

1 BARRETT S. LITT, SB 45527  
 2 Email: [blitt@kmbllaw.com](mailto:blitt@kmbllaw.com)  
 3 RONALD O. KAYE, SBN 145051  
 4 Email: [rok@kmbllaw.com](mailto:rok@kmbllaw.com)  
 5 KAYE, McLANE, BEDNARSKI & LITT,  
 6 LLP  
 7 975 East Green Street  
 8 Pasadena, California 91106  
 9 Tel: (626) 844-7660  
 10 Fax: (626) 844-7670

11 SALOMON ZAVALA, SBN 243424  
 12 Email: [szavala@zavalalawgroup.com](mailto:szavala@zavalalawgroup.com)  
 13 ZAVALA LAW GROUP, P.C.  
 14 1930 Wilshire Blvd., Suite 817  
 15 Los Angeles, California 90057  
 16 Tel: (213) 413-0144  
 17 Fax: (323) 210-7385

18 DO KIM, SBN 231038  
 19 Email: [dkim@dokimlaw.com](mailto:dkim@dokimlaw.com)  
 20 LAW OFFICE OF DO KIM APLC  
 21 3435 Wilshire Blvd., Suite 2700  
 22 Los Angeles, California 90010  
 23 Tel: (213) 251-5440  
 24 Fax: (213) 232-4919

25 Attorneys for Plaintiff  
 26 VICENTE BENAVIDES FIGUEROA

27 **UNITED STATES DISTRICT COURT**  
 28 **EASTERN DISTRICT OF CALIFORNIA**

VICENTE BENAVIDES FIGUEROA,

Plaintiff,

vs.

KERN COUNTY; CITY OF DELANO;  
 ROBERT CARBONE; GREGG  
 BRESSON; RAY LOPEZ; AL  
 VALDEZ; JEFF NACUA; DR. JAMES  
 DIBDIN; AND DOES 1-10,  
 INCLUSIVE,

Defendants.

**CASE NO.**

**COMPLAINT FOR DAMAGES:**

**(1) 42 U.S.C. § 1983 – FALSE  
 EVIDENCE VIOLATIONS**

**(2) 42 U.S.C. § 1983 – JOINT  
 ACTION CONSPIRACY**

**(3) 42 U.S.C. § 1983 BRADY  
 VIOLATIONS**

**(4) 42 U.S.C. § 1983 – JOINT  
 ACTION CONSPIRACY IN THE**

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**RECKLESS INVESTIGATION IN VIOLATION OF MR. BENAVIDES' DUE PROCESS RIGHT TO A FAIR TRIAL**

**(5) 42 U.S.C. § 1983 - *MONELL* VIOLATIONS - INCLUDING POLICY/CUSTOM ARISING FROM DEFENDANT KERN COUNTY'S POLICY AND CUSTOM OF FAILURE TO PRESERVE AND DISCLOSE EXCULPATORY EVIDENCE, FABRICATION OF EVIDENCE, RECKLESS INVESTIGATION, AND FAILURE TO TRAIN AND SUPERVISE REGARDING THE TRUTHFULNESS, INTEGRITY, PRESERVATION, RELIABILITY AND DISCLOSURE OF EVIDENCE, PARTICULARLY IN THE CONTEXT OF CHILD MOLESTATION INVESTIGATIONS (AGAINST KERN COUNTY)**

**(6)42 U.S.C. § 1983 - *MONELL* VIOLATIONS - INCLUDING POLICY/CUSTOM ARISING FROM DEFENDANT KERN COUNTY'S POLICY AND CUSTOM OF FAILURE TO PRESERVE AND DISCLOSE EXCULPATORY EVIDENCE, FABRICATION OF EVIDENCE, RECKLESS INVESTIGATION, AND FAILURE TO TRAIN AND SUPERVISE REGARDING THE TRUTHFULNESS, INTEGRITY,**

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**PRESERVATION, RELIABILITY AND DISCLOSURE OF EVIDENCE, PARTICULARLY IN THE CONTEXT OF CHILD MOLESTATION INVESTIGATIONS (AGAINST KERN COUNTY) (AGAINST CITY OF DELANO)**

**(7) CLAIM UNDER CALIFORNIA CODE § 815.2 FOR RESPONDEAT SUPERIOR AND VICARIOUS LIABILITY FOR NEGLIGENT HIRING, FAILURE TO TRAIN, SUPERVISION, PROMOTION, AND RETENTION**

**(8) GROSS NEGLIGENCE**

**(9) CLAIM UNDER CALIFORNIA CIVIL CODE § 52.1**

**(10) CALIFORNIA GOVERNMENT CODE § 835.4 ARTICLE 2 CLAIM**

**DEMAND FOR JURY TRIAL**

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**I. INTRODUCTION**

1. Plaintiff Vicente Benavides Figueroa (“Mr. Benavides” or “Plaintiff”) is an innocent man who spent nearly 25 years on death row for a heinous murder he did not commit. Mr. Benavides was arrested on November 18, 1991, for the murder of Consuelo Verdugo. He was incarcerated from that time forward. He was found guilty of murder committed with three special circumstances of felony-murder rape, sodomy, and lewd conduct, as well as rape, sodomy, and lewd conduct with the infliction of great bodily injury during those offenses. He was sentenced to death and spent over 25 years on death row.

2. On March 12, 2018, the Supreme Court for the State of California (“Supreme Court”), after evaluating the false statements and testimony of coerced witnesses, and the false medical evidence introduced by medical examiners, granted Mr. Benavides’ petition for *habeas corpus* and vacated his death penalty conviction in its entirety. The Supreme Court stated that “[t]he concession and repudiations lead overwhelmingly to the conclusion that false evidence was introduced at trial.” Although the Supreme Court did not directly address innocence, it quoted uncontroverted evidence that the prosecution’s medical claim was anatomically impossible. Given that the sole prosecution theory of guilt was based on an anatomically impossible contention (that Consuelo died from blunt force trauma to the anus), it follows inexorably that Mr. Benavides is innocent. The Kern County District Attorney’s Office implicitly recognized Mr. Benavides was innocent when it declined to re-prosecute him, which occurred on April 19, 2018, at which point all criminal charges against Mr. Benavides were dismissed. Mr. Benavides was released from custody on that date.

3. Throughout the investigation and prosecution of Mr. Benavides’ case, there were concerted efforts by law enforcement detectives and investigators, Child

1 Protective Services (“CPS”) and the prosecution to falsify evidence and to  
2 influence and coerce Ms. Medina and Cristina into inculcating Mr. Benavides.  
3 Medina family members were enlisted as agents of law enforcement to extract  
4 false information from witnesses to use against Mr. Benavides. Medical evidence  
5 was falsified, and exculpatory medical evidence was withheld. Lay witnesses and  
6 medical personnel were tainted with the state's theories of rape and sodomy during  
7 interviews and the investigation. Law enforcement reports and notes, withheld  
8 from the defense, confirmed the existence of dirt and debris in the vomit found in  
9 the kitchen garbage can, lending credence to Mr. Benavides’ belief that Consuelo  
10 had been outside the apartment, which directly undermined the prosecutor's theory  
11 of the case. In some circumstances, investigating officers withheld exculpatory  
12 evidence from the prosecutors and the defense. In other situations, the prosecutors  
13 had and withheld exculpatory evidence from the defense.

14 **II. JURISDICTION AND VENUE**

15 4. This action is brought by Mr. Benavides pursuant to 42 U.S.C. §1983.

16 5. This Court has jurisdiction under 28 U.S.C. §1343(4) for violations of  
17 the 1871 Civil Rights Enforcement Act, as amended, including 42 U.S.C. §1983,  
18 and under 28 U.S.C. §1331. This Court has jurisdiction over Plaintiff’s  
19 supplemental or pendant claims under California law pursuant to 28 U.S.C. §1367.

20 6. The acts, errors, and omissions complained of all took place within the  
21 Eastern District of California. Therefore, venue lies in this District pursuant to 28  
22 U.S.C. §1391.

23 **III. PARTIES**

24 7. Plaintiff resided in the State of California at all times herein alleged.

25 8. Plaintiff timely filed a tort claim with Kern County on September 11,  
26 2018, which was rejected on October 31, 2018. This action was timely filed within  
27 six months of the denial of the tort claim.

1           9. Defendant Kern County is, and at all times herein alleged was, a public  
2 entity organized and existing under the laws of the State of California. The Kern  
3 County District Attorney's Office and the Kern County Medical Examiner's office  
4 are, and at all times herein alleged were, agencies of Kern County. At all relevant  
5 times, Kern County employed Defendants James Dibdin, Robert Carbone, Gregg  
6 Bresson, Ray Lopez and Does 1-10. At all relevant times, Defendants James  
7 Dibdin, Robert Carbone, Gregg Bresson, Ray Lopez and Does 1-10 acted as agents  
8 of Kern County. Kern County and its officers, employees, and agents are  
9 responsible for Plaintiff's damages under 42 U.S.C. §1983 and California law.

10           10. Defendant City of Delano is, and at all times herein alleged was, a duly  
11 organized public entity, existing under the laws of the state of California. The  
12 Delano Police Department is an official subdivision of the City of Delano, and all  
13 officers employed by said Department are employees of the City of Delano. At all  
14 relevant times, the City of Delano was the employer of Defendants Jeff Nacua, Al  
15 Valdez and Does 1-10. The City of Delano and its officers, employees, and agents  
16 are responsible for Plaintiff's damages under 42 U.S.C. 1983 and California law.

17           11. At times relevant herein, Defendant Robert Carbone ("Carbone") was a  
18 Deputy District Attorney of the Kern County District Attorney's Office. During the  
19 times he was investigating Mr. Benavides' case, he acted outside the scope of his  
20 prosecutorial duties and acted in an investigatory capacity. He is sued in his  
21 individual capacity.

