GERARD FOX LAW, P.C.
Chaka C. Okadigbo (State Bar No. 224547)
cokadigbo@gerardfoxlaw.com
1880 Century Park East, Suite 1410
Los Angeles, CA 90067
Telephone: (310) 441-0500
Facsimile: (310) 441-4447

Attorneys for Plaintiff MARICELA LONG

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARICELA LONG, an individual,

Plaintiff

vs.

COUNTY OF LOS ANGELES, local public entity; LEROY BACA, an individual; and DOES 1 through 25,

Defendants.

Case No.: 2:18-cv-01148-MWF (PLAx)

[Assigned to Hon. Michael W. Fitzgerald, Courtroom 5A]

PLAINTIFF'S OPPOSITION TO DEFENDANT LEE BACA'S MOTION TO DISMISS

Date: May 14, 2014
Time 10:00 a.m.
Courtroom: 5A

Trial Date: None set

TABLE OF CONTENTS

CASES

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STATUTES

I. INTRODUCTION

The instant Complaint is grounded on Substantive Due Process deprivations that resulted in Plaintiff Maricela Long's loss of liberty – imprisonment, employment, and the opportunity to pursue a profession in law enforcement following her conviction. Former Sheriff and chief decision and policy maker of the Los Angeles County Sheriff's Department ("Sheriff's Department), Lee Baca (Complaint, ¶¶ 12, 73, 74), directed officers and deputies under his control to investigate the FBI at a time the FBI was investigating the Sheriff's Department for alleged civil rights abuses in Los Angeles County jails. (Complaint, ¶¶ 15-18, 23).

Following Baca's orders, Sheriff Deputies, not including Plaintiff, conducted surveillance on the FBI agent who had been investigating the Sheriff's Department (Complaint, ¶ 30). With Baca's approval, Plaintiff and other Sheriff Department officers also approached the FBI agent at her home to find out the status of the FBI's investigation of the Sheriff's Department. (Complaint, ¶ 31). Other deputies, not Plaintiff, conducted surveillance on the FBI agent and yet others, not including Plaintiff, hid Brown to prevent him from the FBI, consistent with Baca's directive to prohibit Brown's contact with anyone, including the FBI, even when a subpoena had issued for his testimony before a grand jury. (Complaint, ¶¶ 18, 20, 26, 27).

Ms. Long, a deputy newly assigned to the investigations unit Baca ordered to investigate the FBI (Complaint, ¶ 24), carried out actions she was directed to perform within a rigid chain-of-command environment under which she was expected to follow the orders given to her by her superiors (Complaint, ¶ 12, 74, 75). At the same time, the Sheriff's Department had no policies or training manuals regarding how to handle the investigation of federal authorities suspected of violating state law. (Complaint, ¶ 24, 76). In this environment, Plaintiff interviewed Brown twice, as well as Deputies Gilbert Michel, the deputy who provided the cellphone to Brown and helped him bring drugs into the jail, and William Courson, all in August 2011. (Complaint, ¶¶ 28, 29).

Ms. Long was ultimately convicted in September 2014 for conspiracy to obstruct

justice, obstruction of justice, and making false statements to the FBI as a result of carrying out directives given to her by her superiors to investigate the FBI which emanated from, or were approved by, Baca and acting consistent with those directives. (Complaint, ¶¶ 49, 61, 63, 65, 67, 68, 70, 74, 75, 76, 78, 79). She lost her job as a deputy sheriff, as well as the opportunity to work in law enforcement again. (Complaint, ¶¶ 48, 58). Baca too was convicted for obstruction of justice and making false statements to the FBI as a result of his leadership of investigation of the FBI, the hiding of the FBI informant by Sheriff deputies, the approach of the FBI agent at her home by Sheriff deputies and other activities that fell under the umbrella of investigating the FBI, but which, nevertheless, was construed by the jury as obstructing justice. (Complaint, ¶ 52, 56, 57).

The Complaint alleges substantive due process violations against Baca under 42 U.S.C. § 1983 for setting in motion the chain of events that ultimately led to Plaintiff's loss of liberty, employment, and opportunity to pursue a law enforcement career again by ordering, overseeing, approving or ratifying the investigation of the FBI, the hiding of the FBI informant and other activities in furtherance of the FBI investigation and in hindrance of the federal grand jury investigation. (Complaint, ¶¶ 24, 33, 34, 35, 39, 48, 57, 58, 61, 63, 65, 67, 70, 73-79). (Complaint, ¶¶ 18, 20, 26, 27, 30, 31, 63, 70). Plaintiff conducted her investigation in reliance on her superiors not to lead her astray and within a rigid chain-of-command environment she was expected to obey lacking in training, policy manuals or protocols, written or unwritten, on how to investigate federal authorities.

Baca claims that Plaintiff's allegations fail to establish that: her constitutional rights were violated or that he caused the injuries of which she complains insofar as Plaintiff allegedly caused her own convictions; there are inadequate remedies at state law; Baca's conducted rose to the level of "shocking the conscience" allegedly required for a due process claim; he acted with the requisite intent to cause Plaintiff's constitutional injuries; this suit is not barred by *Heck v. Humphrey*, 512 U.S. 477 (1994);

the Complaint is barred by the statute of limitations; and he is not protected by the doctrine of qualified immunity. All of these claims fail, however.

Ms. Long has sufficiently alleged facts establishing that Baca caused her constitutional injuries notwithstanding her criminal conviction. Furthermore, as a matter of law, she is not required to plead or establish that state law remedies are inadequate in order to prosecute her substantive due process deprivation claims, or to allege that Baca *intended* to cause her constitutional injuries, or to allege facts analogous to *County of Sacramento v. Lewis*, 523 U.S. 833 (1998) or *Rochin v. California*, 342 U.S. 165 (1952) to meet a "shock the conscience" standard. Facts pled and unpled establish that Plaintiff's Complaint is not barred by the statute of limitations. *Heck v. Humphrey* does not bar the instant suit because Ms. Long is not challenging her criminal conviction, nor is she required to negate any elements of the offenses for which she was charged in the criminal action to proceed with this suit. Lastly, Baca is not protected by qualified immunity given that he violated clearly established laws in causing Ms. Long's loss of liberty and property (i.e. employment and deprivation of the opportunity to pursue law enforcement) and was convicted for obstruction of justice in regard to the same events at issue in this Complaint. Alternatively, the issue of whether Baca violated clearly established law should be adjudicated in a later phase of this case and not on a motion to dismiss, bearing in mind the reluctance of courts to resolve qualified immunity issues on a motion to dismiss.

