

STATE OF NEW YORK
SUPREME COURT

COUNTY OF WASHINGTON

TOADFLAX NURSERY, LLC,
Z & M FARM, LLC, and
RICHARD W. MORRIS, JR.,

Plaintiffs,

-against-

SUMMONS

Index No.:

COUNTY OF WASHINGTON,
SHERIFF JEFFREY J. MURPHY, in his official
and individual capacities,
LIEUTENANT TODD LEMERY, in his official
and individual capacities,
SERGEANT TIMOTHY CARROLL, in his official
and individual capacities,
DEPUTY DIRECTOR TIMOTHY R. HARDY, in his official
and individual capacities,
DEPUTY MATTHEW K. JACKSON, in his official
and individual capacities,
DEPUTY KYLE KOLAR, in his official
and individual capacities, and
DEPUTY JOHN K. LATOUR, in his official
and individual capacities,


Defendants.

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorneys an Answer to the Amended Verified Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of venue designated above is that the County of Washington is the County in which the complained of illegal search and seizure by Defendants was made, and where the material events otherwise took place.

Dated: November 17 2020
Albany, New York

TABNER, RYAN & KENIRY, LLP


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STATE OF NEW YORK
SUPREME COURT

COUNTY OF WASHINGTON

TOADFLAX NURSERY, LLC,
Z & M FARM, LLC, and
RICHARD W. MORRIS, JR.,

VERIFIED
COMPLAINT

Plaintiffs,

-against-

Index No.:

COUNTY OF WASHINGTON,
SHERIFF JEFFREY J. MURPHY, in his official
and individual capacities,
LIEUTENANT TODD LEMERY, in his official
and individual capacities,
SERGEANT TIMOTHY CARROLL, in his official
and individual capacities,
DEPUTY DIRECTOR TIMOTHY R. HARDY, in his official
and individual capacities,
DEPUTY MATTHEW K. JACKSON, in his official
and individual capacities,
DEPUTY KYLE KOLAR, in his official
and individual capacities, and
DEPUTY JOHN K. LATOUR, in his official
and individual capacities,

Defendants.

Plaintiffs, Toadflax Nursery, LLC (“Toadflax Nursery”), Z & M Farm, LLC (“Z & M Farm”) and Richard W. Morris, Jr., by and through their undersigned attorneys, allege for their Verified Complaint as follows:

1. This action arises from an unconstitutional search and seizure on October 1, 2019 conducted by Defendants, County of Washington, Sheriff Jeffrey J. Murphy, in his official and individual capacities, Lieutenant Todd Lemery, in his official and individual capacities, Sergeant Timothy Carroll, in his official and individual capacities, Deputy Director Timothy R. Hardy, in his official and individual capacities, Deputy Matthew K. Jackson, in his official and individual capacities, Deputy Kyle Kolar, in his official and individual capacities, and Deputy John K. Latour

(collectively, “Defendants”), at the Plaintiffs’ property located at 2022 County Route 43, Kingsbury, New York, (the “Property”) where the Plaintiffs cultivate and grow industrial hemp as a research partner pursuant to a license issued by the State of New York Department of Agriculture and Markets (“NYSDAM”), granting Plaintiffs permission to legally possess, grow and cultivate industrial hemp.

2. Although Plaintiffs’ industrial hemp research plants (the “Plants”) were legally grown and prominently marked with tags identifying Toadflax Nursery as the owner, and although Defendants had notice of Plaintiffs’ license, Defendants proceeded to uproot, pull up, completely destroy and render useless no fewer than 250 of Plaintiffs’ Plants in connection with an unrelated traffic stop near Plaintiffs’ Property. Defendants’ blatant destruction of Plaintiffs’ entirely legal property constituted, among other things, an unconstitutional search and seizure, occurred without any semblance of due process and with absolutely no finding of culpable or illegal conduct on behalf of Plaintiffs. Defendants’ actions violated established procedures, constituted an unconstitutional invasion and destruction of the Property and Plants, was reckless and negligent.

3. Defendants’ unconstitutional, illegal and tortious conduct caused, among other things, Plaintiffs to suffer the loss of valuable property and other economic losses. Plaintiffs are entitled to monetary damages, attorneys’ fees and all related relief.

THE PARTIES

4. Plaintiff Toadflax Nursery, LLC is a domestic limited liability company duly organized under the laws of the State of New York with an address at P. O. Box 1432, South Glens Falls, New York 12803.