22           12. At all times relevant herein, Defendants Gregg Bresson ("Bresson")  
23 and Ray Lopez ("Lopez"), were Investigators for the Kern County District  
24 Attorney's Office. Defendants Bresson and Lopez acted within the course and  
25 scope of their respective duties and with the complete authority and ratification of  
26 Kern County. At all relevant times herein, Defendants Bresson and Lopez were  
27 acting under color of State law; under the color of the statutes, ordinances,  
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1 regulations, policies, procedures, customs, and usages of Kern County. They are  
2 sued in their individual capacities.

3 13. At all times relevant herein, Defendants Jeff Nacua (“Nacua”) and Al  
4 Valdez (“Valdez”), were officers of the Delano Police Department. Defendants  
5 Nacua and Valdez acted within the course and scope of their respective duties and  
6 with the complete authority and ratification of the City of Delano. At all relevant  
7 times herein, Officers Nacua and Valdez were acting under color of State law;  
8 under the color of the statutes, ordinances, regulations, policies, procedures,  
9 customs, and usages of the City of Delano. They are sued in their individual  
10 capacities.

11 14. At all times relevant here, James Dibdin (“Dibdin”) was employed by  
12 the Kern County Medical Examiner’s Office. Defendant Dibdin acted within the  
13 course and scope of his respective duties and with the complete authority and  
14 ratification of Kern County. At all relevant times herein, Defendant Dibdin was  
15 acting under color of State law; under the color of the statutes, ordinances,  
16 regulations, policies, procedures, customs, and usages of Kern County. He is sued  
17 in his individual capacity.

18 15. Plaintiff is unaware of the true identities, capacities, and roles of  
19 Defendant Does 1 through 10, inclusive, whether a corporation, agent, government  
20 entity, individual, or otherwise, and for this reason sues those Defendants by  
21 fictitious names. Plaintiff is informed and believes and thereon alleges, that each of  
22 the fictitiously named Defendants is in some manner and to some extent liable for  
23 the injuries alleged in the Complaint. Plaintiff will seek leave to amend the  
24 Complaint to alleges the true identities, capacities, and roles of those fictitiously  
25 named Defendants when they are determined.  
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1 16. Defendants Kern County, City of Delano, Robert Carbone, Gregg  
2 Bresson, Ray Lopez, Al Valdez, Jeff Nacua, Dr. James Dibdin, and Does 1-10,  
3 inclusive, are hereinafter referred collectively as “Defendants.”

4 **IV. GENERAL ALLEGATIONS**

5 17. Plaintiff is informed and believes, and herein alleges, that, at all times  
6 herein mentioned, each of the Defendants was the agent and/or employee and/or  
7 co-conspirator of each of the remaining Defendants, and in taking the actions  
8 hereinafter alleged, was acting within the scope of such agency, employment  
9 and/or conspiracy, and with the permission and consent of other co-Defendants.

10 18. Each paragraph of this Complaint is expressly incorporated into each  
11 cause of action that is a part of this Complaint regardless of where that paragraph  
12 appears in the Complaint.

13 19. The acts and omissions of the Defendants were malicious, callous,  
14 oppressive, wanton, reckless, grossly negligent, negligent, and/or deliberately  
15 indifferent with respect to the rights of Mr. Benavides.

16 **V. COMMON FACTS TO ALL CAUSES OF ACTION**

17 **A. Consuelo Verdugo’s Death**

18 20. On the evening of November 17, 1991, Estela Medina (“Ms. Medina”)  
19 and Mr. Benavides brought Ms. Medina’s daughter, 21-month old Consuelo  
20 Verdugo (“Consuelo”), to the Delano Regional Medical Center’s (“DRMC”)  
21 emergency room. Ms. Medina, who worked as a nurse at DRMC, had left  
22 Consuelo and her 9-year old sister Cristina in the care of Mr. Benavides, who often  
23 stayed with her and her daughters.

24 21. Cristina and Consuelo were watching television and coloring when Ms.  
25 Medina left for work. Cristina asked if she could visit her friend, Maribel, who  
26 lived in the same apartment complex. Mr. Benavides gave Cristina permission to  
27 visit Maribel. Approximately fifteen minutes later, Mr. Benavides called for  
28 Cristina to return home. When Cristina returned to the apartment, Mr. Benavides



1 was holding Consuelo. Mr. Benavides told Cristina to call her mother at the  
2 hospital because something was wrong with Consuelo.

3 22. Ms. Medina had left her apartment at approximately 6:40 p.m. to report  
4 to work at DRMC by 7:00 p.m. At 7:20 p.m., Ms. Medina received the call from  
5 Cristina, who told her Consuelo was pale, sick, and could not breathe. Ms. Medina  
6 returned home approximately five minutes later to find Mr. Benavides sitting on  
7 the edge of her bed with Consuelo in his arms. Ms. Medina immediately drove  
8 Consuelo to DRMC, accompanied by Mr. Benavides and Cristina. When the  
9 family arrived at the hospital, Ms. Medina parked the car in front of the emergency  
10 room and took Consuelo inside.

11 23. Dr. Ann Tait, the emergency room physician at DRMC, and the  
12 emergency room nurses, were the first to observe and treat Consuelo on the night  
13 of November 17, 1991. Dr. Tait began treating Consuelo for a head injury, but  
14 soon realized that Consuelo required a higher level of care than DRMC was  
15 equipped to provide, and arrangements were made to transfer her to Kern County  
16 Medical Center (“KMC”) in Bakersfield. At this time, Consuelo's abdomen began  
17 distending, indicating internal bleeding and a worsening of her condition. Consuelo  
18 was then transferred to KMC for surgery and a higher level of care. On November  
19 19, 1991, Consuelo was transferred to UCLA Medical Center, where she  
20 underwent further surgery. She died on November 25, 1991 as a result of her  
21 internal injuries.

22 24. Because the medical evidence is central to understanding the falsified  
23 evidence in the case, particularly Defendant coroner Dibdin’s false testimony, we  
24 explain it in detail in the next sub-section.

25 **B. Mr. Benavides’ Conviction Was Based on False Medical Evidence.**

26 25. Several experts who testified at Mr. Benavides’ trial recanted their trial  
27 testimony and indicated that they had never been provided the medical records  
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1 from DRMC. Had they had those medical records, which demonstrate that  
2 inferences of molestation they had made were erroneous, they never would have  
3 provided the erroneous statements and evidence they did. Every prosecution expert  
4 (except for Defendant Dibdin) recanted their testimony in statements leading the  
5 Supreme Court to exonerate Mr. Benavides without the need for an evidentiary  
6 hearing. The facts recited in the following paragraphs of this subsection  
7 summarizing the false evidence are taken from the Supreme Court's habeas  
8 decision, *In re Figueroa*, 4 Cal.5th 576 (2018).

9 *1. Medical Evidence Presented At Mr. Benavides' Trial.*

10 26. 21-month-old Consuelo Verdugo's mother, Estella Medina, and Mr.  
11 Benavides brought Consuelo to a hospital emergency room at Delano Regional  
12 Medical Center (DRMC) on the evening of November 17, 1991. They reported that  
13 Consuelo had been running after her older sister and hit her head on a door.  
14 Consuelo was limp and minimally responsive to external stimulation. She moved  
15 her arms and legs and withdrew from pain, but did not appear to recognize her  
16 mother. She had a small bruise on her forehead, with scrapes on her nose and lip.  
17 Medical personnel focused on Consuelo's head injury and did not do a complete  
18 examination of her genitalia. When trying to insert a catheter, medical personnel  
19 noted mild redness on her vagina. Catheter insertion would prove difficult and was  
20 repeatedly unsuccessful.

21 27. As Consuelo's condition worsened, she became comatose and was  
22 transferred to the Kern Medical Center (KMC). The receiving charge nurse noted  
23 Consuelo had "blown pupils," often seen incident to blunt force trauma from an  
24 auto accident. Consuelo's distended abdomen was the immediate focus of attention  
25 at KMC. Attempting to insert a catheter, the charge nurse noted a nearly quarter-  
26 sized bruise on Consuelo's external genitalia and a tear extending from her urethra  
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1 to vaginal opening. A KMC emergency room physician, also trying to insert a  
2 catheter, superficially examined Consuelo's genital and anal areas.

3 28. Within twenty minutes of her arrival, Consuelo's abdomen had become  
4 greatly distended. Diagnostic surgery revealed her bowel, duodenum, and pancreas  
5 were "cracked in half," with portions of each resting on either side of her spine.  
6 The surgeon testified these injuries could have been caused by a kick or punch to  
7 the abdomen. He also noted scars and other indicia of prior injury between  
8 Consuelo's colon and liver. These injuries were one to two months old. He did not  
9 know whether Consuelo had been sexually assaulted.

10 29. The morning after surgery, Consuelo was evaluated by pediatrician Jess  
11 Diamond. A thorough examination revealed a tear in Consuelo's hymen, a bruise  
12 on her perineum, swelling around her anus, and a lack of rectal tone. Dr. Diamond  
13 testified these injuries could result from "acute rape." Based upon the subsequent  
14 autopsy report of Dr. James Dibdin, Dr. Diamond testified that Consuelo had  
15 suffered a tear to her vaginal wall. That injury could explain the difficulties with  
16 catheter insertion. Dr. Diamond acknowledged that Consuelo had suffered a blunt  
17 force injury to her abdomen, but explained that sodomy could have caused the  
18 injuries to her abdominal organs if the "penetrating force ... rupture[d] the ...  
19 rectum, then push[ed] the internal organs aside" until reaching the pancreas and  
20 duodenum, splitting them apart. Even if an external blow caused Consuelo's  
21 abdominal injuries, however, Dr. Diamond still believed that she had been  
22 sodomized.