II. LEGAL STANDARD FOR 12(b)6 MOTIONS

Traditionally, Courts have viewed Rule 12(b)6 motions with disfavor and rarely grant such motions. *See, e.g. Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009). Moreover, a dismissal with prejudice is proper only in extraordinary cases. *Broam v. Bogan*, 320 F.3d 1023, 1029 (9th Cir. 2003).

To survive a Rule 12(b) motion to dismiss, the facts alleged need only state a "facially plausible" claim for relief.

For most cases, "the Federal Rules eliminated the cumbersome requirement that a

claimant 'set out *in detail* the facts upon which he bases his claim.'" *Bell Atlantic Corp. v. Twombly*, 550 US 544, 556, fn. 3 (2007) (emphasis in original).

However, in basically every case, plaintiff must provide "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 US 662, 678 (2009); *Valadez-Lopez v. Chertoff*, 656 F3d 851, 858-859 (9th Cir. 2011). A claim is facially plausible when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 US at 678.

On a motion to dismiss, the court must "accept as true all of the factual allegations set out in plaintiff's complaint, draw inferences from those allegations in the light most favorable to plaintiff, and construe the complaint liberally." *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123 (2nd Cir. 2009); *Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005).

III. DEFENDANT'S CONTENTION THAT, BECAUSE OF HER CRIMINAL CONVICTIONS, PLAINTIFF CANNOT ESTABLISH EITHER THAT HER CONSTITUTIONAL RIGHTS WERE VIOLATED OR THAT DEFENDANT PROXIMATELY CAUSED THE VIOLATION OF HER CONSTITUTIONAL RIGHTS FAILS

In argument III (A) and (B), Baca claims that Ms. Long's criminal convictions prevent her from establishing either that her constitutional rights were violated, or that Baca specifically proximately caused such alleged violations. Notably, Baca takes no issue with Ms. Long's assertion that loss of liberty, loss of employment, and deprivation of occupational liberty are constitutional rights protected by substantive due process under the Fourteenth Amendment and, by extension, 42 U.S. § 1983 (or at least offers no argument that Ms. Long failed to allege protected constitutional interests). His issue is whether Ms. Long can prove that he caused the injuries; he claims she cannot. As such, Ms. Long will not address the existence of these constitutional rights, suffice it that her employment-based substantive due process deprivation claims are authorized by *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985) (recognizing

constitutionally protected property interest in employment as tenured civil servant); *Ass'n for Los Angeles Deputy Sheriffs v. Cty. of Los Angeles*, 648 F.3d 986, 991 (9th Cir. 2011) (recognizing constitutionally protected property interest in continued employment in deputy sheriff position); *Enquist v. Oregon Dept. of Agriculture*, 478 F.3d 985, 997 (9th Cir. 2007) (recognizing existence of occupational liberty deprivation claims under substantive due process clause of Fourteenth Amendment where a governmental actor has foreclosed employment in a particular profession); *San Joaquin Deputy Sheriffs' Ass'n v. Cty. of San Joaquin*, 898 F. Supp. 2d 1177, 1189 (E.D. Cal. 2012) (noting that property interest that California public safety officers have in their continued employment is derived from POBRA's Section 3304(b), which applies after a police officer completes his or her probationary period of employment and requires an administrative appeal before a police officer may suffer a "punitive" action). Her loss of liberty interests is protected by the plain language of the substantive due process clause of the Fourteenth Amendment. A further exposition of the existence of Ms. Long's occupational liberty-based deprivation claim is summarized in her Opposition to Defendant County of Los Angeles' Motion to Dismiss (Dkt. No. 27, at 16-20).

Baca's claim that Ms. Long has failed to establish that he caused her constitutional injuries fails. Baca participated in or directed the activities at issue here that caused the violation of Plaintiff's constitutional rights. He also set in motion a series of acts that foreseeably resulted in the cumulative set of actions that his subordinates, including Plaintiff, carried out and which resulted in obstruction of justice and false statement convictions against Plaintiff and Baca himself.

a. Defendant is Liable in His Individual Capacity for Violating Plaintiff's Constitutional Rights

Section 1983 provides, in pertinent part, that "[e]very person who, under color of any statute of any state ..., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the

party injured....” (42 U.S.C. § 1983). A person “subjects” another to the deprivation of a constitutional right, within the meaning of section 1983, if he *does an affirmative act, participates in another's affirmative acts*, or *omits to perform an act which he is legally required to do* that causes the deprivation of which complaint is made. *Stevenson v. Koskey*, 877 F.2d 1435, 1438–39 (9th Cir. 1989). Moreover, personal participation is not the only predicate for section 1983 liability. Anyone who “causes” any citizen to be subjected to a constitutional deprivation is also liable. “The requisite causal connection can be established either by direct personal participation in the deprivation or by *setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury*.” *Johnson v. Duffy*, 588 F.2d 740, 743.

A supervisor is liable for the acts of his subordinates if the supervisor participated in *or directed the violations*. *Preschooler II v. Clark Cnty. Sch. Bd. of Trs*., 479 F.3d 1175, 1182 (9th Cir.2007).

In *Larez v. City of Los Angeles*, 946 F.2d 630 (9th Cir.1991), the court approved the district court’s instruction that the jury could find a police chief liable in his individual capacity if he "set[ ] in motion a series of acts by others, or knowingly refused to terminate a series of acts by others, which he kn[e]w or reasonably should [have] know[n], would cause others to inflict the constitutional injury." *Id*. at 646 (citations omitted).

A supervisor can be held liable in his or her individual capacity if he or she "knew of the violations and failed to act to prevent them." *Maxwell v. County of San Diego*, 708 F.3d 1075, 1086 (9th Cir.2013); *Preschooler II v. Clark Cnty. Sch. Bd. of Trs*., *supra*, 479 F.3d at 1182.

A plaintiff "may state a claim against a supervisor for deliberate indifference based upon the supervisor’s *knowledge of and acquiescence in unconstitutional conduct by his or her subordinates*." *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir.2011).

