

1 BINGHAM McCUTCHEM LLP  
FRANK KENNAMER (SBN 157844)  
2 NEHA SHAH NISSEN (SBN 190848)  
TROY SAURO (SBN 224097)  
3 RACHEL SOMMOVILLA (SBN 231529)  
Three Embarcadero Center  
4 San Francisco, California 94111-4067  
Telephone: 415.393.2000  
5 Facsimile: 415.393.2286

6 Attorneys for WAMM Plaintiffs

7 GERALD UELMEN (SBN 39909)  
Santa Clara University School of Law  
8 500 El Camino Real  
Santa Clara, California 95053  
9 Telephone: 408.554.5729  
Facsimile: 408.554.4426

10 Attorney for County of Santa Cruz  
11 and WAMM Plaintiffs

12 Additional Counsel Listed on Signature Page

13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN JOSE DIVISION**

17 COUNTY OF SANTA CRUZ, CALIFORNIA;  
CITY OF SANTA CRUZ, CALIFORNIA;  
18 VALERIE CORRAL; ELADIO V. ACOSTA;  
JENNIFER LEE HENTZ; HAROLD F.  
19 MARGOLIN; LEVI CASTRO; DOROTHY  
GIBBS; JAMES DANIEL BAEHR; MICHAEL  
20 CHESLOSKY and WO/MEN'S ALLIANCE  
FOR MEDICAL MARIJUANA,

21 Plaintiffs,

22 v.

23 ALBERTO R. GONZALES, Attorney General of  
24 the United States; KAREN P. TANDY,  
Administrator of the Drug Enforcement  
25 Administration; JOHN P. WALTERS, Director of  
the Office of National Drug Control Policy; and  
26 30 UNKNOWN DRUG ENFORCEMENT  
ADMINISTRATION AGENTS,

27 Defendants.  
28

Case No.: 03-CV-1802 JF

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS PLAINTIFFS' FIFTH  
CAUSE OF ACTION**

Date: June 23, 2006  
Time: 9:00 a.m.  
Place: Courtroom 3, Fifth Floor  
Judge: Honorable Jeremy Fogel

1 **I. INTRODUCTION**

2 County of Santa Cruz, California, City of Santa Cruz, California, Valerie Corral,  
 3 Eladio V. Acosta, Jennifer Lee Hentz, Harold F. Margolin, Levi Castro, Dorothy Gibbs, James  
 4 Daniel Baehr; Michael Cheslosky and Wo/Men’s Alliance For Medical Marijuana (“Plaintiffs”)  
 5 hereby oppose Defendants’ Motion To Dismiss Plaintiff’s Fifth Cause of Action (the “Motion”).  
 6 Plaintiffs oppose the Motion on the grounds that they have stated facts that support a claim for  
 7 violation of the Fourth Amendment against official-capacity Defendants Alberto R. Gonzales,  
 8 Attorney General of the United States, Karen P. Tandy, Administrator of the Drug Enforcement  
 9 Administration and John P. Walters, Director of the Office of National Drug Control Policy.  
 10 While Plaintiffs vigorously oppose dismissal of the Fifth Cause of Action in its entirety,  
 11 Plaintiffs have no opposition to dismissal of the 30 Unknown DEA Agent Defendants in this  
 12 matter, along with their claim for monetary damages under the Supreme Court’s holding in  
 13 *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 397 (1971).  
 14 Dismissal of the 30 Unknown DEA Agents, however, does not warrant summary dismissal of  
 15 Plaintiffs’ Fifth Cause of action in its entirety.

