No. _____

In The

Supreme Court of the United States

CORRINE THOMAS, *ET AL.*,

Petitioners,

v.

COUNTY OF HUMBOLDT, CALIFORNIA, *ET AL.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Seventh Amendment right to a jury trial in suits at common law is incorporated against the States by the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

Petitioners are Corrine Morgan Thomas, Doug Thomas, Blu Graham, Rhonda Olson, and Cyro Glad, on behalf of themselves and all other similarly situated. Respondents are County of Humboldt, California, Humboldt County Board of Supervisors, Humboldt County Planning and Building Department, Steve Madrone, Rex Bohn, Mike Wilson, Michelle Bushnell, and Natalie Arroyo, in their official capacity as Supervisors of Humboldt County, and John H. Ford in his official capacity as Planning and Building Director.

RELATED PROCEEDINGS

United States District Court for the Northern District of California:

> *Thomas* v. *County of Humboldt*,
> No. 1:22-cv-5725-RMI (Apr. 3, 2023).

United States Court of Appeals for the Ninth Circuit:

> *Thomas* v. *County of Humboldt*,
> No. 23-15847 (Dec. 30, 2024).

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Page(s)

Cases

Rules & Statutes

Other Authorities

PETITION FOR WRIT OF CERTIORARI

Petitioners Corrine Morgan Thomas, Doug Thomas, Blu Graham, Rhonda Olson, and Cyro Glad petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The circuit court issued two opinions in this case: an unpublished opinion, Pet. App. 1a, which is available at 2024 WL 5242613 (9th Cir. Dec. 30, 2024), and a reported decision, Pet. App. 17a, which is published as *Thomas* v. *Humboldt County*, 124 F.4th 1179 (9th Cir. 2024). The district court's opinion dismissing this case, Pet. App. 49a, is unpublished but available at 2023 WL 3437295 (N.D. Cal. May 12, 2023).

JURISDICTION

The Ninth Circuit issued its decision on December 30, 2024. On January 30, 2025, Justice Kagan issued a 45-day extension for Petitioners to file this petition, making it due by May 15, 2025. Petitioners timely file this petition and invoke this Court's jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS & COUNTY ORDINANCES INVOLVED

The Seventh Amendment to the United States Constitution provides: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-

examined in any Court of the United States, than according to the rules of the common law."

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides, in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This Petition also concerns certain ordinances of the Humboldt County Code, Sections 352-2, 352-3, 352-11, and 352-12. Petitioners have included the text of these provisions in Appendix E.

INTRODUCTION

Long before there were united states in America, the right to trial by jury already stood as a bulwark against tyranny. The people who shaped our legal tradition dating back to Magna Carta have insisted upon juries to prevent government overreach. Yet, as we approach 250 years as a nation, states and municipalities can still try cases outside the judicial system when the common law would have required a jury.

And they do. Places like Humboldt County, California, impose ruinous fines—and even take people's homes—without ever proving the government's case to a jury. Humboldt's system is especially punitive. The County fines people *millions* of dollars for basic permitting and land-use violations that pose little or no harm to the community. Like many state and municipal governments, however, Humboldt channels these claims through administrative tribunals. Doing so deprives the accused of their fundamental right to a trial by jury.

Juries matter a lot in these cases because the facts matter a lot in these cases. Humboldt's exorbitant fines are triggered by a code-enforcement officer's presumption that the only reason someone would violate the building code is because they're growing cannabis without a permit. So whether the accused loses everything depends on whether code enforcement can prove its case to the factfinder. But Humboldt has designed a system in which it gets to try its case to a "hearing officer" who works for code enforcement. Unsurprisingly, Humboldt never loses on its home court. Pet App. 167a–169a.

If the federal government imposed the same penalties, the Seventh Amendment would guarantee a jury to determine whether the facts support the charges. See, *e.g.*, *Tull* v. *United States*, 481 U.S. 412 (1987). But 110 years ago, this Court held that the Seventh Amendment does not apply to the states because the Bill of Rights does not apply to the states. *Minneapolis & St. Louis R. Co.* v. *Bombolis,* 241 U.S. 211 (1916). That position, of course, is no longer good law. And it hasn't been for generations. See *McDonald* v. *City of Chicago*, 561 U.S. 742, 784 n.30 (2010) (noting that *Bombolis* predates this Court's selective-incorporation era).

Since *Bombolis* in 1916, the Court has "shed any reluctance to hold that rights guaranteed by the Bill of Rights" apply to the states. *McDonald*, 561 U.S. at 764. Indeed, the Court has recognized that the Fourteenth Amendment applies "the first eight Amendments" to the states and has incorporated "almost all" of them. *Id.* at 763–764.

The Seventh Amendment's right to a civil jury is one of the few remaining provisions from the Bill of Rights left to incorporate. This Petition presents the Court the chance to finally prevent local governments from violating one of our most fundamental rights. As this Court reiterated last term, "[t]he right to trial by jury is 'of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right' has always been and 'should be scrutinized with the utmost care.'" *SEC* v. *Jarkesy*, 603 U.S. 109, 121 (2024) (quoting *Dimick* v. *Schiedt*, 293 U.S. 474, 486 (1935)). By granting certiorari and holding that the Seventh Amendment

applies to the states, this Court would protect the right at *all* levels of government.

This issue is particularly ripe for review following last term's decision in *Jarkesy*. The lower courts are just beginning to reconsider how the Seventh Amendment applies to administrative adjudications. If this Court addresses Seventh Amendment incorporation now, the lower courts can consider all at once how the right applies in both the federal *and* state systems. That dual consideration will help avoid the problems that could arise if the law develops exclusively in the federal context and is later incorporated wholesale onto the many unique features of state and municipal proceedings. It's best to let the lower courts construe the Seventh Amendment with a view of the full legal landscape.

This Court should grant the Petition.

STATEMENT OF THE CASE

Humboldt County fines people millions of dollars for things they didn't do because it doesn't care if they're innocent. This approach has been enormously successful at depriving residents of their property and liberty. One big reason for that success is that Humboldt does not afford the accused a jury of their peers. Quite the contrary: Humboldt's code-enforcement officers brag that enforcement actions are decided by hearing officers who work for the County and have never ruled against the government. Without hope for a fair hearing, the accused face immense pressure to settle baseless charges. Pet App. 167a–169a, 174a–176a.

A. Humboldt's Dragnet Code Enforcement

Humboldt implemented a system to enforce cannabis-permitting violations that relies primarily on grainy satellite images that may show *other* permitting violations. Code-enforcement officers scour the images for what looks like unpermitted development on a property (*e.g.*, a greenhouse, a building, a graded flat of land, or trees removed without a permit on record). The County then presumes, without any evidence or further investigation, that the landowner must have developed their property without a permit because they were growing cannabis. In Humboldt's view, there's just no other reason that someone might not buy a permit before building a shed, a barn, or a greenhouse in the rural countryside. Pet. App. 147a–155a. So code enforcement doesn't even bother to investigate its hunches. The official government position is that real investigations would be too burdensome because "the County is large, sparsely populated, and poorly served by roads, and roundtrip travel from the County seat can take much of a day[.]" Resp. C.A. Br. 23.

To compound the problems of evidence-less enforcement, Humboldt penalizes new owners for the conduct of prior owners. A current owner is not merely responsible for outstanding code violations on their property but also for the County's suspicion that the prior owner improved the property without a permit to grow cannabis. Pet. App. 153a, 184a–185a.

All fines for land-use violations with a nexus to cannabis are multiplied exponentially. Just by alleging that nexus, the County transforms land-use violations that would typically cost between $1–$1,000

into "Category 4" offenses with 90 days of daily fines between $6,000–$10,000. In a typical case, Humboldt treats an unpermitted structure as three separate violations, worth $30,000 in *daily* penalties, quickly running into the millions. Pet. App. 143a–144a, 158a–160a.

B. Petitioners Are Innocent Residents Caught in Humboldt's Dragnet

Petitioners are all innocent victims of Humboldt's code-enforcement regime. All face life-ruining penalties for code violations supposedly related to cannabis on their properties even though none ever grew cannabis on their properties.

Petitioners Corrine Morgan Thomas and Doug Thomas are disabled and live on a fixed income. Aside from their work running a non-profit, the Miracle Run Foundation for Autism, they are retired. They bought their dream home among Humboldt's redwoods in 2021, after their house in Los Angeles County burned down in a wildfire. The Thomases have never grown cannabis, and they certainly did not set up an illegal grow operation as soon as they moved into their retirement home. Nevertheless, just six days after the Thomases bought the property with clean title, Humboldt fined them $1,080,000 for an unpermitted garage because the prior owner might have grown cannabis inside. In addition to the fines, the County also ordered them to destroy the garage simply because of the alleged nexus to cannabis, at an additional cost of $200,000. Pet. App. 176a–187a.

Petitioner Rhonda Olson also bought property with clean title in Humboldt County in 2021. She has never grown marijuana on the property, and the

County *knew* that. Pet. App. 199a–206a. But it still fined Rhonda $7,470,000. Why? Because it believed that the previous owner had grown cannabis on an "old logging pad" that a timber operation graded without a permit in the 1980s. *Ibid.* Petitioner Cyro Glad was similarly targeted—with $900,000 in fines—for property he just purchased because the County saw unpermitted development in satellite images of his property. Pet. App. 206a–209a. And the same for Petitioner Blu Graham. He faced a $900,000 penalty because he didn't get a permit to construct greenhouses that he used to grow produce for his family's restaurant. Without ever visiting his property, code enforcement insisted, "You're not just growing asparagus in there." They were right, technically—Blu was growing peppers. Pet. App. 187a–193a.

Petitioners each challenged their penalties within the 10 days provided by law. Pet. App. 178a, 190a, 203a, 206a, 209a, 211a. But county law does not set a maximum time by which the County must schedule a hearing, so code enforcement waits several years in to schedule hearings on the charges it filed without evidence. See Pet. App. 165a, 169a.

Nor do county ordinances provide for trial by jury, even though suits for civil penalties are "a particular type of an action in debt, requiring a jury trial," *Tull* v. *United States*, 481 U.S. 412, 418 (1987)—especially where the penalties "are designed to punish and deter, not to compensate." *SEC* v. *Jarkesy*, 603 U.S. 109, 125 (2024). Instead, the County channels its enforcement actions through an administrative process. Pet. App. 250a–253a.

Humboldt made its code-enforcement system as perilous as possible to help generate revenue. In addition to the ruinous fines, Humboldt forces the accused to challenge their penalties before an attorney who works for the County, rather than a jury of their peers. The County's explicit purpose for pushing these cases through administrative hearings is "to penalize Responsible Parties who fail or refuse to comply" with the Code while "minimiz[ing] the expense and delay of pursuing alternative remedies through the civil and/or criminal justice system." Pet. App. 245a. In other words, Humboldt decided that providing juries would cut into its revenue stream.

The lack of a jury also gives code-enforcement officers added leverage to threaten the accused: "[T]he judges and attorneys work for the county and are on the side of the Code Enforcement Unit." "You're going to lose the hearing; it's our people. We're going to impose the maximum fine on you[.]" Pet. App. 167a–168a.

C. Procedural History

In October 2022, Petitioners filed a putative class action on behalf of themselves and others who have requested but not yet received a hearing. They pleaded five constitutional claims: (1) procedural due process; (2) substantive due process; (3) unconstitutional conditions; (4) excessive fines; and (5) denial of the right to a jury in violation of the Seventh and Fourteenth Amendments. Pet. App. 210a–240a.

Respondents moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The district court agreed on each point and dismissed the

case entirely. Pet. App. 82a–128a. Petitioners appealed, and the Ninth Circuit reversed the district court's decision almost entirely.

The appeals court held that Petitioners' claims were timely and ripe, and that they stated claims for relief under the Due Process Clause, the unconstitutional-conditions doctrine, and the Excessive Fines Clause. Pet. App. 5a–15a, 30a–48a. The Ninth Circuit remanded those claims to the district court, where the parties are beginning discovery. Pet. App. 16a, 48a.

For Petitioners' Seventh Amendment claim, however, the Ninth Circuit affirmed the district court's dismissal. The Ninth Circuit has long recognized that a Seventh Amendment claim against state and local governments "is not viable under our court's selective-incorporation precedent." Pet. App. 12a (citing *Jackson Water Works, Inc.* v. *Public Utils. Comm'n*, 793 F.2d 1090, 1096 (9th Cir. 1986)). See *Jackson*, 793 F.2d at 1096 ("[S]eventh amendment not applicable to the states." (citing *Minneapolis & St. Louis R. Co.* v. *Bombolis*, 241 U.S. 211, 217 (1916))). The court thus "d[id] not address the merits of the claim" and affirmed that it was rightly dismissed on the pleadings. *Ibid.*

This Petition follows on the discrete issue of whether the Seventh Amendment binds the states.

REASONS FOR GRANTING THE PETITION

I. This Court alone can address whether the Seventh Amendment's jury-trial right is incorporated against the states.

The Seventh Amendment's guarantee of a jury in common-law cases easily satisfies the modern

approach to incorporation. But no one can bring Seventh Amendment cases against state and local governments because of wrongly decided precedent that predates this Court's recognition that the Fourteenth Amendment applied the Bill of Rights to the states. Whether the fundamental right to civil jury trials is protected at all levels of government is an important question that warrants this Court's consideration.

A. This Court hasn't considered the Seventh Amendment's incorporation since before the era of incorporation.

The last time the Court considered whether the civil-jury right applies to the States was 1916, when the Court viewed the Bill of Rights' application through a fundamentally different lens than the selective-incorporation approach that has prevailed for nearly a century since.

Bombolis was a case about whether a non-unanimous jury in state court could decide a wrongful-death case brought under a federal law. 241 U.S. at 215. Minnesota law counted five-sixths of a jury as unanimous if the jury remained deadlocked for more than 12 hours. *Ibid.* The respondents argued that, dating back to *Barron* v. *Baltimore*, 32 U.S. (7 Pet.) 243 (1833), it has been "beyond controversy that the Seventh Amendment does not apply to proceedings in the State Courts." Opp. Br. at 22–27, *Minneapolis & St. Louis R. Co.* v. *Bombolis*, 241 U.S. 211 (1916) (No. 478). The Fourteenth Amendment did not change anything, they maintained, because the *Slaughter-House Cases* established that "the protection of a citizen in his rights as a citizen of the state still remains

with the state." *Id.* at 26–27 (quoting *Maxwell* v. *Dow*, 176 U.S. 581, 593 (1900)).

The Court agreed with the respondents and held that the Seventh Amendment was "not concerned with state action." *Id.* at 217. It rejected the "new and strange view" that the Bill of Rights might apply to the states. *Ibid.* Instead, the Court relied on the anti-incorporation consensus of the nineteenth century dating back to before the Fourteenth Amendment. See *ibid.* (citing *Livingston's Lessee* v. *Moore*, 32 U.S. (7 Pet.) 469, 539 (1833)). One of those cases, *Walker* v. *Sauvinet*, 92 U.S. 90 (1875), reasoned that due process in the Fourteenth Amendment "does not necessarily imply that all trials in the State courts affecting the property of persons must be by jury." *Id.* at 92–93. Nor was trial by jury "a privilege or immunity of national citizenship, which the States are forbidden by the Fourteenth Amendments to abridge." *Id.* at 92.

By *Bombolis*'s time, the Bill of Rights' *in*applicability to the states was so "completely and conclusively" settled that the Court never considered any factors relevant to incorporation. 241 U.S. at 215. So, the Court's last word on Seventh Amendment incorporation did not discuss things like how fundamental the civil-jury right has been for the last 800 years. See Suja A. Thomas, *Nonincorporation: The Bill of Rights After* McDonald v. Chicago, 88 Notre Dame L. Rev. 159, 174 (2012) ("In the decision, the Court did not discuss the Fourteenth Amendment or due process.").

Just nine years after *Bombolis* dismissed the "strange" case for incorporation, the Court began accepting that the Fourteenth Amendment incorporated the Bill of Rights. See *Gitlow* v. *New York*, 268

U.S. 652, 666 (1925) (incorporating freedom of speech). And from there, the Court never looked back. See *Near* v. *Minnesota ex rel. Olson*, 283 U.S. 697, 707 (1931) (opining that First Amendment incorporation was "no longer open to doubt" and that it was "impossible" to conclude otherwise).

Had *Bombolis* come a decade later, this question could have been settled a century ago. But through an accident of time, the Seventh Amendment has been trapped in the bygone anti-incorporation era. Still, *Bombolis* remains the law. The Court has acknowledged *Bombolis*'s continued effect but never revisited its foundation. See, *e.g.*, *Osborn* v. *Haley*, 549 U.S. 225, 252 n.17 (2007) (noting *Bombolis*'s holding); *Georgia* v. *McCollum*, 505 U.S. 42, 52 (1992) (same); *Howlett* v. *Rose*, 496 U.S. 356, 370 n.17 (1990) (same); *Brady* v. *Southern Ry. Co.* 320 U.S. 476, 479 (1943) (same). Consequently, the courts of appeals have recognized that *Bombolis* forecloses any consideration of claims that apply the Seventh Amendment to state and local governments.[1] Only this Court can overturn

[1] The circuits have recognized, as they must, that *Bombolis* foreclosed the Seventh Amendment's application to state or local proceedings. See, *e.g.*, *Rivera* v. *Centro Médico de Turabo, Inc.*, 575 F.3d 10, 23 (1st Cir. 2009); *Johansen* v. *Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.5 (11th Cir. 1999); *McFadden* v. *Sears, Roebuck & Co.*, 125 F.3d 855 (6th Cir. 1997); *De Young* v. *Lorentz*, 69 F.3d 547, 1995 WL 662087, at *2 n.5 (10th Cir. 1995); *In re Jacobs*, 44 F.3d 84, 89 (2d Cir. 1994); *Linton* v. *Great Lakes Dredge & Dock Co.*, 964 F.2d 1480, 1488 (5th Cir. 1992); *Wartman* v. *Branch 7, Civ. Div., Cnty. Ct., Milwaukee Cnty., Wis.*, 510 F.2d 130, 134 (7th Cir. 1975); *American Dredging Co.* v. *Local 25, Marine Div., Int'l Union of Operating Eng'rs*, 338 F.2d 837, 856 (3d Cir. 1964).

Bombolis and recognize the Seventh Amendment's incorporation.

B. This issue is important for the same reason the Seventh Amendment is incorporated—the civil-jury right is fundamental.

Whether the Court ultimately adheres to or departs from *Bombolis*, the question presented is well worth this Court's attention. Cf. *Gamble* v. *United States*, 587 U.S. 678, 681 (2019) (declining to overturn the dual-sovereignty doctrine). That the Seventh Amendment's civil-jury right maps so readily onto the Court's selective-incorporation standard for fundamental rights only reinforces the question's cert-worthiness.

A right guaranteed by the Bill of Rights is incorporated "if it is fundamental to our scheme of ordered liberty, or deeply rooted in this Nation's history and tradition." *Timbs* v. *Indiana*, 586 U.S. 146, 150 (2019) (cleaned up). And by every metric, the Seventh Amendment fits that bill. Like many of the other rights the Court has held incorporated, the civil-jury right is of "ancient" origin and dates to Magna Carta. *Dimick* v. *Schiedt*, 293 U.S. 474, 485 (1935); see also Magna Carta ch. 39 (1215). And again, like most other fundamental rights, it developed in England as a shield against government overreach. In Blackstone's time, the civil-jury right was already so deeply entrenched that he thought "no conquest, no change of government, could ever prevail to abolish it." 3 William Blackstone, Commentaries *350; see also *Dimick*, 293 U.S. at 485 (noting that Blackstone characterized trial by jury as "'the glory of the English law'

and 'the most transcendent privilege which any subject can enjoy'").

On this side of the Atlantic, the colonies "firmly and universally" embraced juries for both civil and criminal trials. 1 Joseph Story, Commentaries on the Constitution of the United States, § 165, at 113 (Thomas M. Cooley, 4th ed. 1873); see also Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 Minn. L. Rev. 639, 656 (1973). One of the grievances detailed in the Declaration of Independence was the Crown's "depriving us in many cases, of the benefits of Trial by Jury[.]" Declaration of Independence ¶ 20 (1776); see also *SEC* v. *Jarkesy*, 603 U.S. 109, 121 (2024) (citing the English practice of trying Americans without juries "as a justification for severing our ties to England"). And then every state enshrined in its constitution a provision analogous to the Seventh Amendment, making the civil-jury right "probably the only" fundamental right secured by all the original states. *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 340–341 (1979) (Rehnquist, J., dissenting) (citation omitted).

All sides of the founding generation recognized that civil juries were a necessity. As Madison put the point, civil juries were "as essential to secur[ing] the liberty of the people as any one of the pre-existent rights of nature." Mark W. Bennett, *Judges' Views on Vanishing Civil Trials*, 88 Judicature 306, 307 (2005) (quoting 1 Annals of Cong. 454 (Joseph Gales ed., 1789)). And Patrick Henry—who disagreed on much with Madison—similarly hailed the jury as "the best appendage of freedom" by which "our ancestors secured their lives and property." 3 The Debates in the Several State Conventions on the Adoption of the

Federal Constitutions 324, 544 (Jonathan Elliot ed., 2d ed., Philadelphia, J.B. Lippincott 1888). Likewise, Thomas Jefferson saw the right as "the only anchor, ever yet imagined by man, by which a government can be held to the principles of [its] constitution." Letter from Thomas Jefferson to Thomas Paine, 11 July 1789. The only disagreement between the Federalists and Anti-federalists was "whether civil jury rights were the *most* important of all individual rights, or simply *one of* the most important rights." Kenneth S. Klein, *The Myth of How to Interpret the Seventh Amendment Right to A Civil Jury Trial*, 53 Ohio St. L.J. 1005, 1010 (1992) (emphasis added).

The right remained fundamental through Reconstruction and into the present day. At the Fourteenth Amendment's ratification, 98% of Americans lived in states that guaranteed the right to jury trial in all common-law cases. Steven G. Calabresi & Sarah E. Agudo, *Individual Rights Under State Constitutions When the Fourteenth Amendment Was Ratified in 1868: What Rights Are Deeply Rooted in American History and Tradition?*, 87 Tex. L. Rev. 7, 77 (2008). That means it enjoyed more robust protection than even the rights to be free from excessive fines and to keep and bear arms. See *Timbs*, 586 U.S. at 152 (35 out of 37 states forbid excessive fines); *McDonald*, 561 U.S. at 777 (22 of the 37 States "explicitly protected the right to keep and bear arms"). Today, forty-nine states "representing 98% of the states and 98.5% of the U.S. population" guarantee the right to jury trials in civil cases within their state constitutions.[2] Steven

[2] The one outlier? Louisiana. See *Scott* v. *Am. Tobacco Co.*, 36 So. 3d 1046, 1052–1053 (La. App. 2010) (noting that the

Gow Calabresi et al., *Individual Rights Under State Constitutions in 2018: What Rights Are Deeply Rooted in a Modern-Day Consensus of the States?*, 94 Notre Dame L. Rev. 49, 113 (2018).

While full briefing can await the merits, the Court can be confident that an overwhelming historical record bears out what the Court has long acknowledged: "that the trial by jury is a fundamental guaranty of the rights and liberties of the people." *Hodges* v. *Easton*, 106 U.S. 408, 412 (1882); see also *Jacob* v. *City of New York*, 315 U.S. 752, 752–753 (1942) ("The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence[.]"); *Dimick*, 293 U.S. at 486 (civil-jury right "is of such importance" and "occupies so firm a place in our history and jurisprudence").

Whether this fundamental right applies to state and local governments is an issue frozen in time. This Court alone can reach it. And this Court alone can weigh the *stare decisis* considerations (if any) that might favor retaining *Bombolis*'s anachronistic reasoning or cutting it loose. Cf. *McDonald*, 561 U.S. at 758 (holding the Second Amendment is incorporated without giving any weight to outdated precedent that had reasoned "that the Second Amendment applies only to the Federal Government" (citation omitted)); *Ramos* v. *Louisiana*, 590 U.S. 83, 105 (2020) ("[*S*]*tare decisis* isn't supposed to be the art of methodically ignoring what everyone knows to be true."). This Court alone can decide whether to adhere to *Bombolis*'s

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Louisiana Constitution broke from common-law tradition for both civil and criminal jury trials and guarantees the former only by statute). This Court already corrected the latter problem in *Ramos* v. *Louisiana*, 590 U.S. 83, 90 (2020).

perfunctory embrace of now-discredited decisions that nowhere "engage[d] in the sort of Fourteenth Amendment inquiry required by [this Court's] later cases." *McDonald*, 561 U.S. at 758 (citation omitted). This Court alone can determine that the legal developments of the last century make *Bombolis*'s demise "inevitable." *Benton* v. *Maryland*, 395 U.S. 784, 795 (1969). This Court alone can evaluate how any reliance interests the states have in "efficient" adjudications compares to "the reliance interests of the American people." *Ramos*, 590 U.S. at 110. This Court alone can conclude that the Bill of Rights' incorporation includes this fundamental right, too. Win or lose, it's a question that warrants the Court's plenary review.[3]

II. The Seventh Amendment's incorporation is an issue of nationwide importance that is best decided now.

As this Court reiterated last term, the civil-jury right is fundamental when the government seeks monetary penalties in cases involving private rights. See *Jarkesy*, 603 U.S. at 122–125. State and local governments have channeled all sorts of these enforcement actions outside the judicial process. How the

[3] "For many decades," the Court has analyzed "the question of the rights protected by the Fourteenth Amendment against state infringement" under the Due Process Clause. *McDonald*, 561 U.S. at 758. Some Members of the Court have instead viewed the issue through the Privileges or Immunities Clause. *See id.* at 805–35 (Thomas, J., concurring). But "regardless of the precise vehicle," the Fourteenth Amendment requires the states to respect the Seventh Amendment, and, as in *Timbs*, Petitioners' question presented covers both paths. See *Timbs*, 586 U.S. at 157 (Gorsuch, J., concurring).

Seventh Amendment applies to that wide range of claims is important to the development of the law. By addressing incorporation now, the Court would allow lower courts to construe *Jarkesy*'s scope at both the state and federal levels simultaneously. That avoids the risk that Seventh Amendment case law developed with only the federal system in mind might not always map on well to the varied state systems.

A. States are routing more common-law cases outside the judicial system.

The expansion of administrative enforcement throughout the states, tracking the expansion in the federal government, has increasingly removed common-law claims from a jury's view.[4] Given the differences in scope between federal and local authority, however, the types of claims involved vary greatly.[5]

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[4] Keith Bradley, *Does the Seventh Amendment Limit State Adjudication?*, YALE J. REG. NOTICE & COMMENT BLOG (July 18, 2024), https://www.yalejreg.com/nc/does-the-seventh-amendment-limit-state-administrative-adjudication-by-keith-bradley/ ("Myriad state regulatory statutes implement enforcement by administrative adjudication. Courts in multiple states have rejected jury demands in such matters, sometimes by use of the expansive description of 'public rights' in *Atlas Roofing*, and sometimes based on the functional description of adjudication from *Atlas Roofing*.").

[5] See, *e.g.*, *Young* v. *City of LaFollette*, 479 S.W.3d 785, 793–794 (Tenn. 2015) (denying jury right in retaliatory-discharge suit); *State* v. *Schweda*, 736 N.W.2d 49, 60 (Wis. 2007) (denying jury right in $219,120 forfeiture award); *State ex rel. Dep't of Env't Prot.* v. *Emerson*, 616 A.2d 1268, 1271 (Me. 1992) (denying jury right for $191,600 environmental penalty); *W. J. Dillner Transfer Co.* v. *Pennsylvania Pub. Util. Comm'n*, 155 A.2d 429, 435 (Pa. Super. Ct. 1959) (denying jury right for $5,000 penalty for public-utility violation); *Riley* v. *Jankowski*, 713 N.W.2d 379,

Until the people can enforce the Seventh Amendment against the states, the right to a jury in these cases will not depend on the Seventh Amendment but on the whims of local jurisdictions with an incentive to collect monetary penalties. Cf. *United States* v. *James Daniel Good Real Prop.*, 510 U.S. 43, 55–56 (1993).

Many states deny juries in cases that would likely require one under this Court's Seventh Amendment jurisprudence. See, *e.g.*, *State ex rel. Weiser* v. *Center for Excellence in Higher Educ., Inc.*, 529 P.3d 599, 610 (Colo. 2023) (denying jury trial for $3 million in civil penalties for deceptive trade practices because the court was not bound by *Tull*); *Nationwide Biweekly Admin., Inc.* v. *Superior Ct.*, 462 P.3d 461, 489–490 (Cal. 2020) (denying jury right for $2,500 violation of unfair competition and false advertising law because the court was not bound by *Tull*); *Ridlon* v. *New Hampshire Bureau of Sec. Regul.*, 214 A.3d 1196, 1201 (N.H. 2019) (upholding $6 million penalties without a jury trial because the Seventh Amendment does not apply to the states); *State ex rel. Cherry* v. *Burns*, 602 N.W.2d 477, 485 (Neb. 1999) (denying jury right on theory that $50 million in punitive damages was equitable); *Maryland Aggregates Ass'n, Inc.* v. *State*, 655 A.2d 886, 897–898 (Md. 1994) ("[T]he jury trial guarantee [is] inapplicable where the legislature has committed to an administrative agency the initial decision making function with respect to a particular class of disputes[.]"); *National Velour Corp.* v. *Durfee*, 637 A.2d 375, 379–380 (R.I. 1994) (applying *Atlas Roofing Co.* v. *OSHA*, 430 U.S. 442 (1977), to allow an $205,000 administrative penalty in environmental-

396 (Minn. Ct. App. 2006) (denying jury right for civil penalties for false political and campaign material).

enforcement proceeding); *Commissoner of Env't Prot.* v. *Conn. Bldg. Wrecking Co.*, 629 A.2d 1116, 1122 (Conn. 1993) (denying jury right for $868,950 in environmental penalties by distinguishing *Tull* on state grounds); *Texas Ass'n of Bus.* v. *Texas Air Control Bd.*, 852 S.W.2d 440, 450 (Tex. 1993) (reasoning that the public-rights exception covers penalties designed to protect public resources); *Alabama Dep't of Env't Mgmt.* v. *Wright Bros. Constr. Co.*, 604 So. 2d 429, 433–434 (Ala. Civ. App. 1992) (allowing punitive damages through administrative proceedings because "the Seventh Amendment right to jury trial is not applicable to state courts"); *McHugh* v. *Santa Monica Rent Control Bd.*, 777 P.2d 91, 100 (Cal. 1989) (citing *Atlas Roofing* to hold that treble damages for rent-control are incidental to restitution award); *Dep't of Transp.* v. *Del-Cook Timber Co.*, 285 S.E.2d 913, 919–920 (Ga. 1982) (denying jury right for civil penalties because the Seventh Amendment "is generally inapplicable in administrative proceedings").

After *Jarkesy*, that divergence will likely increase as some states will follow this Court's precedent to limit administrative adjudication of common-law suits for penalties and others will refuse. And in practical terms, the delta will appear in the sorts of cases the framers were most concerned about: governments using unaccountable decisionmakers to punish citizens and extract property.

At the same time, recognizing the Seventh Amendment's incorporation is unlikely to impact most civil litigation in state and local courts—especially suits between private parties. Almost every state has a constitutional analog that already provides similar protections to the Seventh Amendment. While states

that have departed from this Court's reading of the Seventh Amendment will have to adjust around the margins (some states, for example, do not require unanimous civil juries),[6] the disruption would be relatively modest.

Other states *might* need to tweak their procedures in "small claims" cases. But several states that interpret their state constitutions consistently with the Seventh Amendment have already held that the jury right does not extend to small claims. See *Cheung* v. *Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 124 P.3d 550, 556 (Nev. 2005); *Crouchman* v. *Superior Ct.*, 755 P.2d 1075, 1081 (Cal. 1988); *Iowa Nat. Mut. Ins. Co.* v. *Mitchell*, 305 N.W.2d 724, 729 (Iowa 1981). Either way, the small-claims question is one that the lower courts can work out after incorporation.[7]

The biggest change will be in the cases the Seventh Amendment was enacted to address—

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[6] See, *e.g.*, Or. R. Civ. P. 59(G)(2) ("In civil cases three-fourths of the jury may render a verdict."); but see Fed. R. Civ. P. 48(b). But see *American Pub. Co.* v. *Fisher*, 166 U.S. 464, 468 (1897) ("[U]nanimity was one of the peculiar and essential features of trial by jury at the common law.") The same was true in *Ramos*, and this Court recognized that "the reliance interests of the American people" must prevail. 590 U.S. at 110.

[7] No matter the merits of the Seventh Amendment's application to small claims, the effects would be limited. By our count, more than 75 percent of states already provide juries in small-claims cases—whether by a defendant's request in the small claims proceeding itself, by transfer to a regular docket, or on appeal. Cf. *Capital Traction Co.* v. *Hof*, 174 U.S. 1, 19 (1899) (upholding the provision for a jury on appeal rather than in the initial court).

government enforcement actions for which the civil jury famously "stands as a shield between the individual and the State." *State* v. *One 1990 Honda Accord*, 712 A.2d 1148, 1157 (N.J. 1998). For these cases, however, incorporation *should* be a burden on the government because the Seventh Amendment was enacted to be a burden on the government. *Parklane Hosiery*, 439 U.S. at 346 (Rehnquist, J., dissenting).

B. This Court should incorporate the Seventh Amendment while the lower courts consider *Jarkesy*'s application.

Incorporating the Seventh Amendment now will allow lower courts to wrestle with *Jarkesy*'s implications at all levels of our federalist system. That will produce more coherent and constitutionally faithful outcomes than a fragmented process in which *Jarkesy* is limited, for a time, to federal adjudications while divergent and incompatible doctrines proliferate in the states. If the law is developed for only federal adjudications, courts cannot consider unique issues presented at the state and municipal level. By contrast, recognizing incorporation while the Seventh Amendment is still in a state of flux will allow the law to develop with an eye to both the federal and state contexts.

The longer the Court waits to confront this issue, the greater the practical impact will become. Now is as good a time as any—indeed, it may be the best time—for this Court to resolve whether the Seventh Amendment applies to the States.

Armed with *Jarkesy*'s enunciation of the Seventh Amendment's guarantee, the lower courts are already

deciding which other penalties must be tried before a jury. See, *e.g.*, *AT&T, Inc.* v. *FCC*, No. 24-60223, 2025 WL 1135280, at *1 (5th Cir. Apr. 17, 2025) (vacating the FCC's $57 million forfeiture order because its in-house adjudication violated the Seventh Amendment); *YAPP USA Auto. Sys., Inc.* v. *NLRB*, 748 F. Supp. 3d 497, 514 (E.D. Mich. 2024), *appeal filed* (6th Cir. Sept. 9, 2024); *Sun Valley Orchards, LLC* v. *DOL*, No. 1:21-CV-16625, 2023 WL 4784204, at *6 (D.N.J. July 27, 2023), *appeal filed* (3d Cir. Sept. 5, 2023); *C.S. Lawn & Landscape, Inc.* v. *DOL*, No. 23-cv-1533 (D.D.C.); *ProCraft Masonry, LLC* v. *DOJ*, No. 23-cv-393 (N.D. Okla.).

While *Jarkesy* reset the baseline for understanding the Seventh Amendment's application to civil penalties at the federal level, many states have yet to revisit their own approaches. Worse, some have explicitly declined to follow *Jarkesy* until the Seventh Amendment is incorporated. See, e.g*., EFG Am., LLC* v. *Arizona Corp. Comm'n*, No. 1 CA-SA 25-0016, 2025 WL 1039587, at *1–2 (Ariz. Ct. App. Apr. 8, 2025) (declining to follow *Jarkesy* in affirming Commission's denial of jury trial request before imposing penalties for violations of the Arizona Securities Act); *Parish of Jefferson* v. *Fayard*, No. 24-432, 2025 WL 618748 (La. Ct. App. Feb. 26, 2025) (declining to follow *Jarkesy* and affirming civil penalties for feeding stray cats); *In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209*, 327 A.3d 789, 805–07 (Vt. 2024) (declining to follow *Jarkesy* and affirming $5,000 civil penalty, even though "some of the criteria relate to the defendant's culpability"); *Blue Beach Bungalows DE, LLC* v. *Delaware Dep't of Just. Consumer Prot. Unit*, 2024 WL 4977006, at *13 (Del. Super. Ct. Dec. 4, 2024) (noting

that *Jarkesy* is not binding on the States and holding that juryless proceedings for violations of the Consumer Fraud Act are constitutional). Were it not for *Bombolis*, these courts—and every other court across the nation—would have to consider the Seventh Amendment's application to the states' varied administrative-enforcement schemes.

Left unchecked, local governments will continue to channel common-law claims away from the judicial process. Administrative tribunals that resemble penal systems but without all the procedural safeguards will continue to replace trials by jury. And, as in Humboldt, these tribunals will impose increasingly destructive penalties for increasingly minor infractions. This Court should step in and restore the Seventh Amendment's protection.

C. There is no benefit to waiting.

Because *Bombolis* foreclosed the issue so long ago, there has not been—and cannot be—any percolation on whether the Seventh Amendment is incorporated. Until this Court considers the question presented, states and municipalities will continue to refuse jury demands in whole categories of common-law cases.

There can be no percolation on the question presented. But the lack of lower-court disagreement in no way precludes review. This Court does not require a circuit split when its precedent forecloses consideration of the question. See, *e.g.*, *Students for Fair Admissions, Inc.* v. *University of N.C*, 142 S. Ct. 896 (Jan. 24, 2022); *Franchise Tax Bd.* v. *Hyatt*, 138 S. Ct. 2710 (June 28, 2018); *Gamble* v. *United States*, 138 S. Ct. 2707 (June 28, 2018); *Knick* v. *Township of Scott*, 138 S. Ct. 1262 (Mar. 5, 2018); *South Dakota* v.

Wayfair, 138 S. Ct. 735 (Jan. 12, 2018); *Lawrence* v. *Texas*, 123 S. Ct. 661 (Dec. 2, 2002). Indeed, the last time this Court granted certiorari in an incorporation case, it did so in these exact circumstances. See *Ramos* v. *Louisiana*, 139 S. Ct. 1318 (Mar. 18, 2019); see also *Malloy* v. *Hogan*, 83 S. Ct. 1680 (1963) (reconsidering precedent foreclosing incorporation of the right against self-incrimination in the absence of a split).

Only this Court can restore the Seventh Amendment to the role the Fourteenth Amendment guaranteed. Without the possibility of any development below, there is no benefit to waiting. The constitutional right to a jury trial will continue to erode in the name of expedience under the weight of local financial incentives. Cf. *Reid* v. *Covert*, 354 U.S. 1, 10 (1957) (plurality) (The Seventh Amendment secured the civil-jury right "against the passing demands of expediency or convenience."). Given last term's decision in *Jarkesy*, the time is right to resolve the incorporation question so that courts can consider the Seventh Amendment's application at all levels of government.

III. This case is a good vehicle for incorporation.

This Petition is an excellent vehicle to address an important constitutional question. Incorporation will be the sole issue before the Court, and Petitioners' Seventh Amendment claim rises and falls on the issue of incorporation.

The only obstacle to consideration of Petitioners' Seventh Amendment claim is *Bombolis*. After 110 years with anti-incorporation as the controlling standard, Seventh Amendment claims are a non-starter in litigation against states and municipalities.

Consequently, the only clean vehicles for review will be cases in which a petitioner preserves their Seventh Amendment claim and has no other issues on which to seek certiorari. Petitioners' case presents that uncommon scenario. No factual disputes or ancillary issues cloud the record. There are no jurisdictional or procedural complications that would prevent this Court from deciding only the incorporation question. The only reason the courts below could not address the issue is because a Seventh Amendment claim "is not viable" under current incorporation precedent. Pet. App. 12a.