5. At all times herein mentioned, Plaintiff Toadflax Nursery was and still is the tenant on the Property.

6. Plaintiff Z & M Farm, LLC is a domestic limited liability company duly organized under the laws of the State of New York with an address at P. O. Box 1432, South Glens Falls, New York 12803.

7. At all times herein mentioned, Plaintiff Z & M Farm was and still is the owner of the Property.

8. Plaintiff Richard W. Morris, Jr., is the managing member of Toadflax Nursery and of Z & M Farm and resides at 1621 Route 9, South Glens Falls, New York 12803.

9. Defendant County of Washington is a local public entity under the laws of the State of New York.

10. Defendant Jeffrey J. Murphy was at all times relevant herein, operating in his official capacity as the Sheriff of the Washington County Sheriff's Office. Among other things, Defendant Murphy is responsible for hiring, training and supervision of all personnel in the Washington County Sheriff's Office.

11. Defendant Todd Lemery was at all times relevant herein, operating in his official capacity as a Lieutenant at the Washington County Sheriff's Office.

12. Defendant Timothy Carroll was at all times relevant herein, operating in his official capacity as a Sergeant at the Washington County Sheriff's Office.

13. Defendant Timothy R. Hardy was at all times relevant herein, operating in his official capacity as a Deputy Director at the Washington County Sheriff's Office.

14. Defendant Matthew K. Jackson was at all times relevant herein, operating in his official capacity as a Deputy at the Washington County Sheriff's Office.

15. Defendant Deputy Kyle Kolar was at all times relevant herein, operating in his official capacity as a Deputy at the Washington County Sheriff's Office.

16. Defendant Deputy John K. Latour was at all times relevant herein, operating in his official capacity as a Deputy at the Washington County Sheriff's Office.

VENUE

17. Venue is proper in this Court pursuant to CPLR 506(b) in that the County of Washington is the county in which the complained of unconstitutional and illegal search and seizure by Defendants was made, and where the material events otherwise took place.

FACTUAL ALLEGATIONS

A. Background on Toadflax Nursery's Hemp License

18. Plaintiff Toadflax Nursery operates at multiple sites growing plants for its full-service retail and garden nursery. It also provides landscaping, design and maintenance services.

19. In or around 2018, Plaintiff Richard W. Morris, Jr. began exploring the possibility of growing industrial hemp. In New York State, as of August 19, 2016, industrial hemp can be legally grown with a license issued by the NYSDAM. Among other things, NYSDAM's industrial hemp research program allows licensed entities to legally possess, grow and cultivate industrial hemp pursuant to a license issued by the NYSDAM.

20. The industrial hemp may be grown and sold for commercial purposes, and New York State benefits from the research gained by growers in this emerging area of agriculture.

21. Plaintiffs initially applied for a license under the NYSDAM industrial hemp research program. On or about May 24, 2019, Toadflax Nursery was issued license number HEMP-G-000353 ("License").

22. The License was also posted on the NYSDAM website providing a list of authorized research partners.

23. Upon information and belief, and as a result of the foregoing, Defendants were on notice of Plaintiff's License.

24. Thereafter, Plaintiffs undertook to grow and cultivate industrial hemp plants in accordance with the terms of the industrial hemp research program and License, and in compliance with all applicable laws and regulations.

25. Consistent with sound practices, Plaintiffs positioned the Plants on the Property out of sight from passing pedestrians and traffic. In addition, Plaintiffs included two tags on each Plant. Each tag included the company name, address and phone number of Toadflax Nursery, as well as the name of the industrial hemp plant strain under research.

B. Defendants' Unlawful Destruction of the Property

26. Upon information and belief, the events giving rise to the claims herein took place in the evening of October 1, 2019, starting at or around 9:00 p.m. Defendants were acting within the scope of their authority and under color of law. Upon information and belief, a trooper of the New York State Police Department was also present at the Property.

27. Upon information and belief, on the evening of October 1, 2019, Defendants were patrolling the area near the Property.

28. Upon information and belief, Defendants saw a group of individuals exiting a field near the Property and walking towards their vehicle parked on County Route 43.

29. Upon information and belief, Defendants initiated a traffic stop of the vehicle on County Route 43 and noticed a small pile of plants laying on the side of road.

30. Upon information and belief, Defendants called for additional units and began interviewing, purportedly on suspicion of illegally possessing marihuana plants.

31. Upon information and belief, at or around 10:00 p.m. on October 1, 2019, under cover of darkness, without Plaintiffs' permission or consent, and without probable cause or any other legal basis, Defendants entered onto the Property and began pulling and uprooting no fewer

than approximately 250 of Plaintiffs' Plants growing in cultivated soil on the Property. The Plants were completely destroyed and rendered useless as a result of Defendants' actions.