16 **II. LEGAL STANDARD**

17 When reviewing a motion to dismiss, the Court must accept as true all facts  
 18 alleged in the complaint as well as reasonable inferences drawn from them. *Pareto v. F.D.I.C.*,  
 19 139 F.3d 696, 699 (9th Cir. 1998). The issue before the court is not whether Plaintiffs will  
 20 ultimately prevail but whether they are entitled to offer evidence to support their claims. *Scheur*  
 21 *v. Rhodes*, 416 U.S. 232, 236 (1974) (“Indeed it may appear on the face of the pleadings that  
 22 recovery is very remote and unlikely but that is not the test.”) For a complaint, or any of its  
 23 causes of action, to be subject to dismissal on a motion to dismiss, it “must appear to a certainty  
 24 that the plaintiff would not be entitled to relief under any set of facts that could be proved.”  
 25 *Rothman v. Vedder Park Management*, 912 F.2d 315, 316 (9th Cir. 1990). The Court must  
 26 liberally construe the complaint in Plaintiffs’ favor, and it must presume that general allegations  
 27 embrace the specific facts that are necessary to support a claim. *See Pelozo v. Capistrano*  
 28 *Unified School Dist.*, 37 F.3d 517, 521 (9th Cir. 1994); *Kennedy v. H & M Landing, Inc.*, 529

1 F.2d 987, 989 (9th Cir. 1976). The Court’s review here is limited to the face of the pleadings,  
 2 documents referenced by the complaint the authenticity of which is not contested, and matters of  
 3 which the court may take judicial notice. *Levine v. Diamantheset, Inc.*, 950 F. 2d 1478, 1483  
 4 (9th Cir. 1991); *In re Stac Elecs. Sec. Litig.*, 89 F. 3d 1399, 1405 (9th Cir. 1996), *cert. denied*,  
 5 *Anderson v. Clow*, 520 U.S. 1103, 117 S.Ct. 1105 (1997).

6 These principles follow from the purpose of a complaint – to give “the defendant  
 7 fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Conley v.*  
 8 *Gibson*, 355 U.S. 41, 47 (1957). The Federal Rules provide for a simplified notice pleading  
 9 standard that relies on liberal discovery rules and summary judgment motions to define disputed  
 10 facts and issues and to dispose of unmeritorious claims. *See Swierkiewicz v. Sorema N.A.*, 534  
 11 U.S. 506, 512 (2002). “A court may dismiss a complaint only if it is clear that no relief could be  
 12 granted under any set of facts that could be proved consistent with the allegations.” *Hishon v.*  
 13 *King & Spalding*, 467 U.S. 69, 73 (1984).

14 Plaintiffs have satisfied this standard and Defendants’ Motion to Dismiss  
 15 Plaintiffs’ Fifth Cause of Action should be denied.

### 16 **III. ARGUMENT**

#### 17 **A. Plaintiffs’ Have Stated Facts To Support Their Claim For** 18 **Violation Of The Fourth Amendment Against Official-** **Capacity Defendants**

19 Plaintiffs have alleged in their First Amended Complaint (“FAC”) that a group of  
 20 armed agents of the Drug Enforcement Administration (“DEA”) entered their home in the early  
 21 morning hours without knocking and announcing their authority or purpose for entry, conducted  
 22 an exploratory general search that was not authorized by the search warrant, and used excessive  
 23 force in conducting an unlawful search and seizure. FAC ¶¶ 55-57. These facts are sufficient to  
 24 support Plaintiffs’ claim that the Federal Government violated Plaintiffs’ Fourth Amendment  
 25 right to be free from unreasonable searches and seizures. *Beck v. Ohio*, 379 U.S. 89, 97 (1964);  
 26 *Rios v. United States*, 264 U.S. 253, 262 (1960). As discussed above, the court must accept these  
 27 facts as true upon review of a motion to dismiss.

28

1 The Government violates the Fourth Amendment “in the only way in which the  
2 Government can do anything, namely through its agents . . .” *See Walder v. United States*, 347  
3 U.S. 62,74 (1954). The agents who conducted the raid were acting under the authority of the  
4 DEA, as part of Plaintiffs’ allegations regarding the overarching effort by the federal government  
5 to violate many of Plaintiffs’ Constitutional rights, including their Fourth Amendment rights.  
6 Because utilizing its agents is “the only way in which the Government can do anything,”  
7 dismissal of the 30 Unknown DEA Agents and the attendant claim for individual damages under  
8 *Bivens* does not warrant dismissal of Plaintiffs’ entire Fourth Amendment claim. Plaintiffs’ Fifth  
9 Cause of Action survives against all official-capacity Defendants.