The remand of Petitioners' remaining claims has no bearing on this Petition's suitability. They are currently proceeding in the district court pursuant to the Ninth Circuit's mandate because those issues aren't "involved in the appeal," cf. *Coinbase, Inc.* v. *Bielski*, 599 U.S. 736, 741 (2023), and no party requested a stay, Fed. R. App. P. 41(d)(1). As the Ninth Circuit recognized, whether Humboldt's current system provides adequate notice and timely hearings or imposes excessive fines are distinct issues from whether the hearings that Petitioners eventually receive must satisfy the Seventh Amendment. Pet. App. 12a. Cf. *Marquez* v. *Screen Actors Guild, Inc.*, 525 U.S. 33, 40–42 (1998) (considering two issues on which summary judgment was affirmed while the remaining issue was remanded to the district court); *Inter-Modal R. Emps. Ass'n* v. *Atchison, Topeka & Sante Fe Ry. Co.*, 520 U.S. 510, 513–514 (1997) (considering the dismissal of Petitioners' ERISA claims over welfare benefits while their claims over pension benefits were remanded to the district court).

Moreover, because Petitioners pleaded a core Seventh Amendment claim—a jury for an action in debt over penalties for land-use violations—this Court's decision on the incorporation question will be outcome determinative. Although the Court does not need to get into the merits of how the Seventh Amendment applies to Humboldt's enforcement regime, Petitioners have a strong claim that should be allowed to proceed below.

To determine whether the civil-jury right applies we look to (1) whether a similar claim would have been brought in a court of law in the 18th century and (2) whether the remedy sought is legal or equitable. *Tull* v. *United States*, 481 U.S. 412, 417–418 (1987). The remedy, however, "is all but dispositive." *Jarkesy*, 603 U.S. at 123.

As *Tull* recognized, suits to impose penalties for environmental nuisances are akin to actions at debt, which require a jury. 481 U.S. at 418–425. More importantly, Humboldt designed its enforcement scheme to "penalize" wrongdoing. Pet. App. 244a, 245a. Because the penalties "are designed to punish and deter, not to compensate," they are "'a type of remedy at common law that could only be enforced in courts of law.'" *Jarkesy*, 603 U.S. at 125 (quoting *Tull*, 481 U.S. at 422).

But granting the Petition does not require the Court to resolve the merits. The Court would address only the "threshold question" presented, then remand for the lower courts to resolve whatever issues their error "prevented them from addressing." *City of Austin* v. *Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 77 (2022) (citation omitted); see also *Ramos*, 590

U.S. at 107 n.63 ("The scope of an incorporated right and whether a right is incorporated at all are two different questions.").

After this Court decides the incorporation issue, the lower courts can apply *Jarkesy* to Petitioners' claims and determine that Humboldt's multi-million-dollar penalties for land-use violations are triable to a jury under the Seventh Amendment.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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TABLE OF APPENDICES

Appendix A

Appendix A

Memorandum Opinion of the
United States Court of Appeals
for the Ninth Circuit

December 30, 2024

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CORRINE MORGAN THOMAS; et al., Plaintiffs-Appellants, v. COUNTY OF HUMBOLDT, California; et al., Defendants-Appellees, and VIRGINIA BASS, Chair, Board of Supervisors, Defendant.	No. 23-15847 D.C. No. 1:22-cv-05725-RMI MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Robert M. Illman, Magistrate Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appendix A

Argued and Submitted April 9, 2024
San Francisco, California

Before: PAEZ and SUNG, Circuit Judges, and FITZWATER,** District Judge.

This putative class action arises out of Humboldt County's system of penalties and fees involving cannabis abatement. Plaintiffs—residents of Humboldt County—filed this action under 42 U.S.C. § 1983, alleging a number of constitutional claims against the County.[1] The district court dismissed all claims in their entirety on various grounds. We have jurisdiction under 28 U.S.C. § 1291. We reverse in part, affirm in part, and remand for further proceedings consistent with this disposition.

1. We first conclude that Plaintiffs have standing to bring both their procedural and substantive due process claims. Accepting Plaintiffs' well-pleaded factual allegations as true and drawing all reasonable inferences in their favor, *see Pennell v. City of San Jose*, 485 U.S. 1, 7 (1988), Plaintiffs have plausibly alleged that they received Notices of Violations (NOVs) for failure to comply with the County's cannabis abatement program and that the County imposed penalties against them under the County's administrative penalty scheme. As a consequence of these

** The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

1 In a separately filed opinion, we address Plaintiffs' claim that the County's system of penalties and fees violates the Eighth Amendment's Excessive Fines Clause.

NOVs and penalties, Plaintiffs allege they have suffered emotional and psychological distress as well as significant financial uncertainty. Plaintiffs have thus alleged concrete injuries caused by the County's actions. *See Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1109 (9th Cir. 2014) (finding emotional distress cognizable); *Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1117 (9th Cir. 2017) (observing that "anxiety, stress, concern, and/or worry about [the plaintiff's] diminished employment prospects" are cognizable injuries). In addition, Plaintiffs have plausibly alleged that they applied for land-use permits but were denied as a result of the County's blanket policy of refusing to issue permits to people facing cannabis-abatement orders. This is also sufficient to establish a concrete injury for standing purposes. *See Carpinteria Valley Farms, Ltd. v. Cnty. of Santa Barbara*, 344 F.3d 822, 830 (9th Cir. 2003).

2. Plaintiffs also have standing to maintain their claims under the unconstitutional-conditions doctrine. Plaintiffs allege that the County has conditioned land-use permits unrelated to cannabis or cannabis abatement on the settlement of separate (and contested) cannabis-related violations. Plaintiffs further allege that such leveraged settlements, whether accepted or not, would require them to pay penalties unrelated to the land-use permits, pay administrative fees unrelated to the land-use permits, and waive their rights to an administrative hearing to contest an NOV. Under *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013), this form of conditioning gives rise to a "constitutionally cognizable injury." *Id.* at 607.

3. Turning to the merits, Plaintiffs allege that the County's system of imposing administrative penalties and fees for purported cannabis-related violations deprived them of procedural due process. "To evaluate a procedural due process claim, we weigh the [factors set out in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)]: '(1) the private interest affected; (2) the risk of erroneous deprivation through the procedures used, and the value of additional procedural safeguards; and (3) the government's interest, including the burdens of additional procedural requirements.'" *Diamond S.J. Enter., Inc. v. City of San Jose*, 100 F.4th 1059, 1069 (9th Cir. 2024) (quoting *Yagman v. Garcetti*, 852 F.3d 859, 864 (9th Cir. 2017)).

As to the first factor, Plaintiffs have plausibly alleged that cognizable private interests are at stake, including both their finances and the full use and enjoyment of their property. *See Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 571-72 (1972); *Harris v. Cnty. of Riverside*, 904 F.2d 497, 503 (9th Cir. 1990). In addition, Plaintiffs allege that these interests are significant. For example, Plaintiffs allege that the penalties imposed against them can reach millions of dollars. The minimum penalties accrued by Plaintiffs and other responsible parties are also significant, especially when compared to the average income of the residents subject to the County's cannabis regulatory scheme. *Cf. Nozzi v. Hous. Auth. of Los Angeles*, 806 F.3d 1178, 1193 (9th Cir. 2015). In combination with the alleged deprivation of access to land-use permits for those with outstanding cannabis-related NOVs, this impact suggests the existence of substantial private interests.

As to the second factor, taking Plaintiffs' allegations in the amended complaint as true, the risk of erroneous deprivation through the County's administrative procedures weighs strongly in Plaintiffs' favor. Plaintiffs allege a slew of procedural irregularities that heighten the probability of an erroneous deprivation. These include, for example, (1) vague notices, *cf. Nozzi*, 806 F.3d at 1194, that fail to describe the specific location of a violation, or the date on which the ten-day clock to appeal the violation begins to run; (2) the imposition of penalties and fees without a "reasonably reliable basis," *Yagman*, 852 F.3d at 864 (quotation omitted); *cf. Stypmann v. City & Cnty. of San Francisco*, 557 F.2d 1338, 1343 (9th Cir. 1977), both by charging property owners with violations based on unconfirmed, imprecise, or outdated satellite images and by holding property owners accountable for previous owners' cannabis-related violations, even when the violations were not properly recorded;[2] (3) undue delays in scheduling appeal hearings, *cf. United States v. Crozier*, 777 F.2d 1376, 1383-84 (9th Cir. 1985); and (4) potentially biased hearing officers, *cf. Yagman*, 852 F.3d at 865. These alleged deficiencies are likely to result in erroneous deprivations, and they are much more likely to do so than the procedures that were in place before the County enacted the cannabis-abatement regulatory scheme challenged here.

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[2] Relatedly, Plaintiffs allege that the County does not record existing violations against the subject properties, thereby depriving subsequent purchasers of constructive knowledge of previous violations.

Finally, Plaintiffs have plausibly alleged that there is no clear governmental interest in maintaining this administrative penalty system. Plaintiffs allege that the County's previous system was significantly different. The previous system gave property owners at least seventy-five days to abate violations. It also required a hearing before the Board of Supervisors, and the Board could not assess a penalty before such a hearing. And though the interests identified by the County— "environmental quality, residential quality of life, and fair competition with those who bear the burdens to operate in nascent legal market for cannabis"—are undoubtedly important, it is far from obvious how these interests are served by the County's imposing significant heavy penalties for vague alleged violations with minimal procedural safeguards. *Cf. Stypmann*, 557 F.2d at 1344.

In sum, we conclude that Plaintiffs have plausibly alleged that the County's system of administrative penalties violated their procedural due process rights. We therefore reverse the district court's dismissal of this claim.

4. Plaintiffs further allege that the County's system of penalties and fees violates their substantive due process rights. "A substantive due process claim involves the balancing of a person's liberty interest against the relevant government interests." *Freedom to Travel Campaign v. Newcomb*, 82 F.3d 1431, 1438 (9th Cir. 1996). Importantly, "the protection from governmental action provided by substantive due process has most often been reserved for the vindication of fundamental rights." *Halverson v. Skagit Cnty.*, 42

F.3d 1257, 1261 (9th Cir. 1994). "Accordingly, where . . . the plaintiffs rely on substantive due process to challenge governmental action that does not impinge on fundamental rights, we do not require that the government's action actually advance its stated purposes, but merely look to see whether the government could have had a legitimate reason for acting as it did." *Id.* (internal quotation marks and citation omitted). In other words, to establish a substantive due process violation based on the County's procedures in the absence of an infringed fundamental right, Plaintiffs "must show the procedures are 'clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare.'" *Yagman*, 852 F.3d at 867 (quoting *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1058 (9th Cir. 2012)). "This is an 'exceedingly high burden.'" *Id.* (quoting *Samson*, 683 F.3d at 1058).

We conclude that Plaintiffs have plausibly alleged both a violation of a fundamental right and that the County lacks "any reasonable justification in the service of a legitimate governmental objective" in its enforcement of the cannabis abatement scheme. *Id.* (quoting *Samson*, 683 F.3d at 1058).

First, Plaintiffs have sufficiently alleged that the County has violated their fundamental due process right to a showing of personal guilt. *See Scales v. United States*, 367 U.S. 203, 225 (1961). Plaintiffs rely on the doctrine that "[p]enalizing conduct that involves no intentional wrongdoing by an individual can run afoul of the Due Process Clause." *Rucker v. Davis*, 237 F.3d 1113, 1124 (9th Cir. 2001), *rev'd sub nom. on*

other grounds Dep't of Hous. & Urb. Dev. v. Rucker, 535 U.S. 125 (2002); *see also Sw. Tel. & Tel. Co. v. Danaher*, 238 U.S. 482, 490-91 (1915) (similar). Plaintiffs' most compelling illustration of this violation is their allegation, which we must accept as true, that the County institutes administrative proceedings—resulting in the imposition of heavy fines—for facilitating the cultivation of cannabis, even when it knows or should know that the party is not responsible. For example, Plaintiffs allege that the County has repeatedly charged new property owners with the cannabis-related offenses of previous owners, thereby severing the administrative proceedings from individual culpability.

Second, Plaintiffs have adequately alleged that the County's administrative penalty procedures are "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." *Yagman*, 852 F.3d at 867 (quoting *Samson*, 683 F.3d at 1058)).

The district court dismissed Plaintiffs' allegations as "implausible," underscoring that Plaintiffs "purchased properties with existing code violations." This reasoning, however, ignores Plaintiffs' well-pleaded allegations that the County does not record existing violations against the property, thereby depriving subsequent purchasers of the most common method of learning about claims against the property.

Moreover, the district court disregarded Plaintiffs' allegations that the County imposed fees on the basis of violations *related to the cultivation of cannabis*,

even in cases where it knew or should have known that the current landowners were not responsible for the underlying violation. It is irrelevant that Plaintiffs were aware of other property violations because the substantive due process claims are based on the missing connection between the NOVs—which are predicated on cannabis-related conduct—and Plaintiffs' lack of culpability. Under these circumstances, a practice of charging subsequent owners of a property with the cannabis-based offenses of the previous owners cannot be said to have "any reasonable justification in the service of a legitimate governmental objective." *Id.*; *see also Sinaloa Lake Owners Ass'n v. City of Simi Valley*, 882 F.2d 1398, 1410 (9th Cir. 1989), *overruled on other grounds by Armendariz v. Penman*, 75 F.3d 1311 (9th Cir. 1996).

5. Plaintiffs have also plausibly alleged that the County's procedure for evaluating land-use permit applications violates the unconstitutional conditions doctrine. "[T]he unconstitutional conditions doctrine . . . vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Koontz*, 570 U.S. at 604. The Supreme Court has specifically recognized a "special application" of this doctrine that "protects the Fifth Amendment right to just compensation for property the government takes when owners apply for a land-use permit." *Id.* This doctrine "prohibits the government from 'deny[ing] a benefit to a person because he exercises a constitutional right' or 'coercing people into giving [those rights] up' by imposing unconstitutional conditions on the use of private land." *Ballinger v. City of Oakland*, 24 F.4th 1287, 1298 (9th Cir. 2022)

(citing *Koontz*, 570 U.S. at 604, 612). The Supreme Court has extended this prohibition to conditioning land-use permits on monetary exactions and mandatory grants of easements. *See Koontz*, 570 U.S. at 612. Such conditions are only permissible if there is a "'nexus' and 'rough proportionality' between the property that the government demands and the social costs of the applicant's proposal." *Id.* at 605-06 (citations omitted).

Here, Plaintiffs allege that the County violates the unconstitutional conditions doctrine by conditioning land-use permits on the settlement of cannabis-related violations unrelated to the desired permits. Indeed, Plaintiffs allege that the County has withheld land-use permits unrelated to cannabis abatement until Plaintiffs agree to settle their cannabis abatement cases. In so doing, Plaintiffs have alleged that the County aims to coerce property owners into accepting responsibility for violations they contend they did not commit, paying a significant fine related to such violations, and forgoing their right to an administrative hearing. Such conditions, even those based on settlements, are not permitted under the unconstitutional conditions doctrine where there is no "close nexus" between the conditions imposed and the permits requested. *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1399 (9th Cir. 1991).

In discussing this claim, the district court ignored Plaintiffs' well-pleaded allegations and misapplied the law. For example, the court determined that no plaintiff had applied for a non-remedial land-use permit during the pendency of their cannabis-abatement

case, even though Plaintiffs specifically allege otherwise. In addition, the district court's observations about the County's eventual acceptance of one such application—specifically, that it was ultimately "accepted and *granted* on the spot"—ignored Plaintiffs' allegations that (1) the County had previously expressed it would not do so until that plaintiff settled, and (2) the County eventually did so only after that plaintiff paid administrative fees related to the "baseless cannabis charges" the County had pursued against him and ultimately dropped. In failing to recognize that the conditioning of permits on the settling of unrelated violations is a viable constitutional claim, the district court disregarded the Supreme Court's admonition that "regardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them." *Koontz*, 570 U.S. at 606.

6. Plaintiffs' last substantive claim alleges that the County's enforcement of its system of administrative penalties and fees violates the Seventh Amendment. As Plaintiffs acknowledge, however, this claim is not viable under our court's selective-incorporation precedent. *See Jackson Water Works, Inc. v. Pub. Utils. Com.*, 793 F.2d 1090, 1096 (9th Cir. 1986). Thus, we do not address the merits of the claim, and we affirm the district court's dismissal.

7. The district court erred in dismissing Plaintiffs' facial and as-applied claims because they were not

brought within two years of the law's enactment. The statute of limitations begins to run when a plaintiff "knows or has reason to know of the actual injury," not necessarily when a local ordinance was enacted. *Scheer v. Kelly*, 817 F.3d 1183, 1188 (9th Cir. 2016) (quoting *Lukovsky v. City & Cnty. of San Francisco*, 535 F.3d 1044, 1051 (9th Cir. 2008)).

At the earliest, Plaintiffs' facial claims accrued when they received their initial NOVs, the earliest point at which they had notice they were subject to the County's cannabis abatement scheme. Because at least some plaintiffs, for example the Thomases, allege that they received their initial NOVs within two years of filing suit, Plaintiffs have a timely facial challenge.[3]

The district court also erred in categorically dismissing Plaintiffs' individual as-applied claims as untimely. First, at least four named Plaintiffs have alleged timely as-applied procedural due process claims. Plaintiffs allege that the County violated their rights to procedural due process when it deprived them of property interests—by imposing penalties and/or denying permits—with inadequate notice, lack of probable cause, and lack of a timely opportunity to be heard. The earliest these claims could have accrued is when a deprivation occurred. The Thomases and Olson have plausibly alleged that they experienced unconstitutional deprivations during the

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[3] Because at least the Thomases have a timely facial challenge, we do not need to address whether the other named plaintiffs have timely facial challenges.

limitations period because they allege that the County imposed baseless penalties on them during this period. Although Graham's NOV was issued (and daily penalties were imposed) well before the limitations period, he alleges that during the limitations period, he was denied a permit due to his abatement case. Because he alleges that the abatement case had no reasonable basis and that he was denied a timely hearing, he too has plausibly alleged a procedural due process violation during the limitations period.

The remaining named Plaintiff, Glad, alleges a claim of undue delay in scheduling a hearing about his alleged Code violation. Glad would have known or had reason to know of this injury, at the earliest, when the delay became unreasonable. Because we do not engage in fact-finding, determining whether the delay became unreasonable during the limitations period is a task for the district court on remand. *See Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206-07 (9th Cir. 1995); *United States v. $8,850 in U.S. Currency*, 461 U.S. 555, 564-65 (1983) (describing four factors to measure constitutionality of delay under the analogous, Sixth Amendment context). We therefore reverse the district court's dismissal of Plaintiffs' individual as-applied procedural due process challenges as untimely.

Second, the Thomases, Olson, and Graham have alleged timely as-applied substantive due process challenges for similar reasons as above. Plaintiffs knew or should have known of their substantive due process injuries at each point the County imposed a penalty on them unrelated to any personal guilt, with

each such penalty being a new, distinctly actionable claim. *See Flynt v. Shimazu*, 940 F.3d 457, 462 (9th Cir. 2019) ("When the continued enforcement of a statute inflicts a continuing or repeated harm, a new claim arises (and a new limitations period commences) with each new injury."). During the limitations period, the Thomases and Olson allege that the County imposed monetary penalties, and Graham alleges that the County denied him a permit, because of alleged violations involving no wrongdoing by them. We agree with the district court, however, that Glad's substantive due process claim is untimely. He does not allege that the County imposed any penalties—such as monetary penalties, the denial of a permit, or the deprivation of the use of his land—during the limitations period. We thus affirm the dismissal of Glad's as-applied substantive due process claim but reverse as to the other plaintiffs.

Third, Plaintiffs' as-applied unconstitutional conditions claims begin to accrue when the County conditioned a permit on entering into such a settlement agreement. The Thomases, Olson, and Graham allege that this happened to them during the limitations period. Glad, however, does not allege ever seeking a land- use permit, so he has not stated an individual claim to begin with. Thus, we affirm the district court's dismissal of Glad's as-applied unconstitutional conditions claim but reverse as to the other plaintiffs.

8. Finally, we conclude that reassignment of this case on remand is not warranted. "In determining whether reassignment is proper, we consider: (1) whether the original judge would reasonably be

expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of justice." *Evon v. L. Offs. of Sidney Mickell*, 688 F.3d 1015, 1034 (9th Cir. 2012) (quoting *United States v. Arnett*, 628 F.2d 1162, 1165 (9th Cir. 1979)). "The first two of these factors are of equal importance, and a finding of one of them would support a remand to a different judge." *Id.* (quoting *United States v. Sears, Roebuck & Co.*, 785 F.2d 777, 780 (9th Cir. 1986)).

Here, although the district court's dismissiveness of Plaintiffs' well-pleaded allegations is cause for concern, we trust that the "original judge would [not] . . . have substantial difficulty in putting out of his . . . mind previously-expressed views or findings determined to be erroneous." *Id.* (quoting *Arnett*, 628 F.2d at 1165). Reassignment upon remand is thus not warranted.

REVERSED in part, AFFIRMED in part, and REMANDED.

Appellants shall recover their costs on appeal.

Appendix B

Appendix B

Opinion of the
United States Court of Appeals
for the Ninth Circuit

December 30, 2024

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CORRINE MORGAN THOMAS; DOUG THOMAS; BLU GRAHAM; RHONDA OLSON; CYRO GLAD, *Plaintiffs-Appellants,* v. COUNTY OF HUMBOLDT, California; HUMBOLDT COUNTY BOARD OF SUPERVISORS; HUMBOLDT COUNTY PLANNING & BUILDING DEPARTMENT; MIKE WILSON, Vice Chair, Board of Supervisors; REX BOHN, member, Board of Supervisors; MICHELLE BUSHNELL, member, Board of Supervisors; STEVE MADRONE, member, Board of Supervisors; JOHN H. FORD, Director, Humboldt County Planning and Building Department; NATALIE ARROYO, in her official capacity as Supervisor of Humboldt County,	No. 23-15847 D.C. No. 1:22-cv-05725-RMI OPINION

Appendix B

Defendants-Appellees,

and

VIRGINIA BASS, Chair,
Board of Supervisors,

Defendant.

Appeal from the United States District Court
for the Northern District of California
Robert M. Illman, Magistrate Judge, Presiding

Argued and Submitted April 9, 2024
San Francisco, California

Filed December 30, 2024

Before: Richard A. Paez and Jennifer Sung, Circuit Judges,
and Sidney A. Fitzwater,* District Judge.

Opinion by Judge Paez

* The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

Appendix B

SUMMARY**

Eighth Amendment's Excessive Fines Clause

The panel affirmed in part and reversed in part the district court's dismissal of a putative class action brought by residents of Humboldt County pursuant to 42 U.S.C.§ 1983, alleging, in part, that the County's system of administrative penalties and fees pertaining to cannabis abatement violates the Eighth Amendment's Excessive Fines Clause.

Pursuant to the County Code, illegal cultivation of cannabis can carry a daily fine of anywhere between $6,000 and $10,000. Once the County's Code Enforcement Unit serves a responsible party with a notice of violation ("NOV"), the party has ten days to abate all violations or face penalties, subject to an appeals process, during which the penalties continue to accrue. Plaintiffs contend that the County charges landowners with violations based on imprecise data, or on the conduct of previous property owners. The district concluded that because plaintiffs had yet to pay a fine, they lacked standing, the Eighth Amendment claim was unripe, and both the facial and as- applied challenges were untimely.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel first held that plaintiffs' claim under the Excessive Fines Clause was constitutionally ripe and that plaintiffs plausibly alleged a sufficient concrete injury to satisfy standing due to the County's imposition of penalties, even before any payment. The continued imposition of significant penalties caused plaintiffs emotional and psychological distress, and they incurred expenses attempting to abate the violations by hiring engineers to inspect their property and attorneys to defend them in hearings. Prudential ripeness considerations further counseled in favor of allowing the litigation to proceed.

The panel found that with one exception, plaintiffs' challenges under the Excessive Fines Clause were timely. The statute of limitations begins to run on a claim(whether facial or as-applied) when a plaintiff knows or has reason to know of the actual injury, not, as the district court found, when the challenged ordinance is enacted. Plaintiffs' facial claim began to run when they received NOVs, which was the earliest point at which they could have known of the penalties at issue. Because at least some plaintiffs alleged they received their initial NOVs within two years of filing suit, the panel reversed the district court's dismissal of plaintiffs' facial challenge as untimely. Several of the named plaintiffs also appeared to have timely as-applied challenges, although plaintiff Cyro Glad's as-applied Eighth Amendment claim appeared to be untimely because he received his initial NOV nearly four years before the suit was filed and no daily penalties were imposed within the limitations period. The panel, therefore, partially reversed the district court's dismissal of the as-applied excessive fines challenges

as untimely but affirmed the dismissal with respect to Cyro Glad.

Turning to the merits, the panel held that plaintiffs alleged a plausible claim for relief under the Excessive Fines Clause. Plaintiffs alleged that the administrative penalties, which can reach millions of dollars, and the County's demolition orders are punitive, not remedial. They also plausibly alleged that the fines were excessive given that (1) at least some of the plaintiffs have been charged with violations that pre-date their occupation of their respective properties; (2) the violations were inaccurately charged or were the fault of previous property owners; (3) lesser penalties could accomplish the same health and safety goals; and (4) the alleged offenses caused no harm beyond a technical lack of compliance with the County's cannabis permitting regulations.

COUNSEL

Jared McClain (argued), Institute for Justice, Arlington, Virginia; Robert Johnson, Institute for Justice, Shaker Heights, Ohio; Thomas V. Loran III, Pillsbury Winthrop Shaw Pittman LLP, San Francisco, California; Derek M. Mayor, Pillsbury Winthrop Shaw Pittman LLP, Sacramento, California; for Plaintiffs-Appellants.

Pamela K. Graham (argued), Colantuono Highsmith & Whatley PC, Pasadena, California; John A. Abaci, Colantuono Highsmith & Whatley PC, Sonoma, California; Michael G. Colantuono, Colantuono

Highsmith & Whatley PC, Grass Valley, California; for Defendants-Appellees.

Thomas Q. Swanson, Hilgers Graben PLLC, Lincoln, Nebraska, for Amicus Curiae Daniel J. Altstatt.

OPINION

PAEZ, Circuit Judge:

This putative class action arises out of Humboldt County's system of administrative penalties and fees involving cannabis abatement. Plaintiffs—residents of Humboldt County—filed this action under 42 U.S.C. § 1983, alleging a number of constitutional claims against the County. The district court dismissed all claims in their entirety on various grounds. We focus only on one of Plaintiffs' claims: that the County's system of administrative penalties and fees violates the Eighth Amendment's Excessive Fines Clause.[1] The district court dismissed that claim because it concluded that the claim was not justiciable and that it was untimely. For the reasons below, we affirm in part, reverse in part, and remand for further proceedings.

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[1] In a separately filed memorandum disposition, we address Plaintiffs' remaining claims.

Appendix B

I. Background

A.

This case concerns Humboldt County's enforcement of its local building and zoning laws, specifically those involving cannabis abatement. We briefly discuss the relevant provisions of the Code of Humboldt County, California ("HCC" or "the County Code").

Pursuant to the County Code, violations of local building and zoning laws are classified into four categories ranging from "Category 1" to "Category 4." HCC §§ 352-3(e)-(h). Those violations classified as Category 4 are the most severe and carry the greatest penalty: a daily fine of anywhere between $6,000 and $10,000. *Id.* § 352-6(a)(4). As relevant here, the illegal cultivation of cannabis, as well as any other violation that facilitates the illegal cultivation of cannabis, is classified as a Category 4 offense. *Id.* § 352-3(h).

The County's Code Enforcement Unit is responsible for enforcement. *Id.* § 352-3(j). Once the Code Enforcement Unit determines that a violation has occurred, it serves each "Responsible Party" with a "Notice of Violation [(NOV)] and Proposed Administrative Civil Penalty." *Id.* § 352-7. The County Code requires the NOV to contain certain information, including the name and last known address of each responsible party and a "description of the specific acts or omissions that gave rise to the Violation." *Id.* § 352-8.

A responsible party who is served with an NOV must abate the violations within ten days or face

penalties. *Id.* § 352-5(b)(1).[2] Indeed, pursuant to the County Code, fines are imposed automatically no later than ten days after service of the NOV. *Id.* §§ 352-3(m)(1), 352-5(b)(1). Moreover, in the case of "subsequent or ongoing cannabis Violations or Violations that exist as a result of or to facilitate illegal cultivation of cannabis, the imposition of administrative civil penalties will start to accrue after service of [an NOV]," unless a tenant (rather than the property owner) is in possession of the property. *Id.* § 352-3(m)(2). The imposition of the "penalty" becomes "final" and the Code Enforcement Unit "acquire[s] jurisdiction to collect the full amount thereof and any and all Administrative Costs and/or Attorney's Fees" ten calendar days after service of the NOV unless a responsible party timely appeals. *Id.* § 352-8(l).

If a responsible party appeals "the determination that . . . a Violation has occurred and/or the amount of the administrative civil penalty [imposed] . . . , the Code Enforcement Unit shall set the matter for hearing before [a] Hearing Officer and serve a 'Notice of Administrative Civil Penalty Appeal Hearing' upon each Appellant." *Id.* § 352-9. The hearing must be scheduled "no sooner than fifteen (15) calendar days after the date on which the Notice of Administrative Civil Penalty Appeal Hearing is served on the Appellant." *Id.* § 352-11. The imposition of fines, however,

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[2] The County is authorized to issue an additional NOV and impose an additional penalty if the violations remain after ninety days. HCC § 352-5(d). It can additionally "withhold issuance of any licenses, permits and other entitlements to a Responsible Party on any project that is subject to unpaid administrative civil penalties." *Id.* § 352-5(e).

does not stop during this period, and can continue "up to and including the ninetieth (90th) calendar day," *id*. § 352-5(a), following the original "Imposition Date," *id*. § 352-3(m).

On appeal, the hearing officer has the authority to determine that no violation has occurred and terminate the administrative proceedings. *Id*. § 352-12. If the hearing officer determines that a violation has occurred or continues to exist, they can affirm the civil penalty or reduce it in limited circumstances. In no event, however, can the hearing officer reduce the penalty "to an amount that is less than the minimum amount set forth [in the County Code] for the Violation category imposed." *Id*. § 352-12(b). For example, in the case of Category 4 offenses, the reduction cannot result in a penalty lower than $6,000 per day. *Id*. § 352-6(a)(4). Once the hearing officer's decision is final, the responsible party may seek judicial review. *Id*. § 352-13.

Finally, once jurisdiction to collect the administrative civil penalty is final, the Code Enforcement Unit may serve the responsible party with a "Notice of Administrative Civil Penalty Assessment" and collect the penalty or impose a lien on the property, *id*. §§ 352-15, 352-16(l), unless the responsible party objects and requests additional review by the County's Board of Supervisors, *id*. § 352-16(i).

B.

Plaintiffs are residents of Humboldt County who allege that they have been aggrieved by the County's

enforcement of its cannabis-abatement regulatory scheme. In general, Plaintiffs allege that the County charges landowners with violations of the County Code on the basis of (1) imprecise images taken from satellites or drones without reasonable suspicion or any further investigation, or (2) the conduct of previous owners, which ceased before Plaintiffs purchased their respective properties. Plaintiffs also allege that the County fails to record the violations of previous owners, such that new landowners like Plaintiffs have no actual or constructive knowledge of ongoing violations when they purchase land. The County nonetheless serves these landowners with vague NOVs that fail to properly inform them of the grounds for the charges or their right to appeal. Once served with an NOV, Plaintiffs allege that landowners face "immediate costs and immense pressure to settle due to the County's issuance of ruinous fines unsupported by any legitimate governmental interest, its refusal to drop baseless charges, its undue delay in providing hearings, its denial of permits while abatements are pending, and the cost the County imposes to prove one's innocence."

In October 2022, Plaintiffs filed this action on behalf of themselves and others similarly situated in the district court. As relevant here, Plaintiffs allege that the County's system of administrative penalties and fees with respect to cannabis abatement violates the Excessive Fines Clause of the Eighth Amendment. After Plaintiffs filed an amended complaint, the County moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The County also requested

judicial notice of over 500 pages of documents, which the court granted.[3]

The district court granted the County's motion to dismiss. The district court reasoned that "the [Complaint was] overwhelmingly dominated by legal arguments couched as factual allegations, unreasonable inferences, unwarranted deductions, conclusory assertions, unjustified labels, and hyperbole." With respect to the Plaintiffs' claim under the Excessive Fines Clause of the Eighth Amendment, the district court concluded first that Plaintiffs' claim was not justiciable because Plaintiffs lacked standing and the claim was unripe, and second that their claim was untimely. This appeal followed.

II. Jurisdiction and Standard of Review

We have jurisdiction under 28 U.S.C. § 1291. Dismissals under Rule 12(b)(1) are reviewed de novo. *See Erickson v. Desert Palace, Inc.*, 942 F.2d 694, 694 (9th Cir. 1991). "[W]hen standing is challenged on the basis of the pleadings, we accept as true all material allegations of the complaint, and . . . construe the complaint in favor of the complaining party." *Pennell v. City of San Jose*, 485 U.S. 1, 7 (1988) (internal quotation marks and citation omitted).

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[3] Plaintiffs assert that the district court improperly relied on facts it took from documents it judicially noticed. Because Plaintiffs' allegations in their amended complaint are sufficient to conclude that their claim is justiciable, we do not address the propriety of the district court's judicial- notice ruling.

A dismissal under Rule 12(b)(6) is also reviewed de novo. *See Moore v. Mars Petcare US, Inc.*, 966 F.3d 1007, 1016 (9th Cir. 2020). At the motion to dismiss stage, "[a]ll allegations of material fact in the complaint are taken as true and construed in the light most favorable to Plaintiffs." *Id.* (citing *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 937 (9th Cir. 2008)).

III. Discussion

The district court determined that Plaintiffs' claim under the Excessive Fines Clause of the Eighth Amendment was not justiciable as well as untimely. We therefore first determine whether Plaintiffs' claim is justiciable— specifically, that at least one named plaintiff in the putative class has standing to bring such a claim and that the claim is ripe—and then determine whether the claim is timely.[4] We then consider whether Plaintiffs plausibly allege that the County's system of administrative penalties and fees violates the Eighth Amendment. For the reasons below, we conclude that (1) at least one plaintiff has standing and their claim is ripe; (2) with one exception, Plaintiffs' claims are timely; and (3) Plaintiffs have plausibly alleged a violation of the Excessive Fines Clause.

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[4] *See Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (en banc) ("In a class action, standing is satisfied if at least one named plaintiff meets the requirements.").

Appendix B

A. Standing and Ripeness

The County contends that the Excessive Fines Clause claim is not ripe because Plaintiffs have yet to pay a fine. The district court, for the same reason, held that all Plaintiffs lacked an injury-in-fact under Article III. We conclude that Plaintiffs' claim is indeed ripe and that they have suffered a cognizable injury.[5]

"[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Its "injury in fact" prong requires a plaintiff to demonstrate an "invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Id.* at 560 (cleaned up). A related doctrine, ripeness, is "drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction." *Reno v. Cath. Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993). The ripeness doctrine is designed to "separate matters that are premature for review because the injury is speculative and may never occur from those cases that are appropriate for federal court action." *Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993) (citation omitted). As a result, "[t]he constitutional component of the ripeness inquiry is often treated under the rubric of standing and, in many cases, ripeness coincides squarely with

[5] Because the County argues—as the district court determined—only that the allegations in the amended complaint do not establish that they have suffered any injury, we focus on the injury-in-fact prong of standing.

standing's injury in fact prong." *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc). In addition, the ripeness doctrine has a prudential aspect "guided by two overarching considerations: the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Id.* at 1141 (internal quotation marks and citation omitted).[6]

Here, in arguing that Plaintiffs' alleged injury is speculative because the fines have not yet been paid, the County effectively challenges Plaintiffs' ability to demonstrate an actual injury as well as ripeness. *See Wolfson v. Brammer*, 616 F.3d 1045, 1058 (9th Cir. 2010) ("Whether framed as an issue of standing or ripeness, the inquiry is largely the same: whether the issues presented are 'definite and concrete, not hypothetical or abstract.'" (quoting *Thomas*, 220 F.3d at 1139).

To begin, the Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. Although we have not previously considered constitutional ripeness and the actual injury requirement in the context of the Excessive Fines Clause, we have addressed the issue in other cases involving the Eighth Amendment. For

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[6] The Supreme Court has "cast doubt on the prudential component of ripeness in *Susan B. Anthony List v. Driehaus*, [573 U.S. 149 (2014)]." *Safer Chems., Healthy Fams. v. U.S. Env't Prot. Agency*, 943 F.3d 397, 412 n.8 (9th Cir. 2019) (quoting *Clark v. City of Seattle*, 899 F.3d 802, 809 n.4 (9th Cir. 2018)). Nonetheless, we consider the issue for the sake of thoroughness.

example, in *18 Unnamed John Smith Prisoners v. Meese*, 871 F.2d 881 (9th Cir. 1989), we considered whether a correctional facility's decision to "double bunk" inmate-participants in the Department of Justice's Witness Protection Program constituted infliction of cruel and unusual punishment in violation of the Eighth Amendment. *Id.* at 882. In so doing, we recognized that "[o]ne does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough." *Id.* at 883 (alteration in original) (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985)). We nonetheless held that the inmates' Eighth Amendment claim was too speculative because (1) there was "no evidence of a concrete injury caused by actual overcrowding, intolerable conditions, . . . and the like," and (2) we could not "conjecture with any reasonable measure of assurance what impact the proposed double bunking would have on the inmates." *Id.* In other words, the inmates' claims involved "contingent future events that may not occur as anticipated, or indeed not occur at all." *Id.*

Here, by contrast, the factors identified in *18 Unnamed John Smith Prisoners* counsel in favor of actual injury and constitutional ripeness. First, there are clear and concrete injuries stemming from the imposition of the penalties. Taking Plaintiffs' factual allegations as true and drawing all reasonable inferences in their favor, the continued imposition of such significant penalties[7] has already caused Plaintiffs

[7] At the upper end, Plaintiffs allege that the penalties imposed by the County can reach millions of dollars.

emotional and psychological distress. Plaintiffs also allege significant financial uncertainty because of these penalties, which the County does not dispute. These alleged injuries are sufficiently concrete to confer standing and establish that Plaintiffs' claim is ripe. *See Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1109 (9th Cir. 2014) (recognizing emotional distress as a concrete and cognizable injury); *Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1117 (9th Cir. 2017) (holding that allegations of "anxiety, stress, concern, and/or worry about [the plaintiff's] diminished employment prospects" presented concrete, cognizable injuries); *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1142 (9th Cir. 2010) (holding that "generalized anxiety and stress" can be sufficient to confer standing). Plaintiffs also allege that in the face of continuously imposed fines, they have spent money attempting to abate the violations by hiring engineers to inspect their property as well as attorneys to defend them in hearings. *See, e.g.*, *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013) (recognizing standing where there is "a substantial risk that the harm will occur, which may prompt plaintiffs to reasonably incur costs to mitigate or avoid that harm") (internal quotation marks and citation omitted)).