23 30. On November 19, 1991, Consuelo was transferred to UCLA Medical  
24 Center ("UCLA"). Upon arrival, her entire body was swollen. She was oozing  
25 blood, and kidney function had ceased. Doctors performed a second surgery. The  
26 surgeon (Dr. Anthony Shaw) closely examined Consuelo's anus and saw no  
27 tearing. He explained that his inability to detect tearing could have been due to the  
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1 extensive swelling. (The surgeon testified that nothing in Consuelo’s medical  
2 records was inconsistent with sexual abuse. Consuelo died on November 25,  
3 1991.)

4 31. The forensic pathologist, Dr. Dibdin, listed Consuelo’s cause of death  
5 as “blunt force penetrating injury of the anus,” with the anus expanded to seven or  
6 eight times its normal size. He testified that Consuelo suffered anal lacerations  
7 along with injuries to her internal organs, including her bowel and pancreas. Dr.  
8 Dibdin noted abrasions to the vagina and anus, as well as healing injuries to the  
9 genital and anal region, suffered approximately four weeks earlier. He testified that  
10 there was a tear in the back wall of the vagina that a catheter, with its soft tip,  
11 could not have caused. Consuelo had five fractured ribs, which Dr. Dibdin believed  
12 were caused by tight squeezing during a sexual assault. Swelling of her brain  
13 indicated she had been shaken. Dr. Dibdin testified the anal injuries were  
14 consistent with penile penetration causing acute lacerations and direct abdominal  
15 injury. He also noted evidence of healing rib fractures that were three to four  
16 weeks old.

17 *2. Medical Evidence Presented In Mr. Benavides’ Habeas Petition,*  
18 *Including Several Doctors Who Had Testified For the Prosecution,*  
19 *Established That The Previous Medical Evidence Was False.*

20 32. In his habeas petition, Mr. Benavides established that false evidence,  
21 now repudiated or undermined, resulted in his convictions for rape, sodomy, lewd  
22 conduct, and murder and the special circumstance findings. Specifically, he  
23 showed – including from testimony from doctors who had previously testified for  
24 the prosecution – that Dr. Dibdin’s theory that Consuelo’s injuries were caused by  
25 anal penetration was both false and medically impossible. He also showed  
26 evidence characterized as injuries to Consuelo’s genitalia and anus was false and  
27 misleading.  
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1 33. Contrary to the trial evidence, Consuelo in fact showed no signs of  
2 sexual assault when examined at DRMC, the first hospital where she received care.  
3 Her injuries were the result of medical intervention, including repeated failed  
4 efforts to insert a catheter, use of an adult-sized Foley catheter rather than a more  
5 appropriately sized device, rectal temperature taking, use of paralytic medication,  
6 and physical examination. Nurse Anita Caraan Wafford, who helped treat  
7 Consuelo when she was brought to DRMC, provided a declaration explaining that  
8 no one at DRMC noted any anal or vaginal trauma.

9 34. Dr. William A. Kennedy II, an expert in pediatric urology, opined in  
10 support of the habeas petition that, “to a high degree of medical certainty”  
11 Consuelo had not suffered anal or vaginal penetration. Had vaginal or anal tearing  
12 been sustained in the hours before treatment, “Consuelo likely would have been  
13 bleeding noticeably by the time she arrived at the hospital.” He added that “[t]his is  
14 especially true if ... penetration by a penis or [other] object were so severe as to  
15 have violated her ... abdominal cavity as proposed by Dr. Dibdin.” Dr. Kennedy  
16 further opined that DRMC medical staff had had ample time to observe Consuelo’s  
17 genital area while taking her temperature rectally and trying to insert a catheter.  
18 After exhaustively reviewing Consuelo’s medical records, Dr. Kennedy noted that  
19 DRMC medical staff saw no bleeding or other genital trauma, “indicat[ing] that  
20 she did not sustain injury to her genitalia or anus prior to her arrival.”

21 35. Two doctors who treated Consuelo at UCLA, the final hospital to  
22 which she was admitted, reviewed all of the medical records. They declared that  
23 anal penetration could not have been the cause of death because the organs  
24 between the anus and upper abdomen were not injured. As explained by Dr. Rick  
25 Harrison, the physician in charge of Consuelo’s care at UCLA, the cause of death  
26 given by Dr. Dibdin was anatomically impossible. Dr. Harrison explained, “Given  
27 the location of [Consuelo’s] injuries they could not have physically been caused by  
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1 a grown man's penis because had she been injured in such a manner the surgeons  
2 would have seen injuries to her rectum and colon and other physicians and nurses  
3 treating her would have likely seen tears to and bleeding from her rectum."

4 36. In addition to injuries caused by numerous medical interventions,  
5 abnormalities to the anal and genital region subsequently noted at KMC and  
6 UCLA are, in part, to systemic edema: bodywide swelling due to disseminated  
7 intravascular coagulation ("DIC"). DIC causes an inability to clot, leading to  
8 uncontrolled bleeding and swelling. Consuelo developed this condition soon after  
9 the exploratory surgery at KMC. Dr. Harrison explained in his habeas declaration  
10 that "[b]ecause her body was so swollen, [he] was not able to fully examine her  
11 genitalia or rectum to confirm the sex abuse findings of the medical staff at KMC.  
12 Had Consuelo sustained those injuries from penile penetration, he "would have  
13 expected that [they] would have been visible despite the swelling." He saw no such  
14 injuries.

15 37. Dr. Diamond, the KMC child abuse expert who examined Consuelo the  
16 morning after her surgery, noted a tear to her hymen and perineum bruising.  
17 However, Dr. Kennedy explained that, in patients with DIC, bruising and tearing  
18 from even minor touching or movement are common because the skin becomes  
19 very fragile. The genital region is comprised of more delicate skin than other areas  
20 of the body. It "deteriorates more quickly and noticeably than the surrounding  
21 tissue." The bruises and tears noted on Consuelo's anus and genitalia were likely  
22 caused by repeated attempts at catheterization. Dr. Kennedy noted that the  
23 "likelihood of unintentional injury from digital manipulation [of the genitals] is  
24 heightened in nonresponsive children." The anal tearing could have been caused by  
25 rectal temperature-taking, Dr. Diamond's examination, or even a bowel movement.

26 38. Notably, the genital and rectal injuries were not seen during Consuelo's  
27 treatment at DRMC. Medical evidence in support of the petition from a DRMC  
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1 nurse explained that “[t]here are no indications of trauma to [Consuelo’s] genitalia  
2 and anus on her chart because no one who treated [her] that night at DRMC saw  
3 any, even though we had the time and opportunity to do so.”

4 39. Consuelo’s genital and anal region was photographed at UCLA. The  
5 photos show extensive swelling due to DIC, but no tears to her genitalia or anus.  
6 Dr. Kennedy explained that, had she suffered a sexual assault four days before, the  
7 photographs would have shown the tearing that she was alleged to have suffered.  
8 Indeed, any severe tears would have worsened as a result of her critical condition  
9 because edema would have stretched the skin, making lacerations appear more  
10 pronounced. Dr. Kennedy further explained that the photos showed no tears of  
11 even a minor nature.

12 40. Dr. Kennedy also explained that Consuelo’s lack of rectal tone, initially  
13 attributed to a penetrating injury, was instead the likely result of paralytic  
14 medication she had been given, along with her extensive treatment and surgeries.  
15 Dr. Kennedy explained, “Anal sphincter laxity is a well-known side effect of”  
16 paralytic medications. No anal sphincter laxity or other anal injury was seen at  
17 DRMC, as would be expected if she had suffered penile penetration.”

18 41. This combined evidence establishes that the tearing noted during Dr.  
19 Dibdin’s autopsy had resulted from medical interference or postmortem  
20 manipulation, contrary to Dr. Dibdin’s testimony.

21 42. Many of the medical professionals who testified at petitioner’s trial  
22 subsequently recanted their testimony, such that the Supreme Court characterized a  
23 comparison between witnesses’ trial testimony and their later declarations as  
24 “striking.”

25 43. Dr. Harrison, from UCLA, originally testified that the injuries he saw  
26 may have been caused by penile anal penetration. He later declared that he had not  
27 been given Consuelo’s DRMC medical records or the autopsy report before  
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1 testifying. “Had [he] seen [all of Consuelo’s] records and been asked to opine on  
2 the cause of death offered by the pathologist, [he] would have testified that it was  
3 anatomically impossible.”

4 44. Similarly, Dr. Leonardo Alonso, a medical resident who treated  
5 Consuelo at KMC, unequivocally testified at trial that he believed Consuelo had  
6 been sexually assaulted. He subsequently declared that he had not reviewed  
7 Consuelo’s initial medical records either before treating her or before testifying.  
8 After reviewing the records, he no longer believed that Consuelo suffered a sexual  
9 assault on the day of her admission.

10 45. Dr. Diamond, the child abuse expert who evaluated Consuelo at KMC,  
11 testified at trial that the appearance of Consuelo’s anal region was consistent with  
12 penetration by an object larger than a finger. He subsequently declared that “it is  
13 now my opinion to a high degree of medical certainty that Consuelo was not raped  
14 or sodomized.”

15 46. Dr. Nat Baumer, a medical expert, testified at the trial for the defense  
16 and admitted that reputable physicians concluded that Consuelo had been sexually  
17 assaulted. Dr. Baumer later unequivocally declared that the child “was not anally  
18 or vaginally penetrated.”

19 47. Dr. Anthony Shaw, a UCLA surgeon, testified at the trial that it would  
20 be improper to conclude based on his postoperative notes that Consuelo had not  
21 suffered a sexual assault. He subsequently declared that he had not been given  
22 Consuelo’s complete medical record before testifying and “[c]onsequently, [his]  
23 testimony supported the prosecution’s allegations that Consuelo had been anally  
24 penetrated with a penis which, based on [his] own observations, [he] could not  
25 support.”