Finally, a plaintiff may state a claim based on conduct by the supervisor "that

showed a reckless or callous indifference to the rights of others." *Larez*, 946 F.2d at 646 (quoting *Bordanaro v. McLeod*, 871 F.2d 1151, 1163 (1st Cir.1989)).

Ms. Long seeks to hold Baca in his individual capacity, for causing the constitutional injuries at issue here – loss of liberty and deprivation of occupational liberty, i.e. the denial of the opportunity to Plaintiff to pursue a career in law enforcement. Baca, the ultimate "supervisor" within the Sheriff's Department, ordered, approved, oversaw, or ratified the actions that resulted not only in her conviction but in his own conviction for obstruction of justice. (Complaint, ¶¶ 12, 15-18, 20, 26-27, 23, 30, 31, 73, 74). He directed his subordinates to investigate the FBI to find out about their investigation of the Sheriff's Department for civil rights abuses in Los Angeles County jails (Complaint, ¶¶ 15-18, 23, 61), to seclude an FBI informant from contacting the FBI (Complaint, ¶ 18, 20, 26, 27), and to question the same agent about the status of the FBI investigation. (Complaint, ¶ 31).

Foreseeably, Plaintiff carried out Baca's directives as communicated to her by Baca subordinates senior to her. Within a rigid hierarchical chain of command environment under which she was expected to follow unquestioningly the directives of her superiors (Complaint, ¶¶ 12, 74, 75) and, given her lack of training and experience in the investigation of federal authorities suspected of violating state law, as well as the lack of any policy manuals on the subject, Ms. Long interviewed FBI informant Brown and Deputies Coulson and Michel. (Complaint, ¶¶ 25, 27-29). She also approached FBI Agent Marx to inquire about the details of the FBI's investigation of the Sheriff's Department regarding human rights abuses in Los Angeles County jails and took other actions within the ambit of carrying out those objectives. (Complaint, ¶¶ 24, 25, 27, 28, 29, 33-35). Other Baca subordinates, not Plaintiff, also acted within the spirit of Baca's directives by hiding Brown to prevent him from contacting the FBI or responding to a grand jury subpoena issued for his testimony, to conduct surveillance on the FBI (Complaint, ¶¶ 26, 27, 30) and carrying out other actions a jury would later interpret to constitute obstruction of justice and which would subsequently be attributed to Plaintiff

under conspiracy charges. (Complaint, ¶¶ 63.) Baca knew of the conduct the jury would later construe as obstruction of justice but failed to prevent it (Complaint, ¶¶ 17, 18, 20, 21, 31, 34, 39, 40, 42, 59, 61, 62) and was himself found liable for obstruction of justice for overseeing the underlying activities that would, in the jury's view, amounted to obstruction of justice. (Complaint, ¶¶ 52, 57).

Based on the foregoing, Baca "set [ ] in motion a series of acts by others … or knowingly refused to terminate a series of acts by others, which he kn[e]w or reasonably should [have] know[n], would cause others to inflict [Plaintiff's constitutional injur[ies]." *Larez*, 946 F.2d at 646; Complaint ¶¶ 63. Baca is also liable for failing to stop the FBI investigation and the actions of his subordinates in carrying out his directives and directing Plaintiff to engage in conduct that would subsequently be construed as obstruction of justice. (Complaint, ¶ 63). *Id*. Furthermore, he participated in the affirmative acts of others, which, acting concurrently, resulted in deprivation of Plaintiff's federally protected rights. 42 U.S.C. § 1983; *Johnson v. Duffy*, *supra*, 588 F.2d at 743. Or, he demonstrated a reckless or callous indifference to the deprivation of Plaintiff's constitutional rights by setting up an rigid chain-of-command structure lacking training or policy protocols on how to investigate federal authorities suspected of violating state law (Complaint, ¶ 2, 3, 24) ordering the investigation into the FBI (Complaint, ¶18), allowing and expecting his subordinates to carry out his directives (Complaint, ¶ 63), failing to intercede on Plaintiff's behalf after it was clear that she would be prosecuted and, during the period of Plaintiff's trial, denying his involvement in the underlying events for which he and Plaintiff would be convicted. (Complaint, ¶¶ 34, 39, 44, 46, 48 64). *See also Starr*, *supra*, 652 F.3d at 1207.

b. Plaintiff Alleged Sufficient Facts to Establish that Baca Proximately Caused Her Injuries.

Plaintiff has pled sufficient facts to show that Baca is liable under § 1983 for the deprivation of her liberty as well as the opportunity to pursue a career in law enforcement again, Baca's claims to the contrary.

The preceding argument details the basis for Baca's liability in his individual capacity for Plaintiff's constitutional injuries. This conclusion is further enhanced by a deeper consideration of the matter of causation.

"In a § 1983 action, the plaintiff must ... demonstrate that the defendant's conduct was the actionable cause of the claimed injury." *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir.2008) (citing *Arnold v. IBM Corp.*, 637 F.2d 1350, 1355 (9th Cir.1981)). To meet this causation requirement, the plaintiff must establish both causation-in-fact (which is sometimes also known as actual causation), and proximate causation (which is sometimes also known as legal causation). *Id.* (citing *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 837 (9th Cir.1996); *Arnold*, 637 F.2d at 1355).

A defendant's conduct is a cause-in-fact or actual cause of a plaintiff's injury if it is a "but-for" cause of the injury. *See White v.* Roper, 901 F.2d 1501, 1505–06 (9th Cir.1990). And defendant's conduct is a proximate or legal cause of a plaintiff's injury if there is "a sufficient causal link between the act or omission of a defendant and any injury suffered by the plaintiff to justify the imposition of liability." *Estate of Macias v. Lopez*, 42 F.Supp.2d 957, 964 (N.D. Cal. 1999).

Proximate or legal causation "frequently is equated with the concept of 'foreseeability,' " and "[u]nder most circumstances, legal causation does not extend beyond the scope of 'foreseeable risks.' " *Id.* (citing *Van Ort*, 92 F.3d at 837 (applying foreseeability test to question of proximate cause in section 1983 action); *Hines v. United States*, 60 F.3d 1442, 1450 (9th Cir.1995) ("The question of proximate cause is usually defined with reference to the scope of the foreseeable risks of the actor's conduct"); *Sundance Land v. Community First Fed. Sav. & Loan*, 840 F.2d 653, 663 (9th Cir.1988) ("The scope of liability should ordinarily extend to but not beyond the scope of the " 'foreseeable risks.' ")).