Second, unlike in *18 Unnamed John Smith Prisoners*, we can determine with reasonable certainty the impact of the penalties on Plaintiffs. Plaintiffs allege that the County holds new owners responsible for violations and corresponding fines that were based on a prior owner's conduct. The amounts of the daily penalties are readily ascertainable from the number of days that have passed since the original imposition

date. There is an objectively reasonable likelihood that these substantial penalties, which have already been imposed, financially burden Plaintiffs because Plaintiffs will have to pay them in full or settle with the County to avoid paying penalties they cannot afford. Thus, Plaintiffs have sufficiently alleged a concrete injury, and their Eighth Amendment claim is ripe.[8]

Decisions from our sister circuits addressing constitutional ripeness under the Excessive Fines Clause support our conclusion. The leading case is *Cheffer v. Reno*, 55 F.3d 1517 (11th Cir. 1995), which relied on our decision in *18 Unnamed John Smith Prisoners* to conclude that "challenges under the Excessive Fines Clause are . . . generally not ripe until the actual, or impending, *imposition* of the challenged fine." *Id.* at 1523 (emphasis added); *cf. Club Madonna, Inc. v. City*

[8] In reaching the opposite conclusion, the district court relied on several other reasons purportedly demonstrating that Plaintiffs' alleged injuries were too speculative. For example, the court suggested that certain plaintiffs—specifically, Corinne and Doug Thomas—did not have standing because the previous owners of their properties were named as responsible parties, not the Thomases. Although the NOV attached to the Thomases' land was addressed to the previous owners, the Thomases specifically allege that, even after contacting the County and informing them that they were the new owners, the County has nonetheless held them responsible for the penalties. Moreover, the County Code itself defines a "Responsible Party" as "Any Owner, Beneficial Owner, [or] person . . . who has caused, permitted, *maintained*, conducted or otherwise allowed a Violation to occur." HCC § 352-3(s) (emphasis added). Based on this information, and drawing all reasonable inferences in the Thomases' favor, the Thomases have plausibly alleged that the penalties were directed at them.

of Miami Beach, 924 F.3d 1370, 1381 (11th Cir. 2019) (agreeing that a claim is not ripe because the plaintiff "does not allege that the City imposed a fine under that provision or that the imposition of a fine is immediately forthcoming"). Under this standard, Plaintiffs' Eighth Amendment claim is ripe. Under the plain terms of the County Code, the penalties *have* been imposed. *See* HCC § 352-3(m).

Moreover, the very reason the court in *Cheffer* found the claim unripe is not at issue here. In *Cheffer*, the plaintiffs alleged that they "*may* be arrested and convicted under [the relevant statute] and, if so, that they *may* be subject to the maximum imprisonment and civil penalties." 55 F.3d at 1524 (emphases added). As a result, the Eleventh Circuit concluded that the plaintiffs' "allegations amount[ed] to mere speculation about contingent future events." *Id.* Here, by contrast, Plaintiffs allege that they *have* been charged with violating the County Code, the daily fine has *automatically* accrued, and the County has reiterated on multiple occasions that Plaintiffs are responsible for paying the fine, thereby reducing the speculative nature of their injury.

In response, the County raises two arguments. First, the County suggests that the availability of an appeal hearing to contest the violation, before any penalty must be paid, indicates that Plaintiffs' allegations about the penalty "amount to mere speculation about contingent future events." *Cheffer*, 55 F.3d at 1524. And second, the County suggests that the authority of a hearing officer and other administrative and judicial officers to reduce a penalty underscores

the contingent nature of the penalties. These arguments are unconvincing.

First, these arguments cannot change the fact that, by the time a responsible party obtains an administrative hearing— which, as Plaintiffs allege, can take years—the penalty will already have been imposed. And, unless a hearing is requested within ten days of service of the NOV, there will be no administrative review before the penalty becomes collectable. *See* HCC § 352-8(l)(i).

Second, given Plaintiffs' numerous allegations that the County has found them responsible and will not remove the penalties, there are fewer possible contingencies that could render Plaintiffs' alleged injuries speculative. *See In re Coleman*, 560 F.3d 1000, 1005 (9th Cir. 2009) ("But plan completion is a single factual contingency—not a 'series of contingencies' rendering the decision 'impermissibly speculative.'" (quoting *Portland Police Ass'n v. City of Portland*, 658 F.2d 1272, 1273-74 (9th Cir. 1981))). Plaintiffs do not need to demonstrate that it is "literally certain" that the harms they identify will materialize; therefore, the mere possibility that a hearing officer could determine that the penalties imposed were not warranted does not render Plaintiffs' alleged injuries speculative. *Clapper*, 568 U.S. at 414 n.5.

Third, assuming that a hearing officer does not terminate the proceedings, the officer's discretion to reduce any penalties is limited. Indeed, according to the County Code, the hearing officer cannot reduce the penalty below the minimum amount set by the

Code for the category of violation. HCC § 352-12(b). Here, cannabis-related offenses are classified as Category Four violations and carry a minimum penalty of $6,000 per day. *Id.* § 352-6. And because Plaintiffs allege that even this minimum amount is excessive, the hearing officer's discretionary authority to reduce the fine to that amount does not make Plaintiffs' injuries contingent on the hearing officer's decisions.[9]

And fourth, as a factual matter, Plaintiffs' allegations cast doubt on the impartiality of the hearing officers. Indeed, Plaintiffs allege that the hearing officers are biased, such that Plaintiffs seem all but certain to face the penalty, even if they pursue an administrative hearing.

Our conclusion that Plaintiffs have standing to challenge the penalties already imposed upon them—but before payment—aligns with our precedents in other pre-enforcement standing and ripeness cases. In *Los Angeles Haven Hospice, Inc. v. Sebelius*, the plaintiff "was the object of [a] governmental action," specifically, "an individualized demand for repayment of over $2.3 million." 638 F.3d 644, 655 (9th Cir. 2011). We held that this alone was sufficient to establish a concrete injury. *Id.*; *see Susan B. Anthony List*, 573 U.S. at 159 (recognizing that a "plaintiff satisfies

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[9] The County points to cases where courts have reduced fines, citing for example *County of Humboldt v. Appellate Division of Superior Court*, 46 Cal. App. 5th 298, 304-05 (2020). As Plaintiffs argue, however, "[t]hat a court went beyond the text of the law to reduce mandatory fines worth more than a property's value does not preclude Plaintiffs from bringing an Eighth Amendment challenge to the penalties they face."

the injury-in-fact requirement" where "'there exists a credible threat'" that the government will enforce the challenged law (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)); *see also Babbitt*, 422 U.S. at 298 (recognizing that plaintiffs "should not be required to await and undergo criminal prosecution as the sole means to seeking relief" (quotation omitted)). Similarly, in *Hotel Employees & Restaurant Employees International Union v. Nevada Gaming Commission*, we held that "[w]here the agency has threatened enforcement, the actual commencement of administrative enforcement proceedings is not necessary" to establish ripeness for a facial challenge to a regulatory system. 984 F.2d 1507, 1513 (9th Cir. 1993) (citing *Pac. Gas & Elec. Co. v. State Energy Res. Conserv. & Dev. Comm'n.*, 461 U.S. 190, 201 (1983)); *see also Freedom to Travel Campaign v. Newcomb*, 82 F.3d 1431, 1435 (9th Cir. 1996) (similar).

Finally, prudential ripeness considerations also counsel in favor of allowing the litigation to proceed. As we observed in *Engquist*, prudential "[r]ipeness analysis has two prongs: the fitness of the issue for judicial review and the hardship to the parties if review is withheld." *Engquist v. Oregon Dep't of Agric.*, 478 F.3d 985, 1000 n.11 (9th Cir. 2007), *aff'd* 553 U.S. 591 (2008). With respect to the "fitness" prong, we concluded that the constitutional challenges in that case "easily satisf[ied] both prongs of the ripeness test, as the issues presented are purely legal and delay will cause unnecessary hardship." *Id.* Here, the issues are also purely legal, and at the motion to

dismiss stage, we take the allegations in the amended complaint as true.

Likewise, Plaintiffs have sufficiently alleged that delay in adjudication will cause hardship. For example, Plaintiffs allege that the County's conduct has resulted in such coercive force that several of the named plaintiffs have needed to "modify [their] behavior to avoid future adverse consequences." *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 734 (1998). Plaintiffs also allege that the County has used and will continue to impose penalties to coerce putative class members into undesirable settlements. Plaintiffs finally allege that the unique nature of this administrative penalty scheme causes even more fines and administrative fees to accrue over time. *Cf. id.* at 733 (suggesting that hardship can be demonstrated when the provisions challenged "subject [the plaintiffs] to any civil or criminal liability").

In sum, taking Plaintiffs' factual allegations as true and drawing all reasonable inferences in their favor, they have plausibly alleged a concrete injury as a result of the County's imposition of penalties, even before any payment. We therefore conclude that Plaintiffs' claim under the Excessive Fines Clause is ripe.

B. Timeliness

"Section 1983 does not contain its own statute of limitations." *Flynt v. Shimazu*, 940 F.3d 457, 461 (9th Cir. 2019) (quoting *Butler v. Nat'l Comm. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014)). "Instead, claims brought under § 1983 are subject to the forum

state's statute of limitations for personal injury suits." *Id.* (citation omitted). In California, "the relevant period is two years." *Id.* (citing Cal. Civ. Proc. Code § 335.1). "Although state law determines the length of the limitations period, federal law determines when a civil rights claim accrues." *Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir. 2001) (internal quotation marks and citation omitted). "A claim may be dismissed as untimely pursuant to a 12(b)(6) motion only when the running of the statute of limitations is apparent on the face of the complaint." *United States ex rel. Air Control Techs., Inc. v. Pre Con Indus., Inc.*, 720 F.3d 1174, 1178 (9th Cir. 2013) (cleaned up). The district court concluded that both Plaintiffs' facial and as-applied Eighth Amendment claims were untimely. We disagree.

First, the district court erred in dismissing Plaintiffs' facial challenge because it was not brought within two years of the law's enactment. The district court reasoned under *Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020 (9th Cir. 2007), that all facial challenges against a local ordinance must be brought within two years of its enactment. As Plaintiffs correctly argue, however, we expressly rejected such a reading in *Scheer v. Kelly*, 817 F.3d 1183, 1187 (9th Cir. 2016). There, we recognized that *Action Apartment Ass'n, Inc.* applied only in the context of injury to property where "the very enactment of the statute [at issue] has reduced the value of the property or has effected a transfer of a property interest." *Id.* (quoting *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1119 (9th Cir. 2010) (en banc)). By contrast, the statute of limitations begins to run

on a claim (whether facial or as-applied) when a plaintiff "knows or has reason to know of the actual injury," not when the challenged ordinance was enacted. *Id.* at 1188 (quoting *Lukovsky v. City & Cnty. of San Francisco*, 535 F.3d 1044, 1051 (9th Cir. 2008)).

At the earliest, Plaintiffs' facial claim under the Excessive Fines Clause began to run when they received NOVs, the earliest point at which they could have known of the penalties at issue. Because at least some plaintiffs, for example the Thomases, allege they received their initial NOVs within two years of filing suit, we reverse the district court's dismissal of Plaintiffs' facial challenge as untimely.

Second, several of the named Plaintiffs appear to have timely as-applied challenges. The Thomases allege that they received their initial NOVs within the limitations period, so their as-applied challenge is timely. Although Rhonda Olson alleges that she received her initial NOVs shortly before the limitations period, she could nonetheless demonstrate timeliness in several ways. For example, because the NOVs were addressed to a different property owner, she may be able to prove that she did not know or have reason to know *she* was subject to these penalties until later. The running of the statute of limitations is thus not apparent on the face of the complaint. *See Air Control Techs.*, 720 F.3d at 1178.

Additionally, even assuming that Olson should have known of her injury when she received the initial NOVs, the County continued to impose penalties associated with those NOVs during the limitations

period. "When the continued enforcement of a statute inflicts a continuing or repeated harm, a new claim arises (and a new limitation period commences) with each new injury." *Flynt*, 940 F.3d at 462. In the excessive fines context, each imposition of a challenged fine is a new, distinct injury. *See* U.S. Const. amend. VIII (prohibiting "excessive fines *imposed*" (emphasis added)); *cf. Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002) ("Each discrete discriminatory act starts a new clock for filing charges alleging that act."). Because Olson alleges that the County imposed penalties on her well into the limitations period, and each imposition was a new unlawful act, Olson's as-applied challenge is not time-barred.

Finally, Olson may be able to prove that she was subject to a distinct unlawful act when, within the limitations period, the County issued a new NOV in her name, reimposing penalties after she disputed their basis. "Rather than being the inevitable consequence of an earlier decision [to issue the initial NOV], this decision [to issue a new NOV] was [plausibly] the result of 'independent consideration,'" and is therefore separately actionable. *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1061 (9th Cir. 2022) (quoting *Knox*, 260 F.3d at 1014). We reverse the district court's dismissal of the Thomases's and Olson's as-applied claims as untimely.

Plaintiff Cyro Glad's as-applied Eighth Amendment claim, however, appears to be untimely, even reading his complaint with the required liberality. Glad received his initial NOV nearly four years before this suit was filed and no daily penalties were

imposed within the limitations period. Further, the NOV he received was addressed to him, so there is little question that he knew or should have known he was subject to the penalties at the time he received the NOV and for the ninety days during which daily penalties were imposed. While Glad may continue to face the coercive effects of the heavy penalties, that is not enough to make his as-applied claim timely. *See, e.g.*, *Garcia v. Brockway*, 526 F.3d 456, 462 (9th Cir. 2008) ("[A] continuing violation is occasioned by continual unlawful acts, not by continual ill effects from an original violation." (quoting *Ward v. Caulk*, 650 F.3d 1144, 1147 (9th Cir. 1981)). We therefore affirm the district court's order dismissing Glad's as-applied excessive fines claim as untimely.

C. Plausible Claim

Next, we turn to whether Plaintiffs allege a plausible claim for relief under the Excessive Fines Clause.[10] Notably, our court has extended the protections of the Excessive Fines Clause to local penalties, fines, and fees. *See Pimentel v. City of Los Angeles* ("*Pimentel I*"), 974 F.3d 917, 922 (9th Cir. 2020); see also *Pimentel v. City of Los Angeles* ("*Pimentel II*"), 115 F.4th 1062, 1065 (9th Cir. 2024). "To determine whether a fine is grossly disproportional to the underlying offense, four factors are considered: (1) the

[10] The district court did not address whether Plaintiffs had alleged a plausible claim under the Excessive Fines Clause. Because our review is de novo and the issue is purely legal, we exercise our discretion to address it in the first instance. *See AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1214 (9th Cir. 2020) (quoting *Raich v. Gonzales*, 500 F.3d 850, 868 (9th Cir. 2007)).

nature and extent of the underlying offense; (2) whether the underlying offense related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of the harm caused by the offense." *Pimentel I*, 974 F.3d at 921. We conclude that Plaintiffs have plausibly alleged that the County's system of administrative penalties and fees violates the Excessive Fines Clause.

Plaintiffs allege that the penalties are clearly punitive, not remedial as argued by the County. As Plaintiffs allege, administrative penalties imposed by the County can reach millions of dollars. In the case of Olson, for example, the imposed penalty dwarfs the value of her property. And even if the penalties serve some remedial purpose, the Supreme Court has rejected, on a similar basis, the argument that such penalties are not punitive. *See United States v. Bajakajian*, 524 U.S. 321, 329 (1998) ("Although the Government has asserted a loss of information regarding the amount of currency leaving the country, that loss would not be remedied by the . . . confiscation of respondent's $357,144."); see also *Pimentel II*, 115 F.4th at 1067 (noting that only "purely remedial sanctions" are not subject to Eighth Amendment scrutiny).

With respect to the four factors identified in Pimentel, Plaintiffs have plausibly alleged that the fines at issue here are excessive. To assess the first factor, "[c]ourts typically look to the [alleged] violator's culpability." *Pimentel I*, 974 F.3d at 922. That is, "if culpability is low, the nature and extent of [their] violation is minimal." *Id*. "It is critical, though, that

the court review the specific actions of the violator rather than by taking an abstract view of the violation." *Id.* Here, the underlying offense is a property offense related to cannabis cultivation. More importantly, and considering the specific actions of the alleged violators, the amended complaint alleges that at least some of the plaintiffs have been charged with County Code violations that pre-date their occupation of their respective properties. At the time of their purchase and since then, Plaintiffs allege that the property was not used and has not been used for any cannabis cultivation or operation. In such cases, the nature and extent of the alleged violations are minimal. Indeed, even if plaintiffs like Olson were aware that the property had some past association with cannabis cultivation, Olson alleges that she was not aware of outstanding County Code violations because the County—contrary to the Code— failed to record the violations against the properties. HCC § 352-4(c).

Turning to the remaining factors, the second factor— "whether the underlying offense relates to other illegal activities"—supports Plaintiffs, even if the underlying offense is related to cannabis cultivation. *Pimentel I*, 974 F.3d at 923. Plaintiffs have plausibly alleged that such violations are either inaccurately charged or the fault of previous property owners. Likewise, the third factor— "whether other penalties may be imposed for the violation"—weighs in Plaintiffs' favor, as the permitting violations would carry a smaller fine if not for the tenuous nexus to cannabis, elevating the violations to Category 4 violations. *Id.* Moreover, it seems clear to us that lesser penalties could accomplish the same health and safety goals,

and the County offers no reason to infer otherwise. And finally, as to the fourth factor, the "extent of the harm caused by the violation," Plaintiffs have alleged that the offenses here have caused no harm beyond a technical lack of compliance with the County's cannabis permitting regulations. *Id.* As Plaintiffs argue on appeal, "[Olson] faces millions in penalties for what is now an empty field. No harm to the community justifies those penalties." *See also Bajakajian*, 524 U.S. at 340 (noting the absence of an "articulable correlation to any injury suffered by the government"); *Pimentel II*, 115 F.4th at 1072 (requiring the City to "provide *some* evidence that the penalty amount was actually tethered to the nature and extent of the harm caused by nonpayment").

In addition, Plaintiffs have alleged that the County's demolition orders are unconstitutionally excessive penalties. Importantly, the Eighth Amendment covers civil penalties like the demolition orders at issue here. *See Austin v. United States*, 509 U.S. 602, 610 (1993) (observing that "a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment" (quotation omitted)). Indeed, the removal of structures on a property owner's land is effectively an *in rem* forfeiture. *See Timbs v. Indiana*, 586 U.S. 146, 154 (2019) ("[C]ivil *in rem* forfeitures fall within the Clause's protection when they are at least partially punitive." (citation omitted)).

The County argues that "[a]batement of unlawful and potentially unsafe structures (like an unpermitted and uninspected tunnel under a [building]) is remedial, not punitive." Plaintiffs respond that the demolition orders also "serve to punish and deter unpermitted cannabis cultivation." Although a closer question than the imposition of penalties, taking Plaintiffs' allegations as true and drawing all reasonable inferences in their favor, the demolition orders are at least partly punitive. Plaintiffs allege that the orders target otherwise lawful structures simply because they once had a nexus to illegal cannabis cultivation, regardless of their effects on public health and safety. In the absence of other justifications, it is plausible that the demolition orders—and the significant expenses they pose to owners—serve, at least in part, to punish and deter unpermitted cannabis cultivation. Thus, for the same reasons as the penalties, Plaintiffs have plausibly alleged that the demolition orders violate the Excessive Fines Clause.

IV. Conclusion

Local governments are often at the forefront of addressing difficult and complex issues. As a consequence, they undoubtedly require flexibility in their decision- making. Nonetheless, and as we have recently observed, "[t]he government cannot overstep its authority and impose fines on its citizens without paying heed to the limits posed by the Eighth Amendment." *Pimentel I*, 974 F.3d at 925. With this important caveat in mind, and for the foregoing reasons, we reverse the district court's dismissal of Plaintiffs'

Eighth Amendment claim and remand for further proceedings consistent with this opinion.

REVERSED in part, AFFIRMED in part, and REMANDED for further proceedings consistent with this opinion.

Appellants shall recover their costs on appeal.

Appendix C

Appendix C

Order of the
United States District Court
Northern District of California

May 12, 2023

Appendix C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EUREKA DIVISION

CORRINE MORGAN THOMAS, et al., Plaintiffs, v. COUNTY OF HUMBOLDT, CALIFORNIA, et al., Defendants.	Case No. 22-cv-05725-RMI **ORDER RE: MOTION TO DISMISS AMENDED COMPLAINT** Re: Dkt. No. 32

Now pending before the court is Defendants' Motion to Dismiss (dkt. 32) and Request for Judicial Notice (dkt. 32-2) ("RFJN"); Plaintiffs have filed a Response in Opposition (dkt. 36), and have objected (dkt. 36-1) to Defendants' RFJN; Defendants filed a Reply Brief (dkt. 37), a Supplemental Request for Judicial Notice (dkt. 37-2) ("SRFJN"), as well as a Response to Plaintiffs' objections to Defendants' RFJN (dkt. 37-3). For the reasons set forth below, Defendants' requests for judicial notice and their motion to dismiss the operative complaint with prejudice are granted.

Appendix C

FACTUAL BACKGROUND

Plaintiff's Amended Class-Action Complaint

Pursuant to 42 U.S.C. § 1983, and the Declaratory Judgment Act (28 U.S.C. §§ 2201-02), on behalf of themselves and others similarly situated, five individuals have sued Humboldt County (California), its Planning and Building Department, its Board of Supervisors, and six individual county officials. *See* First Amend. Compl. ("FAC") (dkt. 31) at 4-6. The five named Plaintiffs are Corrinne and Doug Thomas, Blu Graham, Rhonda Olson, and Cyro Glad – all of whom find themselves embroiled in disputes related to the County's abatement efforts related to the appendages of illegal cannabis cultivation activity, as well as its non-cannabis code enforcement efforts. *Id*. In addition to the County and its above-named subdivisions, Plaintiffs have also sued John H. Ford (the Director of the Planning and Building Department), as well as the following five members of the County Board of Supervisors: Steve Madrone, Rex Bohn, Mike Wilson, Michelle Bushnell, and Natalie Arroyo. *Id*. at 5-6. Plaintiffs' class-action allegations are only advanced by Plaintiffs Corrine and Doug Thomas (hereafter, "the Thomases"), Olson, and Glad; Plaintiff Graham "was planning to be a class representative until the County suddenly agreed to dismiss his abatement order the week before filing the initial complaint." *Id*. at 51. Plaintiffs propose a class to be defined as such: all persons who are currently facing proposed penalties for cannabis-related Category 4 violations – that were "levied" after January 1, 2018 – and who requested administrative hearings within 10 days of service but

who still have not received a hearing for their appeal. *Id*. Plaintiffs, and the members of the proposed class, reportedly will suffer under a litany of asserted policy failures by the County including – *inter alia* – the County's alleged issuance of cannabis-related code violations without adequate investigation or due regard for probable cause; its delays in providing administrative hearings; and, its failure "to provide a jury at the administrative hearing." *Id*. at 51-54. Plaintiffs plead five causes of action: a claim asserting procedural due process violations focused on alleged defects in the County's administrative processes (Claim-1) (*see id*. at 56-58); a claim asserting substantive due process violations that, in essence, contends that the allegedly baseless allegations, coupled with the delays in the hearing process, and the alleged interference with the Plaintiffs' right to develop their properties while awaiting resolution of the code enforcement matters result in unconstitutional "deprivations of life, liberty, or property when there is no governmental interest in the deprivation" (Claim-2) (*see id*. at 59-62); a claim premised on the notion that the County's permitting fees, its settlement offers, its fines, and its fees all constitute "unconstitutional exactions" in violation of the unconstitutional conditions doctrine (Claim-3) (*see id*. at 62-64); a claim alleging the levying of excessive fines and fees under the Eighth and Fourteenth Amendments (Claim-4) (*see id*. at 64-66); and, a claim asserting that the Seventh and Fourteenth Amendments should be construed to mandate jury trials in the sort of administrative hearings of which Plaintiffs have complained, at least as to the factual determination of whether or not a landowner

has violated the code (Claim-5) (*see id*. at 66-68). By way of relief, Plaintiffs seek the certification of the aforementioned class; a bevy of declaratory and injunctive relief; an award of nominal damages for the named Plaintiffs; an award of $795.92 "in damages or restitution in addition to nominal damages" for Blu Graham; and, an award of attorneys' fees, costs, and expenses. *Id*. at 68-70. As far as factual allegations go – Plaintiffs' FAC paints an implausible picture of the events underlying the above-mentioned claims. *See generally id*. at 6-55. Despite the FAC's length, overlooking its irrelevant content, and its conclusory and implausible assertions – and in light of the materials of which the court is taking judicial notice – it becomes clear, as set forth *infra*, that the underlying facts do not, and simply can not, entitle these Plaintiffs to any relief against these Defendants.

The Statutory Framework

Chapter 2 of the Humboldt County Code ("HCC") was enacted pursuant to California Government Code § 53069.4 with the intention of serving as the primary procedure for the imposition of administrative civil penalties within the unincorporated areas of Humboldt County. *See* Defs.' Request for Judicial Notice (dkt. 32-2, Exh. NN) at 466[1]; *see also* Defs.' Supp.

[1] Chapter 2 of the Humboldt County Code is appended to Defendants' RFJN at Exhibit NN. *See id*. at 465-485. For simplicity, the court will simply cite to those provisions by their codified section numbers. Plaintiffs do not offer any factual dispute about these code provisions; therefore, judicial notice of these local laws is appropriate here. *See Aids Healthcare Found., Inc. v. City*

Request for Judicial Notice (dkt. 37-2) at 1-50. In promulgating the Code – the County's Board of Supervisors found that it was furthering the following goals: (1) protecting the public's health, safety, and welfare; (2) laying out an administrative process that employs objective criteria for the imposition of penalties and provides for a process to appeal the imposition of penalties; (3) providing a means of properly penalizing persons who fail or refuse to comply with the County's code and its other ordinances; and (4) minimizing the expense and delay associated with pursuing alternative remedies through the civil and criminal justice system. HCC § 352-2(b)(1)-(4). Whenever the County's Code Enforcement Unit ("CEU") becomes aware that a violation has occurred, the Unit "shall prepare, and serve upon each [r]esponsible [p]arty, a 'Notice of Violation and ***Proposed*** Administrative Civil Penalty, as set forth in this Chapter.' The Notice of Violation may be combined with a Notice to Abate Nuisance issued pursuant to the provisions of this division." *See id.* at § 352-7 (emphasis supplied).[2] Notices of this sort must contain a host of information including: the responsible party's name and last known address; the address and description

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& Cnty. of S.F., 208 F. Supp. 3d 1095, 1098 n.2 (N.D. Cal. 2016) (citing *Colony Cove Props., LLC v. City of Carson*, 640 F.3d 948, 954-56 n.3-4 (9th Cir. 2011) (taking judicial notice of undisputed contents of local ordinances and resolutions)).

[2] As discussed in detail herein, a great deal of the thrust of Plaintiffs' lawsuit depends on obfuscating the "proposed" nature of the administrative civil penalties set forth in the County's § 352-7 notices, by couching them as finalized fines that have in fact been levied when that is not the case.

of the property on which the violation exists; a description of the acts or omissions (and pertinent regulation or ordinance) constituting the violation; an order to correct or otherwise remedy the violation within 10 calendar days after service; a statement that each day after the 10th day that the violation persists constitutes a separate violation up to the 90th day; the amount of the proposed daily administrative civil penalty to be incurred after the 10th day; a statement that the responsible party may file a written appeal request with the CEU of the determination as to the existence of a violation and / or the amount of the proposed administrative civil penalty; a statement that such an appeal has already been taken (if that is the case) along with a bevy of attendant information pertaining to that appeal; and, a statement that, upon the lodging of such an appeal, the CEU shall set the matter for a hearing before a hearing officer appointed by the County Board of Supervisors and issue a notice of hearing no sooner than 15 calendar days after the notice. *Id.* at § 352-8(a)-(k). Further, the notice also must state that the administrative civil penalties will no longer be "proposed," and will become final – conferring jurisdiction on CEU to undertake collection actions (along with costs and attorneys' fees) – under the following circumstances: (1) within 10 days after service of a Notice of Violation and Proposed Administrative Civil Penalty if no appeal request is filed; or, (2) within 20 days of service of the Finding of Violation and Order Imposing Civil Penalty (following an appeal) if a request for judicial review of the hearing officer's final appeal decision is not filed with the Humboldt County Superior Court;

or, (3) within 10 days after service of the Humboldt County Superior Court's final adverse decision. *See id*. at §352-8(I)(i)-(iii); *see also* §352-14(a). Lastly, the notice must state that a finalized administrative civil penalty may become a lien against the property on which the violation occurred or exists, and will have "the same force, effect, and priority" as a judgment lien – also, an additional notice can be served if a new violation occurs or if an existing violation persists for more than 90 days. *Id*. at § 352-8(m), (n). In the case of illegal cannabis cultivation, as in the case of other code violations, the above-described procedure (including the provision for seeking judicial review in the Humboldt County Superior Court) applies. *See id*. at 352-3(m); 352-5; 352-13.

As to potential penalties through the 90th day of the existence of a violation, the proposed daily administrative civil penalty could be as high as $10,000 per day, or up to any amount allowed by state law – whichever is higher. *See id*. at 352-2(a). Violations and their attendant daily penalty ranges are graded by severity according to the following method: Category-1 ($1.00 to $1,000 per day), Category-2 ($1,000 to $3,000 per day), Category-3 ($3,000 to $6,000 per day), and Category-4 ($6,000 to $10,000 per day). *See id*. at 352-6(a). Factors that determine the category in which a violation should be placed include: the seriousness of its impact on the public's health, safety, or general welfare; the number of complaints received about it; issues pertaining to the responsible party's willfulness or negligence; the number of times a responsible party has committed the same or similar violations; the amount of penalties which have been

imposed in similar situations in the past; and, any efforts made by the responsible party to correct or remediate the violation. *See id.* at 352-6(b).

On appeal from the CEU's issuance of a Notice of Violation and Proposed Penalty, hearing officers are empowered to find that no violation was committed at all, or to suspend or reduce fines upon a finding that a party took steps to remedy a violation that did not impact the health, safety, or general welfare of the [public]. *See id.* at §352-12(a)-(b). In the event of an adverse decision by a hearing officer, a Finding of Violation and Order Imposing Administrative Civil Penalty issued by such an officer "shall be final in all respects unless overturned or modified on appeal by the Humboldt County Superior Court . . . [and] shall be accompanied by instructions for obtaining [such] judicial review . . ." *See id.* at 352-12(c); *see also* 352-13 (describing the method for seeking judicial review of a hearing officer's final decision).

Prior to the completion of the administrative proceedings described above, in addition to any judicial review that may have been pursued in the Humboldt County Superior Court, the County is not empowered to collect any penalties. *See id.* at 352-14(a). Lastly, the County's Planning Director – either personally or through an assistant so designated – is statutorily authorized to reduce or eliminate penalties, costs, and attorneys' fees, and may enter into compliance and settlement agreements with owners or occupiers of the property on which violations have been deemed to exist; that is, "in exchange for compliance to correct or otherwise remedy the [v]iolation to preserve the

public health, safety, and welfare of the County residents." *See id*. at 352-14(c).

The Code Enforcement Matter of Corrine and Doug Thomas

In August of 2021, the Thomases purchased certain real estate in Miranda, California, situated atop a ridge near Avenue of the Giants in Humboldt County. *See* FAC (dkt. 31) at 30. Behind the residential structure on the property, there is a detached garage and a three-story building which was described in the real estate listing as a "workshop." *Id*. A few days after the closing of their purchase, the Thomases received a Notice of Violation and Proposed Civil Penalty addressed to Summerville Creek LLC, the property's previous owner. *Id*. Apparently referring to the three-story workshop, the Notice reportedly alleged the following violations: violation of the commercial cannabis land use ordinance; construction of a building or structure in violation of building, plumbing, and electrical codes; and, facilities or activities in violation of the commercial cannabis land use ordinance. *Id*.

As to the origin of the Notice, in mid-2021 satellite imagery and a realtor's listing revealed a metal building with a reflective roof used to grow cannabis at a home in Miranda (274 Lower Cathey Ln., APN 211-391-011-000). *See* RFJN, Exh. A (dkt. 32-2) at 13-17[3]

[3] Plaintiffs do not offer any factual dispute about the authenticity, accuracy, or correctness of any of the records and reports of

see also FAC (dkt. 31) at 70. The realtor's photographs (now part of the administrative record of CEU's case-file in the case related to the Thomases' matter) revealed a number of building vents and certain implements of commercial cannabis cultivation. *See* RFJN, Exh. A (dkt. 32-2) at 13-16. As mentioned, in August of 2021, the CEU served a Notice of Violation and Proposed Administrative Penalty, and a Notice to Abate Nuisance, alleging: an "unpermitted commercial cannabis operation with approximately 2,500 square feet of cultivation"; and, a "structure facilitating commercial cannabis activity and constructed contrary to the provisions of the Humboldt County Code." *See id.* at 24-39. Naming Sommerville Creek LLC (the prior owner) as the responsible party, the notices were sent to the address on record (which was now owned by the Thomases) and notified them as to the possible penalties, while also informing them as to how they might remedy what had been graded as Category-4 violations with proposed daily penalties in the order of $6,000. *Id*. at 27, 35. In other words, while the notices were received by the Thomases, they named

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the administrative proceedings that have been referred to in the FAC and appended to Defendants' RFJN; therefore, the court finds that under the doctrines of incorporation by reference and judicial notice (discussed *infra*), consideration of the entirety of the records and reports of those administrative proceedings is appropriate here. *See Apartment Ass'n of L.A. Cnty. v. City of L.A.*, 10 F.4th 905, 910 n.2 (9th Cir. 2021); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (judicial notice can be taken of the "[r]ecords and reports of administrative bodies."); *see also United States v. 14.02 Acres*, 547 F.3d 943, 955 (9th Cir. 2008) (courts may take judicial notice of matters of public record and the reports of administrative bodies and consider them without converting a Rule 12 motion into one for summary judgment).

Sommerville Creek LLC as the responsible party, and they gave 10 days for the correction of the violations such as to avoid being subjected to a daily administrative penalty of $12,000 (the combined sum for 2 violations) for up to 90 days. *See id*. at 24. The required abatement action would consist of the discontinuation of cannabis cultivation and removal of all cannabis and cannabis cultivation infrastructure, including power and irrigation infrastructure, and the removal of all structures connected to cannabis cultivation that had been constructed in violation of local building, plumbing, and / or electrical codes, including obtaining any necessary demolition permits. *Id*. at 36.

In early September of 2021, a CEU site inspection was mutually arranged at which the Thomases (and their attorney) were present, and to which they had expressly consented. *See id*. At 111, 112-13. The inspector found that the "workshop" was, in fact, "a three-story, seven-room wooden building with metal sheathing, on a pier-and-post foundation" with a measured footprint of 3,780 sq. ft., a total effective floor space of 7,956 sq. ft., and with numerous indicia of having been used as an industrial-scale cannabis production facility. *Id*. at 114. In addition to containing various implements associated with cannabis cultivation, the building still contained the "remnants of cannabis . . . on the floor of every space within the building." *Id*. Moreover the inspector also found: that none of the stairwells had proper railing or hand grips, including the one at the entrance to the building; that none of the six doors in the rear of the building – three on the first floor and three on the second floor – opened to landings; and, that the only safety

measure keeping a person from walking out of a second story door and falling was tape. *Id*. The inspector's report attributed various statements to the Thomases (reportedly made during the course of that inspection) ranging from stating that they might allow their children to ride their bicycles inside the structure, to stating that the building had no apparent usefulness and might never be used. *Id*. The inspector's report concluded that the only potential use for the building might be a barn; however, the inspector found even that use to be inapplicable due to the fact that the Thomases owned no livestock, had no farm equipment, and produced no agricultural products. *Id*.

At that time – that is, during 2021 – the County had a policy "requiring all unpermitted structures associated with an unpermitted cannabis operation to be removed." *Id*. at 135. However, by March of 2022, the county promulgated a policy allowing property owners and operators to prepare a plan and description for the (non-cannabis) continued use of such unpermitted structures if such property owners wanted to maintain, rather than remove, the structure. *See id*. at 132-33. The requirements for this policy were: that the structure be identified for a use permitted by applicable zoning and land use laws; that the structure be within the curtilage (*i.e.*, 2 acres) of an existing residence; that the structure be such that it can be permitted (*i.e.*, a building permit); that the continued existence of the structure not cause environmental harm; and, that it be understood that any subsequent unpermitted cannabis cultivation therein

would be subject to further penalties pursuant to the Code. *Id.*

In any event, on September 2, 2021, notwithstanding the fact that they had never been designated as "responsible parties," the Thomases requested an appeal hearing to contest the CEU's determinations as to the unpermitted 3-story structure on their newly-acquired parcel of land. *See id.* at 119-20. However, the following month – on November 8, 2021 – the Thomases executed a Compliance Agreement (*see id.* at 122-30) to resolve the violation; under that agreement, they agreed to obtain a demolition permit, and to remove the structure within six months. *Id.* at 123. In exchange for the Thomases' promised corrective action, the County agreed to stay enforcement for the agreed-upon period, and upon execution of the Thomases' corrective action, the County would dismiss the pending code enforcement case. *Id.* at 124. However, the agreement also stated that if the Thomases failed to uphold their end of the bargain, the County would then name them as responsible parties, lift the stay, and reinstitute the enforcement proceedings. *Id.*

Midway through the 6-month period of the Compliance Agreement – specifically, in March of 2022 – the County promulgated the above-mentioned policy allowing (under certain conditions) the repurposing of such structures. *See id.* at 132-33. That is, the new policy afforded property owners an avenue to avoid demolition by providing the County with a restoration plan that described a permitted use for the structure. *See id.* at 132. Following the promulgation of the new policy, in April of 2022, an attorney representing the

Thomases informed CEU that his clients wished to keep the structure in place pursuant to the new policy (rather than to demolish it pursuant to their agreement). *See id*. at 462-63. Thus, in August of 2022, the Thomases were presented with a new agreement that allowed them to avoid removing their unpermitted structure if, within eight weeks, they submitted a restoration plan and a permit application; however, finding themselves displeased with the fees associated with the repurposing permits (reportedly triple the amount of ordinary permitting fees), the Thomases chose to neither proceed down that avenue, nor to demolish the structure as they had previously agreed. *See* FAC (dkt. 31) at 35-36. The Thomases contend that "they remain intent on keeping the [unpermitted] three-story structure they purchased with the property, but they are not willing to pay penalties for the prior owner's wrongdoing." *Id*. at 36. At bottom, they complain that they "have still not received an administrative hearing since filing their notice of appeal on September 2, 2021." *Id*. On the other hand, as far as the Thomases' case is concerned, the only operative Notice of Violation and Proposed Administrative Civil Penalty still does not name them as the "responsible party," and instead names their property's previous owner, Summerville Creek LLC. *See* RFJN (dkt. 32-2) at 24. While the FAC complains that the Thomases have not yet received an administrative hearing – neither does the FAC allege that the Thomases have either been actually named in a Notice of Violation, nor does the FAC allege that the Thomases have ever actually been fined. *See generally* FAC (dkt. 31) at 1-70. Indeed, the County has expressly stated that "it has

not named the Thomases in an NOV or fined them," (*see* Defs.' Mot. (dkt. 32) at 13), a fact that Plaintiffs expressly confirm. *See also* Pls.' Opp. (dkt. 36) at 14 ("That the County has not yet collected the fines and fees it's assessed does not change this analysis.").

The Code Enforcement Matter of Blu Graham

In 2012, Plaintiff Blu Graham ("Graham") purchased an 80% interest in a parcel of land in Whitehorn on which "he has been slowly developing a homestead [] ever since." FAC (dkt. 31) at 36. At some point, Graham constructed a number of greenhouses on his property for the purpose of growing produce for his family's restaurant; his property "also contains a fire road and [a] rainwater-catchment pond for fire control." *Id*. On May 10, 2018, CEU issued a Notice of Violations and Proposed Administrative Penalty, and a Notice to Abate Nuisance, to Graham and Jessica Modic (who is not a party to this action) alleging the existence of three violations on the land identified by Parcel No. 108-281-002-000 in Whitehorn, California. *See* RFJN (dkt. 32-2) at 139-43, 145-49. The nature of the alleged violations were: grading without permits (HCC § 331-14); construction of buildings in violation of building, plumbing, and / or electrical codes (HCC § 331-28); and, a violation of the County's commercial cannabis ordinance (HCC § 314-55.4). *See id*. at 141, 147.