10 Plaintiffs’ Fifth Cause of Action for violation of the Fourth Amendment is pled  
11 against all Defendants. *See* FAC ¶ 112. “Where federally protected rights have been invaded, it  
12 has been the rule from the beginning that courts will be alert to adjust their remedies so as to  
13 grant the necessary relief.” *Bell v. Hood*, 327 U.S. 678, 684 (1946); *see also Terry v. Ohio*, 392  
14 U.S. 1, 13-15 (1968) (suggesting that if the exclusionary rule is an inappropriate remedy under  
15 specific circumstances, other remedies should be employed to curtail unconstitutional conduct by  
16 officers). Ultimately, Plaintiffs are entitled to the protection of the Fourth Amendment, and a  
17 cause of action exists even if the 30 Unknown DEA Agents are dismissed as Defendants and  
18 money damages under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* are  
19 unavailable as a remedy.

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1 **IV. CONCLUSION**

2 The facts pleaded in the FAC state a claim for violation of the Fourth Amendment  
3 against the official-capacity Defendants. While Plaintiffs do not oppose dismissal of the 30  
4 Unknown DEA Agent Defendants in this matter, along with their claim for monetary damages  
5 under the Supreme Court’s holding in *Bivens*, the Court should otherwise deny Defendant’s  
6 motion to dismiss Plaintiffs’ Fifth Cause of Action.

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10 DATED: June 2, 2006

BINGHAM McCUTCHEN LLP

11

12 By: /s/

13 Frank Kennamer  
Attorneys for WAMM Plaintiffs

14 Additional Counsel:

15 Daniel Abrahamson (SBN 158668)  
16 Drug Policy Alliance  
Office Of Legal Affairs  
17 819 Bancroft Way  
Berkeley, CA 94710  
18 Telephone: 510.229.5212  
Facsimile: 510.295.2810

DRUG POLICY ALLIANCE

19 By: /s/

Daniel Abrahamson  
Attorneys for WAMM Plaintiffs

20 Graham Boyd (SBN 167727)  
American Civil Liberties Union Foundation  
21 1101 Pacific Avenue, Suite 333  
Santa Cruz, CA 95062  
22 Telephone: (831) 471-9000  
Facsimile: (831) 471-9676

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

23 By: /s/

Graham Boyd  
Attorneys for WAMM Plaintiffs

24 Allen Hopper (SBN 181678)  
American Civil Liberties Union Foundation  
25 1101 Pacific Avenue, Suite 333  
Santa Cruz, CA 95062  
26 Telephone: (831) 471-9000  
Facsimile: (831) 471-9676

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

27 By: /s/

Allen Hopper  
Attorneys for WAMM Plaintiffs

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Gerald Uelmen (SBN 39909)  
Santa Clara University School of Law  
500 El Camino Real  
Santa Clara, California 95053  
Telephone: 408.554.5729  
Facsimile: 408.554.4426

By: /s/  
Gerald Uelmen  
Attorneys for County of Santa Cruz and  
WAMM Plaintiffs

Benjamin Rice (SBN 98551)  
331 Soquel Avenue, Suite 203  
Santa Cruz, California 95062  
Telephone: 831.425.0555  
Facsimile: 831.459.9815

By: /s/  
Benjamin Rice  
Attorneys for County of Santa Cruz  
and WAMM Plaintiffs

John Barisone (SBN 87831)  
333 Church Street  
Santa Cruz, California 95060  
Telephone: 831.423.8383  
Facsimile: 831.423.9401

By: /s/  
John Barisone  
Attorneys for City of Santa Cruz