Foreseeability, however, is not the only aspect of proximate or legal causation. Legal causation is also determined by the existence of intervening or superseding actual causes," which has been applied to § 1983 actions. *Id.* at 965 (citing *Van Ort*, 92 F.3d at

837 (in section 1983 actions, the Ninth Circuit has looked to "[t]raditional tort law" to determine whether "intervening causes ... break the chain of proximate causation"); *White*, 901 F.2d at 1506 (defendant's "conduct is not the proximate cause of [plaintiff's] alleged injuries if another cause supersedes his liability for the subsequent events"). However, foreseeable intervening causes will not supersede a defendant's responsibility. *Van Ort*, 92 F.3d at 837 (foreseeable intervening causes will not supersede the defendant's responsibility); *Conn v. City of Reno*, 591 F.3d 1081, 1101 (9th Cir. 2009). An intervening act "must be a *new and independent force*, which was *not set in motion by the defendant's own wrongful acts*, and must rise to such a level of culpability as to replace the defendant's [culpability] as the legal cause." *Thomas v. Kelly*, 903 F. Supp. 2d 237, 264 (S.D.N.Y. 2012). The case law further establishes that criminal conduct occurring somewhere in the causal chain does not necessarily sever the causal link originating from the defendant. *See, e.g., Bigbee v. Pacific Tel. & Tel. Co.*, 34 Cal.3d 49, 58 (1983); *Richardson v. Ham*, 44 Cal.2d 772 (1955); *Rushdan v. Schriro*, No. CV 05-114-TUC-FRZ JM, 2010 WL 7508269, at *6 (D. Ariz. July 30, 2010), report and recommendation adopted sub nom. *Rushdan v. Ryan*, No. CV 05-114-TUC-FRZ, 2011 WL 4390010 (D. Ariz. Sept. 21, 2011) (an intervening criminal act does not necessarily constitute a superseding cause).

On the facts present here, Baca was a but-for cause of Plaintiff's injuries because without his direction to subordinates to investigate the FBI and to conceal FBI informant Brown, as well as his approval and ratification of conduct activities in furtherance of his directives, such as hiding Brown, conducting surveillance on the FBI, approaching FBI Agent Marx to find out the details of the FBI's investigation of the Sheriff's Department, and his creation of a rigid hierarchal structure under which his commands were to be obeyed at all costs, and more, Plaintiff would not have been placed in the predicament of having to carryout actions that would later be construed by a jury to constitute obstruction of justice and making false statements.

Regarding proximate causation, the events that would unfold in furtherance of

obeying Baca's directives and carrying out further actions consistent with those directives were entirely foreseeable. Therefore, Baca proximately caused Plaintiff's injuries.

Baca cites no authority for his argument that Plaintiff cannot establish that he caused her constitutional injuries. As discussed above, the case law establishes that intervening or superseding causes – which, assuming for the sake of argument, Plaintiff's criminal convictions would be – only break the chain of causation if they are not foreseeable. Here, Plaintiff's actions in following his directives and carrying out actions consistent with his directives were foreseeable.

Baca claims that Ms. Long had the option of refusing Baca's orders, this argument does not carry the day given Ms. Long's lack of experience in investigating federal authorities for perceived violations of state law and her reliance on Baca and other superiors not to steer her into carrying out directives that would get her convicted.[1]

Regardless, it is axiomatic that there can be more than one legal cause of an event. *See, e.g., VanBuskirk v. Carey Canadian Mines, Ltd.*, 760 F.2d 481, 492 (3d Cir. 1985). Thus, Baca's conviction that Plaintiff is necessarily the only cause of her injuries is unfounded particularly, where, as here, Baca himself was convicted for obstruction of justice in connection with the same underlying events for which Plaintiff was convicted. This case should proceed to a jury determination as to whether Baca is the substantial factor cause of Plaintiff's injuries.

Defendant Baca may disagree but the matter of whether the requisite causation is

[1] Baca's claim that Plaintiff at best alleges that Baca issued ill-advised or improper instructions also misses the mark by cheapening Plaintiff's allegations to then knock down phantom arguments Plaintiff is not making. Motion to Dismiss, p. 15. Baca's conviction for obstruction of justice certainly defeats the notion that all he did was "issue ill-advised or improper instructions." Plaintiff is not claiming that she has a federal right not to receive improper orders from Baca. She is claiming that Baca caused the deprivation of her liberty and property interests, i.e. her incarceration, loss of employment, and deprivation of occupational liberty interests, when he ordered and led the investigation of the FBI and approved other activities by his subordinates that a jury later construed as obstruction of justice by him in a criminal action against him concerning the same underlying events in Plaintiff's criminal action. Her obedience to his directives occurred within the context of the hierarchical chain of command structure and lack of training and guidance.

present in a § 1983 action is normally a question of fact. *See Higazy v. Templeton,* 505 F.3d 161 (2nd Cir.2007); *George v. City of Long Beach*, 973 F.2d 706, 709 (9th Cir.1992) ("Questions of proximate causation are issues of fact which are properly left to the jury if reasonable persons could reach different conclusions."); *Monteilh v. City of Los Angeles*, 820 F. Supp. 2d 1081, 1089 (C.D. Cal. 2011). Additionally, on a motion to dismiss, the Court is required to "accept as true all of the factual allegations … in the complaint, draw inferences from those allegations in the light most favorable to plaintiff, and construe the complaint liberally." *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123 (2nd Cir. 2009); *Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005).

Furthermore, Plaintiff's ability to prove her allegations is of no concern in ruling in a motion to dismiss. "In considering a 12(b)(6) motion, we do not inquire whether the plaintiffs will ultimately prevail, only whether they are entitled to offer evidence in support of their claims." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996); *see Allison v. California Adult Authority*, 419 F.2d 822, 823 (9th Cir. 1969); *Peterson v. Grisham*, 594 F.3d 723, 727 (10th Cir. 2010) (court does not weigh potential evidence parties may present at trial).

At minimum, reasonable persons could differ on this question of foreseeability. Therefore, the Court should deny Baca's motion to dismiss to the extent that it rests on the notion that Plaintiff cannot prove he caused her injuries. *White v. Roper*, 901 F.2d at 1506.