26 48. The District Attorney’s Office provided no explanation during the  
27 habeas of why the full medical records had not been provided to these witnesses in  
28



1 connection with their formation of their medical opinions provided to the  
2 prosecution.

3 49. Others who provided related testimony at trial later declared that they  
4 did not see evidence of sexual trauma or did not believe the purported cause of  
5 death by anal penetration was medically possible.

6 50. Dr. Jack Bloch, a KMC surgeon, testified at trial that he did not know  
7 whether Consuelo's internal injuries could have been caused by anal penetration.  
8 His habeas declaration stated that, had he been given Consuelo's DRMC medical  
9 records before testifying, he would have stated "to a high degree of medical  
10 certainty, that Consuelo was not anally or vaginally penetrated ... in the hours prior  
11 to admission at DRMC."

12 51. Nurse Anita Caraan Wafford, Consuelo's nurse at DRMC, declared,  
13 "[W]e never had any concern that Consuelo had been the victim of any type of  
14 sexual assault." Frances Zapiain, an ER technician at DRMC, initially testified that  
15 she did not believe Consuelo suffered sexual abuse and subsequently declared that  
16 she did not notice any indication of sexual assault when assisting with a failed  
17 catheterization.

18 52. Dr. F. Warren Lovell, a forensic pathologist retained by Mr. Benavides  
19 for the habeas petition, declared that had he reviewed Consuelo's complete  
20 medical history before trial he "would have testified that there was no indication in  
21 her medical records which would lead [him] to suspect that Consuelo had been  
22 vaginally or anally penetrated with a penis ... on the night of November 17, 1991."

23 53. Dr. Ann Tait, the ER doctor at DRMC, declared that neither she nor  
24 the nurses saw any sign of trauma to indicate sexual abuse, although they had  
25 ample opportunity to do so.

26 54. Dr. Diamond twice recanted his trial testimony. First, in 2009, he  
27 disavowed his trial conclusion of vaginal penetration. He had testified that he saw  
28

1 a small tear to Consuelo's hymen. In conjunction with the tear Dr. Dibdin noted,  
2 Dr. Diamond concluded and testified at the trial that Consuelo had been penetrated.  
3 His conclusion was bolstered by his inability to obtain a urine sample following  
4 catheterization. In fact, Consuelo had been catheterized during her recent surgery  
5 and was becoming incapable of producing urine due to kidney failure. Dr.  
6 Diamond testified that he passed catheters directly into the abdominal cavity  
7 through the tear in Consuelo's vaginal wall noted in the autopsy report.

8 55. After reviewing the medical records, autopsy report, and declarations  
9 supporting the petition, however, Dr. Diamond no longer believed that Dr.  
10 Dibdin's finding of vaginal wall tearing could be substantiated. Accordingly, Dr.  
11 Diamond recanted that portion of his testimony.

12 56. In 2012, Dr. Diamond submitted a second declaration more fully  
13 recanting his testimony. After consulting with Dr. Astrid Heppenstall Heger, M.D.,  
14 F.A.A.P., whom he characterized as "the pre-eminent expert in the field of child  
15 sexual abuse and sexual assault," Dr. Diamond disavowed his opinion that  
16 Consuelo had suffered anal penetration. Dr. Diamond now believes, "to a high  
17 degree of medical certainty," that Consuelo's abdominal injuries did not result  
18 from anal penetration by a penis or similar object.

19 57. Dr. Heger also provided a declaration in support of the habeas petition.  
20 After reviewing medical records, testimony, and declarations, she concluded death  
21 due to blunt force penetrating injury of the anus "is so unlikely" that it reaches "the  
22 point of being absurd." Dr. Heger explained that the cause of death attributed in  
23 this case has never "been reported in any literature of child abuse or child assault.  
24 Had it occurred here, "it would be a unique and singular noteworthy incident in the  
25 annals of pediatric child abuse literature."

26 58. Deputy Attorney General Kelly LeBel interviewed forensic pathology  
27 expert Dr. Tracey Corey in connection with the habeas petition, which interview  
28

1 was provided to the court. That interview cast further doubt on Dr. Dibdin's  
2 autopsy report. Dr. Corey was "embarrassed about the pathologist because what he  
3 says isn't even ... anatomically possible." She elaborated, "I'm embarrassed that ...  
4 a pathologist didn't know better, didn't know anatomy better."

5 59. Dr. Corey also explained that elements of Dr. Dibdin's testimony were  
6 demonstrably incorrect. For example, Dr. Dibdin testified that he had examined  
7 autopsy slides of Consuelo's anal tissue. Dr. Corey explained Dr. Dibdin's  
8 testimony was necessarily inaccurate. The alleged anal tissue was patently from the  
9 large intestine.

10 60. In the habeas petition, Mr. Benavides also established that false  
11 evidence was presented at the trial regarding Consuelo's rib fractures, loss of  
12 oxygen to the brain, and health history. The Supreme Court did not find it  
13 necessary to assess that issue for the habeas.

14 **C. The Initial Investigation By The District Attorney's Office And**  
15 **The Delano Police Department ("DPD") and District Attorney**  
16 **Investigators.**

17 61. Law enforcement immediately accused Mr. Benavides of raping and  
18 sodomizing Consuelo while he was alone with her during a fifteen-minute  
19 period on the evening of November 17, 1991.

20 62. By November 18, 1991, a day after Consuelo was brought to the  
21 hospital, Delano police officers investigating Consuelo's injuries had already  
22 formulated the theory that Mr. Benavides had raped and sodomized her. A DPD  
23 detective interviewed Mr. Benavides, arrested him and then interviewed him again  
24 on that date. Mr. Benavides was informed of his rights pursuant to *Miranda v.*  
25 *Arizona* (1966) 384 U.S. 436, prior to the second interview, which took place after  
26 he was arrested. He told the detective he started preparing dinner for himself,  
27 Cristina and Consuelo when Ms. Medina left for work; that Cristina asked for his  
28 permission to play with her friend and said she would only be gone for about 15

1 minutes; Consuelo apparently followed Cristina outside, and Cristina brought her  
2 back inside.

3 63. Mr. Benavides told the detective that, when Cristina started to go out  
4 again, he told her she was to take Consuelo along, but Cristina did not want to and  
5 tried to hurry out the door. When Consuelo again attempted to follow, Cristina shut  
6 the door hard and quickly. Mr. Benavides told the detective that either just before  
7 or just after the door was shut, he returned to the kitchen. About a minute later, he  
8 noticed he was hearing no sound from Consuelo. He could not see the front door  
9 from the kitchen so he went into the living room where he found the front door  
10 partially ajar.

11 64. Mr. Benavides opened the front door and saw Consuelo right outside  
12 the door on a grassy area adjacent to the carport. She was lying on her back  
13 looking up, her head slightly tilted to one side, with blood on her nose and mouth.  
14 She was vomiting. He picked her up and took her to Ms. Medina's bedroom, put  
15 her on the bed, and then cleaned up her face using some toilet tissues. At that point,  
16 he said, “[Consuelo] looked bad, that her eyes were contorting and rolling and he  
17 could tell she was injured bad.” Mr. Benavides told the detective he went outside  
18 and walked to the end of the apartment building where he met up with Cristina,  
19 who was then returning home. Mr. Benavides remembered cleaning up the vomit.  
20 He confirmed that Consuelo had only been out of his sight for one minute.

21 65. On November 26, 1991, the day after Consuelo died, Detective Al  
22 Valdez (“Officer Valdez”) of the DPD and Kern County District Attorney's  
23 Investigator Gregg Bresson (“Investigator Bresson”) interviewed Ms. Medina.  
24 They sought her corroboration of their theory that Plaintiff had sexually abused  
25 Consuelo prior to her death and directly caused her death. Ms. Medina told police  
26 that she did not know what had happened to her daughter, Consuelo, but that she  
27 did not believe Mr. Benavides had harmed her. Ms. Medina rebuffed Valdez’s and  
28

1 Bresson's suggestion that she testify in court that Mr. Benavides had in any way  
2 hurt her child, because she did not believe he ever had.

3 66. From the outset, Officer Valdez and Investigator Bresson were assisted  
4 in the investigation by officials and employees from the Kern County District  
5 Attorney's Office, the DPD, and the Kern County Medical Examiner's Office  
6 while acting in their investigatory capacities.

7 67. Evidence (including notes and reports) was systematically falsified  
8 throughout the investigation, and that false evidence was then presented at trial.  
9 Exculpatory evidence was systematically withheld from the defense throughout the  
10 case.

11 **D. The Collusion Between Law Enforcement And Child Protective**  
12 **Services.**

13 68. In response to, and as punishment for, Ms. Medina's rebuff of Valdez's  
14 and Bresson's attempt to have her state that Mr. Benavides had harmed her  
15 daughter, they unilaterally decided to remove Cristina from her custody without  
16 consulting Child Protective Services ("CPS"). By this conduct, later ratified by  
17 other Defendants, they were attempting to pressure and coerce Ms. Medina  
18 into giving false evidence against Mr. Benavides. Valdez and Bresson made  
19 this decision alone, failing to consult any social worker, child protective  
20 services worker, Department of Health Services caseworker, or psychologist.  
21 They told Ms. Medina that the decision was "just one we [Valdez and Bresson]  
22 are making, it's a tough one and until our investigation is concluded, we will  
23 have Cristina in a protective custody situation." District Attorney Investigator  
24 Ray Lopez ("Investigator Lopez") later affirmed law enforcement's sole  
25 responsibility for removing Cristina.