As set forth in the CEU's summary of the Graham code enforcement matter, the investigation into his property "relied on high-resolution satellite data interpolated with relevant Geographic Information

Science [] data as well as permit records of the Humboldt County Planning and Building Department and related government agencies in order to identify properties engaged in unpermitted cannabis cultivation and to assess code violations related to unpermitted development of the property." *Id*. at 164. While the FAC alleges that Graham "was not cultivating cannabis on his property and [that] no infrastructure on his property supported cannabis cultivation," the FAC does not state that Graham disputes the other two alleged violations. *See* FAC (dkt. 31) at 36-43. Nevertheless, Graham contends that "[o]n or about May 12, 2018, the County published [a notice] in a local newspaper that [Graham's] property was under an abatement order relating to illegal [cannabis] cultivation," which "caused him stress and embarrassment." *Id*. at 37.

On May 21, 2018, Graham filed an appeal request which "disputed the [CEU's] determination that a violation exists but also stated that the requested corrective actions would commence [] [and] satellite review of visible abatement efforts on the subject property revealed that roughly within the 10-date abatement period that the unpermitted greenhouse/hoophouse structures cited as violations had been removed from the property [but that] [t]wo greenhouse/hoophouse structures on [the] [S]outh portion of [the] property were re-constructed in 2019; however, this construction was consistent with an approved building permit application received for constructing two Agricultural Exempt greenhouse structures." RFJN (dkt. 32-2) at 164-65. The upshot was that, from CEU's perspective, "two of the three cited violations were timely

abated and [were] not of concern for [the] [appeal] hearing," but that "the unpermitted grading violation had not been corrected or resolved." *Id*. at 165.

Over the next several years, the County offered Graham several opportunities to settle the remaining dispute about the unpermitted grading violation. *See* FAC (dkt. 31) at 39-40. In July of 2018, a County official "acknowledged that [Graham's] pond may be for fire prevention," but also noted that he "had evidence that [the] grading was done with the intent to support cannabis infrastructure" – an assertion which Graham disputed, resulting in his rejection of a settlement offer. *Id*. at 39. In September of 2018, the County proposed another settlement officer that required Graham to admit he had graded the land for unpermitted cannabis cultivation – once again, Graham rejected the offer. *Id*. A similar agreement was proposed in early 2019 which Graham also rejected. *Id*. at 40. The aforementioned agreements all contained penalty provisions that required Graham to pay a sum ranging from $10,000 to $20,000. *See id*. at 39-40. However, in August of 2021, the County offered Graham a no-penalty settlement agreement that proposed the re-grading and filling of the pond in question which Graham also refused to sign "because the offer required him to accept responsibility for the County's [reportedly] baseless claim that he was cultivating cannabis." *Id*. at 40; *see also* RFJN (dkt. 32-2) at 168-70.

After a good bit of more back-and-forth, during which Graham repeatedly expressed that he wanted to keep the pond for firefighting purposes (*see id*. at

182-83; *see also* FAC (dkt. 31) at 40-42), his case finally came on for an administrative hearing, which was scheduled for October 14, 2022. *Id.* at 41. The only remaining violation at issue for the hearing was the unpermitted grading (as set forth in the above-discussed summary of Graham's code enforcement matter, Graham's prior removal of the unpermitted structures meant that "two of the three cited violations were timely abated."). *See* RFJN (dkt. 32-2) at 164-65. The FAC appears to imply that Graham only became aware of this in the lead-up to the hearing in 2022, rather than years earlier when his own removal of the unpermitted greenhouses and their reconstruction in compliance with the permitting process had been undertaken. *See* FAC (dkt. 31) at ¶¶ 387, 388. Prior to the hearing, however, Graham contacted the County and requested a meeting with Defendant Ford (Director of the County's Planning and Building Department) ("Ford"); thereafter, Graham met with Ford and other county officials on September 26, 2022. *Id.* at ¶¶ 393, 394. During that meeting, Graham and Ford agreed to resolve Graham's remaining violation (unpermitted grading) as such: (1) Graham would, there-and-then, apply and pay for a grading permit using a hand-drawn site plan and a letter he had previously procured from an engineer finding that the site was stable; and, (2) by paying the County's administrative costs (occasioned in the course of Graham's code enforcement matter). *See* RFJN (dkt. 32-2) at 235. Graham's grading permit was accepted the same day without the need to pay any filing fee with the proviso that Graham would pay the application fee when he would later "pull the

permit." *Id.* Graham confirmed his agreement via email correspondence with Ford in which he expressed his agreement and stated that he was dropping off a check for the administrative fees that day. *Id.* That day, Graham rendered payment to the County for $3,747.29 in administrative fees associated with his case. *See* FAC (dkt. 31) at 43. Pursuant to this agreement, the County then cancelled Graham's appeal hearing; the County also refunded Graham $2,951.18 of what he paid in administrative fees (*see* RFJN (dkt. 32-2) at 243); and, at the end of the day, Graham ended up paying just under $800 to resolve his code enforcement case – a sum which presumably included his permit fee. *See id.* at 242-49 (settlement packet); *see also* FAC (dkt. 31) at 43. With the consummation of this agreement, and the issuance of his grading permit, dated October 3, 2022, Graham's code enforcement matter was resolved. *See* RFJN (dkt. 32-2) at 251.

The Code Enforcement Matter of Rhonda Olson

In September of 2020, Plaintiff Olson purchased three adjacent parcels of land near her house in Orleans, California, for a combined sum of $60,000. *See* FAC (dkt. 31) at 44. One or more of the parcels "came scattered with junk and needed renovations," and Olson intended to use the parcels "to provide housing for her family and close friends in the properties' existing homes and to build affordable housing that she could sell on the undeveloped parcel." *Id.* at ¶¶ 411, 412. The properties in question were located at 1030 and 1133 Red Cap Road; and, in the recorded deed (recording their purchase by Rhonda Olson from Paul

Zaccardo and Kevin Penny on behalf of "Lb 4 Lb Corporation") the parcels were respectively identified as APN / Parcel Id. Nos. 529-171-033-000 ("Parcel-1"), 529-181-036-000 ("Parcel-2"), and 529-181-038-000 ("Parcel-3"). *See* RFJN (dkt. 32-2) at 519-24. The properties in question had been – for quite some time – the subject of code violation enforcement actions. *See id.* at 286-88, 290-94.

On April 18, 2018, as to Parcel-1, Paul Zaccardo was issued a Notice of Violation and Proposed Administrative Civil Penalty and a Notice to Abate asserting two violations – construction of structures in violation of building, plumbing, and / or electrical codes, and a violation of the commercial cannabis cultivation ordinance. *Id.* at 276-88. Remedying the violations would have involved applying for and obtaining permits to develop and implement a restoration plan for the unpermitted structures; and, ceasing the commercial cultivation operations and removing the supporting infrastructure while applying for and obtaining permits to develop and implement a restoration plan. *Id.* at 279.

On August 20, 2020, weeks before Olson's purchase, police executed a search warrant on Parcel-1 and two neighboring properties; the agencies onsite were the CEU, the California Department of Fish and Wildlife, the California Department of Food and Agriculture, the Department of Justice, the National Guard, and the Humboldt County Hazardous Materials Unit. *See id.* at 290-91. During the course of this inspection, the CEU inspector found that all three properties "were working in concert as one large

cannabis cultivation operation." *Id*. at 291; *see also id*. at 298 (satellite imagery of the three adjacent parcels clearly shows a combined operation). As it related to the property that would be purchased by Olson the following month, the CEU inspector noted the following condition: the presence of two unpermitted structures (greenhouses over 120 sq. ft. in size that had been erected without the necessary electrical or building permits) situated atop a 5,700 sq. ft. area of graded land (for which a grading permit had never been secured). *Id*. at 291-92, 295 (constituting violations of HCC §§ 314-55.4, 331-14. 521-4, and 321-28). One greenhouse was an 1,800 sq. ft. structure with a metal frame, wood bracing, and electrical wiring; the second was an 1,100 sq. ft. structure with a PVC frame, wood bracing, and electrical wiring. *Id*. at 295. The result of the inspection, as to Parcel-1, was the identification of six violations: (1) grading without permits (19,750 sq. ft.); (2) construction of structures in violation of building and electrical codes (16 counts); (3) violation of the commercial cannabis land use ordinance; (4) development in a Streamside Management Area without a permit (17 counts); (5) improper storage and removal of solid waste (2 counts); and, (6) use of a recreational home or mobile home as a residence (1 count). *Id*. at 297. The inspection report also noted that, "a Mark Zaccardo was located across the street and found to be associated with Lb 4 Lb LLC [and] [b]oth [he] and Paul Zaccardo have New York addresses and it is likely that the two are involved with a larger cannabis cultivation operation." *Id*.

Less than three weeks later, on September 8, 2020, on behalf of Lb 4 Lb LLC, Paul Zaccardo and Kevin Penny sold and conveyed Parcel-1, and two nearby properties (Parcel-2 and Parcel-3), to Plaintiff Olson in exchange for $60,000. *See id*. at 519-24; *see also* FAC (dkt. 31) at ¶ 410. Three days later, on September 11, 2020, a Notice of Violation and Proposed Administrative Penalty issued as to Parcel-2 naming Lb 4 Lb LLC as the responsible party, as well as another notice as to Parcel-1 (the previous notice as to Parcel-1, mentioned above, having been issued in April of 2018). *Id*. at 300-11. As to the violation details, Parcel-2 was assessed with six violations: (1) unpermitted commercial cannabis operation with approximately 2,400 sq. ft. of cultivation (Category-4 violation); (2) four structures constructed in violation of the applicable building and electrical codes (Category-4 violation); (3) grading without permits (Category-4 violation); (4) development in a mapped Streamside Management Area to facilitate commercial cannabis cultivation activity (Category-4 violation); (5) junk and inoperable vehicles (Category-1 violation); and, (6) multiple piles of solid waste (Category-1 violation). *See* RFJN (dkt. 32-2) at 302. Regarding the violation details for the 2020 Notice for Parcel-1, CEU alleged three Category-4 violations (violation of the cannabis land use ordinance; structures in violation of the building and electrical code; and unpermitted grading) and a single Category-1 violation (improper storage and removal of solid waste). *Id*. at 309. As reflected in all of the above-cited records – the County had not issued a single notice of violation naming Olson as the responsible party for the violations that

already existed on Parcel-1 and Parcel-2 in the aftermath of her purchase of the three parcels of land at 1030 and 1133 Red Cap Road.

A few weeks after her purchase of the properties in question, a consultant hired by Olson performed a detailed site assessment and communicated it to CEU by way of a response to the violation notices. *See id.* at 319-26. In addition to recommending (presumably to Olson) the removal of the unpermitted structures, junked vehicles, and solid waste – Olson's consultant's assessment inquired from CEU whether Olson would be responsible for resolving the permitting issues on the subject properties. *Id.* at 325. Further, the consultant noted that Olson was attempting to communicate with the prior owners "to determine if they will return to resolve these issues," including attempting to persuade the previous owners to remove the junked vehicles. *Id.* at 326. At bottom, Olson's consultant requested "a year extension of time before the ten (10) day expiration of the violation notices to allow adequate time for corrective actions to be implemented." *Id.*

A little over five months later, Olson communicated with the CEU to inquire further about the violations. *See id.* at 313-17. In one email, Olson noted the existence of a tunnel of some sort that had been constructed under one of the structures that also needed to be addressed and asked if she could set up a meeting with CEU officials onsite "to address the issues from the previous owners." *Id.* at 316. In turn, CEU officials informed her that the properties she had recently purchased all had active code

enforcement cases and that "[b]efore any permits for development can be issued[,] the code enforcement case and associated violations must all be cleared and the case closed." *Id*. at 315. That same day, Olson and a consulting firm (Trinity Valley Consulting Engineers) assisting her asked CEU for the details of the violations for the three parcels. *See id*. at 313-14. The following morning, CEU responded with the details of the violations that existed on each parcel, as well as setting forth the following remedial actions required for resolution: (1) Parcel-1 required the removal of unpermitted structures (greenhouses), removal of solid waste, and contracting with an engineer to resolve unpermitted grading (which might not require a grading plan due to the seismic instability rating); (2) Parcel-2 required removal of unpermitted greenhouses, contracting with an engineer to resolve the unpermitted grading of the flats (for which a grading plan would be required), the removal of tanks located within the Streamside Management Area, the removal of solid waste, and the removal of a junked vehicle (a school bus); and, (3) Parcel-3 required the restoration of the residence back to its original use (*i.e.*, removing cannabis infrastructure), removal of all solid waste from the property, and contracting with an engineer to resolve the unpermitted tunnel underneath the rear storage shed on the property (for which a grading plan would be required). *Id*. at 313.

In April of 2022, when more than 18 months had passed from the time that Olson's consultant had asked for a 1-year extension of time and all the necessary corrective actions had not been effected, the County served a new Notice of Violation and Proposed

Administrative Civil Penalty and a Notice to Abate Nuisance naming Olson as the responsible party as to the violations on Parcel-1. *See id*. at 328-37, 346-436. This notice alleged a Category-1 violation (multiple piles of solid waste), and three Category-4 violations (unpermitted cannabis operation, unpermitted grading, and structures in violation of applicable building and electrical codes). *See id*. at 331. On April 30, 2022, Olson requested an appeal hearing. *See id*. at 336-37.

In May of 2022, a third consultant representing Olson (DTN Engineering, Consulting, and Permitting) submitted a "Current Plan to Lift the Abatement." *See id*. at 339-34. This plan proposed various remedial actions for each of the three parcels including: filling the existing cultivation holes (each of which was approximately 3 ft. in diameter and 2 ft. deep) as well as compacting the soil and putting erosion control measures in place (while assuming that an engineered grading plan would not be required); using approximately 45 yards of a self-consolidating cementing material to fill the tunnel beneath the shed; demolition of the shed; preparing a soils report; and, site preparation. *Id*. at 340-44. In addition to the construction costs, the proposal included budgeted sums for engineering fees, permitting fees, and an additional 25% for contingencies. *Id*. at 344. Including the extra 25% allowance for contingencies, Olson's third consultant estimated the total project cost (for all three parcels) as $61,125.00. *Id*. On May 18, 2022, CEU responded to the following effect: (1) as to Parcel-3, CEU agreed with the consultant's proposed resolution plan; (2) as to Parcel-2, CEU added that the cultivation refuse and infrastructure, and the water

tanks that had been installed in the Streamside Management Area, must be removed, that the 10,000 sq. ft. graded area in the Northeast corner of the parcel must be permitted, and that the accessory building with a nexus to cannabis cultivation must either be permitted or demolished; and, (3) as to Parcel-1, the unpermitted cannabis cultivation structures, infrastructure, and solid waste should also be removed. *Id.* at 438-39. Defendants report that "Olson agreed to comply, but the April 2022 NOV remains open [and] [t]he County remains hopeful of resolution." *See* Defs.' Mot. (dkt. 32) at 16.

The above-cited and judicially-noticed information about the course of Olson's code enforcement case has been omitted from the FAC. Instead, the FAC attempts to paint an inaccurate portrait of these events by amassing the various speculative proposed penalties together and stating that because Olson "faces [] a still staggering $7,470,000" in proposed administrative civil penalties, she "developed shingles on her face due to the stress of the millions of dollars in fines hanging over her head and she temporarily lost the use of her left eye [while] [t]o date, the County has not provided her a hearing or issued her the permits she needs to develop her property." *See* FAC (dkt. 31) at 48.

The Code Enforcement Matter of Cyro Glad

On September 1, 2018, Glad purchased a 40-acre property (identified as APN 218-041-0030 and -006)) from Patrick Woods and Gayna Uransky; at the time of purchase, "there was a greenhouse and several

hoop houses scattered around the front parcel." *See* FAC (dkt. 31) at 49; *see also* RFJN (dkt. 32-2) at 528-30 (recorded grant deed). Between May and August of 2018, using satellite imagery, the County identified various code violations on the property. *See id*. At 532-38. On November 2, 2018, the County served Glad with a Notice of Violation (*see* FAC (dkt. 31) at 49) and a Notice to Abate (*see* RFJN (dkt. 32-2) at 540-45). The cited violations (and the necessary corrective actions) were as follows: unpermitted grading (obtain permits and implement a restoration plan); structures in violation of building, plumbing, and / or electrical codes (remove unpermitted structures by first obtaining demolition permits); unpermitted commercial cannabis cultivation (cease commercial cannabis cultivation activity and remove all supporting infrastructure, and obtain permits to develop and implement a restoration plan); impermissible development within a Streamside Management Area (remove impermanent materials from waterway and, if applicable, submit restoration plan to remediate). *Id*. at 542. The Notice was served on Glad by mail at the same P.O. Box address in Redway, California, that was listed on the recorded grant deed under which he took title to the subject property. *Id*. at 540; *see also id*. at 528.

On November 16, 2018, Glad submitted forms requesting an appeal hearing, but noted therein that "all nuisances are in [the] process of being removed, cleaned, and [brought into compliance] with county code standards." *Id*. at 565-66; *see also* FAC (dkt. 31) at ¶¶ 475, 476. Glad then hired an engineer to assess the property while "he continued his work of cleaning up the mess that the prior occupants had left." *Id*. at

¶ 477. Glad submits that, in February of 2019, he sent Defendant Ford a letter "to plead with him and seek compassion of the violations the County cited [him] for just weeks after he purchased the property," and maintains that he "never received a response." *Id.* at ¶¶ 478, 479. Glad submits that "[o]ver four years have passed since [he] requested his initial hearing, but the County has still not scheduled one for him." *Id.* at ¶ 480. However, county records indicate that CEU sent Glad a letter on May 6, 2021 (addressed to that same P.O. Box address in Redway, California) asking him whether or not the County should schedule his appeal hearing, or if he preferred to enter into a compliance agreement and settle and resolve his case. *See id.* at 569-70. The record does not indicate any further action on Glad's case by either Glad or the County.

LEGAL STANDARDS

The currently-pending motion to dismiss (dkt. 32), filed pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6), asserts a lack of subject matter jurisdiction and challenges the sufficiency of the allegations set forth in the FAC. When evaluating 12(b)(1) challenges to the court's subject-matter jurisdiction, it should be noted that Plaintiffs bear the burden of proving jurisdiction at the time the action is commenced. *See Tosco Corp. v. Cmtys. for Better Env't*, 236 F.3d 495, 499 (9th Cir. 2001), overruled on other grounds by *Hertz Corp. v. Friend*, 559 U.S. 77, 96-97 (2010); *see also Kingman Reef Atoll Invs., LLC v. United States*, 541 F.3d 1189, 1197 (9th Cir. 2008). "Subject matter jurisdiction can never be forfeited or waived and federal courts have a continuing independent obligation to determine

whether subject-matter jurisdiction exists." *Leeson v. Transamerica Disability Income Plan*, 671 F.3d 969, 975 n.12 (9th Cir. 2012) (internal quotation marks and citations omitted). "A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack "asserts that the allegations contained in the complaint are insufficient on their face to invoke federal jurisdiction." *Id.* When considering this type of challenge, courts are required to "accept as true the allegations of the complaint." *See United States ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1189 (9th Cir. 2001); *see also Miranda v. Reno*, 238 F.3d 1156, 1157 n.1 (9th Cir. 2001). On the other hand, in a factual attack, "the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air*, 373 F.3d at 1039. In resolving a factual attack on jurisdiction, courts need not presume the truthfulness of the plaintiff's allegations and they may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment. *See id.*; *see also White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). Once a factual challenge has been raised, the party opposing dismissal must present "affidavits or other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction." *Safe Air*, 373 F.3d at 1039. (quoting *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003)); *see also Colwell v. Dep't of Health & Human Servs.*, 558 F.3d 1112, 1121 (9th Cir. 2009) (quoting *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989)).

Appendix C

In reviewing the sufficiency of a complaint in light of a request to dismiss under Rule 12(b)(6), before the presentation of any evidence either by affidavit or admissions, the court's task is limited – the issue is not whether a plaintiff will ultimately prevail, instead the issue is whether a plaintiff is even entitled to offer evidence to support the claims. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *see also Gilligan v. Jamco Development Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). Dismissal is proper when an operative complaint either fails to advance "a cognizable legal theory," or fails to allege "sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990); *see also Graehling v. Village of Lombard, Ill.*, 58 F.3d 295, 297 (7th Cir. 1995).

In evaluating such motions, courts must: (1) construe the operative complaint in the light most favorable to the plaintiff; (2) accept all well-pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-338 (9th Cir. 1996). However, courts are not required "to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Sciences Securities Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted). Courts "need not assume the truth of legal conclusions cast in the form of factual allegations," *U.S. ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643, n. 2 (9th Cir. 1986), and therefore courts must not "assume that the [plaintiff] can prove facts that [he or she] has not alleged or that the defendants have

violated . . . laws in ways that have not been alleged." *See Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 526 (1983).

To survive dismissal under the standards associated with Rule 12(b)(6), while complaints do not necessarily need to be hyper-detailed, they do need to contain enough relevant factual allegations such as to establish the grounds of a plaintiff's entitlement to relief – and, doing so "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action . . ." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp.*, 550 U.S. at 557). Under these standards, courts follow a "two-prong approach" for addressing a motion to dismiss: (1) first, the tenet that a court must accept as true all of the allegations contained in a complaint does not apply to legal conclusions, threadbare recitals of the elements of a cause of action, or conclusory statements; and, (2) only a complaint that states a *plausible* claim for relief survives a motion to dismiss. Plausibility is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense; however, where the well-pleaded facts do not permit the court to infer more than the mere *possibility* of misconduct, the complaint may have alleged, but it has failed to "show," "that the pleader is entitled to relief" as required by Fed. Rule Civ. Proc. 8(a)(2). *See generally Iqbal*, 556 U.S. at 678-79.

In light of these principles, a court considering a Rule 12(b)(6) motion to dismiss can choose to begin by identifying allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. *Id.* at 679. While legal conclusions can provide the framework of a complaint, they must be supported by well-pleaded factual allegations. *Id.* When a complaint does in fact contain well-pleaded and factual allegations, courts will assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. *Id.* In short, for a complaint to survive a Rule 12(b)(6) motion to dismiss, the nonconclusory factual content, and reasonable inferences from that content, must plausibly suggest a claim entitling the plaintiff to relief. *See Moss v. United States Secret Serv.*, 572 F.3d 962, 970 (9th Cir. 2009).

As to the nature of dismissals, leave to amend should be granted unless it is clear that amendment would be futile because further amendments cannot remedy the defects in the complaint. *See Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1051 (9th Cir. 2008) ("Dismissal without leave to amend is proper if it is clear that the complaint could not be saved by amendment."); *see also Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005); *California ex rel. California Department of Toxic Substances Control v. Neville Chemical Co.*, 358 F.3d 661, 673 (9th Cir. 2004) ("[D]enial of leave to amend is appropriate if the amendment would be futile.") (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

Appendix C

DISCUSSION

Pleading rules mandate that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While the rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the claim plainly and succinctly. *See Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Even after an amendment (*compare* dkt. 1 with dkt. 31), the FAC in this case is anything but a short plain statement of the factual allegations underlying Plaintiffs' claims for relief. Spanning 70 pages, with more than 600 numbered paragraphs, the FAC is overwhelmingly dominated by legal arguments couched as factual allegations, unreasonable inferences, unwarranted deductions, conclusory assertions, unjustified labels, and hyperbole. As to the relatively small number of paragraphs that do contain actual allegations of fact, the vast majority of that content is either irrelevant or simply implausible. By way of example, the FAC's "statement of facts" begins with the following series of statements:

> For decades, the County has attracted off-the-grid homesteaders, hippies, and other counter-culture and anti-government types. As a likely result of the County's geographic, economic, and political makeup, Humboldt has scarcely enforced its building code as thousands of its residents built homes and accessory structures and graded land without first obtaining a permit from the County. The County allowed this culture of unpermitted development to grow

> unabated. After Californians voted to legalize the recreational use of marijuana, however, Humboldt County discovered a newfound rigor for enforcing the permitting requirements and nuisance laws that it had overlooked or left unenforced for decades. The County amended its code to authorize the Planning and Building Department to police cannabis cultivation in tandem with these nuisances and permitting requirements. Faced with the same constraints that made code enforcement difficult historically in Humboldt, the Planning and Building Department devised a strategy to supercharge its abatement regime: *ticket everyone* and force the accused to prove their innocence.
>
> FAC (dkt. 31) at ¶¶ 34-39 (emphasis in original).

The above-quoted passage is emblematic of the overwhelming majority of the FAC's 600 numbered paragraphs. Indeed, because the FAC paints such a distorted picture of the interactions between Plaintiffs and the County, Defendants have asked the court to take judicial notice of approximately 600 pages of the records and reports of administrative agencies, as well as a number of local laws, ordinances and regulations, law enforcement records, a court decision, and other official county records and documents. *See generally* RFJN (dkt. 32-2) at 1-570; *see also* SRFJN (dkt. 37-2) at 1-50. Plaintiffs have lodged an objection to the Defendants' RFJN. *See* Pls.' Obj. (dkt. 36-1) at 2. However, the objection is limited to a single sentence maintaining that: "[t]he Plaintiffs object to the County's request for judicial notice in support of their

motion to dismiss [] on grounds that it impermissibly seeks to introduce facts that are [] beyond the allegations of the subject pleading and thus impermissibly converts their motion into a motion for summary judgment, and [introduces facts that are] not judicially noticeable." *See id.* (citing Fed. R. Evid. 201). Other than this single unspecific and unsupported sentence, Plaintiffs' objection offers nothing.

Judicial Notice

In evaluating a Rule 12(b)(6) motion, review is ordinarily limited to the contents of the complaint and material properly submitted with the complaint. *See Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). Under the incorporation by reference doctrine, however, the court may also consider documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds* by *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1121 (9th Cir. 2002). The court may treat such documents as "part of the complaint, and thus may assume that [their] contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). This doctrine applies to the majority of the material from Defendants' RFJN cited herein as those code enforcement matters, the local statutory framework, and agency records in question have been discussed throughout the allegations in the FAC;

moreover, while Plaintiffs' have lodged a *pro forma* objection, they have not questioned their accuracy or their authenticity (*see* dkt. 36-1).

Additionally, contrary to Plaintiffs' suggestion, at the motion to dismiss phase, the court may take judicial notice of certain items without converting the motion to dismiss into one for summary judgment. *See Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994). For instance, the court may take judicial notice of facts "not subject to reasonable dispute" because they are either: generally known within the trial court's territorial jurisdiction; or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *See* Fed. R. Evid. 201; *see also Harris v. Cnty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (noting that the court may take judicial notice of "undisputed matters of public record," including "documents on file in federal or state courts," as well as "documents not attached to a complaint . . . if no party questions their authenticity and the complaint relies on those documents").

Because Plaintiffs do not offer any factual dispute about any of the contents of Defendants' RFJN cited herein (as well as Defendants' SRFJN) – namely, the records and reports of administrative agencies, as well as the local laws, ordinances and regulations, law enforcement records, a court decision, and the other official county records and documents – judicial notice is proper. *See Aids Healthcare Found., Inc.*, 208 F. Supp. 3d at 1098 n.2 (citing *Colony Cove Props.*, LLC, 640 F.3d at 954-56 n.3-4) (taking judicial notice of undisputed contents of local ordinances and

resolutions)); *see also Apartment Ass'n of L.A. Cnty.*, 10 F.4th at 910 n.2; *see also Barron*, 13 F.3d at 1377 (judicial notice can be taken of the "[r]ecords and reports of administrative bodies"); *see also United States v. 14.02 Acres*, 547 F.3d at 955 (courts may take judicial notice of matters of public record and the reports of administrative bodies and consider them without converting a Rule 12 motion into one for summary judgment). Thus, Plaintiffs' unspecific and unsupported objection (dkt. 36-1) is **OVERRULED** and Defendants' RFJN and SRFJN (dkts. 32-2 and 37-2) are **GRANTED**.

Plaintiffs' Standing to Bring Claim-4 (Excessive Fines and Fees)

Defendants contend that all of the Plaintiffs in this case lack Article III standing "for their claims asserting unconstitutional fees and fines" because of a failure to allege a constitutionally cognizable injury in fact. *See* Defs.' Mot. (dkt. 32) at 17-18. As to Graham, Defendants note that he received his grading permit and paid only $523 permit fees; he is no longer facing any proposed fines; the County resolved his case and refunded all fees (with the exception of the fees associated with his grading permit); thus, Graham owes no penalties. *Id.* at 17. As to the Thomases, Defendants point out that they appealed a violation notice in which they were not named as responsible parties; nevertheless, they entered into a compliance agreement, as a result of which the County never issued any notice in their names; it is speculative whether they will ever be made to pay any fine or penalty at all because "they are seeking to resolve the violations

[that attached to the land they purchased] under a new policy allowing them to maintain an unpermitted structure for non-cannabis uses[,] [t]hus, their case is hypothetical." *Id*. As to Olson, Defendants claim that, while she appealed an April 2022 notice naming her as the responsible party, her third consulting engineer has since contacted the County to resolve the violations that attached to the land she purchased; accordingly, Defendants submit that because she also may never be made to pay any fine, her excessive fine claim is also speculative. *Id*. at 18. Lastly, as to Glad's case, Defendants note that neither have any fines actually been imposed, nor have any been paid; the proposed administrative penalties set forth in his notice (and those of the other Plaintiffs) "are proposed but not imposed [and] Glad may resolve all violations as Graham did and pay no fine or administrative fee." *Id*. at 18.

Plaintiffs disagree and submit that they do "have standing to challenge the process they're stuck in." *See* Pls.' Opp. (Dkt. 36) at 13-14. While overlooking the distinction between proposed fines (as set forth in HCC §§ 352-6(a),(b) and 352-7), and finalized fines that would be subject to collections actions (as set forth in HCC §§ 352-12(c) and 352-14(a)), Plaintiffs simply declare that "[t]hey have had daily fines accrue against them." Pls.' Mot. (dkt. 36) at 13. Plaintiffs add that "they have hired engineers and lawyers in response to the County's sanctions," and that "[t]hey have also racked up administrative fees by contesting their cases and are now subject to treble fees for retroactive permits for any structure cited with a cannabis violation." *Id*. Further, Plaintiffs submit that they

have "incurred reputational damage from the County's publication of its false charges . . . [and that the violation notices have] made Plaintiffs ineligible for permits to develop their property while their abatement cases are outstanding." *Id*. Plaintiffs also dispute that Graham only paid $523 in permit fees – instead, they contend that Graham's permit "really cost $936 . . . in addition to the $795.92 that [he] paid in administrative fees . . . [and] [h]is payment of these fees confers standing, as does the County's unconstitutional denial of his Safe Home permit until he settled his abatement case." *Id*. at 13-14. Lastly, Plaintiffs claim that even the "proposed" nature of the fines set forth in the initial violation notices (which can be reduced or eliminated at no fewer than three junctures in the administrative and judicial review process – that is, by the hearing officer, by Director Ford, or during review in the Humboldt County Superior Court) – is "enough to confer standing because they are 'certainly impending' and 'there is a substantial risk that the harm will occur . . . [t]hus, a 'credible threat of enforcement' is enough for standing." *Id*. at 14 (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 161, 165 (2014)).

Article III limits federal judicial jurisdiction to "Cases" and "Controversies." *See* U.S. Const. Art. III §2. "The doctrine of standing gives meaning to these constitutional limits by 'identify[ing] those disputes which are appropriately resolved through the judicial process.'" *Susan B. Anthony List*, 573 U.S. at 157 (quoting *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560 (1992)). When viewed through that lens, "the irreducible constitutional minimum of standing

contains three elements." *Lujan*, 504 U.S. at 560. The first requirement is that a plaintiff must have suffered an "injury in fact," that is, an invasion of a legally protected interest which is both concrete and particularized, as well as being actual or imminent, as opposed to conjectural, speculative, or hypothetical. *See Lujan*, 504 U.S. at 560. Second, there must be a nexus of causation between the injury and the conduct that has been complained of; in other words, "the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court.'" *Id*. at 560-61 (quoting *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976)). The third requirement – redressability – is that it must be likely, as opposed to merely speculative, that the injury will actually be "redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (quoting *Simon*, 426 U.S. at 37, 43).

The court should also note at this point that "[t]he limitation on federal subject-matter jurisdiction to 'cases or controversies' has both a standing and a ripeness component, which are two sides of the same coin." *See Plant Oil Powered Diesel Fuel Sys. v. ExxonMobil Corp.*, 801 F. Supp. 2d 1163, 1178 (D.N.M. 2011). A "[c]orrect analysis in terms of ripeness tells us *when* a proper party may bring an action and analysis in terms of standing tells us *who* may bring the action." *See Presbytery of the Orthodox Presbyterian Church v. Florio*, 40 F.3d 1454, 1462 (3d Cir. 1994) (emphasis in original). The two doctrines, of course, "'originate' from the same Article III limitation.'" *Susan B. Anthony List*, 573 U.S. at 157 n.5 (quoting

DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 335 (2006)). Sometimes, as appears to be the case here, standing and ripeness "boil down to the same question." *See Susan B. Anthony List*, 573 U.S. at 157 n.5; *see also MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007).

Defendants' standing argument is addressed to Plaintiffs' "claims asserting unconstitutional fees and fines." *See* Defs.' Mot. (dkt. 32) at 18. Therefore, Plaintiffs' assertions to the effect that "they hired engineers and lawyers," or that "they have already incurred reputational damage from the County's publication of its [reportedly] false charges," or that the violation notices supposedly "made the Plaintiffs ineligible for permits to develop their property while their abatement cases are outstanding" are irrelevant and of no import when analyzing the question of whether these Plaintiffs have standing to bring a claim for excessive fines and fees under the Eight and Fourteenth Amendments (Claim-4) (*see* FAC (dkt. 31) at 64-66). The FAC focuses this claim on the County's alleged "policy, practice, and custom of levying Category 4 penalties and ordering the destruction of property for violations of the county code . . . that the County alleges have a nexus to illegal cultivation of cannabis." *Id*. at 64. In short, the FAC's excessive fines and fees claim (Count-4) is clearly directed to the Category-4 fines that appear in the "proposed" fine sections of the notices of violation involved in each of the Plaintiffs' code enforcement cases. *See id*. at ¶¶ 565, 570, 571, 573-75, 577-78. Strangely, Plaintiffs also contend that "[t]he County's policy of requiring that landowners return property to its 'pre-cannabis' state' are also

punitive fines within the meaning of the Eighth Amendment." *See id.* at ¶ 576.

"The Eighth Amendment's Excessive Fines clause 'limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense.'" *Austin v. United States*, 509 U.S. 602, 609-10 (1993) (quoting *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265 (1989)) (emphasis removed). "'The notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law.'" *Austin*, 509 U.S. at 610 (quoting *United States v. Halper*, 490 U.S. 435, 447-48 (1989)). Importantly, "[t]he Clause prohibits only the imposition of 'excessive' fines, and a fine that serves purely remedial purposes cannot be considered 'excessive' in any event." *Austin*, 509 U.S. at 622 n.14. Accordingly, because it cannot be reasonably contended – or considered "plausible," to put it in more fitting verbiage (*see Iqbal*, 556 U.S. at 678-79) – that "[t]he County's policy of requiring that landowners return property to its 'pre-cannabis' state'" is punitive within the meaning of the Eighth Amendment, this allegation (*see* FAC (dkt. 31) at ¶ 576) too is of no import. This is so because requiring landowners to conform their property to a non-illegal use is not punitive and clearly "serves purely remedial purposes which cannot be considered 'excessive' in any event." *See Austin*, 509 U.S. at 622 n.14

As to the FAC's remaining allegations supporting Plaintiffs' excessive fines and fees claim (to wit, the proposed fines), Plaintiffs' assertions as to their supposed injuries ring hollow. No party has actually paid

a fine. It should also not escape mention that all of these Plaintiffs (either knowingly or with constructive knowledge) purchased properties with presumably obvious pre-existing code violations – in other words, they all bought their way into existing code enforcement matters. Having done so affects the traceability analysis under the second prong of the standing analysis. *See Lujan*, 504 U.S. at 560-61. Further, Graham's case is fully resolved and it is certain that he will never pay a fine associated with the code enforcement matter described in this case rendering his part of this claim moot. The Thomases' violation notice did not even name them as a responsible party, they have entered into a compliance agreement, and it would be highly speculative to assume that they will ever pay a fine. The same is true for Olson and Glad, assuming that they would ever pay a fine in any amount would also require a great deal of speculation – let alone assuming that they would pay an 'excessive' fine.

In short, given that no Plaintiff has sustained any actual injury in the nature of excessive fines and fees in violation of the Eighth and Fourteenth Amendments, and given the fact that any future injury is speculative at best, Plaintiffs lacks standing to pursue a claim that they have been subjected to "excessive fines and fees" as described in Claim-4. *See generally Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.") (internal quotation marks omitted); *see also Guatay Christian Fellowship v. Cnty. of San Diego*, 670 F.3d 957, 983-84 (9th Cir. 2011) (procedural due process claims ripen

only when a distinct property deprivation has *already* occurred, thereby warranting federal court's consideration of whether the process due was provided); *Witt v. Dep't of Air Force*, 527 F.3d 806, 812-13 (9th Cir. 2008) (due process claim not ripe for adjudication where injury asserted may or may not occur); *Taylor v. Def. Fin. & Accounting Serv.*, No. CIV. 2:12-2466 WBS DAD, 2014 U.S. Dist. LEXIS 268, 2014 WL 28820, at *14 (E.D. Cal. 2014) (neither the mere existence of unpaid debt, nor the mere notification that a debt was owed, constituted a deprivation of property, and even the initiation of collection efforts did not constitute a final deprivation of property where the debt was recalled and recoupment efforts ceased); *see also Sanders v. Dickerson*, No. CV-09-299-ST, 2010 U.S. Dist. LEXIS 100132, 2010 WL 3824077, at *10 (D. Or. 2010) (pretrial detainee's claim that county's fees for booking, housing, medical services, copying, and mailing amounted to punishment before conviction fails where he was never actually charged the fees and county did not seek reimbursement), *adopted in full*, 2010 U.S. Dist. LEXIS 100151, 2010 WL 3805511 (D. Or. 2010). Accordingly, because it is clear that these defects cannot be remedied by further amendment, Claim-4 (excessive fines and fees) is **DISMISSED with prejudice**.

Ripeness and the County's Alleged Denial of Land-Use Permits

Throughout the FAC, Plaintiffs repeatedly complain about the County's alleged policy and practice of denying land-use permits to landowners with outstanding abatement orders, even when such

requested permits have no nexus to the abatement order. *See* FAC (dkt. 31) at ¶¶ 9, 44, 214-17, 220, 395, 508(c), 532, 549, 554. Plaintiffs have advanced this suggestion in support of Claim-1 (claiming violations of their procedural due process rights) (*see id*. at ¶ 508(c)), in support of Claim-2 (claiming violations of their substantive due process rights) (*see id*. at ¶ 532), and in support of Claim-3 (claiming violations under the unconstitutional conditions doctrine) (*see id*. At ¶¶ 549, 554). Defendants argue that Plaintiffs' land-use permit denial claims are unripe "until they apply for [such] permits and obtain a final decision on their applications." *See* Defs.' Mot. (dkt. 32) at 18. In turn, Plaintiffs respond to the effect that "no Plaintiff is challenging the substantive denial of a permit," instead, "the Plaintiffs' claim is that the blanket denial of permits is part of an unconstitutional system of coercive penalties." Pls.' Mot. (dkt. 36) at 14. In conclusory fashion, Plaintiffs assert that they "have plausibly alleged that the County has a policy of denying permits to people facing abatement orders and has applied that policy to the Plaintiffs." *Id*. at 15. Lastly, Plaintiffs contend that there should be no ripeness issue as to their contentions on account of an allegation that Olson was told by someone employed by the County – during email correspondence – that no non-remedial permits would be issued for properties with open code enforcement matters. *Id*. (citing FAC (dkt. 31) at ¶¶ 441-42. There is also the allegation that when Graham met with some County officials, he was told that the County would not issue any non-remedial permits for a property under an abatement order. *See id*. at ¶ 395.

