota Sioux Spiritual Traditions
 2. Provide all Oklevueha Native American Church Sacraments or Eucharist for all Oklevueha Native American Churches in Canada, Indian Reservations, Mexico, and the United States of America.
 - a) Cultivation
 - b) Harvesting
 - c) Distribution
 3. Rely on the United States Government to protect Oklevueha Native American Church rights to worship as outlined in the First Amendment of the United States Constitution and more clearly outlined in the Religious Land Use and Institutionalized Persons Act of 2000.
- F. The co-founders acknowledge Oklevueha Lakota Sioux Nation Native American Church Code of Ethics to be a guide to assist in the activities and growth of Oklevueha Native American Church.

Oklevueha Native American Church Code of Ethics

Oklevueha Native American Church accepts peyote as central to its established religious belief. Peyote is the significant sacrament for this church. However, Oklevueha Native American Church honors all North and South American Native Eucharist's such as Ayahuasca, San Pedro, Tsi-Ahga, Wine and etc.

The names for the administrators of these sacraments vary. Some of the names these administrators are known by are as follows: Curandera, Elder, Ghost Dance Chief, Mara'akame, Medicine Man/Woman, Priest, Rabbi, Reverend, Sacred Pipe Carrier, Shaman, Sun Dance Chief, Water Pourer, etc. We call such people 'Spiritual Leaders': those who are experienced in some American Native Spiritual practices and who act to facilitate the spiritual practices of others. An Oklevueha Native American Church spiritual leader need not claim exclusive or definitive knowledge of his or her practice. Even though Oklevueha Native American Church's primary purpose is to administer Sacramental Ceremonies; an Oklevueha Native American Church spiritual leader is free to not administer a sacrament during a particular American Native ceremony.

All ceremonies, especially the Sun Dance, Sweet Lodge, and Vision Quest carry some emotional and physical risks, therefore, when a member and/or visiting practitioner chooses to participate in an American Native Ceremony with the assistance of an Oklevueha Native American Church spiritual leader, both takes on special responsibilities. Some of those responsibilities are as follows:

EJ. B. & LM RS

1. Oklevueha Native American Church spiritual leaders are to practice and serve in ways that cultivate awareness, empathy, and wisdom for all members and visiting participants.
2. Oklevueha Native American Church spiritual practices are inspired and conducted in ways that respect the common good, with due regard for public safety, health, and order. Often, the increased awareness gained from American Native Spiritual ceremonies will catalyze a desire for personal and social change in a member and/or visiting practitioner's life. Spiritual leaders shall use special care in assisting the direction of energies of those whom they serve, as well as their own energies, in responsible ways that reflect a loving and respectful regard for all life.
3. Oklevueha Native American Church spiritual leaders respect and seek to preserve the autonomy and dignity of each member and visiting participant. Participation in any Oklevueha Native American Church Ceremony must be voluntary and based on prior disclosure and consent given by each participant while in an ordinary state of consciousness. Disclosure shall include, at a minimum, discussion of any elements of the ceremony that could reasonably be seen as presenting physical or psychological risks. In particular, visiting practitioners must be warned that American Native Ceremonies can be difficult and dramatically transforming. Spiritual leaders shall make reasonable preparations to protect each participant's health and safety during the ceremony and the few hours of vulnerability that may follow a ceremony. Limits on the behaviors of members and visiting practitioners and spiritual leaders are to be made clear and agreed upon in advance of any American Native Ceremony. Cultural and religious customs and confidentiality are to be accepted and honored.
4. Oklevueha Native American Church spiritual leaders are aware during ceremony that members and visiting practitioners may be especially open to suggestion. Leaders pledge to protect participants and not to allow anyone to use that vulnerability in ways that harm themselves or others.
5. Oklevueha Native American Church is committed to growth through attraction of service rather than active proselytizing for membership.
6. Oklevueha Native American Church ceremonies are to be conducted in the spirit of service. Spiritual Leaders accommodate members and visiting practitioners without regard to race, religious affiliations, gender, cultural background, financial status, and/or political affiliations.
7. Oklevueha Native American Church is strictly a spiritual organization that serves individuals and the wider community, and makes absolutely no claims about being in authority or having the ability to conduct saving ordinances.

"It is time to share the ceremonies with all people" – *Seminole Chief Little Dove*

"Never deny anyone that asks for help" – *Lakota Sioux Roadman Leslie Fool Bull*

G. Richard 'He Who Has the Foundation' Swallow, Custodian of the Medicine acknowledges by his passing (meaning to being deceased) should he not have previously appointed a Custodian of the Medicine of the Oklevueha Lakota Sioux Nation Native American Church, the following will take in effect. The surviving Advisors will unanimously appoint a person to be bestowed of this sacred calling. This meaning he or she that is appointed will reside over all spiritual and temporal proceedings of Oklevueha Lakota Sioux Nation Native American Church according to all the stipulations outlined in A – I.