26 69. At the conclusion of Ms. Medina's interview, just days before  
27 Thanksgiving, Detective Valdez and Investigator Bresson, accompanied by  
28 Cristina's aunt, Diana Alejandro, took Cristina to Jamison House, a facility for

1 children in the county's care. That was the last time Cristina was allowed to see  
2 anyone in her family, including her mother, until January 1992. Ms. Medina  
3 was prohibited from seeing her child for Thanksgiving or Christmas that year.  
4 (Ms. Medina only regained custody in January 1992, but, as is explained below,  
5 DA Investigator Lopez later orchestrated a second removal of Cristina as a means  
6 of coercing Ms. Medina into providing false evidence.) At the preliminary  
7 hearing, on December 12, 1991, District Attorney Robert Carbone falsely  
8 represented to the court that his office had not orchestrated Cristina's removal.  
9 He stated that Cristina's removal "has absolutely nothing to do with my office."  
10 On information and belief, Mr. Carbone acted as the supervisor in this case  
11 over the investigative activities of District Attorney investigators Lopez and  
12 Bresson acting in an investigative capacity, and in doing so was also acting in  
13 his investigative capacity.

14 70. Ms. Medina's sister, Diana Alejandro, has two children (who are  
15 therefore Ms. Medina's nieces), Vicky Salinas ("Vicky") and Darlene Salinas. In  
16 the course of an interview between DA Investigator Lopez and Vicky in February  
17 1992, Lopez asked Vicky to help him change Cristina's mind about Mr. Benavides  
18 and incriminate him, which Vicky did. The evidence that Vicky Salinas and others  
19 were enlisted to, and did, gather information and influence and coerce witness  
20 statements and evidence to support the prosecution's case was never disclosed to  
21 the defense.

22 **E. District Attorney Investigators Coerced Ms. Medina To Recant**  
23 **Her Favorable Previous Statements About Mr. Benavides.**

24 71. From the moment of his arrest, Mr. Benavides maintained his  
25 innocence and cooperated with Kern County officers and the DPD. No physical or  
26 forensic evidence linking Mr. Benavides to the crime was discovered on his  
27 person. Through the utter lack of physical or forensic evidence linking him to the  
28 crime, it quickly became apparent that Mr. Benavides did not commit murder.

1 72. Meanwhile, Ms. Medina's sister, Diana Alejandro, and her daughters  
2 Vicky and Darlene, investigated Ms. Medina at the direction of District Attorney  
3 Investigator Ray Lopez, and continually provided Investigator Lopez with  
4 information about Ms. Medina's life, actions, and whereabouts.

5 73. On July 9, 1992, District Attorney Investigator Lopez re-interviewed  
6 Ms. Medina regarding the case as part of his ongoing investigation to develop facts  
7 to support the prosecution's theory of the case. Investigator Lopez again asked Ms.  
8 Medina if Mr. Benavides had ever mistreated her daughters, showed signs of  
9 molesting or abusing them, or did anything to them that bothered or upset her. She  
10 again affirmed that Mr. Benavides never mistreated her girls, that there was no  
11 indication whatsoever that they were molested, and that he never did anything to  
12 the girls that bothered or upset her. Despite Ms. Medina's repeated statements,  
13 Investigator Lopez repeatedly attempted to pressure and influence her to change  
14 her answer.

15 74. Unsatisfied with Ms. Medina's steadfast protestations of Mr.  
16 Benavides' innocence, Lopez decided to remove Cristina immediately and for the  
17 second time from Ms. Medina's care. The custom and practice of Department of  
18 Human Services/CPS caseworkers was to rely on the judgment of District Attorney  
19 investigators where there were criminal investigations or proceedings, which is  
20 what occurred here. At DA Investigator Lopez's instigation, Department of Human  
21 Services/CPS caseworkers again initiated proceedings to remove Cristina from  
22 Ms. Medina's custody and place her in Vicky Salinas' custody. In doing so, they  
23 relied on Lopez's recommendations, which were in turn provided to the court. Mr.  
24 Lopez's objective was to induce and pressure Ms. Medina to provide facts  
25 favorable to the prosecution. The recommendations of the DA investigators for  
26 reunification was effectively conditioned on Ms. Medina conforming to the  
27 investigators' desired answers to their questions. Their willingness to recommend  
28



1 reunification was tied to her agreement that Mr. Benavides was guilty and to  
2 provide statements in support of that contention. And their support for  
3 reunification was essential, given that it was their recommendation and opinion  
4 that was the driving factor in whether reunification would happen.

5 75. In fact, throughout the pendency of Mr. Benavides' case, District  
6 Attorney Investigator Lopez interceded in Cristina's custody case so as to prevent  
7 the court from awarding Ms. Medina custody, and to preserve the coercive  
8 conditions of control inherent in Cristina's placement.

9 76. Ms. Medina learned through the repeated removal of her daughter from  
10 her home that her statements regarding Mr. Benavides' guilt or innocence,  
11 regardless of when or to whom they were made, directly affected the juvenile  
12 court's determination of whether she obtained custody or visitation with Cristina.  
13 DA Investigator Lopez and CPS officials removed Cristina on this second occasion  
14 although she had been caring for Cristina for the past several months, and there  
15 was no evidence of abuse or neglect during that period. The removal, and  
16 subsequent proceedings, were due to Ms. Medina's rebuff of the repeated efforts  
17 by the District Attorney and Delano PD Investigators and Officers to induce her to  
18 falsely incriminate Mr. Benavides. In both removal instances, the initiation and  
19 furtherance of proceedings to deprive her of custody of, and visitation with,  
20 Cristina were based on false accusation that she was lying and protecting Mr.  
21 Benavides. Ms. Medina finally realized that the only way she could obtain custody  
22 of Cristina was to falsely attest to Mr. Benavides' guilt and demonstrate that she  
23 had tried to protect her daughters from him.

24 77. By threatening to take Cristina away permanently and by telling Ms.  
25 Medina they would prevent her from having custody of or contact with her  
26 child unless she accused Mr. Benavides, the Defendants, particularly the  
27 District Attorney investigators acting in an investigatory capacity, knowingly  
28



1 and substantially interfered with her testimony, intentionally encouraged her to  
2 provide materially false testimony, and knowingly (or with reckless disregard  
3 for, or deliberate indifference to, the truth and Mr. Benavides' rights) elicited  
4 false testimony, and used abusive investigatory techniques they knew would,  
5 or were likely to, elicit false evidence.

6 78. As a result of the successful efforts to coerce Ms. Medina into false  
7 statements about Mr. Benavides, to which she later testified, the jury was led to  
8 falsely believe that Mr. Benavides had in the past committed some act -- likely  
9 one of physical or sexual abuse -- that caused Ms. Medina not to trust him with  
10 her daughters. If Ms. Medina had not been coerced into providing false  
11 evidence, and had she testified in accordance with her initial interview  
12 statements, which she would have done absent the pretrial coercion to induce her  
13 to provide new and false evidence, the jury would have believed that Mr.  
14 Benavides did not molest or abuse Consuelo on November 17, 1991 and would not  
15 have found him guilty or sentenced him to death.

16 **F. Defendant Detectives and Investigators Coerced Ms. Medina To**  
17 **Recant Her Favorable Previous Statements By Conditioning Her**  
18 **Custody of Cristina on Inculcating Mr. Benavides.**

19 79. Delano Police detectives and Kern County District Attorney  
20 investigators coerced and manufactured false testimony of Cristina by removing  
21 her from her home, isolating her from her mother and family, repeatedly  
22 questioning her about sex abuse after she stated that neither she nor her sister had  
23 been abused, and suggesting information to her during interviews. They filed false  
24 reports with Department of Human Services/Child Protection Services caseworkers  
25 to induce them to support and continue that removal.

26 80. Detectives Al Valdez and Jeff Nacua of the DPD first interviewed  
27 Cristina on November 18, 1991. During that formal interview, Detectives Nacua  
28 and Valdez used coercive and formulaic tactics designed to interrogate a suspect

1 and ensure a confession. But, as Cristina was only nine years old and not a suspect,  
2 these tactics were highly improper, and they knew or should have known that they  
3 would, or likely would, result in eliciting false facts and unreliable statements. The  
4 detectives used such devious and inappropriate methods as accusing Cristina of  
5 lying; they pressured her to make specific statements by using suggestive and  
6 leading questions. Dr. James Wood, a leading expert and consultant to law  
7 enforcement agencies on developing appropriate techniques for eliciting reliable  
8 information from children, opined that this “is one of the worst interviews of a  
9 child I have ever encountered.” At the time that this occurred, the potential of  
10 coercing child witnesses into making false statements through the use of improper,  
11 leading, abusive or pressure driven interview techniques when investigating  
12 potential sexual abuse was well known and highly publicized

13 81. Cristina informed the officers that she believed Mr. Benavides was  
14 telling the truth. In response, the officers told her that, “as police officers,” they  
15 thought she was wrong and suggested that she did not even believe herself. They  
16 repeatedly asked the same question: whether she believed Mr. Benavides. Finally,  
17 Cristina said she did not know whether she believed him, and then ultimately said  
18 “No? No.” Through these coercive and suggested tactics, the officers altered her  
19 recollections and beliefs.

20 82. At the end of this interview, the officers told Cristina to “think  
21 about [what really happened],” to think about her answers and think about the  
22 truth, because they would be coming back to question her again to find out  
23 what happened “for sure.” They conveyed to Cristina that she had given  
24 incorrect answers in failing to implicate Mr. Benavides, and that they would  
25 give her a second chance to get the "correct" answers in the next interview.  
26 Detectives Nacua and Valdez knew or should have known that Mr. Benavides  
27 was innocent. Additionally, or alternatively, they knew or should have known  
28

1 that they were using investigative techniques that were so coercive and abusive  
2 that those techniques would yield, or were likely to yield, false information.