32. Plaintiffs maintained an expectation of privacy in the area of the Property where the Defendants unconstitutionally entered, searched and destroyed the Plants.

33. The Plants were clearly labeled with tags indicating ownership by the Plaintiffs. Despite the dual identification tags attached to each plant, the Defendants failed to notify the Plaintiffs of Defendants' presence on the Property and continued to destroy the Plants.

34. The Plants were not only maintained pursuant to the License, but there was no other evidence of even possible culpable or illegal activity on the Property.

35. In addition, there were no exigent circumstances requiring Defendants to enter the Property, much less to seize and destroy the Plants, without a warrant or even an inquiry of Plaintiffs.

36. Upon information and belief, (i) Defendants failed to adequately search available databases to properly determine the legality of Plaintiffs' possession of the Plants; and (ii) Defendants made no attempt to inquire of Plaintiffs, who could have provided proof of the License.

37. Upon information and belief, Defendants also (i) failed to provide adequate departmental training with respect to the proper identification of legal, industrial hemp plants, the NYSDAG industrial hemp research program, the avoidance of erroneous destruction of legal, industrial hemp plants or any other aspect of the legal cultivation of hemp; (ii) failed to provide adequate departmental supervision with respect to the identification of legal hemp, the NYSDAM industrial hemp research program, the avoidance of erroneous destruction of legal, industrial hemp plants or any other aspect of the legal cultivation of industrial hemp; and (iii) failed to properly implement a departmental system, policy or database to adequately identify legal, industrial hemp growers in Washington County.

38. Plaintiffs served a notice of claim upon the Defendants within ninety days after the claim arose, and at least thirty days have passed since service of the notice of claim.

39. Defendants have failed and refused to make any adjustment of the claim, causing Plaintiffs to serve this Complaint upon Defendants commencing this action.

FIRST CAUSE OF ACTION
(42 U.S.C. § 1983 – Unconstitutional Search and Seizure)

40. The foregoing allegations are incorporated and re-alleged herein.

41. Defendants' unconstitutional search and seizure was not conducted in compliance with the constitutional requirements of the Fourth Amendment of the United States Constitution in that, among other things, was not conducted pursuant to a search warrant, or pursuant to any exception to the warrantless search requirements.

42. The unconstitutional, warrantless search and seizure of the Property and Plants by Defendants constituted an unreasonable and illegal search and seizure under the Fourth Amendment to the United States Constitution.

43. The unconstitutional, warrantless search and seizure of the Property by Defendants was conducted pursuant to a policy, practice, or custom that violates the Fourth Amendment to the United States Constitution.

44. Defendants lacked statutory and other legal authority for the unconstitutional, warrantless search and seizure of the Property and Plants, among other things.

45. Defendants' unconstitutional, warrantless search and seizure of the Property and Plants in violation of Plaintiffs' Fourth Amendment constitutional rights caused Plaintiffs' damages.

46. Defendants acted willfully, knowingly and purposefully and/or with deliberate indifference to deprive Plaintiffs of their constitutional rights. As a result of the nature of

Defendants' conduct, Plaintiffs are entitled to recover punitive damages against the individual Defendants.

SECOND CAUSE OF ACTION
(42 U.S.C. § 1983 – Due Process)

47. The foregoing allegations are incorporated and re-alleged herein.

48. Plaintiffs held a constitutionally protected property interest in the Plants protected by the Due Process Clauses of the Fifth and Fourteenth Amendment to the United States Constitution and Article I, requiring Defendants to investigate the legality of the licensed operations on the Property before summarily entering the Property and destroying the Plants.

49. Plaintiffs held a constitutionally protected liberty interest protected by the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, preventing law enforcement from interfering with Plaintiffs' License to cultivate and grow industrial hemp as part of the research program.

50. Defendants violated Plaintiffs' due process rights in that they were deprived of their property and liberty interests without any opportunity for notice, a hearing, the opportunity to present witnesses or evidence or any other fundamental aspects of due process prior to Defendants' unconstitutional search and seizure conducted on the Property.

51. Defendants' unconstitutional deprivation of Plaintiffs' property and liberty interests was not supported by substantial evidence in that, among other things, there was no evidence, no criminal charges, no notice, hearing, findings or determination, and no legal basis to conclude that, among other things, that Plaintiffs were engaged in any culpable or illegal conduct.