H. We advisors of Oklevueha Lakota Sioux Nation Native American Church acknowledge that Richard 'He Who Has the Foundation' Swallow' has been appointed by the Great Spirit to be the Medicine Custodian of Oklevueha Lakota Sioux Nation Native American Church, and with our signatures we accept to honor all stipulations A – I of these Articles;

1. Bonnie 'Winyan Waste' Swallow of Oglala, Sioux American Native Blood lineage, of the Pine Ridge Reservation *Bonnie Swallow*
2. Eva 'RiverOwl' Fernandez, Blackfoot Blood lineage *Eva "R.O." Fernandez*
3. James Warren 'Flaming Eagle' Mooney of Seminole American Native Blood lineage of Central Florida *JAMES*
4. Linda Taylor 'BrightHawk' Mooney of Seminole American native Blood lineage of Central Florida *Linda Mooney*

Ed J. ... LM RS

5. Lakota Sioux Nation and Oklevueha EarthWalks Native American Church of Utah Inc
advisors

6. Lynda Willyin San Bernardino Ca
7. Jim C. Hernandez Phoenix AZ
8. Janet Schmidt Dallas TX
9. Field RBR Murray SALT LAKE UT
10. Thomas Seallan-RTS, WHE-CHOW-E-KYCHA SOUTH DAKOTA
11. John Swallow N.E
12. Wynne White Swallow South Dakota
13. Lee Swallow JR South Dakota

I. Principle Agents

Ethel Swallow
Ethel Swallow
Bonnie Winyan Waste 'Bear Killer' Swallow
P.O. Box 84, Wounded Knee, South Dakota, 57794
Phone Number: 308 430-3927

Eva "RiverOwl" Fernandez
Eva "RiverOwl" Fernandez
151 Lake Kentucky, El Paso, Texas 79928
Phone Number: 915 852-3971
Cell Phone: 915 526-7374

James Warren 'Flaming Eagle' Mooney
James Warren 'Flaming Eagle' Mooney
1559 South 1460 East, Spanish Fork, Utah, 84660
Phone Number: 801 427-1272

Linda Taylor 'BrightHawk' Mooney
Linda Taylor 'BrightHawk' Mooney
1559 South 1460 East, Spanish Fork, Utah, 84660
Phone Number: 801 787-3244

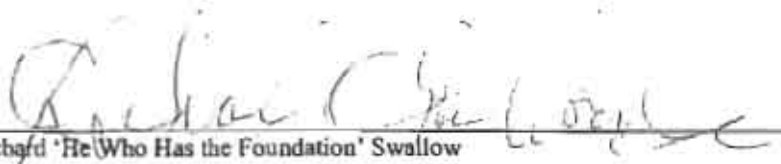
Richard 'He Who Has the Foundation' Swallow
Richard 'He Who Has the Foundation' Swallow
P.O. Box 84, Wounded Knee, South Dakota, 57794
Phone Number: 605 867-1138

ESM → LMRS

We the Co-Founders of Oklevueha Lakota Sioux Nation Native American Church have personal knowledge of the facts of these Oklevueha Native American Church Articles and Article Stipulations with our signature we acknowledge these facts to be true and accurate



James Warren 'Flaming Eagle' Mooney
Co-Founder Oklevueha Native American Church



Richard 'He Who Has the Foundation' Swallow
Co-Founder and Medicine Custodian
Oklevueha Native American Church

Subscribed and sworn to, before me this 17 day of December, 2007

By Bonnie Saxton
Notary Republic

Residing In: London Nebraska

My Commission Expires:

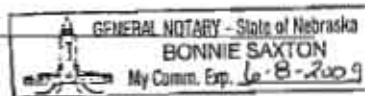
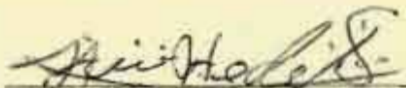



EXHIBIT 3

OKLEVUEHA NATIVE AMERICAN CHURCH AND THE HUICHOL NATION
PROCLAMATION

THIS PROCLAMATION BY AND BETWEEN JAMES 'FLAMING EAGLE' MOONEY OF THE OKLEVUEHA NATIVE AMERICAN CHURCH OF THE UNITED STATES OF AMERICA AND TATA JOSE HERNANDEZ SANCHEZ OF THE HUICHOL FROM LA YESCA NAYARIT MEXICO HEREBY SERVES AS THE OFFICIAL CERTIFYING DOCUMENT FOR THE UNIFICATION OF PURPOSE TO SERVE INDIGENOUS ELDERS OF NORTH AND SOUTH AMERICA AND YOUTH TOWARD A BETTER UNDERSTANDING OF UNIVERSE, SPIRIT AND THOUGHT AND TO SHARE THESE WAYS WITH ALL PEOPLES AND COMMUNITIES REGARDLESS OF BELIEF, RACE, GENDER OR SOCIAL STANDING.