3 83. In addition, DA Investigator Lopez asked Vicky (Ms. Medina's niece)  
4 to help him change Cristina's mind about Mr. Benavides and incriminate him. On  
5 June 12, 1992, Lopez interviewed Cristina at Vicky's house, and tape-recorded  
6 this interview. At the recorded interview, after Cristina had been removed from  
7 her home and away from her mother, she said that she did not believe Mr.  
8 Benavides. Cristina's change in her opinion was the result of the officers'  
9 coercive, abusive and suggestive interview techniques. Cristina's statements at  
10 trial materially affected the verdict and prejudiced Mr. Benavides. These false  
11 statements were then used by the prosecution to support its theory that Consuelo  
12 died from injuries that were part of an ongoing pattern of abuse that began when  
13 Mr. Benavides began babysitting for Ms. Medina's daughters.

14 84. The prosecutor relied upon Cristina's statement in his closing argument  
15 when he urged the jury to find that "not only does it show us that the child was  
16 previously abused, both physically and sexually, but it shows that it happened over  
17 a period of time." If the Defendant detectives and investigators had not engaged in  
18 the foregoing improper and illegal conducts, Cristina's false and unreliable  
19 testimony would not have been introduced at trial, which evidence was highly  
20 material to leading the jury to believe that Mr. Benavides was the cause of  
21 Consuelo's ongoing injuries or caused her injuries on November 17, 1991.

22 85. Defendant District Attorney investigators Lopez or Bresson, or both of  
23 them, prejudicially interfered with the defense's access to prosecution witnesses by  
24 threatening Ms. Medina with losing custody of her daughter and telling Cristina  
25 not to speak to the defense. The instructions that Cristina not talk to the defense  
26 came directly from them. This violated Mr. Benavides' due process rights. On  
27 information and belief, Mr. Carbone was not advised of the role played by DA  
28

1 investigators in the original custody proceedings removing Cristina from Ms.  
2 Medina. On further information and belief, he was advised in his capacity as a  
3 supervisor over the Defendant DA investigators in the second removal. Both he  
4 and the Defendant DA investigators were acting in an investigatory capacity in  
5 relation to both removal efforts.

6 86. Kern County officials withheld from the defense Cristina's DHS/CPS  
7 and juvenile court records that demonstrated the coordinated and concerted efforts  
8 of DHS/CPS workers and law enforcement involved in Mr. Benavides' case to  
9 keep Cristina from her mother in order to coerce the testimony of these two  
10 witnesses.

11 87. Ms. Medina succumbed to the coercion of separating her from Cristina  
12 unless she provided the false narrative that Mr. Benavides had abused her children  
13 and provided the investigators the narrative to the contrary they were seeking. As a  
14 result, when Deputy District Attorney Carbone asked her at trial about Cristina's  
15 statement that Plaintiff had taken Consuelo into their bedroom while he was  
16 babysitting, Ms. Medina testified that she "always told [Mr. Benavides] if  
17 anything - if you would injure my kids in any way, I would have you locked  
18 up." Similarly, when the prosecutor asked if she told Cristina to lock the door  
19 when she went to bed and Ms. Medina was not home, but Mr. Benavides was  
20 there, she testified that she told her daughter to close the door when he was  
21 there. These statements indicated a mistrust of Mr. Benavides' care of her  
22 children that was false, which derived from the pressure and coercion  
23 Defendants placed on Ms. Medina to provide evidence supporting Defendants'  
24 theory of Mr. Benavides' guilt, which evidence was material to persuading the  
25 jury that Ms. Medina believed that Mr. Benavides was guilty. Ms. Medina said  
26 nothing about her belief that Mr. Benavides was innocent.

1 88. Material documents unlawfully withheld from Mr. Benavides included,  
2 but are not limited to the following: (1) a list of persons who obtained the police  
3 reports in Mr. Benavides' case, which stated that juvenile dependency court worker  
4 Alice Thompson obtained his police reports "to determine if sister should be  
5 released or held"; (2) the juvenile court minute orders which listed District  
6 Attorney Investigator Ray Lopez as a witness in the juvenile case; (3)  
7 documentation of phone contacts between Lopez and Cristina's caseworker David  
8 Chenault; (4) documentation of interviews of Cristina, and of Cristina's family  
9 members, conducted by DHS/CPS workers; (5) documentation that Cristina was  
10 receiving counseling at Henrietta Weill Memorial Center and Tulare Youth  
11 Services that showed she was having trouble remembering important aspects of the  
12 event surrounding her sister's death; (6) and a report that indicated Cristina had  
13 received a sex abuse exam from Dr. Jess Diamond before the preliminary hearing  
14 in Mr. Benavides' case that demonstrated she had not been sexually abused.

15 89. The foregoing withheld documents contained material information  
16 necessary for the defense to impeach Cristina's and Ms. Medina's false statements  
17 and to demonstrate the State misconduct in coercing their false testimony. Mr.  
18 Benavides and his counsel were never provided CPS records that demonstrated  
19 Cristina Medina's memory regarding the events of the case was poor, and then  
20 vouched for Cristina's credibility at trial.

21 90. The combined foregoing activity by Defendants Valdez, Nacua  
22 Bresson and Lopez, in concert with CPD employees, ultimately resulted in Ms.  
23 Medina providing false evidence against Mr. Benavides. On information and  
24 belief, numerous communications regarding this effort exist, none of which were  
25 disclosed to the defense.  
26  
27  
28

1 91. There was a coordinated effort among employees of the District  
2 Attorney's Office, the police department, and CPS to remove Cristina from Ms.  
3 Medina's custody until and unless she agreed to testify against Mr. Benavides.

4 **G. Pattern And Practice Of Kern County And The District**  
5 **Attorney's Offices' Collusion With CPS To Violate The**  
6 **Constitutional Rights Of Criminal Defendants.**

7 92. Kern County has a long history of using the combined investigative  
8 activity of law and DHS/CPS to violate the constitutional rights of criminal  
9 defendants, manufacture false evidence, and coerce testimony. Beginning in 1982,  
10 and continuing into the 1990s, Kern County District Attorney employees (acting in  
11 an investigative capacity) and DHS/CPS workers investigated dozens of  
12 molestation cases. They engaged in investigative techniques they knew would  
13 result in false evidence, and relied on incredible, disprovable, unreliable, coerced,  
14 manipulated and/or false allegations of sex abuse, rape, sodomy, and ritual abuse  
15 they obtained through these improper means. They then used this evidence  
16 gathered in the course of their investigations to institute and pursue criminal  
17 charges against various individuals. As part of their investigations, Kern County  
18 District Attorney and DHS/CPS employees acted in concert and used this false and  
19 unreliable evidence to institute and pursue child protective services proceedings as  
20 a means of pressuring parents to provide testimony to support their false  
21 molestation claims.

22 93. The Kern County District Attorney's Office obtained over three dozen  
23 convictions in these molestation cases in the 1980's and early 1990's by: (1) using  
24 coercive interviewing techniques that involved removing children from their  
25 homes such as communicating to the children that they could not return home until  
26 they incriminated individuals in their molestation; (2) manufacturing statements  
27 of abuse by suggesting to children that they were abused and masking this in  
28 reports and using false evidence obtained through these improper techniques to

1 remove children from their parents' custody; (3) withholding evidence of sex  
2 abuse exams in which no evidence of abuse was found or using false medical  
3 evidence; (4) withholding audiotapes and transcripts of interviews in which  
4 children stated they had not been sexually abused; and (5) refusing to allow sex  
5 abuse exams of alleged victims when they knew these exams would produce  
6 exculpatory evidence. Below are two examples:

7 a. In *Larry McCuan, et al. v. County of Kern, et al.* (Super. Ct.  
8 Kern County, 1989, No. 194695), McCuan's 2 daughters, coached by their  
9 step-grandmother who had custody of them, alleged they had been abused  
10 by their parents and accused them of being part of a sex ring. The McCuans  
11 were convicted in 1984. The convictions of the McCuans were overturned  
12 in 1996, in part because of the County's withholding evidence of alleged  
13 sex abuse exams in which no evidence of abuse was found or using false  
14 medical evidence.

15 b. Six similar cases occurred throughout Kern County. For  
16 instance, the testimony of five young boys was the prosecution's key  
17 evidence in a trial in which four defendants were convicted, with John  
18 Stoll, a 41-year old carpenter, receiving a sentence of 40 years for lewd and  
19 lascivious conduct. In 2004, the accusers came back to court and testified  
20 that Stoll never molested them. The court overturned the verdict in part  
21 because the prosecution had suggested to the children that they were  
22 abused and masking this in their reports and using false evidence. *People v.*  
23 *Stoll* (1989) 49 Cal.3d 1136.

24 94. The Kern County District Attorney's Office obtained over three dozen  
25 convictions in these molestation cases by withholding evidence of sex abuse exams  
26 in which no evidence of abuse was found or using false medical evidence (*Jeffrey*  
27 *B. Modahl v. County of Kern* (Super. Ct. Kern County, 1999, No. 99-6463); *People*  
28



1 v. *Kniffen, et al.* (West Kern Muni. Ct. Kern County, 1982, Nos. 33610, 33614,  
2 33624); *Larry McCuan, et al. v. County of Kern, et al.* (Super. Ct. Kern County,  
3 1989, No. 194695); *People v. Pitts* (1990) 223 Cal. App. 3d 606 (1990)).

4 95. In other cases, coercive interviewing techniques that involved removing  
5 children from their homes (such as communicating to the children that they could  
6 not return home until they incriminated individuals in their molestation) were  
7 utilized (*Modahl, supra*, No. 99- 6463; *Kniffen, supra*, Nos. 33610, 33614, 33624;  
8 *McCuan, supra*, No.194695; *Pitts, supra*, 223 Cal. App. 3d 606; *People v. Stoll*  
9 (1989) 49 Cal.3d 1136; *Hazel Wong, et al.v. County of Kern*(Super.Ct.KernCounty,  
10 1986, No. 195381); *Betty Palko et al. v. County of Kern, et al.* (Super. Ct. Kern  
11 County, 1986, No. 194286).