IV. DEFENDANT BACA'S CLAIM THAT PLAINTIFF CANNOT ESTABLISH THE VIOLATION OF HER CONSTITUTIONAL RIGHTS BECAUSE SHE HAS FAILED TO ALLEGE OR ESTABLISH THAT SHE HAS INADEQUATE REMEDIES UNDER STATE LAW IS UNSUPPORTED AS A MATTER OF LAW

Under section heading III(A) in its Motion to Dismiss, Baca contends that Plaintiff has failed to allege that she has inadequate remedies under state law and therefore cannot establish that Baca violated her constitutional rights. However, Ms. Long is not required to plead and establish that she has no adequate state law remedies to

proceed with her § 1983 claim.

In support of his position that Plaintiff is required to plead and establish the inadequacy of state law remedies, Baca improperly relies on *Parratt v. Taylor*, 451 U.S. 527 (1981). However, the Supreme Court clarified, in *Daniels v. Williams*, 474 U.S. 327 (1986), that the Due Process Clause of the Fourteenth Amendment protects against deprivations of substantive due process "by barring certain government actions *regardless of the fairness of the procedures* used to implement them." *Id.* at 331. Following suit, the Ninth Circuit also held that "the due process clause includes a substantive component which guards against arbitrary and capricious government action, even when the decision to take that action is made through procedures that are in themselves constitutionally adequate." *Smith v. City of Fontana ("Fontana")*, 818 F.2d 1411 (9th Cir. 1987).[2]

Based on *Daniels* and *Fontana*, Baca's assertion that Ms. Long must plead and establish that state law remedies are inadequate to proceed with her substantive due process based §1983 claim is flatly wrong as a matter of law.

V. NOTWITHSTANDING DEFENDANT'S CLAIM THAT MS. LONG HAS FAILED TO ALLEGE CONDUCT THAT "SHOCKS THE CONSCIENCE," HER ALLEGATIONS ARE SUFFICIENT TO RAISE A § 1983 CLAIM

Plaintiff agrees with Baca that a plaintiff bringing a substantive due process claim within the § 1983 context must show an abuse of power by a government official that shocks the conscience. Nevertheless, the bar for satisfying this standard is much lower than Baca alleges in his motion; it is not intent.

County of Sacramento v. Lewis ("*Lewis*"), 523 U.S. 833 (1998), upon which Baca relies, involved a high-speed chase of two teenagers on a motorcycle that culminated in a police car running over and killing one of the motorcyclists. *Lewis*, 523 U.S. 833. The

[2] Moreover, even in *Parratt*, Justice Blackmun in his concurring opinion, wrote: "there are certain governmental actions that, even if undertaken with a full panoply of procedural protection, are, in and of themselves, antithetical to fundamental notions of due process." *Parratt*, 451 U.S. at 545. Furthermore, the majority did not state establishing the inadequacy of state law remedies is required for substantive due process deprivation claims.

Court determined that because the police officer did not intend to harm the motorcyclists and the death occurred during a high-speed chase, the actions of the officer did not rise to the level of shocking the conscience. *Id* at 855. However, the Supreme Court did not hold that a showing of intent is required under all circumstances.

When discussing the state of mind necessary to satisfy the "shock the conscience" standard, the Court conceded that deliberate indifference on the part of government officials may rise to the level of shocking the conscience. *Id* at 849. The Court held that when a government official has time to deliberate, but the official is *nonetheless deliberately indifferent*, the official's conduct "shocks the conscience" and supports a claim for violation of substantive due process. *Id*.[3] As an example, the Court even noted that prison officials who are deliberately indifferent to the medical needs of detainees have sufficiently "shocked the conscience" for substantive due process claims. *Id* at 850; *see Barrie v. Grand County, Utah*, 119 F.3d 862, 867 (10th Cir. 1997).

Importantly, the Court noted that deliberate indifference implies the *opportunity for actual deliberation*. Thus, it cannot be applied to emergency situations where government officials are forced to make split-second decisions. *Id* at 851. Since the officer in *Lewis* did not intend to harm the motorcyclists and the conduct at issue occurred during a high-speed chase when the officer did not have an opportunity for actual deliberation, the officer's actions in *Lewis* did not satisfy the "shock the conscience" standard. *Lewis*, 523 U.S. at 855. However, in *non-emergency situations*, such as here, where Baca had ample opportunity to deliberate the ramifications of his conduct, the deliberate indifference alleged in the Complaint satisfies the "shock the conscience" standard.

The Ninth Circuit has defined deliberate indifference within the §1983 context as

[3] The Supreme Court also stated: "Whether the point of the conscience shocking is reached when injuries are produced with culpability falling within the middle range, following from something more than negligence but 'less than intentional conduct, such as recklessness or 'gross negligence,' is a matter for close calls. To be sure, we have expressly recognized the possibility that some official acts in this range may be actionable under the Fourteenth Amendment, and our cases have compelled recognition that such conduct is egregious enough to state a substantive due process claim in at least one instance." *Lewis*, 523 U.S. at 849.

"the conscious or reckless disregard of the consequence of one's acts or omissions. It entails something more than negligence *but is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." Gantt v. City of Los Angeles*, 717 F.3d 702, 708 (9th Cir. 2013).

Here, Baca denied he was ever involved in the underlying events for which Plaintiff was convicted only to then himself receive a conviction for obstructing justice and making false statements. (Complaint, ¶¶ 40, 42, 46, 48, 52, 57). He set in motion the chain of events leading to Plaintiffs' job loss and incarceration by ordering, supervising, participating in, and approving the commission crimes under the imprimatur of Sheriff and chief law enforcement officer in Los Angeles County. As such, his conduct undoubtedly shocks the conscience.

VI. MS. LONG IS NOT REQUIRED TO ALLEGE THAT DEFENDANT BACA INTENDED TO DEPRIVE HER OF HER CONSTITUTIONAL RIGHTS TO SURVIVE A MOTION TO DISMISS

Defendant claims that Ms. Long did not allege that he intended to deprive her of her constitutional rights or that Defendant caused her "serious physical harm or endangerment to health." Motion to Dismiss, at 17-18. In his view, the omission is fatal to Plaintiff's Complaint. Defendant, however, misstates the law; Plaintiff is not required to plead intent.