THROUGH A CEREMONY CONDUCTED BY OKLEVUEHA NATIVE AMERICAN CHURCH CUSTODIAN OF THE EUCHARIST ADAM YELLOW BIRD DEARMON AND BY FANNING WITH EAGLE FEATHERS, FOR PURPOSE OF POWER TO GO FORWARD AND WITH DIRECTION, WITH BREATH TO BREATH, HEART TO HEART, AND CLASPING ARMS, WITNESSED BY THE CREATOR FIRE, WE AND OUR ORGANIZATIONS, FROM THESE MOMENTS ON AND AS LONG AS THE RIVERS FLOW AND THE GRASS GROWS, WALK TOGETHER ON THIS EARTHLY JOURNEY AS SERVANTS, WITH THE SINGLE PURPOSE OF SERVING THE GREAT SPIRIT'S CREATION OF MOTHER EARTH, FATHER SKY AND ALL THEIR CHILDREN WITH RESPECT AND HONOR.


TATA JOSE HERNANDEZ SANCHEZ
ELDER HUICHOL MARAKAME'
LA YESCA NAYARIT MEXICO


JAMES 'FLAMING EAGLE' MOONEY
ELDER SEMINOLE MEDICINE MAN
OKLEVUEHA NATIVE AMERICAN CHURCH

DATE SIGNED: 29/12/11

DATE SIGNED: 12/8/2011

WITNESS:


ADAM YELLOWBIRD DEARMON
OKLEVUEHA NATIVE AMERICAN CHURCH
CUSTODIAN OF SACRAMENTS

SUBSCRIBED AND SWORN TO ME.

DATE SIGNED: 12/12/2011


THIS DAY OF: 12/8/11

BY NOTARY REPUBLIC

RESIDING IN: Spanish Fork, UT

WITNESS:

MY COMMISSION EXPIRES: Dec 2, 2012


MEXICAN CONSULATE
COMISION NACIONAL PARA
EL DESARROLLO DE LOS
PUEBLOS INDIGENAS
C.D.F. "HUICHOL" TEPIC
CLAVE: 1804
MEXICO

DATE SIGNED: 02/01/12

EXHIBIT 4

MATTHEW S. PAPPAS
A T T O R N E Y

E-MAIL:
OFFICE@MATTPAPPASLAW.COM

1719 E. BROADWAY
LONG BEACH, CA 90802

(949) 382-1485
FACSIMILE: (949) 382-1512

September 14, 2015

VIA FACSIMILE ONLY
(707) 565-8572

Sgt. Steve Gossett
Sonoma County Sheriff's Department
2796 Ventura Ave.
Sonoma, CA 95403

Re: Oklevueha Native American Church
1142 Lawdale Rd., Kenwood, CA

Dear Sgt. Gossett:

It is my understanding that Sheriff's deputies are presently on-site at the above referenced location. Apparently, there is concern about the location which is a branch of the Oklevueha Native American Church.

Pursuant to applicable provisions of federal law and California state law, the activities at the church are protected. Moreover, the members of the church are medical cannabis patients under California law. The *Riverside v. Inland Empire Health and Wellness* case is not applicable and any county ban of medical marijuana facilities is preempted by federal law that provides for land use associated with the religious activities of Native Americans. Accordingly, actions taken against this property or members of the church are actionable.

Should the county decide to search, seize or engage in conduct related to narcotics abatement by obtaining a warrant that does not disclose the status of the property and the church, it will be necessary for me to bring an action to enjoin it and for damages, including the value of any items destroyed, taken or removed from the property under such an invalid warrant. Moreover, there is no exigent circumstance or basis for abatement. Your county laws cannot and will not provide a basis for circumventing the Fourth Amendment to the Constitution.


Sgt. Steve Gossett
September 14, 2015
Page Two

So we are clear the church is a valid organization protected by applicable provisions of federal law as well as the state and federal constitutions, I have attached a copy of State of Utah v. Mooney, 2004 UT 49 (2004). In this unanimous decision from the highest court in the State of Utah, actions taken against the church related to its religious land use and ceremonies were deemed improper. The church in Sonoma County is the same one discussed in that case.

Prior to commencing any action against the church or its members, it is important that you contact me and that we discuss the matter so as to ensure there is adequate understanding of the laws at issue and potential liability to county taxpayers as well as officers engaged in search and seizure activities who are now on notice of the property's status.

Should you have any questions, please contact me at (949) 382-1485.