12 96. The aforementioned cases also show the overturning of convictions due  
13 to the manufacturing of statements of abuse by suggesting to children that they  
14 were abused and masking this in reports (*Modahl, supra*, No. 99-6463; *Kniffen,*  
15 *supra*, Nos. 33610, 33614, 33624; *McCuan, supra*, No. 194695; *Pitts, supra*, 223  
16 Cal. App. 3d 606; *Stoll, supra*, 49 Cal.3d 1136; *Wong, supra*, No. 195381). In this  
17 line of cases, their overturning was also based on the prosecution's withholding  
18 audiotapes and transcripts of interviews in which children which stated that they  
19 had not been abused (*Modahl, supra*, No. 99-6463; *Kniffen, supra*, Nos. 33610,  
20 336 14, 33624; *McCuan, supra*, No. 194695).

21 97. The prosecution of alleged child molesters in Kern County was so  
22 replete with gross misconduct that the Attorney General's office stepped in to  
23 investigate child abuse prosecutions in the county. (*See* John Van de Kamp,  
24 California Attorney General, "Report on the Kern County Child Abuse  
25 Investigation," September 1986, and supplementary reports and data.) A Grand  
26 Jury Investigation was also conducted. The report condemned a "presumption  
27 of guilt" applied by officers in the district attorney's office, DHS/CPS agencies,  
28



1 and Kern County police and sheriffs agencies in their pursuit of molestation  
2 suspects. It found that, instead of relying upon legally acceptable evidence,  
3 investigators were removing children from homes, denying family visitations,  
4 and arresting parents based on nothing more than "gut feelings," even where  
5 medical evidence demonstrated that alleged victims had not been abused.

6 98. One of the issues identified by the Attorney General's Report was the  
7 placement of children in child protective custody, for which investigating agents  
8 had total discretion in placing the victims in protective custody. The investigating  
9 agents did not need a supervisor's approval. They routinely removed child  
10 witnesses from their parents without a proper basis for doing so, which occurred in  
11 Mr. Benavides' case.

12 99. Despite the Attorney General's and Grand Jury's reports exposing  
13 these corrupt and unconstitutional practices, they continued in various forms,  
14 as is evidenced by the coercive and abusive investigative techniques, and false  
15 evidence, in Mr. Benavides' case.

16 100. Thirty-four of Kern County's child sexual abuse conviction obtained  
17 during the 1980's were overturned on appeal or granted habeas petitions, such as in  
18 Mr. Benavides' case.

19 101. The foregoing conduct condemned by the Report on the Kern  
20 County Child Abuse Investigation was not conduct undertaken in the name of  
21 or on behalf of the State of California. The Kern County District Attorney's  
22 Office routinely elicited false evidence in child molestation cases through the  
23 use of investigative techniques they knew or should have known would yield  
24 false evidence. It had no policies or supervisory requirements in place to  
25 ensure that false evidence was not being used in such cases. It had no systems  
26 in place to track child molestation cases, even after the Report on the Kern  
27 County Child Abuse Investigation condemning the handling of such cases, and  
28

1 to ensure that such investigative techniques were not used, that use of such  
2 techniques were provided to the defense, that other exculpatory evidence was  
3 provided to the defense, that abuses and improper conduct was reviewed and,  
4 where appropriate, disciplined.

5 102. Similarly, in this case, Delano PD officers and District Attorney  
6 investigators knowingly elicited and/or coerced false statements from two key  
7 witnesses, Consuelo's mother (Ms. Medina) and her sister (Cristina), depriving  
8 Mr. Benavides of a fundamentally fair and reliable determination of guilt and  
9 penalty. The activities of these investigators, which occurred during  
10 investigative activities by personnel of the District Attorney's Office, were  
11 withheld and never disclosed to the defense. These activities were critical  
12 evidence and were material to Mr. Benavides' resulting conviction. The  
13 coercive and manipulative tactics described above (and elsewhere in this  
14 Complaint) represent customary techniques used for years in suspected  
15 molestation cases in Kern County, techniques that have been repeatedly  
16 exposed and discredited. These errors had a substantial and injurious effect and  
17 influence on the jury's determination of the verdicts at both the guilt and  
18 penalty phase.

19 **H. Medical Evidence Was Falsified In Order To Incriminate Mr.  
20 Benavides.**

21 *1. Delano Detectives And District Attorney Investigators Suppressed  
22 And Falsified The Evidence That Consuelo Did Not Have Vaginal  
23 Or Anal Injuries When She Was Admitted to DRMC, Which  
Suppression Was Critical To Medical Opinions At The Trial.*

24 103. As presented in greater detail, in Section V(B), the emergency room  
25 staff at DRMC was the first medical personnel to treat Consuelo on November 17,  
26 1991. All of the DRMC staff who observed Consuelo in the first two hours  
27 following the incident, affirmatively and emphatically stated to law enforcement,  
28 that they had not seen any injuries to Consuelo's genitalia or anus. Had Consuelo

1 been raped and sodomized, injuries to her genitalia and anus would have been  
2 grossly obvious and would have been observed and noted at the time. Any injuries  
3 Consuelo sustained were the result of medical treatment that occurred later.

4 104. Had Consuelo suffered injuries as the result of sexual assault prior to  
5 her arrival at the hospital, the staff at DRMC would have observed bleeding,  
6 lacerations, bruises, or other evidence of injury in Consuelo's genitalia. They did  
7 not observe any evidence of injury despite having ample time and opportunity  
8 to do so. Their observations of Consuelo's genitalia and anus were the first to  
9 be made and were made before Consuelo underwent repeated unsuccessful  
10 attempts at catheterization, extensive efforts at resuscitation at DRMC and  
11 KMC, and major abdominal surgery (which explain later observed injuries).  
12 The DRMC observations (or lack thereof) are, therefore, the most reliable  
13 available evidence of the state of Consuelo's genitalia and anus prior to medical  
14 intervention.

15 105. The DRMC emergency room medical personnel were adamant in  
16 interviews with Delano detectives that they saw no evidence of injury to the anus  
17 when they examined Consuelo on November 17, 1991. Had Consuelo been injured  
18 by penetration of the rectum with sufficient force to cause injury to her internal  
19 organs, both lacerations of the anus and bleeding would have been noted by  
20 DRMC personnel.

21 106. Radiologist Dr. Chabra at DRMC dictated his initial report on  
22 November 18, 1991, after reviewing a radiograph of Consuelo's chest taken on  
23 November 17, 1991. He saw no evidence of rib fractures.

24 107. On December 2, 1991, Dr. Chabra placed an Amended Report in the  
25 medical chart, in which he identified healing fractures of the 8th through 10th ribs  
26 on the right. He estimated that these fractures were 2 to 3 weeks old. And two days  
27 later, he added a further Addendum Report which added mention of a recent

1 fracture of the left 8th rib with displacement of the fragments. Dr. Chabra added  
2 this Addendum Report at the prompting of Delano Police Detectives Valdez and  
3 Nacua, who although not medically trained, purported to conduct their own review  
4 of the radiographs and identified additional rib fractures not noted in Dr. Chabra's  
5 original and amended reports. These Defendants deliberately fabricated these  
6 alleged facts, and knowingly or recklessly induced Dr. Chabra to amend his report  
7 with information they knew or should have known to be false. (As part of his false  
8 reports, Dr. Dibdin claimed to observe acute rib fractures, and a recent displaced  
9 fracture of the 8th rib on the right, either on the front or back.) This evidence from  
10 Dr. Chabra could be used to support Dr. Dibdin's false evidence. These  
11 fabrications of Dr. Chabra's radiologic findings were an attempt by law  
12 enforcement to make them consistent with their theory and rushed and false  
13 conclusion that Consuelo's death was the result of sexual abuse and violence.

14 108. On information and belief, Delano police officers and/or District  
15 Attorney investigators interviewed DRMC medical personnel and obtained the  
16 information regarding the lack of genital and anal injury when Consuelo was  
17 admitted and did not forward it to the prosecutor or the defense. Delano police  
18 officers and/or District Attorney investigators knew or should have known that it  
19 was critical to any reasonable medical determination to provide the medical  
20 records to experts, with whom on information and belief they interacted and falsely  
21 communicated the impression and understanding that Consuelo had had the  
22 injuries observed at KMC and UCLA at the time of her admission to DRMC.

23 *2. Additional Information Regarding Consuelo's Medical Treatment*  
24 *At KMC and UCLA.*

25 109. Dr. Bloch, a surgeon at KMC, performed surgery on Consuelo on  
26 November 18, 1991. He noted (contrary to Dibdin's statements), after performing  
27 abdominal surgery, that Consuelo's colon was intact. Dr. Bloch was never advised  
28 of the DRMC information that there were no injuries to Consuelo's genitalia or

1 anus upon her admission. He concluded and reported (and ultimately testified) that  
2 he observed blood in her abdomen; a severed pancreas and duodenum; and old  
3 scarring and adhesions between the colon and liver. Dr. Bloch concluded that these  
4 injuries were indicative of some form of blunt force trauma to the abdomen.

5 110. On November 20, 1991, Dr. Shaw at UCLA performed surgery on  
6 Consuelo's abdomen. In doing so, he examined her colon and also found it intact.  
7 He also performed an anoscopy and found that Consuelo's rectum and anus had no  
8 signs of lacerations. Although Dr. Dibdin falsely stated that the lacerations and  
9 injuries to the anus he observed were the result of traumatic injury of the anus as a  
10 result of sodomy, Dr. Shaw did not note such lacerations when he conducted his  
11 examination on November 20, 1991. Dr. Shaw likely inadvertently caused or  
12 contributed to the injury of the anus while performing an anoscopy on November  
13 21, 1991. An anoscopy involves examination of the rectum by means of an  
14 instrument that is inserted into the anal opening. An anoscope is too large to have  
15 been used on the rectum of a child Consuelo's age, and its insertion could have led  
16 to lacerations, particularly in light of her compromised medical condition at that  
17 time.