52. All of the acts alleged herein with respect to the deprivation of Plaintiffs' due process rights were pursuant to a policy, practice or custom of the Washington County Sheriff's Office.

53. Defendants acted under color of state law.

54. Defendants' unconstitutional deprivation of Plaintiffs' property and liberty interests caused Plaintiffs' damages.

55. Defendants acted willfully, knowingly and purposefully and/or with deliberate indifference to deprive Plaintiffs of their constitutional rights. As a result of the nature of Defendants' conduct, Plaintiffs are entitled to recover punitive damages against the individual Defendants.

THIRD CAUSE OF ACTION

(Article 1, Section 12 of the New York State Constitution – Unconstitutional Search and Seizure)

56. The foregoing allegations are incorporated and re-alleged herein.

57. Defendants' unconstitutional search and seizure of the Property and Plants violated the constitutional requirements of Article 1, Section 12 of the New York State Constitution in that it was not conducted pursuant to a search warrant, and was not limited in scope, among other things.

58. The unconstitutional, warrantless search and seizure of the Property and Plants by Defendants' constituted an unreasonable and illegal search and seizure under Article 1, Section 12 of the New York State Constitution.

59. The unconstitutional, warrantless search and seizure of the Property by Defendants' was conducted pursuant to a policy, practice, or custom that violates Article 1, Section 12 of the New York State Constitution.

60. Defendants lacked statutory and other legal authority for the unconstitutional, warrantless search and seizure of the Property and Plants, among other things.

61. Defendants' unconstitutional, warrantless search and seizure of the Property and Plants caused Plaintiffs' damages.

62. Defendants acted willfully, knowingly and purposefully and/or with deliberate indifference to deprive Plaintiffs of their constitutional rights. As a result of the nature of Defendants' conduct, Plaintiffs are entitled to recover punitive damages against the individual Defendants.

FOURTH CAUSE OF ACTION

(Article 1, Section 6 of the New York State Constitution – Due Process)

63. The foregoing allegations are incorporated and re-alleged herein.

64. Plaintiffs held a constitutionally protected property interest protected by Article 1, Section 6 of the New York State Constitution, requiring Defendants to investigate the legality of Plaintiffs' licensed operations on the Property before summarily entering onto the Property and destroying the legally cultivated Plants.

65. Plaintiffs held a constitutionally protected liberty interest protected by Article 1, Section 6 of the New York State Constitution, preventing law enforcement from interfering with Plaintiffs' License to cultivate and grow the Plants as part of the NYSDAM industrial hemp research program.

66. Defendants' unconstitutional deprivation of Plaintiffs' property and liberty interests caused Plaintiffs' damages.

67. Defendants acted willfully, knowingly and purposefully and/or with deliberate indifference to deprive Plaintiffs of their constitutional rights. As a result of the nature of Defendants' conduct, Plaintiffs are entitled to recover punitive damages against the individual Defendants.

FIFTH CAUSE OF ACTION

(Trespass)

68. The foregoing allegations are incorporated and re-alleged herein.

69. At or around 10:00 p.m. on October 1, 2019, Defendants illegally entered onto the Property and pulled, uprooted and destroyed no fewer than 250 Plants without Plaintiffs' permission or knowledge.

70. As a result of Defendants' trespass onto the Property, no fewer than 250 Plants were completely destroyed and rendered useless causing Plaintiffs' damages.

SIXTH CAUSE OF ACTION
(Negligence)

71. The foregoing allegations are incorporated and re-alleged herein.

72. At or around 10:00 p.m. on October 1, 2019, Defendants illegally entered the Property and acted negligently in that, among other things, they pulled and uprooted no fewer than 250 Plants and failed to check the multiple tags attached to each Plant containing Plaintiffs' contact information and identifying Toadflax Nursery as the owner, failed to contact Plaintiffs who could have provided proof of the License and failed to adequately search available databases to properly determine the legality of Plaintiffs' conduct on the Property.

73. As a result of Defendants' negligence, no fewer than 250 Plants were completely destroyed and rendered useless causing Plaintiffs' damages.

74. As a further result of Defendants' negligence in pulling and uprooting no fewer than 250 of the licensed Plants from the Property, Plaintiffs have incurred, and will continue to incur in the future, significant economic loss as may be proven at trial.

75. Plaintiffs' damages were caused wholly and solely by Defendants' negligence without any negligence on the part of Plaintiffs in any way contributing thereto.