Very truly yours,

A handwritten signature in blue ink that reads "Matthew S. Pappas". The signature is stylized with a large initial "M" and a long horizontal stroke at the end.

Matthew S. Pappas

MSP:jm

CC: Sonoma County Board of Supervisors

2004 UT 49

State of **Utah**, Plaintiff and Appellee,

v.

James W. Mooney, aka **James W.B.E. Mooney**, **Linda T. Mooney**, and
Oklevueha Earthwalks Native American Church of Utah, Inc., Defendants
and Appellants.

No. 20010787.

Supreme Court of **Utah**.

FILED June 22, 2004.

This opinion is subject to revision before final publication in the Pacific Reporter.

Mark L. Shurtleff, Att'y Gen., Kris C. Leonard, Asst. Att'y Gen., Salt Lake City, and David H. T. Wayment, Provo, for plaintiff.

Kathryn Collard, Salt Lake City, for defendants.

PARRISH, Justice:

¶1 James and Linda **Mooney**, along with their church, the Oklevueha Earthwalks Native American Church (collectively, the "Mooneys"), have been charged by the State with multiple felony counts of "engag[ing] in a continuing criminal enterprise" and of engaging in a "pattern of unlawful activity" by possessing and distributing peyote, a controlled substance, to members and visitors in their religious services. The State also seeks forfeiture of the church's property in connection with this alleged criminal activity. The Mooneys moved to dismiss the charges, arguing that a federal regulatory exemption incorporated into **Utah** law permits them to use and distribute peyote in "bona fide religious ceremonies" because they are members of the Native American Church. The Mooneys also argued that if state law is not interpreted to permit their possession and use of peyote for religious purposes, their prosecution violates their constitutional right to freely exercise their religion, as well as their constitutional rights to due process and equal protection of the law.

¶2 The trial court rejected the Mooneys' arguments, holding that the Mooneys are not entitled to the protection of any exemption for the religious use of peyote because they are not members of a federally recognized Native American tribe. We reverse the trial court's decision, holding that **Utah** law incorporates a federal regulation exempting from prosecution members of the Native American Church who use peyote in bona fide religious

ceremonies. On its face, the federal regulation does not restrict the exemption to members of federally recognized tribes. We therefore rule that the exemption is available to all members of the Native American Church. Any other interpretation is not only inconsistent with the plain language of the exemption, but would fail to provide members of the Native American Church with constitutionally adequate notice that their religious use of peyote could expose them to criminal liability.

BACKGROUND

Regulation of Peyote

¶3 A cactus indigenous to the Rio Grande valley of southern Texas and northern Mexico, peyote contains mescaline, which can induce hallucinations and other psychedelic effects in those who consume it. There is a long tradition among some Native American groups of worshiping peyote and of consuming the cactus and experiencing its effects in religious ceremonies. See [Peyote Way Church of God, Inc. v. Thornburgh, 922 F.2d 1210, 1212 \(5th Cir. 1991\)](#); [United States v. Boyll, 774 F. Supp. 1333, 1335 \(D.N.M. 1991\)](#); [Native Am. Church v. United States, 468 F. Supp. 1247, 1248 \(S.D.N.Y. 1979\)](#); see also Christopher Parker, Note and Comment, A Constitutional Examination of the Federal Exemptions for Native American Religious Peyote Use, 16 *BYU J. Pub. L.* 89, 89-94 (2001).

¶4 Congress first restricted the possession and sale of peyote in the Drug Abuse Control Amendments of 1965, and classified it as a Schedule I controlled substance in 1970. 21 U.S.C. § 812(c) Schedule I(c)(12) (2004); [Boyll, 774 F. Supp. at 1338](#); [Native Am. Church, 468 F. Supp. at 1249](#). In 1965 and again in 1970, there were efforts in Congress to enact an explicit statutory exception for the use of peyote in bona fide religious ceremonies. *Id.* These efforts did not succeed, but they led the Bureau of Narcotics and Dangerous Drugs, the predecessor to the agency now known as the Drug Enforcement Agency (the "DEA"), to promulgate a regulatory exemption for the religious use of peyote. *Id.* That exemption provides as follows:

The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to a Native American Church is required to register annually and to comply with all other requirements of law.

21 C.F.R. § 1307.31 (2004). Throughout this opinion, we will refer to this regulatory exemption as the Religious Peyote Exemption, or simply as the federal exemption.

¶5 The religious use of peyote in Native American religious ceremonies became a frequent topic of debate after the United States Supreme Court decided the case of [Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 \(1990\)](#). In *Smith*, the Court held that the state of Oregon did not violate the Free Exercise Clause of the First Amendment to the United States Constitution when it refused unemployment benefits to certain practitioners of Native American peyote religion who had been fired for illegally using peyote. *Id.* at 890. The Court announced that a neutral law of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. *Id.* at 878-80.