Initially, the court will note that ripeness – as a concept – attaches to not only claims, but also to allegations. *See e.g.*, *Steadfast Ins. Co. v. Essex Portfolio LP*, No. 21-cv-02756-JSC, 2021 U.S. Dist. LEXIS 157987, at *11 (N.D. Cal. Aug. 20, 2021) ("Because Essex's claim that Steadfast breached the insurance contract is unripe, there is no ripe allegation that such breach was in bad faith."); see also *Tahoe-Sierra Pres. Council, Inc.v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1076 (9th Cir. 2003) ("We acknowledge, however, that one set of claims, asserted by the 10% Plaintiffs, alleges harm that has not yet been done; we analyze these unripe allegations in section III.B."). Moreover, in *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1454 (9th Cir. 1987), the Ninth Circuit interpreted *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186 (1985), as requiring – for ripeness purposes – a final decision by the government which inflicts an actual, concrete harm upon the plaintiff property owner. More specifically, with a narrow exception for futility that is not applicable here, the *Kinzli* court determined that a final decision, inflicting a concrete harm, is ripe for adjudication when the property owner can show a rejected application. *See Kinzli*, 818 F.2d at 1454. The same is true for due process claims – allegations of harm that is yet to be experienced (*i.e.*, by complaining of permit denials without actually applying for one) are unripe. *See Halverson v. Skagit Cnty.*, 42 F.3d 1257, 1261 (9th Cir. 1994) (substantive due process is violated at the moment the harm occurs); *see also Herrington v. County of Sonoma*, 857 F.2d 567, 569 (9th Cir. 1988) (equal protection and due process challenges to

county actions regarding land use become ripe when the plaintiff has received a final decision which inflicts concrete harm).

Here, Plaintiffs concede that they have not actually received any such final decisions by having had any such land-use permit applications rejected. *See* Pls. Mot. (dkt. 36) at 14. Instead, Plaintiffs rely on a pair of allegations to the effect that Olson and Graham were told by someone employed by the County that such permits would not be granted. *See* FAC (dkt. 31) at ¶¶ 395, 441-42. Plaintiffs' reliance on such a contention is unavailing as it fails to satisfy the finality standard set forth in *Kinzli* and *Williamson County*, and the other authorities mentioned above. In other words, the allegation about Olson's email correspondence, and Graham's conversation, do not establish the infliction of concrete harm as would be the case with an actual land-use permit application that had been submitted and rejected. Instead, Plaintiffs' approach relies on speculative, rather than concrete, harm. For these reasons, the court agrees with Defendants that Plaintiffs allegations about the blanket denial of land use permits (asserted in support of Claims 1, 2, and 3) are unripe and, therefore, will not be considered.

Some of Plaintiffs' Claims are Time-Barred & Claim-5 is Foreclosed

Defendants submit that "Plaintiffs' claims that the County's procedures for [its violation notices] are unconstitutional are time-barred, as all issued more than 2 years before this action was filed on October 5,

2022." *See* Defs.' Mot. (dkt. 32) at 19. In this vein, Defendants submit that all of Plaintiffs' as-applied due process claims pertaining to the County's procedures for handling these violation notices are time-barred. *Id*. Defendants also argue that to the extent Plaintiffs have presented a facial challenge to the County's statutory framework for adjudicating the violation notices in question, that too would be time-barred as the "ordinances [were] adopted in 2017 – 5 years before this suit." *Id*. Plaintiffs respond to the effect that "the unconstitutional conditions" of which Graham is complaining continued until "mere weeks before he sued," and the injuries to the Thomases, Olson, and Glad "are ongoing." *See* Pls.' Opp. (dkt. 36) at 16. Plaintiffs note that "they each requested a hearing and remain ensnared in the very abatement process (such that it is) that they're challenging" and that "[t]he County cannot seriously contend that it has trapped the Plaintiffs in this interminable system for so long that the statute of limitations bars them from trying to get out." *Id*.

Claims brought under § 1983 must conform to the forum state's statute of limitations for personal injury claims. *See Action Apartment Ass'n v. Santa Monica Rent Control Op. Bd.*, 509 F.3d 1020, 1026 (9th Cir. 2007) (citing *Wilson v. Garcia*, 471 U.S. 261, 266-67 (1985)). In California, that limitations period is 2 years. *See* Cal. Code Civ. P. § 335.1. As to accrual, this court is bound to apply the, "know or should know of an injury," accrual rule to a constitutional challenge of an ordinance or a statute brought pursuant to § 1983. *See Action Apartment Ass'n*, 509 F.3d at 1026-27 ("'Generally, the statute of limitations begins to

run when a potential plaintiff knows or has reason to know of the asserted injury.'") (quoting *De Anza Properties X, Ltd. v. County of Santa Cruz*, 936 F.2d 1084, 1086-87 (9th Cir. 1991) (". . . the action of the local government giving rise to a cause of action for a taking was the government's enactment of the ordinance itself.")).

Here, a number of Plaintiffs' claims have been presented well beyond the expiration of the applicable two-year limitations period. First, as Plaintiffs see it, Claim-4 (alleging excessive fines and fees) entails facial and as-applied challenges: to the County's statutory framework as to the fine amounts (*see* FAC (dkt. 31) at ¶ 580); as to requiring landowners to bring their properties into compliance with its code (*id*. at ¶ 581); and, as to the amounts of administrative fees involved in code enforcement cases (*id*. at ¶ 582). To the extent Plaintiffs have asserted facial challenges to the Humboldt County Code, those challenges have been filed well beyond the 2-year limitations period as the ordinances were enacted upwards of 5 years before the commencement of this action. To the extent Plaintiffs asserted as-applied challenges in this regard – with the exception of the Thomases' notices, those too have been filed beyond the 2-year limitations period because: (1) this action was commenced on October 5, 2022; (2) Graham's notice was issued on May 10, 2018; (3) the Olson property notices were issued on September 11, 2020 (days after she purchased the property); and, (4) Glad's notice was issued on November 2, 2018. However, no further action is necessary in this regard because the court has already dismissed Claim-4 with prejudice because, as described

above, all Plaintiffs (including the Thomases) lack standing to bring such a claim.

Further, in Claim-5 (denial of a right to a jury in administrative hearings), Plaintiffs appear to present a facial challenge to Humboldt County's statutory framework because "[t]he County imposes civil penalties through a[n] administrative-enforcement scheme to minimize the expense and delay associated with pursuing remedies through the [civil or] criminal justice system." *See id.* at ¶ 594. Plaintiffs' novel contention in this regard boils down to the suggestion that because this administrative process entails "factual determination[s] of whether a landowner violated the code in order to grow marijuana without a permit," and because such determinations can supposedly "result[] in the deprivation of property and liberty as a punishment for the offense, the accused is entitled to have a jury of their peers decide those facts." *See id.* at ¶ 598-99. To the extent that Claim-5 is a facial challenge to the Humboldt County code-enforcement ordinances under the Seventh and Fourteenth Amendments, the claim is clearly time-barred as the statutory framework was enacted well beyond the applicable 2-year limitations period. *See generally De Anza Properties,* 936 F.2d at 1086-87 (facial challenge under the takings clause accrues on enactment of the ordinance itself); *see also Action Apartment Ass'n*, 509 F.3d at 1027 (facial substantive due process challenge accrues on enactment of ordinance). In any event, to the extent that Claim-5 is an as-applied challenge, it is foreclosed by well-established precedent setting forth that there is no right to a jury trial in the sort of administrative hearing at issue here – something

which Plaintiffs appear to vaguely concede. *See* Pls.' Opp. (dkt. 36) at 33 ("The Plaintiffs recognize that the discrete issue of Seventh Amendment incorporation is foreclosed by circuit precent . . . [and] ask this Court to confirm as much, so that they may seek relief on appeal.")

While the Seventh Amendment right attaches in cases involving legal rather than equitable claims (*see Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989)), Plaintiffs' limited concession (limited to Seventh Amendment incorporation) appears to ignore the broader problem with Claim-5 – namely, that it has long since been established that legislatures may delegate fact-finding powers to administrative agencies when governments sue in their sovereign capacities in actions to enforce public rights. *See e.g., Atlas Roofing Co. v. OSHRC*, 430 U.S. 442, 450 (1977) ("At least in cases in which 'public rights' are being litigated - *e.g.*, cases in which the Government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact - the Seventh Amendment does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible."); *see also Stern v. Marshall*, 564 U.S. 462, 490-91 (2011) ("Shortly after [*Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) (plurality opinion)], the Court rejected the limitation of the public rights exception to actions involving the Government as a party. The Court has continued, however, to limit the exception to cases in which the claim at issue derives from a [] regulatory scheme, or in which resolution of the claim by an

expert Government agency is deemed essential to a limited regulatory objective within the agency's authority. In other words, it is still the case that what makes a right 'public' rather than private is that the right is integrally related to particular Federal Government action."); *see also Simpson v. Office of Thrift Supervision*, 29 F.3d 1418, 1424 (9th Cir. 1994) (concluding that the Seventh Amendment is inapplicable in government proceedings implicating public rights when a legislature has "provided [] a proper administrative forum for adjudicating [the] action."); *see also Jackson Water Works, Inc. v. Pub. Utils. Com.*, 793 F.2d 1090, 1096 (9th Cir. 1986) ("First, the state is not obligated under the federal Constitution to provide either a right of appeal or a jury trial . . . [and] [s]econd, the Supreme Court has recognized that the creation of administrative remedies may properly eliminate rights that may have been available in the judicial forum . . . [and in this case] [w]e agree . . . that the legislature could have rationally concluded that the public's interest would be better served by allowing the City to select the forum.").

The undersigned finds that Humboldt County's code-enforcement regulatory framework clearly fits into this rubric, and that it expressly provides for full-fledged judicial review after the conclusion of the administrative phase of the proceedings. Much like the district court in *Jackson Water Works*, the undersigned finds that Humboldt County rationally concluded that the public's interest would be better served by allowing for the selection of an administrative forum for the *initial* phase of the overall adjudication of its code enforcement cases – that is, before

those matters might proceed to state court for final judicial review. For these reasons, and because it cannot be remedied by further amendment, Claim-5 (denial of the right to a jury under the Seventh and Fourteenth Amendments) is **DISMISSED with prejudice**.

Improperly Sued Individual Defendants

Plaintiffs have sued the five individual members of the County's legislative arm – the Board of Supervisors – without alleging any actionable individual action on any of their parts other than stating that "[t]he Board of Supervisors passed the ordinances at issue in this case, and it controls, directs, and funds the County's Planning and Building Department and its subsidiary Code Enforcement Unit." *See* FAC (dkt. 31) at ¶¶ 23, 25-29. The members of the Board of Supervisors are never mentioned again in the FAC – their inclusion is, quite literally, only pegged to the fact that they sit on a board that legislated the ordinances at issue. *See generally id.* at ¶¶ 1-618. Additionally, Plaintiffs have sued Defendant John H. Ford – Director of the Humboldt County Planning and Building Department. *See id.* at ¶ 30. As the case caption in the FAC makes clear, these individuals have all been sued only in their official capacities. *See id.* at 1.

To the extent that Plaintiffs have sued Defendants Madrone, Bohn, Wilson, Bushnell, and Arroyo (hereafter, "the Supervisors"), because they "passed the ordinances at issue in this case" (*id.* at ¶ 23) that theory is untenable as those Defendants enjoy absolute

legislative immunity for such actions. *See Bogan v. Scott-Harris*, 523 U.S. 44, 54-55 (1998) ("Absolute legislative immunity attaches to all actions taken in the sphere of legitimate legislative activity," and "[m]ost evidently . . . acts of voting for an ordinance were, in form, quintessentially legislative."). Plaintiffs appear to state that this is not the basis on which the Supervisors have been sued. *See* Pls.' Opp. (dkt. 36) at 16. On the other hand, to the extent that the Supervisors have been sued for their official actions because the Board "controls, directs, and funds the County's Planning and Building Department" (*see* FAC (dkt. 31) at ¶ 23), it is still improper to name them individually because liability attaches to the entity represented by official capacity defendants, and it is redundant and unnecessary to name the individual if the entity has received notice and an opportunity to respond to the action. *See Brandon v. Holt*, 469 U.S. 464, 471-72 (1985) ("In at least three recent cases arising under § 1983, we have plainly implied that a judgment against a public servant 'in his official capacity' imposes liability on the entity that he represents provided, of course, the public entity received notice and an opportunity to respond. We now make that point explicit."). This applies with equal force to Defendant Ford as well – given that he has also been sued in his official capacity, and also that he has not been alleged to be responsible for any actionable conduct beyond that which the FAC has pegged to the County itself. Plaintiffs' only response in this regard is to state that "[c]ourts routinely entertain suits against both municipal entities and their officials," while citing (without using a pinpoint citation) to one patently

inapplicable case. *See* Pls.' Opp. (dkt. 36) at 17. The response is unavailing – as Defendants point out, this is a suit against the County, not against the needlessly-named officials. *See* Defs.' Mot. (dkt. 32) at 20. Indeed, as pleaded, each of the 5 causes of action is only brought "against the County," without so much as a mention of the individual defendants. *See* FAC (dkt. 31) at ¶¶ 497, 517, 549, 565, 587. Accordingly, Defendants Madrone, Bohn, Wilson, Bushnell, Arroyo, and Ford are herewith **DISMISSED** from this action.

Claim-1 (denial of procedural due process) Fails to State a Claim

Through Claim-1, Plaintiffs submit that their procedural due process rights have been violated in that the County's "policy and practices [], taken together, deprive owners facing cannabis abatement orders of a meaningful opportunity to be heard." *Id*. at ¶ 497. This claim is supported by ineffectual and implausible allegations – specifically, the ten supposed indicia of denials of notice or a meaningful opportunity to be heard, are all either implausible, irrelevant, conclusory, or are based on unreasonable inferences or unwarranted deductions. In that vein, Plaintiffs claim procedural due process violations because the County supposedly issued them violations "without adequate investigation or regard for probable cause"; that it refused to dismiss citations when shown photographic proof that there is no cannabis on the property; that it "refus[ed] to allow landowners to abate permitting violations by obtaining the permit at issue"; that it "obscured" the time landowners have to comply with

an abatement order; that the County conditions the issuance of abatement permits on a landowner's payment of unrelated fines and fees; and, that it failed to toll the accrual of fines before an accused can receive an administrative hearing. *See id*. at ¶ 504. Based on the standards set forth above, these allegations are not entitled to a presumption of truth for present purposes. As to the suggestion that the County refuses to issue non-remedial land-use permits during the pendency of code enforcement cases (*see id*.) – as explained above – because no Plaintiff actually applied for such a permit, let alone having had such an application rejected, the allegation is unripe. All that remains to support Plaintiffs' procedural due process claim, therefore, are the suggestions: (1) that the violations were issued "without adequate investigation or regard for probable cause"; (2) that the violations were "based on satellite images that predate the passage of the cannabis-related code at issue"; (3) that the County impermissibly delays the administrative hearings; and (4) that "[c]harging up to $4,500 for an administrative hearing or a compliance agreement" supposedly violated their procedural due process rights. *See id*. at ¶ 504(a), (b), (h), (j).

The Fourteenth Amendment's Due Process Clause "protects persons against deprivations of life, liberty, or property." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). In provides two distinct, but related, spheres of protection – procedural and substantive. *See Albright v. Oliver*, 510 U.S. 266, 272 (1994). "The touchstone of due process is protection of the individual against arbitrary action of government, whether the fault lies in a denial of fundamental procedural

fairness or in the exercise of power without any reasonable justification in the service of a legitimate governmental objective." *County of Sacramento v. Lewis*, 523 U.S. 833, 845-46 (1998)) (citations and internal punctuations omitted). For purposes of analyzing the viability of Claim-1, the inquiry must begin by noting that "[a] procedural due process claim has two distinct elements: (1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections." *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998); *see also Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999). Once the first prong is satisfied, the inquiry turns to determining "what process is due." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The hallmark of procedural due process is that any deprivation of life, liberty or property must "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). As to the hearing, it must constitute an "opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Where a meaningful pre-deprivation hearing is practicable, post-deprivation remedies do not provide due process. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436 (1982).

The notice must also be sufficient to enable the plaintiff to prepare for the hearing in a meaningful way. *See SEIU Local 1021 v. Cnty. of Mendocino*, No. 20-cv-05423-RMI, 2021 U.S. Dist. LEXIS 5980, at *8 n.2 (N.D. Cal. Jan. 12, 2021). "Precisely what procedures the Due Process Clause requires in any given

case is a function of context." *Brewster*, 149 F.3d at 983. A three-part balancing test is used to determine whether or not a given set of procedures satisfy due process in a given case. *See id*. To that end, *Mathews v. Eldridge* requires courts to consider: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, (3) the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See Mathews*, 424 U.S. at 335. Lastly, it should be noted that property interests are not created by the Constitution but by existing rules or understandings that stem from independent sources such as state law. *See Thornton v. City of St. Helens*, 425 F.3d 1158, 1164 (9th Cir. 2005).

Rather than focusing its procedural due process claim on notice and a meaningful opportunity to be heard, Plaintiffs' FAC simply throws out a litany of remonstrances (*see* FAC (dkt. 31) at ¶ 504(a)-(j)) – nearly all of which do not fit into the procedural due process rubric at all. By way of example, "[c]harging up to $4,500 for an administrative hearing or a compliance agreement" (*see id*. at ¶ 504(j)) is not relevant to effective notice or a meaningful opportunity to be heard; and, even if it were, no Plaintiff in this case has been made to pay such a sum. Likewise, the suggestion that the County refuses to dismiss citations when shown "photographic proof that there is no cannabis on the property" (*see id*. at ¶ 504(c)) is also irrelevant to an alleged deprivation of notice or a

meaningful opportunity to be heard; and, even if relevant, the assertion constitutes an unwarranted deduction in that such a photograph would not be conclusive as to the absence of cannabis on the property and would not be in any way relevant to the grading or building code violations at issue here. Plaintiffs' assertions that these investigations were inadequate, or without regard for probable cause, or based on old satellite images, (*see id*. at ¶ 504(a),(b)) are conclusory and contradicted by the record as set forth herein, as is the case with the majority of Plaintiffs' assertions offered in support of this claim (*see also id*. at ¶ 504(d), (f), (g)). Plaintiffs' assertion to the effect that the County's failure "to toll the accrual of fines before an accused can receive an administrative hearing" (*see id*. at ¶ 504(i)) is premised on Plaintiffs' stubborn refusal to acknowledge the reality that the "penalties" set forth in the notices are merely *proposed* penalties (*see* n.2 *supra*) which can be reduced or eliminated at several junctures in the administrative process – as was done in the course of Graham's code enforcement matter. When stripped of this content, all that remains is Plaintiffs' grievance about the timeliness of administrative hearings (*see id*. at ¶ 504(h)). Lastly, and in conclusory fashion, Plaintiffs submit that "[t]he County's procedurally deficient system creates an unreasonable risk of erroneous deprivation of property." *Id*. at ¶ 505. However, the FAC does not allege that any Plaintiff has actually been deprived of liberty or any property. No party has paid any fines; no party has otherwise been deprived of any other property; the unripe suggestion that non-remedial land use permits have been denied has never been

tested by an actual application for one (let alone an actual denial); Graham has voluntarily resolved his case and paid only a few hundred dollars for a permit (or for other fees, but it matters not because he *voluntarily* paid that sum); and the other Plaintiffs have repeatedly delayed their own hearings by expressing interest in resolving their cases. Thus, Plaintiffs themselves have occasioned most of the delay of which they now complain.

As set forth above, the County is still waiting for the Thomases' actions to either submit a remedial plan or to obtain a permit to demolish the unpermitted (and potentially unsafe) structure on their property – subject to two agreements into which they entered voluntarily. The Thomases' first compliance agreement stayed all enforcement for a six-month period, following which, their attorney informed the County the Thomases wanted to keep their unpermitted structure pursuant to a new County policy (rather than to demolish it pursuant to their agreement). Then, in August of 2022, when the Thomases were presented with a new agreement that allowed them to avoid removing their unpermitted structure if, within eight weeks, they submitted a restoration plan and a permit application, they then chose to neither proceed with a restoration plan, nor to demolish the structure as they had previously agreed. Instead, while now insisting on keeping their unpermitted three-story structure, the Thomases maintain that they are not willing to pay increased permit fees due to a prior owner's wrongdoing. Thus, most (if not all) of the delay in the Thomases' case has clearly been occasioned by their own hand. Then there is the fact that the

operative violation notice as to their property does not even name them as the responsible party – calling into some question their right to a hearing on that notice in the first place. Nor does the FAC allege that the Thomases have ever been fined, or that their unpermitted (and reportedly unsafe) three-story structure has been in any way harmed by the County. Much like the Thomases, Olson also repeatedly led the County to believe that she preferred to informally resolve her case; through three sets of consultants, Olson started and stopped her applications for approval of remediation plans multiple times. Accordingly, it cannot be plausibly suggested that the Thomases and Olson have suffered any deprivation of a constitutionally-protected liberty or property interest – let alone a denial of adequate procedural protections. *See Brewster*, 149 F.3d at 982.

The other two Plaintiffs fare no better in this regard. Graham's voluntary settlement of his case effectively forfeits his right to complain about any delay attending an administrative hearing; and, even if that were not the case, much of the delay leading up to his settlement was attributable to Graham himself. Following Graham's filing of his initial appeal request in May of 2018, he demolished and properly reconstructed the two unpermitted greenhouse structures on his property pursuant to valid agricultural permits[4] – meaning that his only active violation in his

[4] As set forth in detail *supra*, Graham applied for and received these building permits, allowing him to abate two of the three violations on his property voluntarily (which resulted in the

matter was an unpermitted grading violation that existed on his property. As set forth above, between May of 2018 and Graham's ultimate settlement of his case in the Fall of 2022, Graham and the County were engaged in back-and-forth settlement negotiations. Once it appeared that those negotiations would not bear any fruit, and Graham's grading violation was actually scheduled for an administrative hearing in October of 2022, Graham then chose to voluntarily settle his case.

Glad's case is riddled with equivocation. He requested his hearing in November of 2018 but noted that all nuisances were in the process of being removed, cleaned, and brought into compliance with county code standards (which, of course, would obviate the need for any hearing). He then hired an engineer to assess the property, while he continued his work of cleaning up the mess that the prior occupants had left. In February of 2019, he sent Director Ford a letter "to plead with him and seek compassion of the violations the County cited [him] for just weeks after he purchased the property," and claims that he "never received a response." *See* FAC (dkt. 31) at ¶¶ 478, 479. As mentioned above, county records indicate that CEU sent Glad a letter on May 6, 2021, asking him whether or not the County should schedule his appeal hearing, or if he preferred to enter into a compliance agreement and settle and resolve his case; and the

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dismissal of those violations). This, of course, thoroughly contradicts the FAC's conclusory assertion that the County "refus[es] to allow landowners to abate permitting violations by obtaining the permit at issue." *See* FAC (dkt. 31) at ¶ 504(d).

record does not indicate any further action on Glad's case by either Glad or the County. It is therefore implausible for Glad to suggest that the delay in his matter being scheduled for a hearing is only attributable to the County, as Glad repeatedly led the County to believe that he preferred an informal resolution. It should also not go without mention that no Plaintiff has advanced any plausible non-conclusory assertion of any prejudice attributable to the County stemming from any delay in the scheduling of any administrative hearings. As to the suggestion that a hearing might have been required prior to the issuance of the notices in question – such a suggestion would have no basis in the law. *See e.g.*, *Walnut Hill Estate Enters. v. City of Oroville*, No. 2:09-cv-00500-GEB-GGH, 2010 U.S. Dist. LEXIS 74084, at *16-17 (E.D. Cal. July 21, 2010) ("Plaintiffs have not pointed to any California law requiring a hearing prior to the issuance of a 'Notice of Repair or Demolish.'"). In the end, because no Plaintiff has been subjected to any deprivation of any constitutionally-protected liberty or property interest, or any denial of adequate procedural protections, it cannot be plausibly contended that any of them have suffered any procedural due process violations; nor does it appear that these defects could be remedied by further amendment. For these reasons, as well as those argued by Defendants (*see* Defs.' Mot. (dkt. 32) at 21-25; *see also* Defs.' Reply (dkt. 37) at 10-13), Claim-1 (denial of procedural due process) is **DISMISSED with prejudice**.

Appendix C

Claim-2 (denial of substantive due process) Fails to State a Claim

Claim-2 argues that Plaintiffs have suffered a denial of substantive due process "based on [the County's] policy, practice, and custom of issuing citations and imposing penalties for code violations allegedly related to cannabis cultivation (a) without regard for probable cause that the accused has cultivated cannabis illegally and (b) unsupported by a valid governmental interest." *See* FAC (dkt. 31) at ¶ 517. This claim, too, is entirely supported by baseless assertions, conclusory statements, unreasonable inferences, unwarranted deductions, and outright contortions of reality. As set forth above, CEU relied on County records to determine whether or not certain structures that existed on Plaintiffs' properties were permitted or unpermitted – and in the case of the unpermitted tunnel, the unpermitted three-story building, the unpermitted greenhouses, sheds, and other structures, the unpermitted structures within Streamside Management Areas, the solid waste piles, the vehicles improperly being used as residences, and the junked school bus – the County used various investigative methods (including a criminal search warrant) to determine that these unpermitted structures were erected in violation of applicable building, plumbing, and / or electrical codes. In other words, a great many of the code violations at issue in this case were unrelated to any notion as to whether or not these Plaintiffs (or even their predecessors in interest) were or were not actively cultivating cannabis on their properties. Nevertheless, the FAC advances heedless allegations in support of Claim-2 as such:

"[r]elying on aerial images alone, the County charges Category 4 violations for activity unrelated to cannabis like having a greenhouse or a rainwater-catchment unit [while] [t]he presence of an unpermitted greenhouse or rainwater-catchment unit is not probable cause that a landowner is cultivating cannabis without a permit." *See id.* at ¶ 525-26. The FAC then proceeds to reassert the litany of conclusory assertions about the accrual of astronomical daily proposed fines (though no Plaintiff has paid any fine); the supposed deprivation of landowners' right to develop their property while they wait indefinitely for administrative hearings (though no Plaintiff has ever applied for such a permit); that the "policy and practice of charging Category 4 violations without probable cause imposes a significant financial, reputational, and psychological cost on the named Plaintiffs' and the Class as soon as their receive [a violation notice]" (notwithstanding the fact that each of these Plaintiffs knew or had constructive knowledge that they were purchasing properties with existing code violation matters); and, that the County charges up to $4,500 in administrative fees to hold hearings or settle these code enforcement matters (though Graham ultimately paid no such administrative fees to settle his case, and neither has any other Plaintiff paid any such fee). *Id.* at ¶ 531-34. Beyond this, Plaintiffs FAC renders a series of legal conclusions masquerading as factual allegations. By way of just a few examples, Plaintiffs' FAC argues: that "[t]he County has no legitimate governmental interest in charging cannabis-related Category 4 violations without regard for probable cause" (*id.* at ¶ 535); that "[n]o process the

government can provide could justify its deprivation of life, liberty, or property when there is no governmental interest in the deprivation" (*id*. at ¶ 538); that "[t]he County has no interest in punishing conduct that does not harm the public" (*id*. at 539); and, that "[n]o process could justify the government's deprivation of an innocent person's life, liberty, or property based on someone else's conduct." *Id*. at ¶ 541.

Substantive due process "forbids the government from depriving a person of life, liberty, or property in such a way that 'shocks the conscience' or 'interferes with rights implicit in the concept of ordered liberty.'" *United States v. Salerno*, 481 U.S. 739, 746 (1987) (quoted sources and internal quotation marks omitted); *see also Corales v. Bennett*, 567 F.3d 554, 568 (9th Cir. 2009). "To state a substantive due process claim, the plaintiff must show as a threshold matter that a state actor deprived it of a constitutionally protected life, liberty, or property interest." *Shanks v. Dressel*, 540 F.3d 1082, 1087 (9th Cir. 2008). It should be noted, "[h]owever, [that] [t]he Supreme Court has 'long-eschewed . . . heightened [means-ends] scrutiny when addressing substantive due process challenges to government regulation' that does not impinge on fundamental rights." *Id*. (quoting *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 542 (2005)).

For that reason, "the 'irreducible minimum' of a substantive due process claim challenging land use action is failure to advance any legitimate governmental purpose.'" *Shanks*, 540 F.3d at 1087 (quoting *North Pacifica LLC v. City of Pacifica*, 526 F.3d 478, 484 (9th Cir. 2008)); *see also Matsuda v. City and*

County of Honolulu, 512 F.3d 1148, 1156 (9th Cir. 2008) ("[S]tate action which neither utilizes a suspect classification nor draws distinctions among individuals that implicate fundamental rights will violate substantive due process only if the action is not rationally related to a legitimate governmental purpose.") (internal quotations omitted). A plaintiff bears an "exceedingly high burden" in demonstrating that a municipality behaved in a constitutionally arbitrary fashion. *See Matsuda*, 512 F.3d at 1156.

When executive action is at issue, "only egregious official conduct can be said to be arbitrary in the constitutional sense: it must amount to an abuse of power lacking any reasonable justification in the service of a legitimate governmental objective." *Shanks*, 540 F.3d at 1088 (citing *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)); *see also City of Cuyahoga Fall v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 198 (2003) (rejecting substantive due process claim because city engineer's refusal to issue building permits "in no sense constituted egregious or arbitrary government conduct"). Even decisions based upon erroneous legal interpretations, or those rendered with a lack of due care, are not necessarily constitutionally arbitrary. *Id.*; *see also Collins v. City of Harker Heights*, 503 U.S. 115, 128 (1992) (rejecting claims "that the Due Process Clause should be interpreted to impose federal duties that are analogous to those traditionally imposed by state tort law"); *Brittain v. Hansen*, 451 F.3d 982, 996 (9th Cir. 2006) ("[S]ubstantive due process secures individuals from 'arbitrary' government action that rises to the level of 'egregious conduct,' not from reasonable, though possibly

erroneous, legal interpretation."). The court's task in evaluating such claims "is not to balance 'the public interest supporting the government action against the severity of the private deprivation.'" *Id*. (quoting *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1237-38 (9th Cir. 1994)). Instead, a plaintiff's substantive due process claim must fail if "[i]t is at least fairly debatable" that a municipality rationally furthered its legitimate interest through its challenged action. *Id*.

In promulgating the chapter of its Code setting forth its administrative penalty framework of which Plaintiffs complain, the Board of Supervisors found that "enforcement of the Humboldt County Code, [the] other ordinances adopted by the County of Humboldt and conditions on entitlement set forth in permits and / or agreements that have been issued or approved by the County are matters of local concern and serve important public purposes." *See* HCC § 352-2(b). The Board further found that it was furthering the following goals: (1) protecting the public's health, safety, and welfare; (2) providing an administrative process that employs objective criteria for the imposition of penalties and provides for a process to appeal the imposition of penalties; (3) providing a means of properly penalizing persons who fail or refuse to comply with the County's code and its other ordinances; and (4) minimizing the expense and delay associated with pursuing alternative remedies through the civil and criminal justice system. *See* HCC § 352-2(b)(1)-(4).

First, as discussed above in the context of Claim-1 (procedural due process), none of these Plaintiffs have plausibly alleged any cognizable deprivation of life, liberty, or property. Second, when stripped from its conclusory and implausible content, the FAC also fails to allege any lack of governmental interest in either the statutory framework or the executive enforcement actions taken thereunder. Third, the FAC contains no competent allegations which establish that any action taken by the County that shocks the conscience, that was arbitrary or discriminatory, or that interfered with rights implicit in the concept of ordered liberty. In other words, Plaintiffs have not even approached "show[ing] as a threshold matter that a state actor deprived [them] of a constitutionally protected life, liberty, or property interest," or that the land use actions involved in this case failed to advance legitimate governmental purposes. *See Shanks*, 540 F.3d at 1087. Because this case does not involve any plausible allegation that state action either utilized a suspect classification, or drew distinctions among individuals that implicate fundamental rights, or that was arbitrary in the constitutional sense, and because it is clear that all of the complained of land use actions were all eminently related to the legitimate governmental purposes set forth in HCC § 352-2(b)(1)-(4), Plaintiffs have not stated – and will not be able to state – a substantive due process claim. *See Matsuda*, 512 F.3d at 1156.

Plaintiffs' arguments to the contrary are all unpersuasive because they simply rehash the FAC's conclusory statements and its implausible allegations. *See* Pls. Mot. (dkt. 36) at 22-25. Plaintiffs argue that "the

abatement program violates due process because the County enforces it with systematic indifference to innocence . . . [and] disregards probable cause and fails to investigate before it administers penalties . . . [and] knowingly penalizes innocent purchasers for the conduct of others." *Id*. at 22. However, as is clear from the factual background set forth above, these are gross mischaracterizations. First, each of these Plaintiffs (with either actual or constructive knowledge) purchased properties with existing code violations, such as unpermitted (and potentially unsafe) structures and buildings, a tunnel of some sort, illegal installations in Streamside Management Areas, and unpermitted grading – it is, therefore, unreasonable to suggest that they should be permanently immunized (as a matter of constitutional law) from code enforcement as to the unpermitted and violative conditions on their land. Second, it is highly disingenuous to contend that the County enforces the abatement program with "systematic indifference to innocence," or that the County "disregards probable cause and fails to investigate" when each of these Plaintiffs (in one way or another) has expressly acknowledged the existence of unpermitted or otherwise violative conditions on their land. Plaintiffs also argue that "due process prohibits punishing innocent purchases," by contending that the "the NOV's don't just order the abatement of existing nuisances – they impose penalties for past illegal *conduct*." *Id*. at 24. This too is a mischaracterization. As stated herein repeatedly, the penalties, about which Plaintiffs have made much ado, are merely "proposed penalties," none of the Plaintiffs in this case have paid a single cent of penalties. The proposition

of penalty in the initial notices is clearly meant to be coercive in order to induce speedy compliance with the abatement orders. As is clear from Graham's code enforcement matter, the County has no interest whatsoever in lining its pockets with penalty money – instead, its only interest is in securing compliance with its abatement orders and bringing non-compliant properties into compliance with its land use code. In short, Plaintiffs have failed to state a claim for any substantive due process violations – and, it is clear that this defect cannot be cured by further amendment. Accordingly, for these reasons, as well as those argued by Defendants (*see* Defs.' Mot. (dkt. 32) at 26-28; *see also* Defs.' Reply (dkt. 37) at 13-14), Claim-2 (denial of substantive due process) is **DISMISSED with prejudice**.

Claim-3 (violation of the unconstitutional conditions doctrine) Fails to State a Claim

Plaintiffs state that they "bring this Count based on the County's policy and practice of denying permits to landowners who face cannabis-related Category 4 violations brought without regard for probable cause unless the landowner will agree to (a) pay a sum of money the County has proposed in an unrelated settlement agreement; (b) waive their due-process right to a hearing at which they can contest unrelated code violations; (c) consent to warrantless searches of their property; and (d) waive their right to sell or otherwise transfer their property." *See* FAC (dkt. 31) at ¶ 549. The FAC goes on to proclaim that "[t]he unconstitutional conditions doctrine vindicates constitutional rights by prohibiting the government from coercing

people into giving them up in exchange for a discretionary benefit such as a building or grading permit[,] [however] [t]he government cannot coercively withhold a land-use permit from someone for exercising their constitutional right." *Id*. at ¶ 550-51. Once again, this claim is built on a foundation of mischaracterizations, conclusory statements, unwarranted deductions, unreasonable inferences, and implausible assertions. As stated above, no Plaintiff in this case has even applied for such a non-remedial land-use permit – let alone having such application rejected for this reason. Second, contrary to Plaintiffs' suggestion, an insistence on flouting valid land use ordinances (building codes, plumbing codes, electrical codes, permitting requirements, etc.) is not a constitutional right. Third, as described above, all of the County's regulations at issue here serve legitimate governmental interests and all have been enforced in an even-handed, proportionate, non-discriminatory, and non-arbitrary manner. While Plaintiffs contend that the "sum that the County proposes in settlement offers, including fines and / fees, is not roughly proportionate to the social costs associated with the landowner's permit application," (*see id*. at ¶ 557) Plaintiffs gloss over the fact that none of them have actually unsuccessfully applied for any non-remedial permits during the pendency of their code enforcement cases. This assertion is particularly disingenuous because the only remedial permit application to have been submitted by any plaintiff in this case, Graham, was accepted and *granted* on the spot. When he was negotiating a resolution of what remained of his code enforcement matter (a single grading violation) with Director Ford

on the eve of his administrative hearing, Graham applied for a grading permit there-and-then using a hand-drawn site plan; Graham's permit application was accepted and granted that very day. So too, therefore, is it disingenuous for Plaintiffs to suggest that "[t]his monetary exaction in exchange for a permit is an unconstitutional condition," (*see id*. at 558) when the only one of them to have applied for a permit of any sort had the permit granted without any such "monetary exaction" other than an ordinary permit fee. Plaintiffs also contend that "[t]he demand that landowners give up their constitutionally guaranteed right to a hearing on the County's unrelated claims against them in exchange for a permit is also an unconstitutional condition." *Id*. at ¶ 559. Lastly, Plaintiffs suggest that Graham "is entitled to a declaration that the County's exaction" of $795.92 in fees for a grading permit for his rainwater-catchment pond violated the doctrine against unconstitutional conditions. *Id*. at ¶ 562. However, in so contending, Plaintiffs overlook the fact that Graham actually had an administrative hearing scheduled, and days before the hearing was to take place, Graham *voluntarily* decided to cancel his own hearing and to pay the sum in question to resolve the matter informally.

The unconstitutional conditions doctrine is rooted in the proposition, established through a long line of cases likely beginning with *Lafayette Ins. Co. v. French*, 59 U.S. (18 How.) 404, 407 (1856), and *Barron*

v. Burnside, 121 U.S. 186 (1887)[5], that the government may not deny a discretionary benefit to a person simply by virtue of that person's exercise of a constitutional right. *See e.g., Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 545 (1983); *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 59-60 (2006); *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 78 (1990); *see also Perry v. Sindermann*, 408 U.S. 593, 602-03 (1972) (public college would violate a professor's freedom of speech if it declined to renew his contract because he was an outspoken critic of the college's administrators); *see also Memorial Hospital v. Maricopa County*, 415 U. S. 250, 269-70 (1974) (county impermissibly burdened the right to travel by extending healthcare benefits only to those indigent sick who had been residents of the county for at least one year). "Those cases reflect an overarching principle, known as the unconstitutional conditions doctrine, that vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them

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[5] "In both of the cases referred to, the foreign corporation had made the agreement not to remove into the Federal court suits to be brought against it in the state court. In the present case, no such agreement has been made, but the locomotive engineer is arrested for acting as such in the employment of the corporation, because it has refused to stipulate that it will not remove into the Federal court suits brought against it in the state court, as a condition of obtaining a permit, and consequently has not obtained such permit . . . In all the cases in which this court has considered the subject of the granting by a state to a foreign corporation of its consent to the transaction of business in the state, it has uniformly asserted that no conditions can be imposed by the state which are repugnant to the Constitution and laws of the United States." *Id.* at 199-200.

up." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013).

Certain types of land use cases "'involve a special application' of this doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits," and in such cases, the Supreme Court has explained that past decisions "reflect two realities of the permitting process[:] [] that land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than property it would like to take . . . [and] that many proposed land uses threaten to impose costs on the public that dedications of property can offset [such as] [w]here a building proposal would substantially increase traffic congestion, for example, officials might condition permit approval on the owner's agreement to deed over the land needed to widen a public road." *Id*. at 604-05. Thus, in *Koontz*, the Court explained that its precedent in this area has sought to "accommodate both realities by allowing the government to condition approval of a permit on the dedication of property to the public so long as there is a 'nexus' and 'rough proportionality' between the property that the government demands and the social costs of the applicant's proposal." *Id*. at 605-06.