"[Section] 1983 . . . contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." *Daniels v. Williams, supra*, 474 U.S. at 329-30; *see also Maddox v. City of Los Angeles*, 792 F.2d 1408, 1413-14 (9th Cir. 1986). The *Gantt* decision, discussed earlier, specifically refutes Baca's position that intent must be shown. There, the Ninth Circuit explicitly stated that trial court jury instructions "misled the jury when it appeared to *equate the 'shocks the conscience' standard with an intent to injure." Gantt, supra*, 717 F.3d 708. In non-emergency situations like the present case, intent to injure is not required. *Id*. When a governmental official has time to deliberate about their actions, as Baca did, a substantive due process claim may be supported by reckless or gross negligence. *Id*.

Conscious or reckless disregard is established by "*something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result*." *Id*; *see also Tennison v. City and County of San Francisco*, 570 F.3d 1078, 1089 (9th Cir. 2009).

Defendant also misconstrues *Lewis*. The High Court never stated that a plaintiff must plead and prove intent to injure or to cause a constitutional due process deprivation. To the contrary, *Lewis* clarified that conduct "more than negligence but less than intentional conduct" could meet the shocking the conscience standard, depending on the situation. *Lewis*, 523 U.S. at 855.

Case law also unmistakably reveals that a supervisor, such as Baca, can be held individually liable for setting in motion a series of acts by others that that he knows or reasonably should have known would inflict injury on Plaintiff. *Larez v. City of Los Angeles*, *supra*, 946 F.2d at 646. Similarly, he can be held liable if he or she "knew of the violations and failed to act to prevent them." *Maxwell v. County of San Diego*, *supra*, 708 F.3d at 1086.

In short, misstates the law by claiming that Ms. Long is required to plead and establish that he intended to deprive her of her constitutional rights.

VII. CONTRARY TO DEFENDANT'S RELIANCE ON *HECK V. HUMPHREY*, MS. LONG'S SUIT IS NOT BARRED

Contrary to Defendant's contentions, *Heck v. Humphrey*, 512 U.S. 477 (1994) does not bar the instant lawsuit.

The issue before the Supreme Court in *Heck* was "whether a state prisoner may challenge the constitutionality of his conviction in a suit for damages under 42 U.S.C. § 1983." *Id.* at 478. The plaintiff in *Heck* sought relief under § 1983, which provides a remedy for violations of civil rights. As the Supreme Court saw it, the case was framed by the relationship between § 1983 and the writ of habeas corpus which provides "the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement ... even though such a claim may come within the literal terms of §1983." *Id.* at 481 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 488–90 (1973)). The

Court held that even if a claimant seeks damages under § 1983, if the suit *requires a determination of the constitutionality of the procedures underlying a prisoner's confinement or its duration*, the prisoner cannot seek damages under § 1983, and instead must proceed under habeas. *Id.* at 481–482 (distinguishing *Preiser* and *Wolff v. McDonnell*, 418 U.S. 539 (1974)).

The Court further held that, if a favorable result in a suit for damages by a prisoner *"would render a conviction or sentence invalid,"* then a plaintiff must establish that his "conviction was reversed, expunged by executive order, or otherwise declared invalid by a state or federal tribunal." *Id.* at 486–87. Thus, in the absence of such circumstances, a § 1983 suit will not lie where a judgment in favor of the plaintiff "would necessarily imply the invalidity of his conviction or sentence." *Id.* at 487. The Ninth Circuit has elaborated: "In evaluating whether claims are barred by *Heck*, an important touchstone is whether a § 1983 plaintiff could prevail only by negating 'a*n element of the offense of which he has been convicted*.' " *Cunningham v. Gates*, 312 F.3d 1148, 1153–54 (9th Cir.2002) (quoting *Heck* at 487 n.6.)

Plaintiff's Complaint does not invoke *Heck*'s prohibition against suit. Unlike in *Heck*, Plaintiff is not asserting a malicious prosecution type claim. She is not suing the U.S. government for prosecuting her, nor is she challenging the "constitutionality of the procedures underlying her conviction or its duration." Additionally, Ms. Long is not required to negate any elements of the offenses for which she was convicted, nor would a favorable result in this action signal that her conviction or sentence is invalid.

Plaintiff is seeking to hold Baca liable for setting in motion a series of acts which he knew, or should have known, would result in the imprisonment or incarceration of persons who carried out his directives, or who took actions within the purview of those directives, associated with the investigation of the FBI, the concealment of the FBI informant, the investigation of an FBI agent to ascertain the details of the FBI's investigation of the Sheriff's Department. Baca caused Ms. Long's imprisonment, job loss, and, in turn, denied opportunity to pursue a career in law enforcement again, for the

reasons canvassed earlier herein. Holding Baca liable for causing the constitutional deprivations at issue entails finding that he is the substantial factor cause of these deprivations. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1206 (9th Cir. 2003) ("[t]he traditional notion of "but for" causation is subsumed within the substantial factor test, whereby defendants' actions may be the proximate cause of a plaintiff's injuries if those actions were a substantial factor in bringing them about").

A finding of liability in this action will not contradict Plaintiff's criminal conviction because the criminal conviction did not adjudicate the relative levels of culpability as between Baca and Plaintiff. At the time of Plaintiff's trial, Baca was denying his role in overseeing, approving and ratifying the activities of Sheriff Department officers and deputies that led to Plaintiff's conviction. (Complaint, ¶¶ 15-18, 23, 28, 29, 31, 49, 61, 63, 65, 67, 68, 70, 74-79). However, he was subsequently convicted for his involvement in those affairs. His conviction leaves open the possibility that a jury will find him liable for setting in motion the series of acts that led to Plaintiff's constitutional injuries in this action. That possibility, however, does not require negating Plaintiff's criminal convictions or any elements of the offenses for which Plaintiff was charged. Baca can be found to be the substantial factor cause of Plaintiff's injuries notwithstanding Plaintiff's criminal conviction.