¶6 The *Smith* decision generated a great deal of controversy and motivated Congress to legislate in response. See generally Michael W. McConnell, *Religious Freedom, Separation of Powers, and the Reversal of Roles*, 2001 *BYU L. Rev.* 611, 613-14. One of these responses was the adoption of the American Indian Religious Freedom Act Amendments (the "AIRFA Amendments") in 1994. These amendments were based on the following congressional findings:

The Congress finds and declares that—

- (1) for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures;
- (2) since 1965, this ceremonial use of peyote by Indians has been protected by Federal regulation;
- (3) while at least 28 States have enacted laws which are similar to, or are in conformance with, the Federal regulation which protects the ceremonial use of peyote by Indian religious practitioners, 22 States have not done so, and this lack of uniformity has created hardship for Indian people who participate in such religious ceremonies;
- (4) the Supreme Court of the United States, in the case of [Employment Division v. Smith, 494 U.S. 872 \(1990\)](#), held that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and also raised uncertainty whether this religious practice would be protected under the compelling State interest standard; and
- (5) the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment.

42 U.S.C. § 1996a(a) (2004). On the basis of these findings, Congress directed that

[n]otwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.

Id. § 1996a(b)(1). For the purposes of these provisions, Congress defined the term "Indian" to include members of "any tribe, band, nation, pueblo, or other organized group or community of Indians . . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Id. § 1996a(c)(2).

The Mooneys and the Native American Church

¶7 The Native American Church was formally established in Oklahoma in 1918. [Peyote Way, 922 F.2d at 1212](#). The formation of this entity was motivated, at least in part, to protect the religious use of peyote from early attempts to suppress it. [Boyll, 774 F. Supp. at 1336](#). The Native American Church has now grown to include many local branches or chapters, including, according to the Mooneys, the defendant Oklevueha Earthwalks Native American Church.

¶8 James **Mooney** claims to be a descendant of Native Americans, but is not a member of any federally recognized tribe. The Mooneys practiced Native American religion before founding their church, and provided religious programs and services to inmates of **Utah** correctional facilities, both as volunteers and, in Mr. **Mooney's** case, as an employee. James and Linda **Mooney** founded their Oklevueha Earthwalks Native American Church in April of 1997 in Benjamin, **Utah**. Because Texas is the only state in the nation in which peyote is grown, the Mooneys obtained peyote for use in their church services by registering and complying with the requirements of the Texas Department of Public Safety Narcotics Services.

ANALYSIS

I. INCORPORATION OF THE RELIGIOUS PEYOTE

EXEMPTION INTO THE UTAH CONTROLLED SUBSTANCES ACT

¶9 The first issue we address is whether the federal Religious Peyote Exemption has been incorporated into Utah law. The Utah Controlled Substances Act (the "Act") provides:

"Controlled Substance" means a drug or substance included in Schedules I, II, III, IV or V of [Utah Code] Section 58-37-4, and also includes a drug or substance included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any controlled substances analog.

Utah Code Ann. § 58-37-2(1)(e)(i) (2002). While peyote is among the controlled substances listed in Schedule I of section 58-37-4 of the Utah Code, the preamble to Schedule I provides an exception for substances that are "specifically excepted" or "listed in another schedule." *Id.* § 58-37-4(2)(a)(iii) (2002). We must decide whether this qualifying language incorporates the federal Religious Peyote Exemption of 21 C.F.R. § 1307.31 into state law. This is a question of statutory interpretation that we review for correctness without deference to the conclusions of the trial court. See [Ward v. Richfield City, 798 P.2d 757, 759 \(Utah 1990\)](#).^[1]

¶10 We hold that the federal exemption for the religious use of peyote in bona fide ceremonies of the Native American Church constitutes a "specific exception" to the listing of peyote as a controlled substance within the meaning of Utah Code section 58-37-4(2)(a)(iii). To interpret the statute otherwise would create a direct conflict with a preemptive federal law, and would raise substantial constitutional impediments to the State's prosecution of the Mooneys.