For example, a litigation waiver included in a settlement agreement does not amount to an unconstitutional condition because there is "'a close nexus – a tight fit – between the specific interest the

government seeks to advance in the dispute . . . and the specific right waived.'" *Emmert Indus. Corp. v. City of Milwaukee*, 307 F. App'x 65, 67 (9th Cir. 2009) (quoting *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1399 (9th Cir. 1991)). Thus, while "the government may not impose a choice between the government benefit and the exercise of a constitutionally guaranteed right," (*see Parks v. Watson*, 716 F.2d 646, 650 (9th Cir. 1983), the doctrine "does not strip state and federal governments of [the] indispensable and long acknowledged power [to conclude commercial bargains]." *Honolulu Rapid Transit Co. v. Dolim*, 459 F.2d 551, 553 (9th Cir.), cert. denied, 409 U.S. 875 (1972). Lastly, "[b]ecause the doctrine of unconstitutional conditions only applies where surrender of a constitutional right is at stake, a plaintiff's initial burden is to demonstrate that a constitutional right is implicated, and to specify which one." *La. Pac. Corp. v. Beazer Materials & Servs.*, 842 F. Supp. 1243, 1251 (E.D. Cal. 1994).

Here, Plaintiffs' FAC identifies four allegedly unconstitutional conditions attending the County's alleged "practice of denying permits" unless Plaintiffs agree to (a) pay a sum of money the County has proposed in an unrelated settlement agreement; (b) waive their due-process right to a hearing at which they can contest unrelated code violations; (c) consent to warrantless searches of their property; and (d) waive their right to sell or otherwise transfer their property." *See* FAC (dkt. 31) at ¶ 549. However, as was the case above – Plaintiffs' contention is built on a faulty foundation. First, the court will note – once again – that no Party has applied for and been denied

such a non-remedial permit. Second, the FAC makes only mention of Plaintiffs' "right to sell or transfer their property" (*see id*. at ¶¶ 325, 547, 556) in cursory and conclusory fashion in three isolated snippets; perhaps because no Plaintiff other than Graham has entered into a settlement agreement with the County. Third, Graham – the only Party to apply for a permit had his permit granted that same day without being subjected to any onerous set of conditions. To the extent Plaintiffs contend that Graham waived his hearing "in exchange for" his permit – that characterization would be disagreeable because Graham agreed to cancel his hearing because his case had been resolved and there was nothing left to contest at a hearing. To the extent that Plaintiffs contend that Graham's resolution of his case (or that of any of the other Plaintiffs') was (or would be) conditioned upon CEU being permitted to inspect the property to determine compliance with the agreement – that condition clearly bears "'a close nexus – a tight fit – between the specific interest the government seeks to advance in the dispute . . . and the specific right waived.'" *Emmert Indus. Corp.* 307 F. App'x at 67 (quoting *Davies*, 930 F.2d at 1399). Lastly, the only Plaintiff to pay any sum of money in this case was Graham – who voluntarily paid a few hundred dollars in fees to secure his grading permit and resolve his case.

In short, perhaps with the exception of the right to privacy, implicated by a potential agreement to let CEU inspect a reportedly remedied code violation, and the proposals to delay alienation or sale of the land in question during the agreed-upon period for abating nuisances (as set forth in the proposed, but

rejected, settlement agreements), Plaintiffs have failed "to demonstrate that a constitutional right is implicated, and to specify which one." *Beazer Materials & Servs.*, 842 F. Supp. at 1251. Plaintiffs have not shown – and, in the court's opinion will not be able to show – that the County has ever sought to impose a choice between a government benefit and the exercise of a constitutionally guaranteed right. The court sees nothing wrong with Graham's agreement with the County. And, in other respects, it is clear (as Defendants argue) that "the [other proposed] compliance agreements here impose conditions closely tailored to the County's goal to enforce its laws, such as inspections to confirm compliance, corrective actions including obtaining permits, limiting transfer of property until compliance is achieved, and imposing fines [if] compliance does not follow . . . [in exchange for which] the County agrees to dismiss citations, not take enforcement action unless the property [owner] fails to comply, and issues a release of the enforcement action, all to the benefit of the property owner." *See* Defs.' Mot. (dkt. 32) at 32. In any event, with the exception of Graham – whose case is resolved – no other Plaintiff has executed any compliance agreement or been made to forfeit any constitutional right in exchange for any discretionary benefit, at least not in the absence of a close nexus between the specific interest the County has sought to advance and the specific right for which a waiver was solicited.

As to the limited waiver of a privacy right (necessary for the County to inspect a property owner's report of abatement pursuant to such a settlement agreement), the court finds that such a limited waiver

bears the requisite "close nexus" to bring it outside of the scope of the unconstitutional conditions doctrine. Likewise, as to the requested agreement to not alienate or sell a subject parcel during the operative period of a settlement agreement's period allowing for the abatement of a nuisance, that too bears the requisite close nexus to place it beyond the doctrine's ambit. Indeed, had such a restraint on alienation or sale been incumbent on the Zaccardo brothers and Kevin Penny, the owners of "Lb 4 Lb LLC" of New York, perhaps Olson would not have been bought her way into the code enforcement cases which she claims caused her profound distress and illness – the same can be said for the Thomases and Glad, all of whom also appear to have bought their way into existing code enforcement cases. In light of the above, the court finds that Plaintiffs have not stated a claim under the unconstitutional conditions doctrine and that it appears that further opportunities for amendment would be futile. Accordingly, for these reasons, as well as those put forth by Defendants (*see* Defs.' Mot. (dkt. 32) at 30-32; *see also* Defs.' Reply (dkt. 37) at 8-9), Claim-3 (alleging violations of the unconstitutional conditions doctrine) is **DISMISSED with prejudice**.

CONCLUSION

For the reasons explained herein, as well as on the basis of the remainder of Defendants' arguments not expressly mentioned or discussed herein, Plaintiffs' First Amended Class Action Complaint (dkt. 31) is **DISMISSED with prejudice** in its entirety. The court will issue a separate judgment as required by Rule 58(a).

IT IS SO ORDERED.

Dated: May 12, 2023

/s/ Robert M. Illman
ROBERT M. ILLMAN
United States Magistrate Judge

Appendix D

Plaintiffs' Amended Class Action Complaint
Filed in U.S. District Court
Northern District of California

January 20, 2023

Appendix D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

CORRINE MORGAN THOMAS and DOUG THOMAS, a married couple; BLU GRAHAM; RHONDA OLSON; and CYRO GLAD, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

COUNTY OF HUMBOLDT, CALIFORNIA; HUMBOLDT COUNTY BOARD OF SUPERVISORS; HUMBOLDT COUNTY PLANNING AND BUILDING DEPARTMENT; STEVE MADRONE, REX BOHN, MIKE WILSON, MICHELLE BUSHNELL, and NATALIE ARROYO, in their official capacity as Supervisors of Humboldt County; and JOHN H. FORD in his official capacity as Planning and Building Director,

Defendants.

Case No. 1:22-cv-5725-RMI

AMENDED CLASS ACTION COMPLAINT

Magistrate Judge Robert M. Illman

Appendix D

INTRODUCTION

1. Humboldt County fines landowners hundreds of thousands of dollars for things they never did because it files charges without regard for probable cause. The accused then rarely ever get the chance to defend themselves because the County withholds hearings from those who fight the baseless charges against them.

2. While the County makes accused landowners wait indefinitely for an administrative hearing, fines continue to accumulate and the County denies them permits they need to develop their property. The only way out is to pay the County, one way or another.

3. The County designed this code-enforcement policy to maximize its proceeds from legalized commercial marijuana growth, squeezing every possible dollar out of residents along the way.

4. After California legalized recreational marijuana, Humboldt County created an "abatement" program, under which it cites landowners for nuisances and permitting violations that it alleges have some connection to cultivating marijuana without a permit.

5. By alleging the violations are cannabis-related, the daily fines automatically jump from a few hundred dollars to between $6,000 and $10,000 per violation, regardless of whether the violations pose any harm to the community.

6. The main way the County identifies properties to fine is by reviewing satellite images that show

harmless things like greenhouses on a property. The County will allege, without probable cause or any further investigation, that the greenhouse's presence means the landowner must be growing marijuana illegally. Based solely on that image, the County will typically issue a $10,000 fine for the greenhouse, plus another $10,000 fine for unpermitted cultivation because the County will allege—again, without any proof or investigation—that the greenhouse must have unpermitted marijuana inside. The County will often tack on another $10,000 daily fine by alleging that the owner couldn't have built a greenhouse without grading their land without a permit.

7. The County's code-enforcement dragnet catches plenty of harmless conduct and innocent landowners, including people growing their own food and people who just purchased their property and have done nothing wrong.

8. Landowners cited with cannabis-related violations become trapped in the abatement process unless they pay the County to let them out. The entire system is designed to generate money for the County as efficiently as possible—by forcing accused residents to pay the County even when they have done nothing wrong.

9. Providing proof that there is no cannabis on a property is not enough to get the County to drop its cannabis-related fines. Nor can a landowner "abate" their failure to have a permit by simply applying for the permit at issue. Indeed, the County won't issue *any* permits to properties facing abatement orders,

ensuring that the daily fines will accrue while also depriving landowners of their ability to legally develop or repair their property.

10. The County makes accused landowners wait several *years* and pay up to $4,500 for a hearing at which they can finally defend themselves against the County's accusations. As the County delays the hearing, daily fines continue to accumulate, as do administrative fees that the County charges just to discuss the ongoing abatement.

11. In the rare instance that the County ever does schedule an administrative hearing, the County does not let a jury decide whether a landowner violated the code in order to cultivate cannabis—a factual determination that can multiply the penalty by 10 times or more. Instead, a law firm hired by the County decides the facts of the case.

12. Humboldt County's cannabis-abatement program violates due process, imposes unconstitutional conditions and unconstitutionally excessive fines and fees, and deprives accused landowners of their right to a jury.

13. Accordingly, the named Plaintiffs—on behalf of themselves and a putative class of similarly situated landowners—seek to enjoin the County's unconstitutional implementation and enforcement of its abatement program.

Appendix D

JURISDICTION AND VENUE

14. Plaintiffs bring this civil-rights lawsuit pursuant to 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, for violations of rights, privileges, or immunities secured by the U.S. Constitution.

15. This Court has jurisdiction under 28 U.S.C. § 1331 (federal-question jurisdiction) and 28 U.S.C. § 1343 (civil-rights jurisdiction).

16. Venue is proper in the Northern District of California under 28 U.S.C. § 1391.

PARTIES

17. Plaintiffs Corrine Morgan Thomas and Doug Thomas are adult citizens of the United States and residents of Humboldt County, California. The Thomases face $1,080,000 in fines, the ordered destruction of their three-story workshop (an additional cost of $180,000), plus thousands in fees to the County because someone else grew marijuana at their property over two years before they bought it.

18. Plaintiff Blu Graham is an adult citizen of the United States and a resident of Humboldt County, California. He faced $900,000 in fines for unfounded and uninvestigated allegations that he was growing marijuana in greenhouses that the County saw in satellite images of his property. Really, he was growing vegetables for his restaurant. He waited 4.5 years for the County to a hearing so he could contest the

baseless charges that he was growing marijuana, during which time the County withheld a permit he needed for his house. As Blu was preparing the filing of this lawsuit, the County suddenly scheduled his hearing and agreed to drop its claims against him (and issue a permit that it had been wrongfully denying since 2018) if he waived his right to a hearing and paid back the $3,747 in fees that the County charged him as the County dragged out his case for 4.5 years.

19. Plaintiff Rhonda Olson is an adult citizen of the United States and a resident of Humboldt County, California. She faces over $7 million in fines because someone else grew marijuana on her property before she purchased it. The County has also prohibited her from developing her property—the very reason she bought it—while her abatement case is pending. She's been waiting over two years for a hearing.

20. Plaintiff Cyro Glad is an adult citizen of the States and a resident of Humboldt County, California. He faces $900,000 in fines for cannabis-related violations on a property he had just purchased. County officials never visited the property in person; they just levied the allegations and fines without probable cause. Cyro requested an administrative hearing to contest the charges back in November 2018 and is still waiting for the County to provide him an opportunity to be heard.

21. Defendant County of Humboldt is a general-law county within California.

22. At all times relevant to the facts of this case, Humboldt County and its officials, agents, and employees have acted under color of law. The actions that give rise to Plaintiffs' claims are, unless otherwise indicated, taken pursuant to the policies, practices, and customs of the County, at the direction of, with the knowledge of, and through the actions of its former and current policymakers, including its Board of Supervisors and its Planning and Building Department.

23. Defendant Humboldt County Board of Supervisors is the legislative and executive body of the County's government. The Board of Supervisors passed the ordinances at issue in this case, and it controls, directs, and funds the County's Planning and Building Department and its subsidiary Code Enforcement Unit.

24. Defendant Humboldt County Planning and Building Department is a division of the Humboldt County government tasked with enforcing laws, ordinances, and policies regarding planning and building, including code violations. Humboldt's Code Enforcement Unit is part of the Planning and Building Department.

25. Defendant Steve Madrone is Chair of the Board of Supervisors.

26. Defendant Rex Bohn is Vice Chair of the Board of Supervisors.

27. Defendant Mike Wilson is a member of the Board of Supervisors.

28. Defendant Michelle Bushnell is a member of the Board of Supervisors.

29. Defendant Natalie Arroyo is a member of the Board of Supervisors.

30. Defendant John H. Ford is the Director of the Humboldt County Planning and Building Department. The Director supervises the Planning and Building Department, and he exercises the Department's statutory power, including that of the Department's Code Enforcement Unit.

STATEMENT OF FACTS

31. Humboldt County is a mostly rural community of about 54,000 households spread across 4,052 square miles, 80% of which is forestlands, protected redwoods, and recreation areas.

32. About half of Humboldt residents live in unincorporated and isolated parts of the County.

33. The County is economically depressed. Humboldt residents earn an average yearly income of roughly $29,500, well below the national average; about 16% of residents live in poverty.

34. For decades, the County has attracted off-the-grid homesteaders, hippies, and other counterculture and anti-government types.

35. As a likely result of the County's geographic, economic, and political makeup, Humboldt has scarcely enforced its building code as thousands of its residents built homes and accessory structures and graded land without first obtaining a permit from the County.

36. The County allowed this culture of unpermitted development to grow unabated.

37. After Californians voted to legalize the recreational use of marijuana, however, Humboldt County discovered a newfound rigor for enforcing the permitting requirements and nuisance laws that it had overlooked or left unenforced for decades.

38. The County amended its code to authorize the Planning and Building Department to police cannabis cultivation in tandem with these nuisances and permitting requirements.

39. Faced with the same constraints that made code enforcement difficult historically in Humboldt, the Planning and Building Department devised a strategy to supercharge its abatement regime: *ticket everyone* and force the accused to prove their innocence.

40. The Planning and Building Department instituted an "abatement" program, under which it charges residents with code violations and alleges that those violations must be connected to illegal marijuana growth.

41. Code violations that the County alleges have a nexus to cannabis—often without evidence or investigation—carry tens of thousands of dollars in daily fines.

42. The County's policy and practice is to accuse landowners of code violations relating to marijuana without regard for probable cause that a landowner grew marijuana illegally.

43. The County then imposes ruinous daily fines for things like the failure to get a permit before building structures as basic as a temporary greenhouse if the County says that someone might have, at some point, grown marijuana on the property.

44. Even when an alleged code violation is the failure to obtain a permit, the County doesn't allow the landowner to abate the "nuisance" by obtaining the permit in question. Indeed, the County won't issue *any* permits to properties under abatement orders.

45. Instead, the County orders landowners to destroy unpermitted structures within 10 days or it begins issuing daily fines—simply because the County alleges that the structures once had something to do with marijuana.

46. Photographic proof that there is no marijuana growing on their property is not enough to get the County to stop the fines.

47. Nor is evidence that the violations pre-existed the landowner's ownership or the County's allegations of cannabis growth.

48. Landowners who weren't growing marijuana illegally and who don't want to destroy their property must appeal the charges to an administrative "court" run by Code Enforcement.

49. Ever since the County began its abatement program around the end of 2017, the County has had a policy and practice of waiting several years—sometimes over *four years*—before it schedules an initial administrative hearing.

50. While landowners wait indefinitely for the County to schedule an initial hearing, the fines continue to accumulate, the County charges administrative fees for every interaction the landowner (or their attorney) has with the government about their abatement, and the County refuses to issue other necessary permits unless the landowner agrees to pay the County to settle their case.

51. Landowners who agree to apply for permits to grow cannabis commercially, however, can get their fines reduced or even dismissed.

52. The County's enforcement regime is designed to squeeze every dollar the County can out of its residents as it tries to maximize its proceeds from legalized marijuana.

53. Landowners fined without probable cause cannot escape the abatement process without paying the County—either in the form of fines, a settlement, administrative fees, or the licensing fees and taxes that the County charges to allow them to grow commercially in exchange for dismissing the code violations.

54. The County's unconstitutional implementation and enforcement of this abatement program gives rise to the facts in this Complaint.

A. Humboldt County Began Aggressively Prosecuting Building Code Violations Following Marijuana Legalization

55. California voters passed Prop 64 in November 2016 to legalize marijuana use for adults over 21 years old as of January 1, 2018.

56. In response to legalization, Humboldt amended its tax system and civil code throughout 2017.

57. Under the County's tax and fee schemes for marijuana, a commercial permit costs up to $86,560 in application and licensing fees, plus thousands of dollars in additional fees to cover the time that County staff works on an application. Commercial growers must also pay annual taxes up to $3 per square foot of a cultivation area, which the County charged for years regardless of whether marijuana was actually grown on the property.

58. These laws created a massive financial incentive for the County to push landowners into purchasing commercial permits.

59. In 2018 alone, the County took in about $5 million in permits and fees.

60. Correspondent to this legal pathway for commercial growth, the Board of Supervisors also passed several other ordinances in 2017 to increase enforcement and impose massive fines and fees on anyone who it thinks might be growing marijuana in Humboldt without buying a permit from the County.

61. Growing cannabis without a permit now qualifies as a "Category 4 violation" of the county code—the code's most severe offense, which carries a daily fine of $6,000 and $10,000 and applies to those violations that "have a significant and/or substantial impact" on public health and safety.

62. But the County did not stop at punishing illegal growth: The Board of Supervisors also amended the county code to increase the penalties for *all* code violations that the County alleges "exist[] as a result of or to facilitate the illegal cultivation of cannabis."

63. As a result of these changes, minor code violations become Category 4 violations subject to $10,000 in daily fines whenever the County alleges that a violation exists in order to facilitate the unpermitted growth of marijuana.

64. Violations that would typically carry fines between $1 to $1,000 multiply by a factor of 10 or more based solely on a supposed nexus between the alleged violation and marijuana.

65. To increase the County's capacity to enforce all its new cannabis-related regulations, the Board of Supervisors more than doubled the number of full-time Code Enforcement officers.

66. The County also "substantially" reduced the time landowners have to correct alleged nuisances before they face an abatement order: A property owner used to get 30 days to correct any alleged nuisances before they would receive an abatement order, another 30 days to abate the nuisance after receiving an abatement order, and then another 15 days before the County could schedule a hearing to impose a penalty. But the County combined those steps and reduced the total abatement period from 75 days to just 10 days, while landowners now faced exponentially larger fines if they don't comply in time.

67. While the issuance of civil penalties for an abatement used to require a hearing before the Board of Supervisors, the County amended that system to make a hearing by request only and in front of a hired hearing officer instead.

68. The explicit purpose of shortening the abatement period and reducing process rights was to streamline the County's ability to recover costs from abatements.

69. Additionally, the 2017 code changes replaced the County's complaint-based enforcement system and authorized the Code Enforcement Unit to proactively enforce state and local laws regarding marijuana cultivation.

70. The County's proactive, cannabis-focused enforcement mandate extended the purview of the Planning and Building Department and its Code Enforcement Unit beyond the traditional role of processing permit applications and abating nuisances that pose a danger to the public welfare, as the Board of Supervisors made its Code Enforcement Unit the County's primary enforcement agency for cannabis-related violations.

71. The Board of Supervisors directed the Planning and Building Department to implement its new cannabis-related abatement program by January 1, 2018, when legalization would take full effect in California.

72. As a result, by the time marijuana became legal, a newly constituted Code Enforcement Unit was in place to aggressively enforce code violations in Humboldt County.

73. The County's code and enforcement policy changes were calculated to boost county revenue by extracting fines and fees from residents who don't pay for costly commercial permits and increased property taxes for commercial growth.

74. To maximize the County's cannabis-related revenue, County officials, including Planning Director John Ford instituted a policy and practice under which the County tickets all unpermitted greenhouses for cultivating unpermitted cannabis growth.

75. Director Ford has also imposed extra-legal requirements on people seeking permits for greenhouses that have nothing to do with cannabis.

76. For instance, Director Ford will personally decide that a greenhouse is larger than what he thinks the landowners need to grow their own food, and he has demanded the landowners get a business license for their greenhouse even though the law requires none.

77. Director Ford will also require that landowners seeking a permit for a greenhouse must sign a special form promising to never grow cannabis in the greenhouse under threat of criminal penalties instead of the civil penalties the County typically assesses.

78. Director Ford's Planning Department treats greenhouses as inherently suspect despite their many legal uses.

79. Although the County often has no idea what is inside a greenhouse, anyone with an unpermitted greenhouse faces fines for illegal cannabis cultivation to ensure the County does not miss out on any cannabis-related revenue.

B. Humboldt County Imposes Ruinous Fines Without Regard for Probable Cause

80. The Planning and Building Department has run wild with its new fine-driven mandate and adopted a policy and practice of charging cannabis-related code violations without proof or process.

81. By charging cannabis-related code violations indiscriminately, the County's policy has inevitably punished many innocent people throughout the County.

82. In 2018, the Department's first full year prosecuting cannabis-adjacent building and permitting issues, the County increased code enforcement by about 700 percent, resulting in the County's assessment of $3 million in fines that year.

83. The County accomplished that drastic increase in enforcement through a policy and practice of charging Category 4 violations without regard for probable cause.

84. Category 4 violations, which carry fines of $10,000 per day, are those that are "committed intentionally or through inexcusable neglect and have a significant and/or substantial impact on the health, safety, comfort, and/or general welfare of the public."

85. The County's policy and practice, however, is to charge cannabis-related Category 4 violations without regard for any evidence that landowners violated the county code intentionally, or through inexcusable

neglect, to grow cannabis illegally, and without regard for whether a cannabis-related code violation has a significant or substantial impact on health, safety, comfort, or general welfare.

86. The County administers its blanket enforcement by using drones and a satellite-imaging program that provides the County with aerial images of property in the County.

87. Satellite imaging is the County's primary basis of enforcement, with 119 of the 200 abatement cases in 2021 coming through the County's satellite program.

88. Prior to the County's use of drones and satellite imagery, it issued far less than 100 citations per year.

89. In the four years after the County began using drones and satellite imagery, it has issued cannabis-related citations to over 1,200 properties.

90. Using aerial imaging, County officials identify properties that may have a greenhouse, building, a graded flat of land, an access road, or trees removed without a permit on record.

91. One problem with the County's reliance on these aerial images is that they often misrepresent property boundaries.

92. The County has ticketed a residents for their neighbors' greenhouses, simply because Code Enforcement was mistaken about where the property boundaries lined up with their satellite images.

93. Worse, the County's inability to properly identify property lines on its aerial images has led county officials to execute armed *raids* of properties for growing cannabis without a permit based on permitted activity on a neighbor's property.

94. When the County does identify the correct property, its crude satellite images reveal plenty of activities wholly unrelated to cannabis growth—let alone *illegal* growth in a state that allows residents to grow cannabis for medical and recreational use.

95. But the County persists in relying on imprecise aerial images because it's profitable; it provides a cheap way to pressure residents to pay the County fines, fees, and permitting costs, and it shifts the costs of the County's errors to its residents.

96. Many of the citations the County has issued are completely unfounded.

97. And even when County officials can be sure that they've spotted an unpermitted structure in an aerial image, the image does not reveal anything about the contents of a greenhouse or other structure.

98. A greenhouse in a crude aerial image is not probable cause that a landowner is growing marijuana in the greenhouse.

99. It is common for people in rural Humboldt to grow their own food, often out of necessity.

100. The crude aerial images that the County relies on cannot distinguish between a greenhouse growing food and one growing cannabis illegally.

101. The County's enforcement-by-satellite practice is so crude and indiscriminate that it has led the County to accuse the nuns at the Redwoods Abbey of running an illegal cannabis operation based on their vegetable garden.

102. The County has also mistaken a patch of solar panels for a greenhouse and a patch of tomatoes for an outdoor cannabis grow.

103. The County has similarly accused vegetable and lavender farmers of having cannabis in their greenhouses when it was just vegetables and lavender.

104. Similarly, a chicken farmer received a cannabis-abatement order for a greenhouse in which he was rearing chicks.

105. Nevertheless, the County's policy and practice is to charge landowners with unpermitted commercial cannabis cultivation based merely on a satellite image that shows a hoop house (a temporary greenhouse built from PVC pipes and a plastic covering), a larger greenhouse, or some other accessory structure.

106. The County follows similar enforcement practices for unpermitted grading.

107. Many people in Humboldt live on property once owned by logging companies that graded the land to help clear timber for decades.

108. The crude satellite images that the County relies on, which merely provide a snapshot in time, are unable to reveal the purpose of a grade.

109. Nor can the crude satellite images show whether the amount of soil graded exceeded the threshold that requires a permit.

110. Indeed, the two-dimensional images often can't show whether there is any grade at all.

111. But the County treats a greenhouse as proof that there must be grading.

112. A greenhouse in a crude satellite image is not probable cause that a landowner graded land without a permit.

113. More importantly, the County cannot determine from a crude satellite image alone that a landowner built a greenhouse or graded their land *for the purpose of* cultivating cannabis.

114. The County charges a range of cannabis-related Category 4 violations based solely on satellite images that show greenhouses, gardens, graded flats of land, and rainwater-catchment units.

115. The County elevates these charges to Category 4 violations without evidence of cannabis cultivation—let alone evidence amounting to probable

cause that the landowner violated the code to facilitate illegal growth.

116. The County often takes no investigative steps to confirm the presence of *any* cannabis in the greenhouse or on the graded flat found in a satellite image—let alone whether the cultivation is illegal.

117. Code Enforcement refers to these satellite-imaging cases it brings as "unreviewed."

118. When accused landowners have protested fines based on only satellite images, County officials have responded that they are not authorized to come check the property to confirm the presence of cannabis before issuing a fine.

119. Yet the County also maintains that it has all the evidence of a code violation it needs before it issues a notice of violation.

120. The clear implication is that the County (wrongly) believes it can issue code violations accompanied by hundreds of thousands of dollars in penalties, administrative fees, and restrictions on the use of property based on a lower quantum of suspicion than the probable cause required to obtain a warrant.

121. When the County does have probable cause of illegal cultivation, the Sheriff's Department seeks a warrant and raids the property along with Code Enforcement (and other government agencies).

122. When the County does not have probable cause of illegal cultivation, it issues fines and notices of violations instead.

123. The County also has a policy and practice of imposing fines on new purchasers or inheritors of land in Humboldt despite lacking any probable cause that these new owners committed Category 4 violations.

124. This policy ignores the *mens rea* requirement for Category 4 violations, which limits the code's most severe punishments to those committed intentionally or with inexcusable neglect.

125. The County charges cannabis-related Category 4 violations without regard for intent or culpability.

126. When someone purchases or inherits a parcel, the County's policy and practice is to wait until a new owner records their title and then fine the new purchaser for violations relating to a prior owner's alleged cannabis growth—even when the County knows that the new owner has not grown cannabis or committed the cannabis-related violations it charges.

127. The County treats the fines as if they run with the land, holding new owners responsible for the violations and corresponding fines that were based on a prior owner's conduct.

128. Director Ford has announced the County's position when someone purchases a piece of property

not knowing there were outstanding violations: "Not wanting to be cold-hearted, but the reality is that a property owner is responsible for their property and subsequent property owners inherit that responsibility."

129. Consistent with this policy of holding new owners responsible for the conduct of prior owners, the County has cited new purchasers for the prior owner's abatement orders, sent new purchasers a prior owner's outstanding bills, and even told new purchasers that they should track down prior owners and get them to pay if the new owners do not want to pay themselves.

130. Although county law requires the County to record code violations against the property after the 10 days to abate the violation has elapsed, the County has not and does not do so.

131. As a result of the County's failure to record outstanding abatement orders, the alleged code violations and corresponding penalties do not appear in a title search, depriving new purchasers of fair notice that the County plans to hold them responsible for someone else's wrongdoing.

132. Without regard for notice or culpability, the County will still insist, under threat of tens of thousands of dollars in daily fines, that the new owner must return their new property to its "pre-cannabis state," a murky concept that requires the owner to destroy any structures and re-grade land that the County alleges once had a nexus to cannabis.

133. In many cases, the County's punitive order that landowners return a property to its pre-cannabis state is more hazardous to the environment than leaving structures or grading in place.

134. The County imposes these penalties and fees regardless of the cost to the current owner and regardless of whether there was no cannabis cultivated in a structure or on a flat of land after the current owner's purchase of the property.

C. The County's Abatement Program Is Designed to Force Owners into Settlements

135. The County designed its cannabis-related enforcement regime to inflict so much pain and pressure on accused landowners that they feel compelled to settle the County's claims, regardless of their validity.

136. The County creates settlement pressure from the very day it issues a Notice of Violation and Proposed Administrative Civil Penalty and Notice of Abatement (together an "NOV").

137. To effect service under the county code, the County must send notice by certified mail and post a copy on the subject property.

138. The 10-day clock can, therefore, begin to run before a landowner receives actual notice of an alleged violation in the mail.

139. And the County's policy and practice is to trick landowners into believing the clock started even

earlier by pre-dating violations before the date the County actually effects service.

140. For instance, the County might date a notice Tuesday, November 29, but not place it in the mail and post it on a property until Friday, December 2—so, whenever the landowner sees the posted notice or receives their certified mail, they are given the misimpression that the 10-day clock started on November 29.

141. The County's pattern and practice of failing to correctly date a notice and adequately explain the date the fines will begin to run obscures how much time landowners have to respond.

142. The County further shortens the time landowners think they have to respond through its practice of posting the notice on a Friday to create the false impression that four of the 10 days fall on a weekend, leaving landowners with the mistaken belief that they have just one full week to weigh the risks of costs of incurring fines, fees, and the other costs associated with abating or opposing any alleged cannabis-related violations.

143. The County also posts notice in the newspaper to publicly accuse landowners of growing cannabis illegally.

144. The County makes these public accusations against landowners regardless of whether it has probable cause that they have grown marijuana illegally.

145. These public accusations increase pressure on landowners to settle abatement orders, and the County never retracts the accusation after a landowner establishes the accusations were baseless.

146. Even when the County dismisses an unsubstantiated notice of violation, it still charges landowners the cost of publishing its baseless accusations in the newspaper, along with fees to cover other administrative costs of initiating a case against them.

147. Landowners who have done nothing wrong still face over $650 in administrative fees, including $207 to cover the cost of publishing the County's untrue accusations against them. If they refuse to pay, the County will send them to collections.

148. Once served with an abatement order, landowners face immediate costs and immense pressure to settle due to the County's issuance of ruinous fines unsupported by any legitimate governmental interest, its refusal to drop baseless charges, its undue delay in providing hearings, its denial of permits while abatements are pending, and the cost the County imposes to prove one's innocence.

1. Humboldt County Issues Ruinous Fines and Fees Unsupported by Any Governmental Interest

149. The County imposes cannabis-related Category 4 penalties without any regard for whether the penalty serves a valid governmental interest.

150. When assessing fines for cannabis-related code violations, the County's policy and practice is to ignore the county code's mitigating factors such as the owner's culpability, history of similar offenses, and the severity of the impact on public health and safety.

151. The County's policy and practice is to issue the maximum $10,000 daily fines even when there are no health and safety concerns, complaints, prior violations, or culpability, and even when the County's entire investigation consisted of viewing a satellite image.

152. County officials even have insisted that a violation does not need to cause *any* actual harm to justify a maximum daily fine of $10,000.

153. While one daily fine of $10,000 would be unconstitutionally excessive for the innocent and harmless conduct and the paperwork violations for which the County imposes Category 4 violations, the County multiplies exponentially the pressure it places on landowners through a policy and practice of charging duplicative violations.

154. On average, the County charges about three Category 4 violations per property.

155. The most typical trifecta of fines are for a single unpermitted hoop house: (1) building a hoop house without a permit; (2) grading the land without a permit to build the hoophouse; and (3) growing marijuana illegally in the hoophouse.

156. Taken together, Code Enforcement will impose up to $30,000 in *daily* fines for building a temporary hoop house without a permit by alleging—without further investigation or evidence—that a hoop house itself is proof that a landowner also graded their land and grew cannabis without a permit.

157. A single day's worth of $30,000 daily fines already exceeds the average yearly income for Humboldt residents.

158. The daily fines accumulate for 90 days—quickly exceeding one million dollars in many cases—unless the landowner "abates" the alleged nuisance within 10 days.

159. To afford the County's excessive fines, the average Humboldt resident would have to work for over 90 years just to earn enough gross income to cover the penalties for not obtaining a building permit that would have cost a couple hundred dollars.

160. The fines are so unaffordable that even Supervisor Rex Bohn, one of the program's chief architects, asked the Planning Department what the fines are meant to accomplish: "We throw out these fines that are gonna be 35 million dollars if you don't do anything. … Should we bring that back to something more reasonable or is it to scare the panties off them?"

161. And, as if 90 days of excessive fines were not enough, the County can re-notice the violation after 90 days and impose another set of daily fines for 90 more days.

2. Innocent Landowners Cannot Escape an Abatement Order Without Paying

162. Other than immediately paying to settle an abatement order, there is rarely a way for innocent landowners to quickly resolve their case.

163. For instance, when the County charges a Category 4 violation for the failure to obtain a permit, its policy and practice is to refuse to issue the permit(s) necessary to resolve the abatement order on the grounds that the property is facing the abatement order that the permit would resolve.

164. In other words, the County makes it impossible to "abate" the nuisance and then charges the landowner 90 days of fines plus fees for their failure to do the impossible.

165. Without regard for public safety, the environmental impact, or the cost to the owner, an abatement notice will order landowners to destroy unpermitted structures and re-grade land solely because someone grew marijuana on the property at some point.

166. The County requires landowners to demolish structures that qualify for permits just because it alleges the structures once had a nexus to illegal cultivation.

167. And for structures that would not immediately qualify for permits, it is still often cheaper for landowners to bring the structures into compliance

than to demolish them; yet, the County insists on its demolition regardless.

168. But the County has rarely allowed landowners to bring a structure up to code because its policy and practice of ordering the destruction of buildings with an alleged nexus to cannabis is a major part of the leverage it creates for its fine-driven enforcement scheme.

169. For those rare structures that the County will permit as built, it charges a penalty of treble permitting fees without regard for whether the current owner was the one who failed to obtain the permit(s) at issue.

170. Some structures under abatement orders are large, structurally sound, permanent buildings that require an engineer, demolition permits, high labor and hauling costs, and even an environmental impact study before the owner can tear them down.

171. As a result, complying with an abatement order can cost a landowner well over $100,000 to demolish harmless and stable structures and land simply because cannabis may have once been cultivated on the land—even when it was a prior owner or trespasser who grew the cannabis.

172. On March 22, 2022, in response to a news story about Code Enforcement's unjust treatment of the Thomases, Rhonda, and other innocent purchasers in Humboldt, the Board of Supervisors held a meeting to reconsider the County's policy toward

unpermitted buildings once used for unpermitted cannabis cultivation.

173. At that meeting, Director Ford bemoaned publicly that the article elicited sympathy for the innocent purchasers whom his office was fining millions of dollars for someone else's code violations.

174. Director Ford confirmed his Department's policy that new owners like the Thomases and Rhonda had inherited responsibility for all issues on the property, even if his office had not recorded the violations to provide them notice of the violations and penalties they were inheriting.

175. Under the new policy adopted at the March 22 meeting, property owners can now prepare a plan describing their desired non-cannabis use for an unpermitted structure if:

a. The use is permitted under zoning and land-use laws;

b. The structure is within the 2-acre curtilage of an existing residence;

c. The structure can be permitted;

176. If the building does not fit those criteria, the owner must seek a conditional use permit, even if the use would be allowed without a conditional use permit had there not been cannabis on the property.

177. Innocent owners must also pay for all permits, "including penalty fees (i.e., triple fees for

building permits)," because of the prior cannabis cultivation on the property.

178. Demolishing a structure within 10 days instead of seeking a permit is often still not enough to get the County to dismiss a violation.

179. Owners willing to demolish a structure fare no better than those who can't obtain a permit: the County refuses to dismiss their violations either way.

180. Dozens of landowners in Humboldt have sent the County pictures during the 10-day abatement period to show that they destroyed an unpermitted hoop house and that there is no cannabis on their land, and the County still refused to drop the charges. Often, the County doesn't even respond.

181. Neither proof of innocence nor proof that the alleged nuisance is abated is enough to escape the County's clutches.

182. The County's policy and practice is to keep landowners trapped in its abatement process until they pay the County, one way or another.

3. The County Refuses to Provide Timely Administrative Hearings While It Pressures Accused Landowners to Settle

183. Another way the County pressures landowners to settle is by delaying administrative hearings indefinitely.

184. An NOV includes an "Attachment C," which an accused landowner can file to seek an initial administrative hearing to contest the County's charges.

185. Once an accused landowner files their Attachment C, the county code permits Code Enforcement to schedule an administrative hearing "no *sooner*" than 15 days after the notice of appeal—even though the daily fines begin to accrue after just 10 days.

186. The code does not impose a maximum time limit on how long the County can take to schedule an administrative hearing.

187. The County does not stay the accrual of daily fines upon the filing of an Attachment C to request an administrative hearing, nor does it do so during settlement negotiations.

188. Since the County adopted its new abatement program in 2017, the County's policy and practice has been and still is to wait years before scheduling an administrative hearing.

189. There is no legitimate governmental reason for the delay in scheduling initial hearings on abatement orders, as the County maintains that it has all the evidence it needs *before* it issues an NOV.

190. The purpose of the delay is to increase the pressure the County places on those landowners facing abatement orders.

191. Even if the County were to schedule a hearing within 15 days, the soonest the code allows, a landowner must incur *at least* five days of daily fines before they are even allowed to receive their hearing.

192. Again, a single day of fines typically exceeds the average yearly income of county residents, so five days of fines quickly becomes unpayable for accused landowners.

193. To make matters worse, the County's policy and practice is to ensure that the full 90 days of fines run against anyone who seeks an administrative hearing.

194. Consequently, people who seek an administrative hearing must incur hundreds of thousands—if not *millions*—of dollars in fines just to defend themselves.

195. The fines that accrue while an owner waits for a hearing multiply the risk and cost of exercising one's right to a hearing—even when the County brought the charges without regard for probable cause and cannot ultimately prove that the accused violated the code to cultivate cannabis.

196. If a landowner requests a hearing because they were falsely accused of violating the code *for the purpose* of growing cannabis, and then successfully shows at their hearing that they did not grow cannabis, the County can still "prevail" by proving simply that the accused committed the underlying code

violation (*e.g.*, building a cannabis-free greenhouse without a permit).

197. In other words, by delaying hearings and refusing to stay the accrual of fines, the County ensures that a landowner subjects themselves to 90 days' worth of *some* fines—even when the County never had the evidence to prove the alleged nexus to cannabis that led the County to file the charges and the landowner to insist on their right to a hearing.