The disparity between the substantial factor standard need to find Baca civilly liable in a §1983 action, on the one hand, and the *mens rea* for obstruction of justice, on the other, underscores the point that a favorable judgment for Plaintiff here would not invalidate her criminal convictions. When Ms. Long challenged the jury instruction for obstruction of justice on appeal, claiming it needed to convey that her *primary or sole motive* was to obstruct justice when she took the actions that resulted in her conviction, the Ninth Circuit disagreed. *United States v. Smith*, 831 F.3d 1207, 1217-1218 (9th Cir. 2016). The *Smith* court held that a motive to obstruct justice could exist alongside other motives for Ms. Long's overall conduct. *Id.* at 1217-1219. Also, the motive to obstruct need only be more than merely incidental to merit conviction. *Id.* Therefore, Ms. Long

could have been convicted with a *mens rea* on the low end of the merely incidental scale, or despite harboring additional motives beyond the criminal motive to obstruct justice. Conversely, the causation question in this § 1983 action requires a finding that a defendant is the substantial factor cause of the injuries complained of. *Ileto, supra*, 349 F.3d at 1206. The two scenarios do not produce a conflict. Asking the jury here to determine liability for Plaintiff's constitutional injuries does not invoke the specter of contradicting the jury's finding in her criminal trial.

It is properly within the purview of this § 1983 action for a different jury to assess Baca's liability for the constitutional injuries Plaintiff has suffered and considering his role in orchestrating the events that led not only to her conviction but to his conviction also.

Lastly, Defendant alludes to paragraphs from the Complaint which he construes as evidencing Plaintiff's denial of her criminal conviction and proclaiming her innocence. Motion to Dismiss, at 19-20. The purpose of those paragraphs, however, was not for Plaintiff to challenge the validity of her criminal conviction. They are relevant to establish Plaintiff's relative level of culpability compared to Baca. Considering *Smith*'s pronouncement that a person can exhibit mixed motives for engaging in an action for which he or she is criminally convicted, given the low bar for *mens rea* for obstruction of justice, for example, and in view of the fact that the criminal action did not adjudicate Baca's culpability relative to Plaintiff's for the events that resulted in her conviction, it is not a contradiction of Plaintiff's criminal conviction to discuss her motives for engaging in the activities that resulted in her conviction.

Based on the present record, the Court should deny the County's motion to dismiss on the ground that *Heck* bars suit. *See, e.g. Curry v. Baca*, 497 F. Supp. 2d 1128, 1129 (C.D. Cal. 2007) (denying motion to dismiss on ground that, unlike in *Heck*, the court could not conclude on the record before it that the plaintiff's civil rights suit would *"necessarily imply the invalidity of the [plaintiff's] conviction or sentence*").

VIII. MS. LONG'S COMPLAINT IS NOT BARRED BY THE STATUTE OF LIMITATIONS

Baca claims that the Complaint is time barred because the activities Plaintiff contends resulted in her injuries occurred more than four years ago, thus exceeding the two-year statute of limitations period he claims applies to § 1983 actions. To the contrary, however, the Complaint was filed within a two-year limitations period. Plaintiff's job loss was not finalized until March 2017, less than a year from the filing of the Complaint, although this fact is not plead in the Complaint. Therefore, the employment based constitutional injuries at issue here were timely raised. In any event, even if the injuries at issue here -- Plaintiff's loss of liberty and job loss, which in turn deprived her of the opportunity to pursue a profession in law enforcement – were construed as having occurred on the date of her criminal conviction, the Complaint remains timely, taking tolling into consideration.

A cause of action accrues when a plaintiff knows or has reason to know of the injury that is the basis of her action. *Gibson v. United States*, 781 F.2d 1334, 1344 (9th Cir. 1986).

Here, Ms. Long did not finally lose her job, and hence the bar to future employment in her profession, until March 2017 when the Civil Service Commission finalized its decision to terminate her employment. This fact was not pled in the Complaint, however.

Ms. Long had no reason to file her Complaint prior to the finalization of the decision to terminate her employment because the County had not yet taken the official action that permanently severed her employment. The accrual date for Ms. Long's employment based substantive due process claim is the date on which she was finally deprived of her job, March 2017 and not when she might have been aware that she might ultimately lose her job permanently. Because Plaintiff filed her Complaint on February 9, 2018, less than two years from March 2017, the Complaint is timely for her employment based § 1983 claim.

In any event, Baca cannot plausibly contend that Ms. Long's constitutional injuries occurred before the date she was criminally convicted because there was no injury – job loss or incarceration – until then. Assuming Plaintiff's injuries occurred on the day the jury announced its verdict in the criminal action, the Complaint remains timely when tolling is considered.

A 12(b)6 motion to dismiss grounded on the contention that the statute of limitations has run may be granted "only if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute [had been] tolled." *Cervantes v. City of San Diego*, 5 F.3d 1273, 1275 (9th Cir. 1993). Here, tolling applies in Plaintiff's favor.

The Ninth Circuit has applied California tolling principles from malicious prosecution cases to toll the limitations period during an appeal in instances where, like a malicious prosecution claim, the cause of action did not exist until an underlying judgment was entered by the trial court. *Morales v. City of Los Angeles*, 214 F.3d 1151, 1155 (9th Cir. 2000). The statute is then tolled during an appeal from the judgment. *Id.* However, the time between the filing of the judgment and filing of the notice of appeal is not tolled. *Id*. Therefore, "the limitations period begins running from the date of judgment, is tolled from the date the notice of appeal is filed, and begins to run again when the state appellate court issues a remittitur." *Id*; *see also Smith v. Cobb*, 2016 WL 4523847 1, 9 (S.D. Cal. 2016) (applying *Morales* to toll limitations period in Section 1983 access-to-courts suit from date appeal was filed to date when appeals court issued decision); *Hernandez v. Broin*, 2011 WL 4715156 1, 4-6 (N.D. Cal. 2011) (applying *Morales* and equitable tolling principles to toll limitations period after timely filing of motion for new trial); *See Ford v. County of Marin*, 2001 WL 868877 1, 4-5 (N.D. Cal. 2001) (applying *Morales* to toll limitations period until underlying California state court case was fully adjudicated).

Applying *Morales* principles to this case, the statute of limitations accrued from the moment Ms. Long was convicted, September 23, 2014 (although Plaintiff

erroneously pled in Paragraph 49 of the Complaint that she was convicted on July 1, 2014) and ran until the filing of her notice of appeal, September 30, 2014 (Complaint, ¶ 53), thus for four days. The statute was then tolled during her appeal, i.e. the period between the filing of her notice of appeal, September 30, 2014 (Complaint, ¶53), and August 4, 2016, when the Ninth Circuit issued its ruling denying her appeal (Complaint, ¶ 54), thus for one year, six months and five days. The statute then began to run again from the date Plaintiff's appeal was denied through the time she filed the Complaint, thus from August 4, 2016 (Complaint, ¶ 54) through February 2, 2018, thus for one year, six months and five days.