SEVENTH CAUSE OF ACTION
(Conversion)

76. The foregoing allegations are incorporated and re-alleged herein.

77. At or around 10:00 p.m. on October 1, 2019, Plaintiffs were the owner of and entitled to the immediate possession of no fewer than 250 Plants destroyed by Defendants.

78. At or around 10:00 p.m. on October 1, 2019, Defendants pulled, uprooted, and converted no fewer than 250 Plants.

79. As a result of Defendants' illegal conversion, no fewer than 250 Plants were completely destroyed and rendered useless causing Plaintiffs' damages.

80. As a result of the foregoing, Plaintiffs have incurred, and will continue to incur in the future, significant economic loss as may be proven at trial.

EIGHTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

81. The foregoing allegations are incorporated and re-alleged herein.

82. At or around 10:00 p.m. on October 1, 2019, Defendants acted intentionally, deliberately, and with reckless disregard for the foreseeable probability that their conduct would cause Plaintiff, Richard W. Morris, Jr. to suffer emotional distress.

83. Defendants knew or should have known that emotional distress was the likely result from their conduct.

84. Defendants' conduct was extreme and outrageous, beyond all possible bounds of decency, utterly intolerable in a civilized community, and without privilege.

85. Defendants' actions were the sole and proximate cause of Plaintiff's emotional distress.

86. The emotional distress suffered by Plaintiff was severe and of such a nature that no reasonable person could be expected to endure it.

87. Plaintiff is, and with a high degree of likelihood will continue to be, inflicted with emotional distress due to Defendants' intentional acts.

88. As a result of Defendants' intentional acts with total, utter, wanton, and reckless disregard for Plaintiff, Plaintiff has suffered, and will continue to suffer, severe anguish and emotional trauma, embarrassment, humiliation, and severe emotional distress.

NINETH CAUSE OF ACTION
(Prima Facie Tort)

89. The foregoing allegations are incorporated and re-alleged herein.

90. At or around 10:00 p.m. on October 1, 2019, Defendants' actions were willful, intentional, unwarranted and without just cause or provocation, and it was reasonably foreseeable that such actions would cause Plaintiffs to suffer serious injuries and economic loss.

91. As a result of the Defendants' willful, intentional, unwarranted and unprovoked acts, Plaintiffs have suffered, and will continue to suffer, serious injuries and economic loss.

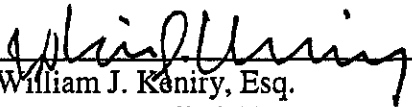
WHEREFORE, Plaintiffs respectfully request that the Court:

- a. Grant Plaintiffs judgment on each Cause of Action;
- b. Issue a declaration of Plaintiffs' rights with respect to their constitutional rights, including, but not limited to, a declaration that Defendants' search and seizure of the Property and Plants was unconstitutional;
- c. Award all compensatory damages for injuries in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- d. Award all incidental relief, including, but not limited to, consequential damages, lost income, lost research opportunities and funding, property damage, reputational harm, emotional harm, deprivation of constitutional and other rights, punitive damages, and monetary damages, all in an amount to be determined at trial;
- e. Award all attorneys' fees and expenses, including, but not limited to, pursuant to 42 U.S.C. § 1988;

f. Award all other substantial damages, costs and disbursements of this action; and such other and further relief as the Court may deem just and proper.

Dated: ~~October~~ ^{November} 17, 2020
Albany, New York

TABNER, RYAN & KENIRY, LLP



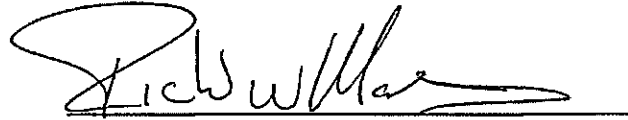
William J. Keniry, Esq.
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Telephone: (518) 465-9500

VERIFICATION

STATE OF NEW YORK)
COUNTY OF Saratoga) ss.:

RICHARD W. MORRIS, JR., being duly sworn, deposes and says:

I am the Managing Member of Toadflax Nursery, LLC ("Toadflax Nursery"), and Z & M Farms, LLC ("Z & M Farms") Toadflax Nursery, Z & M Farms and I are the Plaintiffs in the proceeding herein; I have read the foregoing Complaint, know the contents thereof, and that the same is true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters that I believe to be true.



Richard W. Morris, Jr.
Individually and for Toadflax Nursery, LLC
and Z & M Farms, LLC

Sworn to before me on the
19th day of October 2020.


Notary Public

KAREN SCRIVER
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01SC5077354
Qualified in Warren County
My Commission Expires: 7/24/23