198. So even when the County can't prove its allegations of cannabis cultivation that were the crux of its case, it can still demand that landowners pay $90,000 per violation—instead of $900,000—for exercising their right to a hearing instead of "abating" the issue within 10 days.

199. As landowners wait indefinitely for the County to schedule their hearing, they must also work with the County to address the very abatement orders they haven't yet had the chance to oppose in order to maintain any hope of leniency from the County's hearing officer, because the code restricts the hearing officer's authority to reduce the fines unless the landowner took "immediate steps" to abate an issue.

200. Working with the County also comes at an additional cost, as the County charges administrative fees for the time its officials and employees spend talking to landowners and their attorneys about pending abatement orders.

201. County officials have told accused landowners exactly that: hiring an attorney to contest an abatement order increases the ultimate cost that the County charges landowners in administrative fees.

202. Code Enforcement officials will even contact landowners without their lawyers present to pressure them into a settlement, even when the County knows that landowner has retained counsel to challenge the abatement order.

203. In some cases, the County makes clear that it is more willing to work with landowners if they do not bring their lawyer to negotiations.

204. Fully aware of the financial and psychological costs that its abatement regime brings to bear, County officials routinely check in with landowners to pressure them into waiving their right to a hearing and settling their case instead.

205. Code Enforcement officials warn landowners that an appeal is not in their personal interest because the County does not lose before its own hearing officer.

206. Code Enforcement Officer Warren Black has told innocent landowners, "You're going to lose the hearing; it's our people. We're going to impose the maximum fine on you [if you insist on a hearing], and you're going to owe us $270,000."

207. Similarly, Mr. Black has told other landowners that it "would be better to enter into an

agreement" than go forward with their demand for a hearing because "the judges and attorneys work for the county and are on the side of the Code Enforcement Unit."

208. The County's threats appear to be correct: Whenever the County actually does schedule a hearing before the law firm it hired to decide cannabis-related cases, the County wins.

209. The County makes clear to accused landowners that settling their case is the only logical thing to do in the face of ever-increasing penalties and indefinite delays.

210. Granted, the County's win-rate is, at least in part, a product of its refusal to schedule hearings on charges brought without probable cause and its willingness to drop cannabis-related allegations once it schedules a hearing.

211. The system works as it's designed: to streamline the County's collection of fines and fees without regard for culpability.

212. The County's undue delay in scheduling hearings facilitates this unjust outcome by forcing an accused landowner to endure years under the threat of fines, fees, and abatement costs, while also being unable to develop their land with no guarantee that the County will ever schedule their hearing.

4. The County Illegally Prohibits Landowners from Developing Their Property While an Abatement Order Is Pending

213. The County also increases settlement pressure by making permits costly or completely unavailable to landowners facing abatement orders.

214. The County has a policy and practice of denying all permits to landowners with pending cannabis-related abatement orders, even if the permits are wholly unrelated to the abatement issue.

215. The County adopted this blanket-denial policy despite a county ordinance that limits its authority to deny permits to only those *projects* that are subject to unpaid administrative civil penalties.

216. As part of this policy, the County denies landowners the very permits that the County is fining them for not having.

217. The County will also deny unrelated permits to landowners who are awaiting a hearing on an abatement order, including permits under the County's "Safe Home Program."

218. The County created its Safe Home Program at the same time it adopted its cannabis-driven code enforcement. The program, as extended, gives landowners from October 2017 through the end of 2027 to come forward and apply for as-built permits for their property without facing penalties.

219. While the County dangled the carrot of amnesty for permitting violations, its Code Enforcement unit began blindly swinging the stick of crippling fines at any violation it perceived to have a nexus to cannabis.

220. The County will refuse to issue as-built permits for homes—or any other permits—to landowners facing a cannabis-related abatement order unless a landowner agrees to enter a settlement agreement or apply for a permit to grow cannabis commercially.

221. County officials go so far as to make the extortive settlement pressure explicit—telling landowners that they cannot get permits for their property unless they settle their abatement cases.

222. The County's denial of permits leaves an accused landowner unable to develop or maintain their property for years as they await an initial hearing on the merits of the County's cannabis-related abatement order.

223. The County's illegal denial of permits increases the undue pressure on landowners to settle by denying their right to develop their property and by putting them at risk of additional permitting violations unless they give up their right to appeal any abatement orders.

5. Challenging an Abatement Order Comes at a Great Cost

224. If the County would ever finally provide an accused an administrative hearing, the hearings are extremely costly.

225. Administrative hearings take place before a hearing officer for Code Enforcement.

226. Despite the massive fines that the County levies "to minimize the expense and delay associated with pursuing alternative remedies through the … criminal justice system," the County does not allow the accused to have a jury decide the facts of their case.

227. The hearing is conducted before a contractor from a private law firm that the County hires to serve as the hearing officer.

228. Under the County's agreement with this private firm, the County pays hearing officers $240 per hour for their work plus $120 per hour for their travel time.

229. The County passes on the cost of the hearing officer to the accused in the form of another administrative fee.

230. The County charges up to $4,500 in administrative fees to landowners who request an administrative hearing.

231. In addition to the cost of the hearing officer, the County also charges landowners for the time their salaried staff members spend preparing for the hearing.

232. These fees the County charges for exercising one's right to an initial hearing are in addition to the daily fines that a landowner necessarily accrued waiting for the County to schedule the hearing.

233. The county code permits the hearing officer to reduce the penalty below the amount that Code Enforcement assessed in the NOV *only* if the landowner immediately remedied a violation that did not impact the health, safety, or general welfare of the public.

234. Perversely, the County supposedly interprets any attempts by a landowner to work with the County to remedy parts of underlying violations—including permitting issues unrelated to cannabis cultivation—as a reason to continue delaying the initial hearing, further increasing the cost to accused landowners without ever telling them that their cooperation might delay their hearing.

235. As a result, exercising one's right to an initial hearing guarantees increased fines and fees, which the hearing officer cannot reduce because the landowner chose to contest an abatement order rather than caving to the demands of an NOV within 10 days. Any attempt to mitigate violations in the meantime further delays the hearing while increasing the administrative fees a landowner incurs as they await their initial hearing.

236. The County reminds landowners of all the associated risks—and the fact that all landowners are sure to lose their administrative appeal—as it pressures landowners to settle their case and waive their right to contest an abatement order.

237. The County's system for adjudicating cannabis-related code violations is designed to pressure landowners into settlements instead of hearings to determine the merits of the County's allegations.

238. If the hearing does go forward, any party aggrieved by a hearing officer's decision may then file a request for judicial review in the county superior court within 20 days.

239. The appeal to the superior court is a limited civil case for which the record from the administrative hearing is admitted as prima face evidence of the County's claims.

240. The County can enforce its administrative order and collect any penalties before a landowner appeals the hearing officer's decision and receives a hearing in superior court.

241. As a result, the County can collect the ruinous fines it issued without probable cause before an accused landowner can ever step foot in a real court.

6. The Pressure Is the Point

242. The pressure campaign described throughout this section—with the ruinous fines, time pressure, the inability to obtain permits, the lack of a

timely hearing, and the County's refusal to dismiss baseless charges—is all designed to generate revenue for the County.

243. Once a landowner receives an NOV, they are trapped in an abatement unless they pay the County to let them out.

244. When a landowner appeals an NOV, the County typically responds by immediately offering a compliance agreement under which the landowner agrees to pay one day's worth of the daily fines plus administrative fees up to $4,500.

245. The administrative fees include things like the time that County employees have spent answering a landowner's phone calls or responding to emails about the case, down to the 15-minute increment.

246. The fees also include the cost of the County publishing its accusations against the landowner in the newspaper.

247. Paying fines and fees as part of a settlement agreement isn't the only way a landowner can pay their way out of an abatement order.

248. The County has also offered to drop cannabis-related abatement orders for landowners who will agree to enter the costly process to grow commercially.

249. The County has even offered to dismiss a cannabis-related abatement order in exchange for a landowner transferring to the County the title to the

very unpermitted building that the County insisted the landowners had no other choice but to destroy.

250. In other words, because someone else once grew marijuana on a property before their purchase, the new landowners would have to pay to destroy a structure on their property or turn over the property to the County, without compensation, for public use.

251. Those landowners who don't respond to an NOV get a $900,000 lien put on their property.

252. As of August 2022, the County had placed a $900,000 lien on 24 properties, plus a $150,000 lien on a 25th.

253. For those who resist the County's settlement offers and insist on an administrative hearing, the financial and psychological pressures remain unabated indefinitely, until the County eventually agrees to schedule an administrative hearing.

254. Once the County does schedule a hearing, it increases the pressure to settle yet again by finally dropping any pretext of its baseless cannabis allegations and instead seeking 90 days' worth of fines for the underlying code violations that the landowner might not have ever contested if not for the cannabis charges, plus thousands in administrative fees.

255. For many landowners, the only sensible way out of a cannabis-related abatement order—whether brought based on probable cause or not—is

to settle before the fines and fees become insurmountable.

256. About one-third of landowners facing abatement orders have agreed to settle their case and waive their right to a hearing, generating millions in fines and fees for the County without Code Enforcement ever having to prove the allegations it brings without regard for probable cause.

D. The County's Violation of the Individual Plaintiffs' Constitutional Rights

1. Corrine Morgan Thomas & Doug Thomas

257. Corrine and Doug Thomas live in Miranda, California.

258. The Thomases are both disabled and on a fixed income.

259. They are retired aside from their work for a non-profit they run called the Miracle Run Foundation for Autism.

260. The Miracle Run Foundation is named after a book Corrine wrote and the movie based on that book, which depicts their twin autistic sons' perseverance through school.

261. Through their foundation, the Thomases raise awareness and money to support families with autism.

262. The Thomases lived in Los Angeles County with their twin sons until the Woolsey Fire destroyed their home in November 2018.

263. Using the insurance money from the fire, the Thomases decided to purchase their "forever home" in the middle of a redwood forest in Humboldt, where they always dreamt of living.

264. The Thomases closed on a home in Miranda on August 20, 2021.

265. The home sits on top of a ridge above the Avenue of the Giants.

266. Behind the home, there is a detached garage alongside a three-story building that the listing referred to as a workshop.

267. When the Thomases purchased the property, the workshop was empty and the electrical wiring inside had all been cut.

268. Six days after the Thomases closed on their new home, on August 26, they received an NOV addressed to Summerville Creek LLC, the property's prior owner.

269. The code-enforcement case for the violations listed in the notice had existed since 2019, over

two years prior to the Thomases' purchase of the property.

270. The notice listed two violations: (1) violation of the commercial cannabis land use ordinance; (2)(a) construction of building/structure in violation of building, plumbing and/or electrical codes; and (b) facilities/activities in violation of the commercial cannabis land use ordinance.

271. The paperwork described the conditions causing a nuisance as "[u]npermitted commercial cannabis operation with approximately 2,500 square feet of cultivation" and a "[s]tructure facilitating commercial cannabis activity and constructed contrary to the provisions of Humboldt County Code."

272. The notice said the owner faced a daily administrative penalty of $12,000 for 90 days unless they (1) ceased all commercial cannabis cultivation operations and removed all cannabis and infrastructure supporting commercial cannabis including water infrastructure and power sources; and (2) removed all structures with a nexus to cannabis cultivation and constructed in violation of the Humboldt County Code, including applying for and obtaining a demolition permit when applicable.

273. The Thomases filled out the Attachment C to their NOV and submitted their request for a hearing on September 2, 2021, stating that they were the new owners as of 12 days prior and that there was no cannabis operation on the property.

274. The Thomases have never grown cannabis.

275. The Thomases certainly did not set up an illegal grow operation in Humboldt within days of moving into their new home.

276. It should have come as no surprise to the County that there was no cannabis operation on the Thomases' property given that the County had raided the property and shut down the cannabis operation at issue in 2019, over two years before the Thomases bought the property.

277. During a 2019 raid, the County had already cleared out all the remnants of the prior owner's growing operation and cut the electric to the three-story workshop, leaving no illegal cannabis growth for the Thomases to abate.

278. The County would have also known that the property changed hands before it issued the NOV, as the Thomases had already recorded their deed with the County as the county code requires.

279. Despite having raided the property and initiated a code-enforcement case over two years prior to the Thomases' purchase of the property, the County waited until after the Thomases purchased the property to serve the Thomases with a NOV for the prior owner's wrongdoing.

280. Frightened by the penalties in the NOV, the Thomases contacted the County and informed County officials of their new ownership of the property—but

that did not deter the County for pursuing its abatement order against them.

281. No County official has ever suggested to the Thomases or the attorney they hired to defend themselves against the County's charges that the Thomases are not responsible for the NOV and its corresponding civil penalties.

282. To the contrary, since the County issued the Thomases an NOV for someone else's conduct, the County has made clear consistently that, pursuant to the County's established policy and practice, the Thomases must pay fines and fees for the prior owner's conduct or sign a settlement agreement pursuant to which they relinquish a variety of their rights as landowners.

283. Having successfully terrified the Thomases under the threat of more than a million dollars in fines, the County sought the Thomases' consent to inspect their property, ostensibly so the County could confirm once again that the workshop had been used to cultivate cannabis—something, again, the County was well aware of already.

284. Code Enforcement Officer Brian Bowes visited the Thomases property on September 8, 2020.

285. The Thomases told him that they do not smoke pot and do not grow pot.

286. Mr. Bowes responded that he did not care who they are or what they've done and that the

Thomases are still responsible for the violations on the property they bought, including the citation for the unpermitted cultivation of cannabis.

287. The Thomases asked if they could just get the building permitted because they intended to use it for woodworking and storage, but Mr. Bowes responded that the County would not let them permit it and said that the Thomases were stuck having to tear it down.

288. Mr. Bowes concluded that—even if the County did not have a policy prohibiting the permitting of buildings used to cultivate cannabis—the only permissible use for the building was a barn, but the Thomases could not use the workshop as a barn because they do not raise livestock or store agricultural products on their property.

289. Even though the Thomases did nothing wrong, the County still insisted that they must destroy the three-story workshop solely because the prior owners used it to cultivate cannabis.

290. The three-story workshop that the County wants to demolish is situated behind the family's home, surrounded by old-growth trees.

291. The Thomases hired an engineer in response to the abatement order. He estimated that the cost to remove the building with minimal environmental impact was about $180,000 plus the cost of the necessary demolition permits.

292. The Thomases do not want to destroy the three-story building, which Doug planned to use as a workshop for projects related to his renovations to their home.

293. Nor do the Thomases want to remove old-growth trees from their scenic yard, considering the trees were the main appeal to the Thomases living in a redwood forest.

294. The Thomases also cannot afford the cost of removing the building.

295. After losing everything in the Woolsey Fire, the Thomases invested their insurance money into their new home.

296. They cannot afford nearly $200,000 in abatement costs designed to punish someone else's wrongdoing.

297. The threat of over a million dollars in fines, plus nearly $200,000 in abatement costs has caused the Thomases an incredible amount of emotional distress, as they could not afford the costs and penalties.

298. On October 7, 2021, rather than rescinding the NOV, the County offered the Thomases a settlement agreement under which they would be required to admit to the County's cannabis-related accusations, remove the unpermitted structure from their property, and pay administrative fees.

299. The settlement offer confirmed that Code Enforcement opened the case against the Thomases

on July 12, 2019, more than two years before they purchased the property.

300. As the Thomases contemplated their options, the fines continued to accrue.

301. By November 8, 2021, the fines had reached $756,000, plus the $200,000 to destroy their workshop.

302. The Thomases' fixed retirement income does not include a spare $956,000 to pay for someone else's wrongdoing.

303. Out of duress, and feeling like they had no other option, the Thomases signed a settlement agreement under which the County was willing to "stay enforcement" of its NOV and proposed civil penalty if the Thomases purchased a demolition permit and paid to demolish the workshop within six months.

304. The agreement also required the Thomases to consent to warrantless inspections of their property and prohibited them from transferring ownership.

305. If they failed to comply, the County would reinstitute the abatement order and civil penalties.

306. The Thomases could not afford the associated costs and decided not to destroy their building; instead, they waited for their administrative hearing.

307. On March 22, 2022, a news story about the plight of the Thomases and other innocent purchasers in Humboldt caused the Planning Department and

the Board to Supervisors to reconsider their policy toward unpermitted buildings used for unpermitted cannabis cultivation.

308. The County confirmed at that meeting that new owners like the Thomases inherited responsibility for all violations on the property prior to their purchase—regardless of whether they had notice of those violations.

309. Under the new policy adopted at the March 22 meeting, the Thomases can obtain a permit for their workshop only if their desired use is permitted under the zoning and land-use laws.

310. Accepting Mr. Bowes' conclusion that the Thomases' workshop has no permissible use under the county code, the Thomases would have to seek a conditional use permit.

311. To do so, they must pay treble fees as a penalty for the prior owner's cannabis cultivation on the property.

312. As the County has made clear to the Thomases' attorney, there is no guarantee that the County will issue a conditional use permit even after the Thomases pay a penalty for someone else's wrongdoing.

313. The Thomases' attorney emailed the Planning Department to confirm that his innocent clients, including the Thomases, would still have to pay triple permitting fees.

314. By email on April 4, 2022, Code Enforcement Officer Branden Howton replied: "As for your list of clients below, please inform them they will still have to be paying three (3) times the cost for permitting[.] … Although some of the buildings listed below meet [the new policy's] criteria, some do not. Please keep that in mind. Due to the time required for the permitting process, we will be offering No-Penalty Compliance Agreements. Other requirements for abatement will still apply as the policy only applies to the structures used for cultivation."

315. The policy took effect on April 5, 2022.

316. The Thomases' November 2021 agreement with the County lapsed on May 16, 2022.

317. On August 16, 2022, the County offered the Thomases a new settlement agreement.

318. Much like the prior year's offer, the August 2022 agreement acknowledged that the abatement case pre-dated the Thomases' ownership, but it still required them to falsely admit that they committed the prior owner's cannabis-related offenses.

319. The August 2022 agreement also required the Thomases to consent to warrantless searches, prohibited them from transferring ownership, and required that they pay administrative fees that the County incurred bringing a case against them for someone else's wrongdoing.

320. The August 2022 agreement, however, allowed the Thomases to keep the three-story workshop if, within eight weeks, they submitted a restoration plan and permit application.

321. The County confirmed again with the Thomases' attorney that the County would charge the Thomases triple the permit fees to obtain any permits they needed, again, as punishment for someone else's wrongdoing.

322. If, upon reviewing the Thomases' permit application, the County determined that it could not permit the structure, the Thomases would then have three months from the County's denial of the permit to obtain demolition permits and demolish the structure.

323. Once the Thomases either obtained a permit for the structure or demolished the structure, the County would then dismiss the code-enforcement case against them.

324. The Thomases rejected the agreement because they remain intent on keeping the three-story accessory structure they purchased with their property, but they are not willing to pay penalties for the prior owner's wrongdoing.

325. The Thomases also do not want to admit guilt or otherwise waive their right to privacy, their right to be heard, or their right to sell or transfer their property.

326. To date, the Thomases have still not received an administrative hearing since filing their notice of appeal on September 2, 2021.

2. Blu Graham

327. Blu Graham has lived in and around southern Humboldt County for most of his life.

328. Blu owns a hiking company called Lost Coast Adventure Tours and, along with his wife, owns a restaurant called Mi Mochima near their home in Shelter Cove. Blu also works as a contractor for a national outdoor-recreation retailer, serving as a guide on hiking tours in Humboldt.

329. Blu was the chief of the Whale Gulch Volunteer Fire Company for about five years and remains a captain for the company.

330. Back in December 2012, Blu purchased an 80% interest in a parcel of land in Whitethorn, and he has been slowly developing a homestead there ever since.

331. Blu constructed greenhouses on his property to grow fresh produce for his family's restaurant.

332. Blu's property also contains a fire road and rainwater-catchment pond for fire control.

333. Back in May 2018, Blu was in the second group of Humboldt residents to receive an NOV from the County.

334. The notice alleged three violations: (1) violation of the commercial cannabis ordinance; (2) construction of building/structure in violation of building, plumbing, and/or electrical codes; and (3) grading land to install a rainwater-catchment pond without permits.

335. The notice informed Blu that he'd face $10,000 in fines per day for a period of 90 days unless he completely abated the alleged nuisances within 10 days.

336. To abate the issues, the notice required Blu to implement a restoration plan for all three violations, cease all cannabis cultivation, and remove all supporting infrastructure.

337. Blu was not cultivating cannabis on his property and no infrastructure on his property supported cannabis cultivation.

338. Along with the NOV, the County included a cover letter, also dated May 10. The letter informed Blu that Code Enforcement "recently inspected" his property and "observed violations of County Code." It warned that "these recorded Notices may hinder the landowner's ability to sell or refinance the property."

339. On or about May 12, 2018, the County published in a local newspaper that Blu's property was under an abatement order relating to illegal cultivation.

340. The publication of allegations that Blu was growing marijuana illegally caused him stress and embarrassment, as he had recently opened Mi Mochima and was trying to get the business off the ground with his wife. He had to explain his innocence to inquiring customers.

341. Blu went to Eureka on or around May 14, 2018, to speak with Code Enforcement about his NOV and file his request for an administrative hearing.

342. Code Enforcement officers Brian Bowes and John Moredo assured Blu that everyone in Humboldt would get an NOV eventually.

343. They told him he had three options: settle, appeal, or lose his land. They tried to persuade Blu to take the first option—enter a settlement agreement under which he'd admit guilt and pay a $30,000 fine to the County.

344. Blu rejected the County's settlement offer and insisted on having an administrative hearing.

345. He told Code Enforcement officers that he knew they did not have proof of cannabis because there was none on his property.

346. Code Enforcement officers responded, "Well, you're not just growing asparagus in there."

347. Blu was, in fact, just growing vegetables in his greenhouses.

348. The officers provided Blu with four aerial pictures of his property from 2012, 2014, 2015, and 2017.

349. None of the images on which the County relied showed the property at the time of the alleged violation in 2018, when its cannabis-related code provisions became law.

350. It is impossible to detect marijuana cultivation from these crude images.

351. It is impossible to detect *anything* inside Blu's greenhouses from these crude images.

352. There was no marijuana cultivation on the property.

353. The rainwater-catchment pond that the County alleged that Blu dug to cultivate cannabis is situated about 1,000 feet up a ridge from Blu's house and greenhouses. The pond exists solely for fire prevention; it is designed so a firefighting helicopter can drop down and scoop up water to fight a nearby fire.

354. There are no pipes or irrigation leading from the pond to Blu's greenhouses below.

355. Blu was not using his pond to grow marijuana illegally.

356. Blu retained an attorney and timely filed his notice to request a hearing on the abatement order, asserting that there was no marijuana on his property.

357. On May 22, 2018, Blu's attorney sent a letter to the County inviting Code Enforcement to come inspect the property. The letter also explained that Blu wanted to keep and permit his greenhouses because he uses them to grow fresh produce for his wife's restaurant.

358. Along with the letter, Blu's attorney included pictures to show that there was no illegal cultivation on Blu's property.

359. The County made clear in response that they had no intention of visiting Blu's property and refused to issue a permit for his greenhouses. The County insisted that its cannabis allegations predated 2018.

360. Unable to obtain a permit from the County, Blu removed his greenhouses to comply with the abatement order despite his hopes to retain them to continue growing vegetables.

361. Blu's attorney sent a second letter on June 25, 2018, this time to Director John Ford. He expressed concern and confusion over the County's refusal to inspect the property and dismay at the fact that the County charged Blu based on crude aerial photos that do not show any marijuana.

362. The June 25 letter conceded that Blu dug the rainwater-catchment pond in 2015 to aid the local fire company. He sought a retroactive permit for the grading rather than filling it in, as the fire company

inspects the pond annually and has expressed its pleasure with it.

363. On July 5, 2018, Deputy Director Bob Russell responded by letter. He acknowledged that the pond may be for fire prevention but claimed that the County also had evidence that Blu's grading was done with the intent to support cannabis infrastructure (which, again, was not true).

364. Mr. Russell said that the NOV against Blu would stand and offered Blu a reduced penalty of $20,000 plus administrative fees if he signed a settlement agreement. If he elected instead to move forward with his administrative hearing, the County warned that a settlement "may no longer be an option."

365. Mr. Russell did not respond directly to Blu's request to permit his pond. Instead, he said that the County may "eventually" allow Blu to permit existing "empty" structures on his property through the Safe Home Program.

366. Blu again rejected the County's settlement offer; he maintained instead that he wished to go forward with the initial hearing he requested back in May because he knew the County had no evidence to support its baseless claims of illegal cultivation.

367. The 90 days of fines for Blu ran through August 18, 2018, at which point Blu accumulated $900,000 in fines for his unresolved abatement order,

despite his filing a timely request for an initial hearing that he never received.

368. In September 2018, the County offered to settle Blu's case for $10,000 if Blu signed a settlement agreement pursuant to which he admitted that he graded land without a permit for the purpose of cultivating cannabis.

369. Blu once again rejected the offer and demanded his initial hearing because the development of his property had nothing to do with marijuana.

370. The County still refused to provide Blu an administrative hearing.

371. Blu hired a register engineer to inspect the grade of his pond.

372. On January 15, 2019, the engineer sent a letter to Bob Russell advising him that he did not observe any commercial-cannabis activity on Blu's property and that "[t]he property [was] developed for use as a rural homestead with site grading activities and building development occurring a little at a time over the past 40 years."

373. The letter concluded that the grading did not create a geologic or erosion hazard and that the rainwater-catchment pond is stable and does not require corrective action to protect against erosion and sediment runoff.

374. On February 6, 2019, the County offered another compliance agreement that would have

required Blu to pay $20,000 (an increase from the $10,000 it offered the year before). Blu again refused to pay the County's settlement demand and wrongfully admit that he was growing cannabis on his property.

375. In a conversation with Code Enforcement officer Warren Black, Blu objected to the County's issuance of Category 4 violations without any evidence that a greenhouse contains cannabis. Mr. Black responded that the prevalence of cannabis throughout Humboldt justifies the County's policy and practice of levying fines without individualized suspicion—just as police would be right to suspect that any shed contains methamphetamine in a region that has problems with that drug.

376. The County offered Blu another settlement agreement on August 5, 2021. He again refused to sign and—once again—insisted on an administrative hearing because the offer required him to accept responsibility for the County's baseless claim that he was cultivating cannabis.

377. With his abatement case still unresolved, Blu went to the Planning Department to try to obtain a permit for his home through the Safe Home Program. He paid $799 for the initial startup fee.

378. Code Enforcement, however, learned that Blu was trying to participate in the Safe Home Program and put a hold on his application after he already began the process, paid the County fees, and hired and paid for contractors.

379. Even though Code Enforcement knew that Blu had retained counsel for his abatement case who had already participated in settlement negotiations, County officials contacted Blu directly to pressure him into signing a settlement agreement in exchange for his Safe Home permit.

380. Warren Black told Blu that it was in Blu's best interest to drop his request for a hearing and sign a settlement agreement instead because the County would not issue Blu a permit for his house while his abatement order was outstanding and because no one can win their administrative hearing before the County's hand-picked hearing officer.

381. Mr. Black went so far as to encourage Blu to submit public-records requests to see the County's perfect win-rate in administrative hearings.

382. Mr. Black followed up by email later the same day and gave Blu instructions on how to submit an information request for the results of all the administrative hearings held on cannabis-related charges.

383. Blu interpreted this email as telling him he should settle his case because Code Enforcement does not lose at its administrative hearings.

384. Mr. Black emailed Blu again on August 4, 2022, and confirmed that he would only "release the hold on [Blu's] safe homes project" if Blu signed the County's settlement offer in his unrelated abatement case.

385. In September 2022, over four years after Blu requested his initial hearing but only a few weeks after he retained undersigned counsel to challenge the County's code-enforcement system, Code Enforcement suddenly sent Blu a notice of administrative hearing, scheduled for October 14.

386. Shortly after the County served the notice of administrative hearing, Mr. Black once again contacted Blu directly to pressure him to settle.

387. The County informed Blu that it was no longer pursuing the cannabis-related claims that Blu had contested for over four years.

388. Instead, the County would limit its case at the hearing to one count of grading without a permit—wholly unrelated to the cultivation of cannabis.

389. The County informed Blu that, if he exercised his right to a hearing, he would face $90,000 in fines for the failure to obtain a grading permit after he received an NOV: a fine of $1,000 per day for the full 90 days allowed by the ordinance, all of which ran while Blu awaited his hearing.

390. Blu had tried to obtain the permit at issue back in 2018 but the County denied his request because he had a pending cannabis-abatement order.

391. In other words, if Blu exercised his right to an administrative hearing, he faced $90,000 in penalties for failing to obtain the very permit that the

County refused to issue him because he exercised his right to an administrative hearing.

392. The County, however, offered to settle Blu's case if he would admit to grading land for the pond without a permit, pay up to $4,500 in fees, and waive his right to an administrative hearing.

393. Rather than signing the settlement agreement, Blu contacted the County and requested a meeting with Director Ford.

394. Blu met with Director Ford and other County officials on September 26, 2022.

395. At the meeting, Director Ford confirmed the County's policy of refusing to issue *any* permits for a property under an abatement order.

396. Director Ford agreed to drop Blu's case and to issue a permit for Blu's pond (which, again, Blu had been requesting—without success—since 2018) without a signed settlement agreement if Blu paid over $3,700 in administrative fees to cover the cost of the County prosecuting Blu's case while he was waiting for his initial hearing.

397. Director Ford confirmed that the engineering report Blu's attorney submitted back in January 2019 was sufficient to obtain a grading permit for the pond.

398. Deputy Director Bob Russell told Blu that settling his case would have been a lot cheaper if Blu

had not hired an attorney to defend himself against the County's claims for so long.

399. That same day, Blu gave the County a cashier's check for $3,747.29 to pay the administrative fees associated with his case.

400. These fees included $207 to post notice of his alleged cannabis-related violations in the newspaper and $3,747.10 in general staffing costs.

401. In exchange for Blu paying the administrative fees, the County agreed to expedite the permit for his pond that it had denied him for over four years.

402. Director Ford followed up by email and confirmed that the County would resolve the violations on Blu's property if he paid his administrative fees and paid for the grading permit.

403. The County sent Blu a letter dated September 28, 2022, stating that it was processing a refund for him to return $2,951.18 of what he paid in administrative fees as a reduction for costs associated with preparing for his administrative hearing that the County never held.

404. All told, Blu had to pay the County $795.92 in administrative fees to defend himself against baseless cannabis-related charges that the County filed against him without probable cause and eventually dropped over four years later for lack of evidence.

405. The only reason Blu paid these administrative fees in exchange for the County dropping his

abatement case was because the County was holding hostage the permits Blu needed for his property.

406. On Monday, October 3, 2022, Blu paid the County another $936 for his grading permit.

407. That same day, the County issued a permit for Blu's pond and closed its abatement case against him.

408. The County then released its hold on the permit for Blu's house under the Safe Home program because he paid the County $795.92 in administrative fees to drop his abatement case.

3. Rhonda Olson

409. Rhonda Olson is a longtime resident of Orleans, California, an unincorporated area of Humboldt County more than two hours northeast of the county seat in Eureka.

410. On September 10, 2020, Rhonda closed escrow on the purchase of three adjacent parcels of land near her house in Orleans for $60,000.

411. She planned to use the property to provide housing for her family and close friends in the properties' existing homes and to build affordable housing that she could sell on the undeveloped parcel.

412. The property came with scattered junk and needed renovations that Rhonda planned to undertake to improve the property.

413. The first parcel is on the top of a large hill. It has a modular home and the remnants of several hoop houses; it also has an industrial garage and a logging flat atop a steep driveway, all of which dates back to a logging operation on the property from the 1980s.

414. The second parcel is below the first and leads to the street; it has a home and a spacious yard.

415. The third parcel is a naturally sloped field across the street; it is empty aside from some grapevines and the remnants of a hoop house.

416. At the time of purchase, Rhonda knew that the prior owners had been raided by law enforcement and that law enforcement had cleared an illegal growing operation from the property.

417. Because she was aware of the raid, she conditioned her purchase on the property having a clean title.

418. The title search showed no outstanding violations or liens on the property.

419. It wasn't long after Rhonda's purchase, however, before the County brought Rhonda's development plans to an abrupt halt.

420. On October 1, 2020, Rhonda received an NOV for each of the three parcels, each dated September 11—just one day after she closed escrow on the property. The NOVs were all addressed to the prior owner, a corporation based out of Santa Rosa.

421. The first NOV, for the vacant parcel across the street, cited four nuisances: (1) unpermitted commercial cannabis cultivation; (2) two hoop-house structures facilitating commercial cannabis activity; (3) grading without permit to facilitate commercial cannabis cultivation; and (4) multiple piles of junk.

422. The first NOV assessed daily fines of $31,000: a $10,000 fine for each of the cannabis-related violations and $1,000 for the junk.

423. There was no cannabis on the property at the time of the NOV, and an engineer would later confirm that no grading was done on the parcel.

424. The second NOV, for the parcel with the house, also cited four nuisances: (1) unpermitted commercial cannabis operation; (2) structures facilitating commercial cannabis activity and constructed contrary to the county code; (3) grading to facilitate commercial cannabis cultivation activity; and (4) piles of junk.

425. The second NOV also assessed daily fines of $31,000: a $10,000 fine for each of the cannabis violations and $1,000 for the junk.

426. There was no cannabis on the second parcel at the time of the NOV, and a simple check of tax records or historical satellite imaging would have confirmed for the County that the structure at issue was constructed decades ago—not as part of the prior owner's cannabis operation.

427. The third NOV, for the parcel up the hill with the modular home, cited six violations: (1) unpermitted commercial cannabis cultivation; (2) four structures facilitating commercial cannabis activity and constructed contrary to the county ode; (3) grading to facilitate commercial cannabis cultivation; (4) development in a mapped streamside management area to facilitate commercial cannabis cultivation; (5) junk and/or inoperable vehicles; and (6) piles of junk.

428. The third NOV assessed daily fines of $42,000: a $10,000 fine for each of the four cannabis-related violations and $1,000 each for the two junk-related violations.

429. As with the other two parcels, there was no cannabis while Rhonda owned it; the police had cleared it all out during their raid of the prior owner, before the County issued NOVs.

430. Code Enforcement officials later acknowledged in March 2022 that the grading on this parcel was an "old logging pad" that they were "not really worried about" because it pre-dated any cannabis cultivation on the property.

431. The County fined her for it anyway.

432. In total, Rhonda faced $104,000 in daily fines for cannabis-related charges on land she just bought days prior for $60,000.

433. Rhonda has never grown marijuana on the property.

434. The day after receiving the abatement orders, Rhonda hired an engineer to inspect her property.

435. The engineer sent the County a letter on October 5, 2020. He explained that law enforcement had terminated the illegal growing operation, there was no cannabis on the property, and any grading happened more than a decade before Rhonda purchased the property. He also noted (and included pictures showing) that Rhonda had removed all the hoop houses and was in the process of removing the junk.

436. Rhonda filled out the Attachment C forms to request an administrative hearing and sent them by certified mail on October 7, 2020.

437. She explained on her Attachment C that she was the new owner and "did not make the nuisance and had a clear title as of September 10, 2020." She let the County know she was working to correct any nuisances the prior owners left, including by clearing out the junk.

438. Rhonda contracted an engineer to put together a plan relating to all the alleged grading on the property. He recommended filling in some soil on the parcel and not rebuilding the hoop houses on top of the ridge.

439. Filling in the soil was not enough for the County, however.

440. Having not heard anything from the County following her submission of proof that she cleared up the abatement issues on the third parcel with the grapevines, Rhonda paid an engineer $3,200 to test the soil and water in preparation for installing septic and building a home.

441. She emailed the County to let them know she conducted the testing and to request the necessary permits to begin building and installing a septic system.

442. County officials responded by email on March 23, 2021, and warned, "Just an FYI, no permits will be issued for properties with open Code Enforcement cases."

443. The email also clarified that the County prosecutes grading as a Category 4 violation even when the grading originally had nothing to do with cannabis: "I also received your email regarding another property where you stated that the grading was done for a timber harvest plan. Unfortunately, the fact that the flats were used for cannabis cultivation is why the violation exists. For normal timber operations flats are permitted but the moment they are used for unpermitted cannabis cultivation they will need to be addressed by a licensed engineer."

444. County officials also acknowledged by email that the police removed all cannabis from the property prior to Rhonda's purchase, despite the notices of violations citing her for cultivating cannabis on the property.

445. Similarly, in public comments on March 22, 2022, Code Enforcement told the Board of Supervisors that "all that's left is some grading" on Rhonda's properties, which could be "chalk[ed] up to pre-cannabis logging activity."

446. But despite acknowledging that nearly all of the alleged conditions do not exist, pre-dated cannabis cultivation, and were not Rhonda's fault, the County kept its abatement orders—with their $9.36 million in fines—in place anyway.

447. The County sent Rhonda an offer to settle the abatements in March 2021. The agreement, which noted that it opened its case against her property on April 16, 2018—over two years before she purchased it—required Rhonda to wrongfully admit that she committed all the violations on the property.

448. After Rhonda refused the settlement agreement, the County sent Rhonda an invoice in her name dated April 27, 2021, stamped "PAST DUE," telling Rhonda she had 30 days to pay $15,000 in "carryover fines and penalties" that the prior owner still owed on a settlement agreement with the County, it seems, from some time in 2018—several years before Rhonda purchased the property.

449. About a year later, on April 21, 2022, the county re-issued NOVs (dated April 5, 2022) for the prior owner's conduct, this time in Rhonda's name.

450. The new set of NOVs dropped a few of the allegations from the first and reduced the daily

penalties to $83,000, bringing the fines that Rhonda faces down to a still staggering $7,470,000.

451. The County re-charged Rhonda with the same cannabis-related violations from the last NOVs even though the County had already publicly acknowledged that Rhonda had cleaned up almost all of the prior owner's violations and that it was "not really worried" about the legacy logging grades.

452. Emails between Code Enforcement Officers Brian Bowes and Warren Black reveal that the County re-noticed the violations in Rhonda's name because she had not completed the abatement "voluntarily." (Ironic quotation marks in original).

453. Rhonda again submitted her Attachment C to request an administrative hearing.

454. Rhonda developed shingles on her face due to the stress of the millions of dollars in fines hanging over her head, and she temporarily lost the use of her eye.

455. To date, the County has not provided her a hearing or issued her the permits she needs to develop her property.

4. Cyro Glad

456. Cyro Glad moved to Humboldt County from North Lake Tahoe in the 1990s to attend the Heartwood Institute for vocational training as a massage therapist.

457. After working between Humboldt and Tahoe for years, in 2008, Cyro began leasing a property in New Harris, an unincorporated area of Humboldt to the southeast of Garberville.

458. He cared for and helped develop a piece of rental property for several years until the tragic death of his life partner in 2015.

459. Following her death, Cyro left the property in Humboldt for several years during which he spent most of his time in Nevada caring for his mother while she suffered from terminal cancer.

460. Then, in 2018, one of Cyro's former landlords in Humboldt contacted him and offered to sell him a set of adjacent properties where he used to live.

461. They were selling the land because they were aging and explained that they wanted to sell to Cyro because he had always cared for the property and the subsequent tenants had not treated the property with the same respect.

462. Cyro had always dreamed of owning a piece of land in Humboldt but never thought he'd have the chance; with his mother's blessing, he jumped at the opportunity.

463. The property consists of adjacent 40-acre parcels in New Harris.

464. At the time of purchase, there was a greenhouse and several hoop houses scattered around the

front parcel; the back parcel consisted almost entirely of an undeveloped mountain covered in forest.

465. Cyro closed on the properties on September 1, 2018, and recorded the transfer of ownership with the County. He began moving onto the property shortly thereafter.

466. When Cyro took over the property, there was no cannabis cultivation and none of the structures on the property were being used to cultivate cannabis.

467. Cyro began immediately cleaning up the property—clearing junk, removing the hoophouses, and preparing the dirt driveways for winter.