When tolling is considered, only *one year, six months and nine days* elapsed between the time of Plaintiff's conviction and the filing of the Complaint, assuming she was convicted in September 2014. Even if a conviction date of July 1, 2014 is assumed, the Complaint was still timely because, when added to the one year, six months and five days that elapsed between the decision on appeal and the filing of Plaintiff's complaint the time between the conviction, Plaintiff will still have filed the Complaint within approximately *one year and nine months* of her conviction, again, once tolling is factored. This still falls under a two-year limitations period.

IX. BACA'S CLAIM OF QUALIFIED IMMUNITY FAILS NOT LEAST BECAUSE OF HIS CRIMINAL CONVICTION FOR OBSTRUCTION OF JUSTICE AND LYING TO FEDERAL AUTHORITIES

Baca claims that he is immune from suit under the doctrine of qualified immunity. However, viewed in the light most favorable to Ms. Long, at minimum, it is premature for the Court to dismiss the Complaint on qualified immunity grounds. But Baca's invocation of the qualified immunity doctrine should be rejected here.

A "complaint should not be dismissed [under Rule 12(b)(6)] unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Groten v. California*, 251 F.3d 844, 851 (9th Cir. 2001). Additionally, courts are

reluctant to dismiss complaints on qualified immunity grounds at the pleading stage. *See, e.g. Groten v. California*, 251 F.3d 844, 851 (9th Cir. 2001) (reversing dismissal of plaintiff's Section 1983 due process claim because dismissal at the pleading stage "is not appropriate unless we can determine, based on the complaint itself, that qualified immunity applies"); *See Kanciper v. Lato*, 989 F.Supp. 2d 216 (E.D. N.Y. 2013) (holding that dismissal of a Section 1983 claim on the basis of qualified immunity is improper because evidence supporting a finding of qualified immunity is normally adduced during the discovery process and at trial). This Court should deny Defendant's motion to dismiss to the extent that it rests on the notion that Baca is protected by qualified immunity.

Qualified immunity requires the court to engage in a two-prong analysis. The court must consider (1) whether the facts, taken in the light most favorable to the party asserting the injury, show that the defendant's conduct violated a constitutional right of the plaintiff, and 2) whether the plaintiff's constitutional right was clearly established at the time of the alleged violation. *Scott v. Harris*, 550 U.S. 372, 377 (2007).

With respect to the first prong, Baca claims that Plaintiff cannot establish that he violated her constitutional rights. Plaintiff, however, has already addressed these arguments in the preceding sections of this brief. At issue therefore is whether her constitutional rights were clearly established at the time of the alleged violation. Plaintiff submits they were or, at minimum, that she has alleged enough to create a genuine dispute on the issue to survive Baca's motion to dismiss.

A plaintiff's constitutional right is clearly established if a reasonable official would understand that his actions violated that right. *Osolinski v. Kane*, 92 F.3d 934, 936 (9th Cir. 1996). The reasonableness inquiry is objective and does not consider the official's underlying intents or motivations. *Huff v. City of Burbank*, 632 F.3d 539, 549 (9th Cir. 2011).

Defendant contends that there was no clearly established case law governing his conduct as alleged by Ms. Long, that County Counsel approved it and therefore he is

protected by qualified immunity. Motion to Dismiss, at 25-26. However, Ms. Long is not required to find case law specific to Baca's exact conduct to prove that her constitutional rights were clearly established at the time he violated them, and Defendant cites no authority to the contrary. Notably, Baca does not state what exactly was unclear – Plaintiff's constitutional rights or how his conduct violated those rights. Be that as it may and accepting all allegations in the complaint as true, as the Court must, Baca directed, ordered, and approved his subordinates engaging in illegal conduct, such as hiding an FBI informant. He was convicted of these actions by a federal jury, thus a reasonable officer in his position would have known his actions violate the law. He knew or should have been aware that obstruction of justice is a felony and that a felony conviction bars a convict from pursuing a career in law enforcement. Government Code § 1029. He further should have known that Plaintiff and other persons faced conviction for obstruction of justice and would lose their employment, and the opportunity to be reemployed as peace officers (Government Code § 1029) as a result of following his directives.

Baca's reliance on the approval by County Counsel of the Sheriff's Department's contact with FBI Agent Marx to argue that he did not violate clearly established law falls flat. Baca improperly conflates County Counsel's alleged approval of the contact with FBI Agent Marx with approval of his entire conduct that lie at the center of the violations of Ms. Long's constitutional rights, which did not occur. Because Plaintiff has not alleged that County Counsel pre-approved all conduct Baca engaged in that caused the violation of her constitutional rights, as opposed to the contact with Agent Marx alone, Baca cannot plausibly contend that the approval of County Counsel somehow makes unclear whether his entire conduct violated Ms. Long's constitutional rights at the time he engaged in the conduct.

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X. IN THE EVENT THE COURT IS INCLINED TO DISMISS THE COMPLAINT, IT SHOULD DO SO WITHOUT PREJUDICE AND PERMIT PLAINTIFF TO FILE AN AMENDED COMPLAINT

If the Court is, for some reason, inclined to grant the County's motion to dismiss, Plaintiff requests that the Court grant her leave to amend pursuant to Rule 15(a) of the Federal Rules of Civil Procedure (leave to amend "shall be freely given when justice so requires"). *See also United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (standard for granting leave to amend is generous); *National Council of La Raza v. Chegavske*, 800 F.3d 1032, 2041 (9th Cir. 2015) ("black letter law" that district court must afford at least one chance to amend absent clear showing amendment would be futile); *Davoodi v. Austin Independent School Dist.*, 755 F.3d 307, 301 (5th Cir. 2014) (dismissal after giving plaintiff only once chance to state case "is ordinarily unjustified").

Dated: April 23, 2018

GERARD FOX LAW, P.C.

By: s/Chaka C. Okadigbo
Attorneys for Plaintiff MARICELA LONG