¶11 Our primary source of guidance in statutory interpretation is the plain and ordinary meaning of the statutory language. [Dick Simon Trucking, Inc. v. State Tax Comm'n, 2004 UT 11, ¶ 17, 84 P.3d 1197](#). Unfortunately, the language of the Utah Controlled Substances Act fails to specify the source of the applicable exceptions. Although the Act explicitly provides that scheduled substances are controlled unless "specifically excepted," Utah Code Ann. § 58-37-4(2)(a)(iii) (2002), it does not address whether the contemplated exceptions are found in state statutes, state regulations, federal statutes, federal regulations, or some combination of these sources.^[2] Similarly, although the Act states that scheduled substances are controlled "unless listed in another schedule," *id.* § 58-37-4(2)(a)(iii), it neither specifies the other contemplated schedules nor addresses the resolution of conflicts arising when a particular substance is listed as controlled on one

schedule but listed as exempt under another schedule. In short, the statute does not address the situation presented here, where the substance in question is listed as a controlled substance under one of the state schedules but is listed as exempt under the federal schedules that have been incorporated by reference into the **Utah** Controlled Substances Act. See *id.* § 58-37-3. These omissions and inconsistencies render the statutory language ambiguous and require that we turn to other accepted principles of statutory construction.

A. Preemption by the American Indian Religious Freedom Act Amendments

¶12 In construing statutes, we are obligated to "avoid interpretations that conflict with relevant constitutional mandates." [State v. Mohi, 901 P.2d 991, 1009 \(Utah 1995\)](#). This canon of interpretation has sometimes been couched as a recognition that "[w]e have a duty to construe statutes to avoid constitutional conflicts." [Provo City Corp. v. State, 795 P.2d 1120, 1125 \(Utah 1990\)](#); see also [State v. Lindquist, 674 P.2d 1234, 1237 \(Utah 1983\)](#) ("[I]t is the duty of this Court to construe a statute to avoid constitutional infirmities whenever possible. We must adopt that construction which will save the statute from constitutional infirmity." (quotation and citations omitted)).

¶13 The Supremacy Clause of the United States Constitution authorizes Congress to preempt state law in areas covered by federal legislation, rendering invalid any state statute that conflicts with a federal act of preemption. U.S. Const. art. VI, cl. 2; [Ray v. Atl. Richfield Co., 435 U.S. 151, 158 \(1978\)](#). We therefore avoid interpreting an ambiguous state statute in a way that would render the statute invalid under an explicitly preemptive federal law. See [Martin v. City of Rochester, 642 N.W.2d 1, 18 \(Minn. 2002\)](#) (interpreting a state statute to avoid conflicting with a preemptive federal law).

¶14 The AIRFA Amendments' prohibition on criminalizing the religious use of peyote constitutes a clear congressional act of preemption against the laws of any state that might otherwise prohibit the use of peyote for religious purposes by Native Americans, as the AIRFA Amendments define them. The AIRFA Amendments provide that "[n]otwithstanding any other . . . law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion . . . shall not be prohibited by . . . any State." 42 U.S.C. § 1996a(b)(1) (2004). Were we to hold that the **Utah** Controlled Substances Act does not incorporate the federal Religious Peyote Exemption, the Act would prohibit peyote use in all circumstances, thereby

running afoul of the AIRFA Amendments. We therefore are persuaded to interpret the **Utah** Controlled Substances Act to have incorporated the exemption for the religious use of peyote found at 21 C.F.R. § 1307.31.

¶15 The State urges us to hold that the **Utah** Controlled Substances Act does not incorporate the federal exemption and suggests that we resolve the resulting preemption problem by holding that the AIRFA Amendments preempt **Utah** law only to the extent that **Utah** law criminalizes peyote use by members of federally recognized Native American tribes. This interpretation would leave **Utah** law available for prosecution of those religious peyote users, such as the Mooneys, who are not members of a federally recognized tribe. While the interpretation advocated by the State would facilitate the result it desires, such an interpretation nevertheless would require that we find the **Utah** Controlled Substances Act in conflict with federal law. We decline to do so in the face of an equally plausible interpretation that avoids any such conflict.

B. Constitutional Guarantees of Due Process

¶16 The statutory interpretation urged by the State is also untenable because it raises a serious question as to whether the Mooneys' constitutional due process rights would be violated by a conviction. In this regard, we are again constrained by the principle of statutory construction counseling us to avoid interpretations that are inconsistent with constitutional guarantees.¹³ *Mohi*, 902 P.2d at 1009; [Provo City Corp.](#), 795 P.2d at 1125; [Lindquist](#), 674 P.2d at 1237.

¶17 Both the United States and **Utah** Constitutions protect citizens from deprivation of liberty or property absent due process of law. U.S. Const. amends. V & XIV, § 1; **Utah** Const. art. I, § 7. The **Utah** Controlled Substances Act imposes substantial criminal penalties on those found guilty of violating its provisions. Our constitutional guarantees of due process require that penal statutes define criminal offenses "with sufficient definiteness that ordinary people can understand what conduct is prohibited." [Kolender v. Lawson](#), 461 U.S. 352, 357 (1983); [State v. MacGuire](#), 2004 UT 4, ¶¶ 13-14, 84 P.3d 1171; see also [In re Discipline of Sonnenreich](#), 2004 UT 3, ¶ 37, 86 P.3d 712 ("**Utah's** constitutional guarantee of due process is substantially the same as the due process guarantees contained in the . . . United States Constitution." (quotations and citations omitted)). These guarantees do not permit enforcement of a statute that forbids an act "in terms so vague that [persons] of common intelligence must necessarily guess at [the statute's] meaning and differ as to its application." [United States v. Lanier](#), 520 U.S. 259, 266 (1997) (quotations and citations omitted); see also [MacGuire](#), 2004 UT 4 at ¶ 14.

