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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.
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Case No.: 03-CV-1802 JF

**PLAINTIFFS’ SURREPLY IN
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

Case No.: 03-CV-1802 JF

1 **I. INTRODUCTION**

2 On June 2, 2006 County of Santa Cruz, California, City of Santa Cruz, California,
 3 Valerie Corral, Eladio V. Acosta, Jennifer Lee Hentz, Harold F. Margolin, Levi Castro, Dorothy
 4 Gibbs, James Daniel Baehr; Michael Cheslosky and Wo/Men’s Alliance For Medical Marijuana
 5 (“Plaintiffs”) filed its Opposition to Defendants’ Motion To Dismiss Plaintiffs’ Fifth Cause of
 6 Action, ultimately agreeing to dismissal of the 30 Unknown Drug Enforcement Administration
 7 Agents and their claim for damages under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388
 8 (1971). However, Plaintiffs rigorously oppose outright dismissal of their Fifth Cause of Action
 9 on the grounds that their claim for violations of the Fourth Amendment still stand against all
 10 other defendants. To that end, Plaintiffs request leave to amend their First Amended Complaint
 11 (“FAC”) to remove the 30 unknown Drug Enforcement Administration Agents and plead their
 12 Fourth Amendment claim for declaratory and injunctive relief against official capacity
 13 Defendants Alberto R. Gonzales, Attorney General of the United States, Karen P. Tandy,
 14 Administrator of the Drug Enforcement Administration and John P. Walters, Director of the
 15 Office of National Drug Control Policy.

16 **II. LEGAL ARGUMENT**

17 **A. The Federal Rules Give Plaintiffs The Right To Amend Their**
 18 **Complaint To Include Requests For Appropriate Damages**

19 Defendants argue that Plaintiffs’ Fifth Cause of Action for violations of the Fourth, Fifth,
 20 Ninth and Tenth Amendments of the United States Constitution should be summarily dismissed
 21 because the only relief Plaintiffs sought for violations of their Fourth Amendment rights was
 22 compensatory and punitive damages under *Bivens*. Defendants further argue that allegations in
 23 the FAC regarding Jurisdiction and Venue cite the Fourth Amendment only as forming a basis
 24 for claims for damages instead of declaratory and injunctive relief.

25 However, under the Federal Rules, dismissal of a meritorious claim is not warranted
 26 merely because Plaintiffs prayed for damages instead of injunctive or declaratory relief. Rule
 27 54(c) provides “every final judgment shall grant relief to which the party in whose favor it is
 28 rendered is entitled, even if the party has not demanded such relief in the party’s pleading.” Fed.

1 R. Civ. P. 54(c). “If a pleading provides a defendant notice of the plaintiff’s claims and the
 2 grounds for the claims, omissions in a prayer for relief do not bar redress of meritorious claims.”
 3 *See Pension Benefit Guar. Corp. v. East Dayton Tool & Die Co.* 14 F.3d 1122, 1127 (6th Cir.
 4 1994) (*citing Conley v. Gibson*, 355 U.S. 41, 47 (1957); *Z Channel, Ltd. v. Home Box Office*, 931
 5 F.2d 1338, 1341 (9th Cir. 1991) (granting damages even though the complaint sought only
 6 injunctive and declaratory relief).

7 **B. Plaintiffs Have Provided Sufficient Notice Of Fourth**
 8 **Amendment Claims Against All Defendants**

9 Plaintiffs have pled facts sufficient to give defendants fair notice of a Fourth Amendment
 10 claim. The Fourth Amendment “[applies] to all invasions on the part of the government and its
 11 employees of the sanctity of a man’s home and the privacies of life. It is not the breaking of his
 12 doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the
 13 invasion of his indefeasible right of personal security, personal liberty and private property . . .”
 14 *Mapp v. Ohio*, 367 U.S. 643, 646 (1961) (*quoting Boyd v. United States*, 116 U.S. 616, 630
 15 (1886)). In the body of the FAC Plaintiffs allege facts showing that the sanctity of their home
 16 was violated when a group of armed agents of the Drug Enforcement Administration (“DEA”)
 17 entered in the early morning hours without knocking and announcing their authority or purpose
 18 for entry, conducted an exploratory general search that was not authorized by the search warrant,
 19 and used excessive force in conducting an unlawful search and seizure. FAC ¶¶ 55-57. The
 20 FAC provides ample factual support for a Fourth Amendment claim, and provides sufficient
 21 notice to all Defendants that such claim is alleged in regard to their activities.

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