468. On November 16, 2018, just over two months after he purchased the property, Cyro's neighbor called him to let him know that he found a NOV addressed to Cyro posted on a gate a few roads over from Cyro's address.

469. The NOV, dated November 2, 2018, listed four violations: (1) violation of the building code to cultivate cannabis; (2) grading without a permit to cultivate cannabis; (3) unpermitted cultivation of cannabis; and (4) development within a streamside management system.

470. The NOV informed Cyro that he had 10 days to abate all nuisances or else he'd face $10,000 in daily fines for 90 days.

471. The notice did not specify which structures or grading on the 40-acre parcel that the County believed were constructed to cultivate cannabis.

472. Indeed, the County never visited the property to have any idea whether any of the structures or grading were constructed to cultivate cannabis—it couldn't even find the correct gate (or road, even) to post Cyro's NOV.

473. Had the County bothered to investigate its charges, it would have learned that Cyro just moved in a few weeks prior and had not been cultivating cannabis on the property.

474. The County assessed $10,000 in daily fines against the property based solely on satellite images showing hoop houses.

475. Cyro filled out the Attachment C, requesting an administrative hearing the same day he received the NOV. He explained on the form that the property just became his responsibility as of September 2018 and that he was already working to clean the property and bring it up to the County's standards.

476. When Cyro got to the post office to mail in his Attachment C, he found another copy of the NOV waiting for him at the post office, so he filled out and submitted that Attachment C as well.

477. Cyro then hired an engineer to assess the property, and he continued his work of cleaning up the mess that the prior occupants had left.

478. Having still not heard anything else from the County by February 2019, Cyro sent a letter to Director Ford to plead with him and seek compassion over the violations the County cited Cyro for just weeks after he purchased the property.

479. Cyro never received a response.

480. Over four years have passed since Cyro requested his initial hearing, but the County has still not scheduled one for him.

481. The County's abatement records as of August 2022 confirmed that the County still has Cyro's case listed as "appeal requested."

Class Allegations

482. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad maintain this action on behalf of themselves individually and all others similarly situated under Federal Rule of Civil Procedure 23(a), (b)(2). Plaintiff Blu Graham was planning to be a class representative until the County suddenly agreed to dismiss his abatement order the week before filing the initial complaint.

483. The County's conduct toward the Plaintiffs is part of a broader policy and practice, pursuant to which the County cites landowners for enhanced cannabis-related code violations without regard for probable cause, fails to schedule administrative hearings at a meaningful time and in a meaningful manner, imposes penalties unsupported by any governmental

interest, imposes unconstitutional conditions on permits for those properties, imposes unconstitutionally excessive fines and fees, and denies accused landowners the right to a jury of their peers to decide factual questions that determine whether the Plaintiffs owe hundreds of thousands—if not millions—of dollars in fines.

484. Plaintiffs propose a putative class with the following class definition: "All persons who are currently facing penalties for cannabis-related Category 4 violations that were levied after January 1, 2018, who filed an 'Attachment C' to request an administrative hearing within 10 days of the County effecting service, and who have still not received a hearing for their appeal."

485. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and members of the proposed Class have suffered, or will suffer, the following policies and practices of the County:

a. Issuing cannabis-related code violations without adequate investigation or regard for probable cause;

b. Issuing enhanced cannabis-related penalties for minor code violations like the failure to obtain a permit;

c. Refusing to allow landowners to abate permitting violations by obtaining the permit at issue;

d. Refusing to dismiss citations for enhanced cannabis-related violations based on photographic proof that cannabis is not on the property;

e. Refusing to provide a timely administrative hearing;

f. Refusing to issue unrelated permits to landowners while abatement orders are pending;

g. Exacting unconstitutional conditions for the issuance of permits from landowners facing abatement orders;

h. Obscuring the time landowners have to challenge or comply with an abatement order;

i. Failing to toll the accrual of fines before an accused can receive an administrative hearing;

j. Charging excessive administrative fees for basic interactions with the County;

k. Charging up to $4,500 for an administrative hearing or a settlement agreement;

l. Failing to provide a jury at the administrative hearing.

486. The proposed Class meets all the Rule 23(a) prerequisites for maintaining a class action.

487. **Numerosity**: The proposed Class is so numerous that joinder of all members is impracticable. On information and belief, the County has issued cannabis-related Category 4 violations to over 1,200 landowners since it began its cannabis-enforcement program in 2018. On information and belief and based on publicly available records, at least 48 landowners who have requested a hearing still face penalties but have not yet received hearings. As a result, the proposed class is so numerous that individual joinder of all members is impracticable.

488. **Commonality**: This action presents questions of law and fact common to the proposed Class, resolution of which will not require individualized determinations of the circumstances of any particular plaintiff.

a. Common questions of fact include but are not limited to:

i. Does the County issue citations and impose enhanced penalties for cannabis-related violations without adequate investigation or regard for probable cause?

ii. Does the County issue citations and impose enhanced penalties for cannabis-related violations without regard for actual harm to public health and safety?

iii. Does the County fail to schedule timely administrative hearings?

iv. Does the County refuse to dismiss charges in the face of exculpatory evidence?

v. Does the County deny the issuance of permits to properties under abatement orders?

vi. Does the County impose unconstitutional conditions on permits for properties under abatement orders?

vii. Does the County refuse to toll the accrual of daily fines while landowners await an initial administrative hearing?

viii. Does the County charge up to $4,500 for an administrative hearing or a settlement?

ix. Does the County provide a jury at administrative hearings?

b. Common questions of law include but are not limited to:

i. Do the County's cannabis-related code-enforcement policies and practices violate the Due Process Clause?

ii. Does the County's policy of issuing citations and imposing enhanced penalties for cannabis-related violations without adequate investigation or regard for

probable cause violate the Due Process Clause?

iii. Does the Due Process Clause prohibit the government from punishing harmless conduct?

iv. Does the Due Process Clause prohibit the government from punishing an innocent person for someone else's conduct?

v. Does the County impose unconstitutional conditions on the issuance of permits for properties facing cannabis-related abatement orders?

vi. Does the Excessive Fines Clause prohibit the government from charging up to $10,000 in daily fines without regard for culpability or whether a violation poses harm to public safety?

vii. Does the Preservation Clause require the County to provide a jury when it imposes civil penalties for code violations?

489. **Typicality:** Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad's claims are typical of the claims of the proposed Class. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad's claims, as well as those of the proposed Class, arise out of the same policy, practice, and custom of the County; are based on the same legal theories; and involve the

same harms. Additionally, Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad seek the same relief for themselves and members of the proposed Class in the form of declaratory and injunctive relief.

490. **Adequacy**: Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad will fairly and adequately protect the interests of the class they seek to represent because their interests are aligned and there are no conflicts between them and the members of the putative class. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad, and members of the putative class, have suffered the same injuries at the hands of the same defendants, and all are entitled to the same relief in the form of declaratory and injunctive relief. All members share the same interest in ensuring that the County's code-enforcement procedures respect the constitutional rights of landowners and in securing relief for those constitutional rights the County has already violated.

491. Plaintiffs are represented by counsel who will fairly and adequately represent the class. Plaintiffs are represented *pro bono* by the Institute for Justice ("IJ"). IJ is a nonprofit, public-interest law firm that, since its founding in 1991, has successfully litigated constitutional issues nationwide, including challenges to inadequate procedure in criminal and civil enforcement proceedings. IJ has also litigated several federal class actions and putative class actions involving property rights, including against the following municipalities: Philadelphia (*Sourovelis v.*

City of Philadelphia, No. 14-cv-4687, 2021 WL 244598, at *1 (E.D. Pa. Jan. 28, 2021) (appointing firm as class counsel and approving federal consent decree in challenge to civil forfeiture proceedings)); New York City (*Cho v. City of New York*, No. 16-cv-7961 (S.D.N.Y. Oct. 2, 2020) (ECF 111) (approving settlement of putative class action under which New York City agreed not to enforce agreements extracted through coercive property seizures)); and Pagedale, Missouri (*Whitner v. City of Pagedale*, No. 15-cv-1655 (E.D. Mo. May 21, 2018) (ECF 116) (appointing firm class counsel and approving federal consent decree prohibiting abusive ticketing practices)). IJ also litigated a significant Second Circuit case about due process, notice, and the opportunity to be heard in *Brody v. Village of Port Chester*, 434 F.3d 121 (2d Cir. 2005).

492. Local counsel Pillsbury Winthrop Shaw Pittman LLP is an international law firm whose predecessor was founded in San Francisco in 1874. They are now headquartered in New York, and their practice focuses on real estate, construction, energy, finance, and technology & media. Pillsbury has approximately 700 lawyers in 20 offices worldwide. It has a large, sophisticated, and effective California litigation practice—both in state and federal courts.

493. The putative class also meets the requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure.

494. The County has acted, or refused to act, on grounds generally applicable to the putative class. Declaratory and injunctive relief is appropriate with

respect to all members of the class pursuant to Fed. R. Civ. P. 23(b)(2).

495. The class is entitled to the requested relief.

CLAIMS FOR RELIEF

COUNT 1

Denial of Procedural Due Process

In Violation of the Fourteenth Amendment

On Behalf of the Named Plaintiffs Individually and Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad on Behalf of the Class

496. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 495.

497. On behalf of the named Plaintiffs and the Class, Plaintiffs bring this count against the County based on its policy and practices that, taken together, deprive owners facing cannabis-abatement orders of a meaningful opportunity to be heard.

498. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o State shall make or enforce any law which shall … deprive any person of life, liberty, or property, without due process of law."

499. The Due Process Clause guarantees a fair legal process in adjudicative and quasi-adjudicative proceedings, including code-enforcement actions.

500. Among other things, the Due Process Clause requires that the government provide the accused with notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

501. Additionally, the Due Process Clause prohibits the government from imposing penalties—including fines and fees—or adjudicating guilt or innocence before providing appropriate notice and a meaningful opportunity to be heard.

502. The County, acting under color of law, deprived the named Plaintiffs and the Class of the due process of law in violation of the Fourteenth Amendment to the United States Constitution.

503. The County has a duty under the Fourteenth Amendment to provide the named Plaintiffs and the Class with notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

504. The County deprived the named Plaintiffs and the Class of due process. The following policies, individually and in conjunction, deny them adequate notice and a fair or meaningful opportunity to be heard:

a. Issuing cannabis-related code violations without adequate investigation or regard for probable cause;

b. Issuing cannabis-related code violations based on satellite images that predate the passage of the cannabis-related code at issue;

c. Refusing to dismiss citations for cannabis-related Category 4 violations based on photographic proof that there is no cannabis on the property;

d. Refusing to allow landowners to abate permitting violations by obtaining the permit at issue;

e. Refusing to issue permits to landowners with pending abatement orders;

f. Conditioning the issuance of permits on a landowner's payment of unrelated fines and fees;

g. Obscuring the time landowners have to comply with an abatement order;

h. Refusing to provide an administrative hearing indefinitely;

i. Failing to toll the accrual of fines before an accused can receive an administrative hearing; and

j. Charging up to $4,500 for an administrative hearing or a compliance agreement.

505. The County's procedurally deficient system creates an unreasonable risk of erroneous deprivation of property.

506. Named Plaintiffs and the Class possess fundamental property interests protected by the Fourteenth Amendment to the United States Constitution in their homes, accessory structures, possessions, earnings, income, and capital.

507. Due to the procedural defects in the County's administrative processes, it is substantially likely that the County's cannabis-abatement program is baselessly depriving the Named Plaintiffs and the Class of their property interests.

508. The County has interfered with property interests by, among other things, (a) issuing violations without adequate investigation or regard for probable cause; (b) relying on evidence that predates the code violations at issue; (c) refusing to allow landowners to abate permitting violations by obtaining the permit at issue; (d) refusing to dismiss violations in the face of evidence that the violation is unfounded; (e) refusing to schedule a timely hearing at which an accused can meaningfully contest the allegations; (f) refusing to toll the accrual of fines while an accused awaits a hearing; (g) refusing to issue permits to an accused while they await a hearing; (h) conditioning the issuance of permits on a landowner's payment of unrelated fines and fees; (i) obscuring the time landowners

have to respond to an abatement order; and (j) charging up to $4,500 for a hearing at which an accused can finally contest the accusations.

509. The County's cannabis-related abatement program is designed to—and very much does—compel landowners to pay fines and fees without a timely or meaningful opportunity for a hearing to determine whether the landowner actually engaged in the conduct the County has publicly accused them of doing.

510. The policies and practices by which the County administers its cannabis-abatement program for code violations have deprived the named Plaintiffs and the members of the Class of the process guaranteed to them by the Fourteenth Amendment to the United States Constitution.

511. The County's policies and practices are arbitrary and shocking to the conscience and so offensive as to not comport with traditional ideas of fair play and decency.

512. The County has no legitimate governmental interest in depriving the named Plaintiffs and the Class of their right to due process.

513. As a direct and proximate result of the County's policy and practice, the named Plaintiffs and the Class have suffered irreparable injuries to their constitutional rights.

514. The named Plaintiffs and the Class are entitled to declaratory relief and an injunction barring

the County from administering its abatement program in violation of due process.

515. The named Plaintiffs are also entitled to nominal damages.

COUNT 2

Denial of Substantive Due Process

In Violation of the Fourteenth Amendment

On Behalf of the Named Plaintiffs Individually and Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad on Behalf of the Class

516. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 495.

517. On behalf of the named Plaintiffs and the Class, Plaintiffs bring this Count against the County based on its policy, practice, and custom of issuing citations and imposing penalties for code violations allegedly related to cannabis cultivation (a) without regard for probable cause that the accused has cultivated cannabis illegally and (b) unsupported by a valid governmental interest.

518. The Due Process Clause of the Fourteenth Amendment prohibits the government from depriving any person of life, liberty, or property, without due process of law.

519. The Due Process Clause requires that law enforcement be neutral, impartial, and objective.

520. Issuing citations and imposing fines and fees is an exercise of law-enforcement power.

521. The County has a massive financial interest in imposing Category 4 penalties for code violations allegedly related to cannabis. This financial interest includes the pressure those penalties place on landowners to settle their case, the fines and fees the County charges to hold an administrative hearing or settle, and the incentive for other landowners to seek permits to grow cannabis commercially instead of paying excessive fines and fees.

522. This financial interest has caused the County to adopt a policy and practice of abusing its prosecutorial discretion by charging Category 4 violations without regard for probable cause that a landowner has violated the county code for the purpose of cultivating cannabis without a permit.

523. This financial interest incentivizes the County to charge cannabis-related Category 4 violations without regard for the public's interest in health and safety and without regard for landowners' constitutional rights.

524. The County's policy and practice is to charge Category 4 violations and impose fines and fees on landowners without ensuring it has probable cause to believe those landowners have violated the

code for the purpose of cultivating cannabis without a permit.

525. Relying on aerial images alone, the County charges Category 4 violations for activity unrelated to cannabis like having a greenhouse or a rainwater-catchment unit.

526. The presence of an unpermitted greenhouse or rainwater-catchment unit is not probable cause that a landowner is cultivating cannabis without a permit.

527. Despite lacking probable cause that a landowner is growing cannabis without a permit, the County's policy and practice is to allege that landowners violated the code for the purpose of cultivating cannabis.

528. Landowners facing a cannabis-related abatement order are injured as soon as they receive a notice of violation.

529. The County publishes notice of the abatement orders in the newspaper to publicly accuse the landowners of growing cannabis illegally.

530. The County then charges accused landowners the cost of publishing that notice, regardless of whether the County published it without probable cause and could never substantiate its allegations.

531. Daily fines and administrative fees then accrue against accused landowners before the County can or will schedule an administrative hearing.

532. Charges brought without probable cause also deprive a landowner of their right to develop their property while they wait indefinitely for the County to schedule an administrative hearing.

533. The County charges up to $4,500 in administrative fees to hold an administrative hearing or settle cannabis-related Category 4 violations that it brought without probable cause.

534. The County's policy and practice of charging Category 4 violations without probable cause imposes a significant financial, reputational, and psychological cost on the named Plaintiffs and the Class as soon as they receive an NOV.

535. The County has no legitimate governmental interest in charging cannabis-related Category 4 violations without regard for probable cause.

536. The County's policy and practice of charging cannabis-related Category 4 violations without regard for probable cause deprives the named Plaintiffs and the Class of their due-process right to neutral, objective, and unbiased law enforcement.

537. The County also violates substantive due process by charging cannabis-related Category 4 violations unsupported by any legitimate governmental interest.

538. No process the government can provide could justify its deprivation of life, liberty, or property

when there is no governmental interest in the deprivation.

539. The County has no interest in punishing conduct that does not harm the public.

540. Nor does the County have an interest in issuing fines and denying permits for land, structures, or other property based on a prior owner's misconduct.

541. No process could justify the government's deprivation of an innocent person's life, liberty, or property based on someone else's conduct.

542. The prior presence of marijuana on a property is not a continuing nuisance once the property is no longer used for illegal purposes.

543. No process could justify the County ordering a new owner to destroy parts of their property because the prior owner had previously used the property for an illegal purpose.

544. The County has no legitimate governmental interest in depriving the named Plaintiffs and the Class of their property because a prior owner cultivated marijuana on the property without a commercial permit.

545. As a direct and proximate result of the County's policy and practice of charging Category 4 violations (a) without regard for probable cause of unpermitted cannabis cultivation and (b) unsupported by any valid governmental interest, the named

Plaintiffs and the Class have suffered and will suffer irreparable harm to their constitutional rights.

546. The named Plaintiffs and the Class are entitled to declaratory relief and an injunction barring the County from issuing cannabis-related Category 4 violations (a) without probable cause and (b) unsupported by any valid governmental interest.

547. The named Plaintiffs are also entitled to nominal damages.

COUNT 3

Unconstitutional Exactions

In Violation of the Fifth and Fourteenth Amendments

On Behalf of the Named Plaintiffs Individually and Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad on Behalf of the Class

548. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 495.

549. On behalf of the named Plaintiffs individually and the Class, Plaintiffs bring this Count based on the County's policy and practice of denying permits to landowners who face cannabis-related Category 4 violations brought without regard for probable cause unless the landowner will agree to (a) pay a sum of money the County has proposed in an unrelated settlement agreement; (b) waive their due-process right

to a hearing at which they can contest unrelated code violations; (c) consent to limitless warrantless searches of their property; and (d) waive their right to sell or otherwise transfer their property.

550. The unconstitutional-conditions doctrine vindicates constitutional rights by prohibiting the government from coercing people into giving them up in exchange for a discretionary benefit such as a building or grading permit.

551. The government cannot coercively withhold a land-use permit from someone for exercising their constitutional rights.

552. The unconstitutional-conditions doctrine prevents the government from demanding property, a monetary exaction, or the waiver of some other enumerated constitutional right in exchange for a land-use permit.

553. The Constitution forbids such extortionate demands regardless of whether the government approves a permit due to a landowner's willingness to give up their rights or denies a permit based on a landowner's refusal to do so.

554. The County has a policy and practice of denying land-use permits to landowners with outstanding abatement orders, even when the permits have no nexus to the abatement order.

555. The County's policy and practice is to grant land-use permits only if the landowner facing an

abatement order will pay the County to settle an unrelated abatement case and waive their right to a hearing in that unrelated case.

556. The County imposes two unconstitutional conditions on permit applicants who have outstanding cannabis-related abatement orders: The landowner must agree to (1) pay the sum the County has proposed in a settlement offer for an unrelated abatement case; (2) give up their right to an administrative hearing; (3) give up their right to deny warrantless searches of their property; and (4) give up their right to sell or otherwise transfer their property.

557. The sum that the County proposes in settlement offers, including fines and/or fees, is not roughly proportionate to the social costs associated with the landowner's permit application.

558. This monetary exaction in exchange for a permit is an unconstitutional condition.

559. The demand that landowners give up their constitutionally guaranteed right to a hearing on the County's unrelated claims against them in exchange for a permit is also an unconstitutional condition.

560. As a direct and proximate result of the County's policy and practice, the named Plaintiffs and the Class have suffered irreparable injuries to their constitutional rights.

561. The named Plaintiffs and the Class are entitled to declaratory relief and an injunction barring

the County from denying permits to landowners facing abatement orders unless they pay a settlement and waive their right to an administrative hearing.

562. Plaintiff Blu Graham is entitled to a declaration that the County's exaction of $3,747.29 (later reduced to $795.92) in administrative fees in exchange for a grading permit for his rainwater-catchment pond violated the doctrine against unconstitutional conditions.

563. The named Plaintiffs are entitled to nominal damages. Plaintiff Blu Graham is also entitled to damages or restitution in the amount of $795.92 in addition to nominal damages.

COUNT 4

Excessive Fines and Fees

In Violation of the Eighth and Fourteenth Amendments

On Behalf of Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad Individually and on Behalf of the Class

564. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 495.

565. On behalf of themselves individually and the Class, Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, and Cyro Glad bring this Count against the County based on its policy,

practice, and custom of levying Category 4 penalties and ordering the destruction of property for violations of the county code (*e.g.*, the failure to obtain permits to build structures and grade land) that the County alleges have a nexus to the illegal cultivation of cannabis.

566. The County has acted under color of state law in violating the constitutional rights of the Plaintiffs and the Class.

567. The Excessive Fines Clause of the Eighth Amendment to the United States Constitution prohibits the government from imposing penalties that are grossly disproportionate to the offense for which they are imposed.

568. The Fourteenth Amendment to the United States Constitution incorporated the Excessive Fines Clause against the states.

569. The County is bound by the Excessive Fines Clause when is issues civil fines and fees.

570. The Category 4 penalties that the County levies for code violations related to cannabis are punitive.

571. The County's policy and practice is to levy $10,000 or more in daily penalties plus up to $4,500 in fees for minor code violations by elevating them to Category 4 violations based on an alleged nexus to cannabis.

572. Contrary to the county code, the County's policy and practice does not consider the actual harm cause by a violation, whether there is any risk to public health or safety, a landowner's culpability or ability to pay, alternative remedies available, or additional penalties that a landowner already faces.

573. The County's policy and practice of elevating code violations to Category 4 offenses is a method of generating revenue by pressuring landowners into settlements or commercial cannabis permits.

574. The penalties that the County levies are grossly disproportionate to the many near-harmless offenses that the County elevates to Category 4 violations based on their nexus to cannabis.

575. The penalties for cannabis-related code violations are also duplicative, as the County already imposes Category 4 penalties for unpermitted cultivation.

576. The County's policy of requiring that landowners return property to its "pre-cannabis state" are also punitive fines within the meaning of the Eighth Amendment.

577. The ordered destruction of property is grossly disproportionate to the many near-harmless offenses to which Category 4 violations apply based on their nexus to cannabis.

578. The penalties for cannabis-related Category 4 violations that the County imposes on new

purchasers of property based on the prior owner's misconduct are also unconstitutionally excessive.

579. Any penalty for innocent conduct is unconstitutionally excessive.

580. On its face and as applied to Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and the Class, the County's policy and practice of fining landowners $10,000 per day for code violations based on their nexus to cannabis violates the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

581. On its face and as applied to Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and the Class, the County's policy and practice of ordering landowners to destroy structures and re-grade land with a nexus to cannabis violates the Excessive Fines Clause of the Eighth Amendment.

582. On its face and as applied to Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and the Class, the County's policy and practice of ordering landowners pay up to $4,500 in administrative fees for Category 4 violations violates the Excessive Fines Clause of the Eighth Amendment.

583. As a direct and proximate result of the County's policy and practice of levying Category 4 penalties for code violations with a nexus to cannabis, Plaintiffs Corrine Morgan Thomas, Doug Thomas,

Rhonda Olson, Cyro Glad, and the Class have suffered and will continue to suffer irreparable injury to their constitutional rights.

584. On its face and as applied to Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and the Class are entitled to declaratory relief and an injunction barring the County from enforcing its policy and practice of imposing Category 4 fines and fees for code violations committed to facilitate cannabis cultivation.

585. On its face and as applied to Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and the Class are entitled to declaratory relief an injunction barring the County from enforcing its policy and practice of ordering landowners to return land to its pre-cannabis state.

Count 5

Denial of the Right to a Jury

In Violation of the Seventh and Fourteenth Amendments

On Behalf of Plaintiffs Corrine Morgan Thomas, Doug Thomas, and Rhonda Olson Individually and on Behalf of the Class

586. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 495.

587. On behalf of themselves individually and the Class, Plaintiffs Corrine Morgan Thomas, Doug

Thomas, Rhonda Olson, and Cyro Glad bring this Count against the County based on its policy, practice, and custom of imposing Category 4 penalties and ordering the destruction of property for violations of the county code without providing accused landowners the right to a jury.

588. The Fourteenth Amendment to the United States Constitution incorporated against the states all rights that are fundamental to our scheme of ordered liberty and deeply rooted in this Nation's history and tradition.

589. States and municipalities cannot violate the fundamental rights guaranteed by the Bill of Rights in the United States Constitution.

590. The right to a jury in civil actions is a fundamental right that is deeply rooted in history and tradition.

591. The Preservation Clause of the Seventh Amendment protects the individual right to a trial by jury in common-law actions where the value in controversy exceeds $20.

592. Actions brought by the government for fines are common-law actions.

593. A civil penalty is historically a remedy at common law that only courts of law can enforce.

594. The County imposes civil penalties through a administrative-enforcement scheme to minimize

the expense and delay associated with pursuing remedies through the criminal justice system.

595. Individuals have the right to a jury in civil cases brought to punish and deprive them of their protected liberty and property interests.

596. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and the Class possess fundamental property interests protected by the Fourteenth Amendment to the United States Constitution in their homes, accessory structures, possessions, earnings, income, and capital.

597. The County cannot deny the right to a jury by imposing penalties through administrative hearings rather than in court.

598. The factual determination of whether a landowner violated the code in order to grow marijuana without a permit can carry hundreds of thousands—if not millions—of dollars in penalties.

599. Because the finding of such facts against the accused results in the deprivation of property and liberty as punishment for the offense, the accused is entitled to have a jury of their peers decide those facts.

600. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and the Class have a right to have a jury adjudicate the facts underlying the County's claims for Category 4 penalties.

601. The County's imposition of penalties through an administrative process that does not include a jury has been conducted pursuant to a policy, practice, or custom that violated the Preservation Clause of the Seventh Amendment and the Fourteenth Amendment to the United States Constitution.

602. As a direct and proximate result of the County's policy and practice of imposing penalties through an administrative process that does not include a jury, Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and the Class have suffered and will continue to suffer irreparable injury to their constitutional rights.

603. Plaintiffs Corrine Morgan Thomas, Doug Thomas, Rhonda Olson, Cyro Glad, and the Class are entitled to declaratory relief and an injunction barring the County from enforcing its policy and practice of imposing civil penalties through an administrative process that does not include a jury.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

604. Certify a class under Rule 23(b)(2) consisting of: "All persons who are currently facing penalties for cannabis-related Category 4 violations that were levied after January 1, 2018, who filed an 'Attachment C' to request an administrative hearing within 10 days of the County effecting service, and who have still not received a hearing for their appeal."

605. Declare that the County's cannabis-related code-enforcement policies and practices violate the procedural due process guaranteed by the Fourteenth Amendment.

606. Declare that the County's cannabis-related code-enforcement policies and practices violate the substantive due process guaranteed by the Fourteenth Amendment.

607. Declare the County imposes unconstitutional conditions on landowners who seek land-use permits while facing cannabis-related abatement orders.

608. Declare that the County's policy and practice of imposing Category 4 penalties based on a code violation's nexus to cannabis growth violates the Excessive Fines Clause of the Eighth Amendment to the U.S. Constitution.

609. Declare that the County's policy and practice of imposing cannabis-related Category 4 penalties without the right to a jury violates the Preservation Clause of the Seventh Amendment of the United States Constitution.

610. Enjoin Defendants from enforcing their cannabis-related code-enforcement policies and practices in violation of the procedural due process guaranteed by the Fourteenth Amendment.

611. Enjoin Defendants from enforcing their cannabis-related code-enforcement policies and practices

in violation of the substantive due process guaranteed by the Fourteenth Amendment.

612. Enjoin Defendants from imposing unconstitutional conditions on land-use permits for landowners facing cannabis-related abatement orders.

613. Enjoin Defendants from issuing unconstitutionally excessive penalties for Category 4 violations based on a code violation's alleged nexus to cannabis growth.

614. Enjoin Defendants from imposing civil penalties for cannabis-related Category 4 violations through an administrative process that does not include a jury.

615. Award the named Plaintiffs nominal damages.

616. Award Plaintiff Blu Graham $795.92 in damages or restitution in addition to nominal damages.

617. Award Plaintiffs attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 as well as any other costs and fees that are legal and equitable.

618. Award any further legal or equitable relief the Court deems just and proper.

Dated: January 20, 2023

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Appendix D

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Appendix E

Appendix E

Excerpts of the Humboldt County Code

Appendix E

HUMBOLDT COUNTY CODE § 352-2

Purpose, Intent and Scope.

(a) The purpose of this Chapter is to provide alternative remedies to correct Violations of the Humboldt County Code and other ordinances adopted by the County of Humboldt, and where necessary, penalize Responsible Parties for such Violations. The procedure for the imposition of administrative civil penalties set forth herein shall not be exclusive, but shall be cumulative and in addition to all other civil and criminal remedies provided by law. Nothing in this Chapter shall prevent the County of Humboldt from using any other available remedies to address and correct Violations, either in lieu of, or in addition to, the imposition of administrative civil penalties pursuant to this Chapter. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(b) The Humboldt County Board of Supervisors hereby finds and determines that enforcement of the Humboldt County Code, other ordinances adopted by the County of Humboldt and conditions on entitlement set forth in permits and/or agreements that have been issued or approved by the County of Humboldt are matters of local concern and serve important public purposes. Under the authority of, and consistent with, California Government Code Section 53069.4, the County of Humboldt adopts this administrative civil penalty procedure in order to achieve the following goals: (Ord. 2576, § 5, 06/27/2017)

(1) To protect the public health, safety and welfare of the communities and citizens in the County of Humboldt. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(2) To provide for an administrative process that has objective criteria for the imposition of penalties and provides for a process to appeal the imposition of such administrative civil penalties. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(3) To provide a method to penalize Responsible Parties who fail or refuse to comply with the provisions of the Humboldt County Code and other ordinances adopted by the County of Humboldt, or conditions on entitlement set forth in permits and/or agreements issued or approved by the County of Humboldt. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(4) To minimize the expense and delay associated with pursuing alternative remedies through the civil and/or criminal justice system. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(c) All final administrative orders made pursuant to the administrative civil penalty procedures set forth in this Chapter shall be subject to review only as provided in California Government Code Section 53069.4 and California Code of Civil Procedure Section 1094.6. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

Appendix E

HUMBOLDT COUNTY CODE § 352-3

Definitions.

(a) *Administrative Costs.* Any and all costs relating to staff time expended in the performance of enforcement activities authorized under this Chapter, including, without limitation, obtaining title reports, recording documents, noticing Responsible Parties, scheduling and participating in further hearings, collection activities and other such costs.

(b) *Appellant.* Any Responsible Party that files an appeal of the Code Enforcement Unit's determination that a Violation has occurred or exists.

(c) *Attorney's Fees.* Any and all legal fees incurred by the prevailing party in any administrative proceeding to impose and/or recover administrative civil penalties pursuant to the provisions of this Chapter. Recovery of Attorney's Fees by the prevailing party is limited to those administrative proceedings in which the County of Humboldt elects, at the initiation of that individual proceeding, to seek recovery of its own legal fees. In no administrative proceeding shall an award of Attorney's Fees to a prevailing party exceed the amount of reasonable legal fees incurred by the County of Humboldt in the administrative proceeding.

(d) *Beneficial Owner.* Any mortgagee of record, beneficiary under a recorded deed of trust or the owner or holder of any lease of record; provided, however, that the United States, the State of California and the

County of Humboldt shall not be deemed to be Beneficial Owners by virtue of any lien for unpaid taxes.

(e) *Category 1 Violations.* Primarily procedural Violations that are committed through neglect or oversight and have a negligible impact on the health, safety, comfort and/or general welfare of the public.

(f) *Category 2 Violations.* Violations that are committed unintentionally through neglect or oversight and have a significant and/or substantial impact on the health, safety, comfort and/or general welfare of the public.

(g) *Category 3 Violations.* Violations that are committed intentionally or through inexcusable neglect and have a minimal impact on the health, safety, comfort and/or general welfare of the public.

(h) *Category 4 Violations.* Violations that are committed intentionally or through inexcusable neglect and have a significant and/or substantial impact on the health, safety, comfort and/or general welfare of the public. Category 4 Violations shall include, but not be limited to, the commercial cultivation of cannabis in Violation of any applicable local or state laws, regulations, policies, procedures, permits and agreements and any violation of building, health and safety, or zoning requirements that exists as a result of or to facilitate the illegal cultivation of cannabis.

(i) *Code Enforcement Investigator.* Any and all code enforcement officers assigned by the Humboldt County Code Enforcement Unit to correct Violations

through the imposition of administrative civil penalties as set forth in this Chapter.

(j) *Code Enforcement Unit.* The Humboldt County Code Enforcement Unit, including any and all Code Enforcement Investigators employed thereby.

(k) *Completion Date.* The date on which a continuing Violation is corrected or otherwise remedied by the Responsible Party as set forth in this Chapter.

(l) *Costs.* Any and all costs and/or Attorney's Fees incurred during the performance of the enforcement activities authorized under this Chapter.

(m) *Imposition Date.*

(1) The date on which administrative civil penalties start to accrue, which shall not be more than ten (10) calendar days after service of a Notice of Violation and Proposed Administrative Civil Penalty.

(2) For repeat, subsequent or ongoing cannabis Violations or Violations that exist as a result of or to facilitate illegal cultivation of cannabis, the imposition of administrative civil penalties will start to accrue after service of a Notice of Violation and Proposed Administrative Civil Penalty. If all the following are found to be true by the Code Enforcement Unit or the court, then the date on which administrative civil penalties start to accrue shall not be more than ten (10) calendar days after

service of a Notice of Violation and Proposed Administrative Civil Penalty:

(A) A tenant is in possession of the Property.

(B) Owner or its agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.

(C) Owner or its agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the Owner or its agent to have actual notice of the illegal cannabis cultivation.

(n) *Owner*. The owner of record of the Property on which a Violation has occurred or exists whose name and address appears on the last equalized secured property tax assessment roll, or, in the case of any public entity, the representative thereof.

(o) *Premises*. Any lot or parcel of land upon which a building is situated, including any improved or unimproved portion thereof, and adjacent streets, sidewalks, parkways and parking areas.

(p) *Personal Property*. Articles of personal or household use or ornament, including, but not limited to, furniture, furnishings, automobiles and boats. As used herein the term "Personal Property" does not include intangible property such as evidence of indebtedness, bank accounts and other monetary deposits, documents of title or securities.

(q) *Property.* Any Premises, Personal Property and/or Real Property located within the unincorporated area of Humboldt County.

(r) *Real Property.* Any lot or parcel of land, including any alley, sidewalk, parkway or unimproved public easement.

(s) *Responsible Party.* Any Owner, Beneficial Owner, person, business, company or other entity, and the parent or legal guardian of any person under eighteen (18) years of age, who has caused, permitted, maintained, conducted or otherwise allowed a Violation to occur.

(t) *Violation.* Any act or omission for which an administrative civil penalty may be imposed pursuant to this Chapter, including:

(1) Any failure to comply with the provisions of the Humboldt County Code.

(2) Any failure to comply with the provisions of any other uniform codes and/or ordinances adopted by the Humboldt County Board of Supervisors, including, but not limited to, building and zoning ordinances.

(3) Any failure to comply with any order issued by the Humboldt County Board of Supervisors or any other board, commission, department, hearing officer, examiner or official authorized to issue orders by the Humboldt County Board of Supervisors, including, but not limited to, the Humboldt

County Planning Commission, the Humboldt County Code Enforcement Unit, the Humboldt County Planning and Building Director, the Humboldt County Health and Human Services Director and the Humboldt County Health Officer.

(4) Any failure to comply with any condition imposed by any entitlement, permit, contract or environmental document issued or approved by the County of Humboldt. (Ord. 2138a, § 1, 12/3/1996; Ord. 2272, 4/23/2002; Ord. 2576, § 5, 6/27/2017; Ord. 2646, § 2, 7/28/2020)

HUMBOLDT COUNTY CODE § 352-11

Administrative Civil Penalty Appeal Hearing.

At the time and place specified in the Notice of Administrative Civil Penalty Appeal Hearing, which shall be no sooner than fifteen (15) calendar days after the date on which the Notice of Administrative Civil Penalty Appeal Hearing is served on the Appellant, the Hearing Officer shall hear the sworn testimony of the Code Enforcement Investigator, the Appellant and/or his or her representatives and all other competent persons desiring to give testimony concerning the alleged Violation and/or the amount of the proposed administrative civil penalty and any other matters the Hearing Officer deems pertinent. The Administrative Civil Penalty Appeal Hearing shall be recorded (i.e. audio, video and/or stenographic) in order to maintain a record of the proceedings. The costs associated with transcribing a recording of the Administrative Civil Penalty Hearing shall be borne by

the party or parties requesting such transcription. The Administrative Civil Penalty Appeal Hearing may be combined with a Code Enforcement Appeal Hearing held pursuant to the provisions of this Division. (Ord. 2138a, §1, 12/3/1996; Ord. 2458, §1, 8/23/2011; Ord. 2576, § 5, 6/27/2017)

HUMBOLDT COUNTY CODE § 352-12

Issuance of Finding of Violation and Order Imposing Administrative Civil Penalty by the Hearing Officer.

(a) Upon conclusion of the Administrative Civil Penalty Appeal Hearing, the Hearing Officer shall determine whether or not a Violation has occurred or exists as set forth in the Notice of Violation and Proposed Administrative Civil Penalty. If it is found that a Violation has not occurred, the Hearing Officer shall terminate the administrative civil penalty proceedings. If it is found that a Violation has occurred or exists, the Hearing Officer shall affirm, reduce or suspend the proposed administrative civil penalty in accordance with the criteria set forth in this Chapter. The Hearing Officer shall prepare, and serve upon each Responsible Party, a "Finding of Violation and Order Imposing Administrative Civil Penalty." The Finding of Violation and Order Imposing Administrative Civil Penalty may be combined with a Finding of Nuisance and Order of Abatement issued pursuant to the provisions of this Division. (Ord. 2138a, §1, 12/3/1996; Ord. 2458, §1, 8/23/2011; Ord. 2576, § 5, 6/27/2017)

(b) In situations where the Responsible Party has taken immediate steps to remedy a Violation that did not impact the health, safety or general welfare of the public, the Hearing Officer may reduce the administrative proposed administrative civil penalty or suspend a percentage of the Responsible Party's payment. If the Responsible Party complies with the terms and conditions of the payment suspension for a period of one (1) year after the date on which the Finding of Violation and Order Imposing Administrative Penalty is served thereon, the Responsible Party will no longer be liable for the suspended amount. However, if the Responsible Party does not comply with the terms and conditions of the payment suspension set forth in the Finding of Violation and Order Imposing Administrative Civil Penalty, the suspended portion of the penalty shall become immediately due and payable. In no event shall an administrative civil penalty be reduced to an amount that is less than the minimum amount set forth in this Chapter for the Violation category imposed. (Ord. 2138a, §1, 12/3/1996; Ord. 2272, 4/23/2002; Ord. 2458, §1, 8/23/2011; Ord. 2576, § 5, 6/27/2017)

(c) A Finding of Violation and Order Imposing Administrative Civil Penalty issued by the Hearing Officer shall be final in all respects unless overturned or modified on appeal by the Humboldt County Superior Court. A Finding of Violation and Order Imposing Administrative Civil Penalty shall be accompanied by instructions for obtaining judicial review of the Hearing Officer's decision as set forth in California Government Code Section 53069.4(b)(1)-(2). (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)