¶18 Because the **Utah** Controlled Substances Act does not clearly specify whether it incorporates the Religious Peyote Exemption, a holding that the exemption does not apply would give rise to serious constitutional claims under the due process clauses of the federal and state constitutions. The ambiguity in the statute is such that the scope of its peyote prohibition cannot be decisively interpreted by lawyers, to say nothing of citizens untrained in the law. This weighs strongly against any interpretation that would enable the State to initiate criminal prosecution based on arguably legitimate conduct.

¶19 In summary, we interpret the **Utah** Controlled Substances Act to have incorporated the Religious Peyote Exemption found at 21 C.F.R. § 1307.31. This interpretation avoids a conflict with the preemptive AIRFA Amendments. It also avoids the constitutional due process claims that would be created by allowing the State to prosecute the Mooneys under a statute that may reasonably be read to have permitted their religious activities.

II. INTERPRETING THE PEYOTE EXEMPTION IN **UTAH** LAW

¶20 Having held that the federal exemption for religious peyote use is incorporated into **Utah** law, we must decide whether the terms of the exemption protect the Mooneys from prosecution. This task requires that we look first at the plain meaning of the regulatory language, and give effect to that meaning unless the language is ambiguous. [Thomas v. Color Country Mgmt., 2004 UT 12 ¶ 9, 84 P.3d 1201.](#)

A. The Plain Meaning of the Religious Peyote Exemption

¶21 The State argues that the Religious Peyote Exemption is available only to members of federally recognized Native American tribes. The Mooneys contend that the exemption is not so limited. The exemption states that it applies to "members of the Native American Church," provided such members are using peyote in bona fide religious ceremonies. James **Mooney** asserts that his church is one of many chapters or churches that make up the Native American Church, that the peyote was used in bona fide religious ceremonies and that, in acquiring peyote from Texas, his church has registered and otherwise followed the applicable regulations of the Texas Department of Public Safety and the United States DEA. These assertions remain unchallenged on appeal.

¶22 Because the text of the exemption is devoid of any reference to tribal status, we find no support for an interpretation limiting the exemption to tribal members. See [Boyll, 774 F.](#)

[Supp. at 1338](#) (holding that under the plain language of the federal Religious Peyote Exemption, the exemption applies to all members of the Native American Church, regardless of any tribal affiliation). The term "members" in the exemption clearly refers to members of the "Native American Church"—not to members of federally recognized tribes. Therefore, so long as their church is part of "[t]he Native American Church," the Mooneys may not be prosecuted for using peyote in bona fide religious ceremonies.

B. Deference to the Federal Agency's Interpretation

¶23 In arguing that we should limit the applicability of the Religious Peyote Exemption to members of federally recognized tribes, the State maintains that we should defer to the interpretation of the DEA, the successor to the federal agency that promulgated the exemption. The State argues that the DEA applies the federal exemption only to members of federally recognized tribes.

¶24 We will defer to an agency's interpretation of its own regulation only if it is a reasonable interpretation of the regulatory language. Indeed, the United States Supreme Court has required that federal courts defer to the regulatory interpretation of a federal agency only if the language of the regulation "is not free from doubt" and if the interpretation is "reasonable" and "sensibly conforms to the wording and purpose" of the regulation. [Martin v. Occupational Safety & Health Review Comm'n, 499 U.S. 144, 150-51 \(1991\)](#) (citations and quotations omitted). No deference is otherwise required.

¶25 Whether a federal court must defer to the regulatory interpretation of a federal agency presents a different question from whether a state court is required to defer to a federal agency's interpretation of a federal regulation incorporated into state law. In the latter case, although we are free to consider the interpretation of a federal agency, we have no obligation to defer to that interpretation. In this case, in view of the plain language of the federal exemption and the due process concerns raised by the prosecution of Native American Church members whose activities fall within its plain language, we will not defer to any agency interpretation that would limit the federal exemption to members of federally recognized tribes.

C. Federal Policy Toward Native Americans

¶26 Finally, the State argues that an interpretation extending the federal exemption to members of the Native American Church who are not members of federally recognized tribes would violate the United States Constitution's Equal Protection Clause, because the

exemption would be a religion-based preference permitting members of a particular church, and not others, to use peyote in religious ceremonies. The State maintains that an exemption for members of federally recognized tribes can survive constitutional scrutiny because it is a political preference designed to preserve tribal culture, rather than a constitutionally suspect racial preference.^[4]

¶27 The State relies on [Peyote Way, 922 F.2d at 1212](#), where the Fifth Circuit Court of Appeals held that the federal Equal Protection Clause permits the Religious Peyote Exemption's preference for Native American Church members because of the federal government's unique political relationship with Native American tribes, and that the Equal Protection Clause does not require that the exemption be extended to religious peyote users who are neither Native American Church members nor members of federally recognized tribes. See also U.S. Const. art. VIII, § 8, cl. 3 (giving Congress the power to regulate commerce with the "Indian Tribes"); [Morton v. Mancari, 417 U.S. 535, 551 \(1974\)](#) (recognizing the "unique legal status" of Native American tribes with respect to the federal government). The State therefore urges a regulatory interpretation that would limit the peyote exemption to members of federally recognized tribes, because a preference for such tribe members receives deference under the Supreme Court's equal protection jurisprudence.

¶28 These arguments do not persuade us to interpret the Religious Peyote Exemption in a way that contravenes the plain meaning of its terms. It is particularly important, as a safeguard for our citizens' due process rights, for us to remain faithful to the plain language of a statute when it would impose criminal penalties on those who violate it. While the constitutional arguments advanced by the State may be relevant to our statutory analysis, they are speculative and remote when compared with the tangible due process claims that the Mooneys would have were they to be prosecuted in violation of the plain language of the exemption.^[5]

¶29 We also recognize that this case involves a prosecution under state, rather than federal, law. It is by no means clear that the federal government's duties to Native Americans, see [Mancari, 417 U.S. at 551](#), would legitimize state efforts to limit religious preferences to members of federally recognized Native American tribes. It is similarly unclear whether an interpretation that extended the religious peyote exemption to only some members of the Native American Church would survive scrutiny under article I, section 4 of the **Utah** Constitution, which provides that "the State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Accordingly, despite the State's argument that some hypothetical equal protection claims might be

leveled against the plain language interpretation we adopt today, we are constrained to interpret the incorporated regulation according to its plain meaning.

CONCLUSION

¶30 We reverse the decision of the district court. We hold that the federal Religious Peyote Exemption found at 21 C.F.R. § 1307.31 has been incorporated into the **Utah** Controlled Substances Act. Although the statutory language governing incorporation is ambiguous, we interpret the Act in a manner that avoids a conflict with federal law and does not risk depriving the Mooneys of their constitutional rights to due process.

¶31 In interpreting the reach of the federal exemption as incorporated into **Utah** law, we rely on its plain language, electing not to defer to a contrary interpretation that the State argues has been adopted by the federal DEA. On its face, the exemption applies to members of the Native American Church, without regard to tribal membership. The bona fide religious use of peyote cannot serve as the basis for prosecuting members of the Native American Church under state law. We remand for reconsideration of the Mooneys' motion to dismiss in light of this opinion.

¶32 Chief Justice Durham, Associate Chief Justice Wilkins, Justice Durrant, and Justice Nehring concur in Justice Parrish's opinion.

[1] The trial court did not expressly rule on this issue because it held that even if the Religious Peyote Exemption were incorporated into **Utah** law, the Mooneys would not qualify for it. This holding was based on an interpretation of the regulation that limited its applicability to members of federally recognized tribes. Like issues of statutory interpretation, we review the trial court's interpretation of a regulation for correctness, giving no deference to the trial court's conclusions. See [Brendle v. City of Draper, 937 P.2d 1044, 1046 \(Utah Ct. App. 1997\)](#).

[2] All of these are possible sources of exemptions in light of the fact that the definition of "Controlled Substance" under the **Utah** Controlled Substances Act includes substances scheduled under the federal Controlled Substances Act. **Utah** Code Ann. § 58-37-2(1)(e) (2002).

[3] All of the constitutional analysis in this opinion is in the context of our attempt to interpret the statute and its incorporated regulation. Because we interpret the statute and incorporated regulation in a manner that avoids the constitutional issues raised by the Mooneys, we need not and do not consider the merits of the Mooneys' constitutional claims.

[4] See [Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 227 \(1995\)](#) (holding that equal protection jurisprudence requires the application of "strict scrutiny" to all racial classifications).

[5] Any equal protection claims arising from our plain language interpretation of the regulatory exemption would not belong to the State, but rather to religious peyote users who are not members of the Native American Church. Cf. [Peyote Way, 922 F.2d at 1212-21](#) (considering the equal protection claim of religious peyote users who were neither Native American tribe members nor Native American Church members). Because none of the parties to this proceeding fall within this category, the State's reliance on this equal protection argument is speculative at best.