18 111. Dr. Bentson, chief of neuroradiology at UCLA Medical Center  
19 ("UCLA"), did a Computerized Tomography (CT) scan taken on November 21,  
20 1991, of Consuelo's brain. Dr. Bentson observed bilateral watershed brain infarcts  
21 of the parietal occipital area of Consuelo's brain. He concluded that these infarcts  
22 were attributable to the child being suffocated. Dr. Bentson's conclusion was based  
23 solely on his review of the CT scan. He never reviewed any medical records or  
24 medical history of Consuelo and her hospital treatment prior to the CT scan. Only  
25 one of these was disclosed to the defense. As is explained in ¶ 163, had the missing  
26 CT scans been disclosed, Dr. Baumer would have seen and assessed the brain  
27 infarcts and would have been able to opine that the infarcts were due to Consuelo's  
28

1 medical condition on November 21, 1991, which would have refuted the false and  
2 inaccurate testimony presented by the prosecution that Consuelo had been  
3 suffocated.

4 *3. Dr. Dibdin Provided False Evidence, Either Deliberately Or With*  
5 *Reckless Disregard Or Deliberate Indifference, That Consuelo's*  
6 *Cause Of Death Was Blunt Force Trauma To The Anus Resulting*  
7 *From Sodomy.*

8 112. Dr. James Dibdin, a forensic pathologist regularly employed by Kern  
9 County, conducted the autopsy of Consuelo on November 26, 1991. Dr. Dibdin  
10 falsely asserted in the autopsy or other reports he provided (written or verbal) that  
11 the cause of death was blunt force penetrating injury of the anus resulting from  
12 sodomy. He falsely concluded, and reported to District Attorney investigators and  
13 others in the District Attorney's Office, that the cause of death was blunt force  
14 penetrating injury of the anus; that Consuelo's internal injuries were the result of  
15 sodomy; that the subdural hematoma and rib fractures he observed during the  
16 autopsy were a direct result of squeezing and shaking; and that the pattern of  
17 injuries that the child displayed was indicative of Shaken Baby Syndrome. He  
18 subsequently testified to these conclusions at the trial.

19 113. The sole medical professional who testified about sexual assault but did  
20 not subsequently recant his testimony was Dr. Dibdin. His testimony was  
21 completely refuted by the evidence from the other medical professionals who  
22 provided evidence for the habeas proceedings.

23 114. Detective Bresson testified at the preliminary hearing that Dr. Dibdin  
24 had told him the cause of death was "blunt force penetrating injury to the  
25 anus." Dr. Dibdin's theory that anal penetration also caused the injury to the  
26 upper abdominal contents was manufactured after the preliminary hearing  
27 when the autopsy report was prepared on January 21, 1992, two months after  
28 Consuelo's death.

1 115. On information and belief, Dr. Dibdin intentionally delayed  
2 preparation of the autopsy report in order to manufacture evidence. Defendant  
3 detectives and investigators developed the theory that Consuelo was raped and  
4 sodomized to the point of causing abdominal injury and death on November  
5 18, 1991, merely one day after suffering her injuries. Even though this cause of  
6 death was medically impossible, Dr. Dibdin provided support for this cause of  
7 death in the autopsy report. Dr. Dibdin therefore completed the autopsy report  
8 not from his findings, or from what he saw, but according to the desires and  
9 necessity of the Defendant detectives and investigators.

10 116. Dr. Dibdin falsely attributed the injuries of the genitalia he observed  
11 during the autopsy to rape and mischaracterized the severity of the injuries. He  
12 noted in his autopsy report a one-half inch laceration of the “posterior wall of the  
13 vaginal opening” and an abrasion of the skin between the vagina and anus. The tear  
14 is in fact relatively small and entirely inconsistent with penetration of the vagina by  
15 a penis or similarly sized object, which would have resulted in extensive laceration  
16 of the vagina and external genitalia. It was most likely caused by a catheter during  
17 the repeated attempts at catheterization at DRMC and KMC. (Dr. Dibdin cited this  
18 injury in his testimony as evidence of vaginal penetration and characterized it as  
19 “quite a large laceration.”)

20 117. Dr. Dibdin falsely reported (and later testified) that he observed  
21 swelling only around Consuelo's genitalia and anus, when in fact she had  
22 severe swelling over her entire body. Edema of the entire body would be more  
23 pronounced in areas such as the genitalia and anus due to gravity. Dr. Dibdin  
24 and others manufactured the false medical assertions that Consuelo had  
25 internal tears of her vagina and rectum that indicated she had been vaginally  
26 and anally penetrated with a penis or similar size object.



1 118. According to Dr. Dibdin's reports (and later testimony), Consuelo  
2 had tears in her anus, vagina, and urinary bladder, which he observed from  
3 microscopic slides he reviewed during the autopsy. Dr. Dibdin attributed these  
4 tears to anal penetration, which caused the internal abdominal injuries.

5 119. No such injuries in fact existed. Tissue slides of Consuelo's  
6 perineum, cut by the Kern County Coroner's Office, contain no evidence of  
7 tears or scarring, either new or old. The slides have evidence of hemorrhage. In  
8 some areas, this hemorrhage was up to two days old, and in another area was  
9 no more than ten days old. This older hemorrhage present in the slides was  
10 most likely the result of massive bleeding in Consuelo's abdomen during her  
11 eight days of hospitalization and her acute state of DIC. The hemorrhage that  
12 was present was not evidence of penile penetration and was most likely the  
13 result of internal bleeding from her abdominal injuries and DIC.

14 120. Dr. Dibdin falsely claimed that he had observed severe lacerations of  
15 the anus that were evidence of sodomy. He stated that these lacerations were so  
16 severe as to have cut completely through the anal sphincter muscle. However, as  
17 explained previously, the staff in the DRMC and KMC emergency rooms did not  
18 note these tears, despite ample time and opportunity to do so. Had tearing been  
19 present, lacerations of the severity Dr. Dibdin describes would have been observed  
20 in these examinations and noted in medical records.

21 121. Dr. Dibdin falsely attributed the laxity of the anal sphincter he  
22 observed on autopsy to traumatic injury of the anus as a result of sodomy.  
23 According to him, the lacerations went completely through the sphincter muscle,  
24 causing the anus to become lax. These lacerations were not noted by Dr. Shaw  
25 when he conducted his examination on November 20, 1991. Laxity of the anal  
26 sphincter after death is a well-known *post mortem* change. Dr. Dibdin's  
27 attribution of this change to sodomy was false.

28



1 122. Dr. Dibdin's reports (and ultimate testimony) concerning the cause  
2 of Consuelo's abdominal injuries and her death were anatomically impossible.  
3 He asserted that Consuelo's internal injuries, including her transected pancreas,  
4 duodenum, and transverse mesocolon, were caused by blunt force penetrating  
5 injury of the anus which caused lacerations of the anus and injury to multiple  
6 organs including the bowel and pancreas. Contrary to Dr. Dibdin's assertions,  
7 it is not possible for an object entering the rectum to cause injury to the  
8 abdominal contents without also causing a rupture of the wall of the rectum.  
9 Nor, contrary to Dr. Dibdin's assertions, is it possible for an object entering the  
10 rectum to cause injury to the pancreas, duodenum, and transverse mesocolon,  
11 which are located in the upper abdomen, without also causing injury to the  
12 organs located between them, including the sigmoid colon. Several of the  
13 doctors who provided evidence at the habeas opined not only that they  
14 disagreed with Dr. Dibdin's conclusion that death was caused by "blunt force  
15 penetrating injury to the anus," but such an assertion was medically  
16 impossible. As described previously, Dr. Harrison concluded it was medically  
17 impossible; Dr. Kennedy concluded there had been no vaginal or anal  
18 penetration; Dr. Heger concluded that Dr. Dibdin's opinion was absurd.

19 123. Dr. Dibdin also made false assertions concerning the location of  
20 Consuelo's rib fractures. The description of the location of the acute and  
21 healing fractures is not supported by the reports or testimony of any of the  
22 radiologists who examined Consuelo while she was hospitalized. The  
23 radiologists who examined Consuelo at DRMC, KMC, and UCLA had  
24 identified rib fractures inconsistent with Dr. Dibdin's claims, facts known to  
25 the Defendants.

26 124. According to Dr. Dibdin, Consuelo had acute rib fractures of ribs 6-  
27 10 on both sides of the body near the spine, as well as of ribs 6-10 on the right  
28

1 in the front. Dr. Dibdin also claimed that she had older healing rib fractures on  
2 ribs 8 and 9 on the left in the back. However, Dr. Seibly, a radiologist at KMC,  
3 found that the radiographs from KMC depicted fractures showing signs of healing  
4 in ribs 8-10 on the right rear, a location where Dr. Dibdin had seen recent fractures  
5 that were not yet healing. Dr. Seibly noted also an acute displaced fracture of the  
6 left 8<sup>th</sup> rib in the front, where Dr. Dibdin had not seen any sign of fracture.

7 125. In providing all the foregoing false evidence, Dr. Dibdin either  
8 deliberately provided false evidence, or provided false evidence with reckless  
9 disregard for, or deliberate indifference to, the truth or to Mr. Benavides' rights.  
10 Dr. Dibdin's false reporting described above, and the activities of the various  
11 Defendants identified above to elicit them, were furthered and relied on by  
12 prosecutors in initiating and/or furthering the prosecution and were ultimately  
13 presented at Mr. Benavides' trial. His false autopsy report (and possibly other  
14 reports) was reviewed and relied on by the other medical experts who provided  
15 opinions to, and testified for, the prosecution. Dr. Dibdin, and the detectives and  
16 investigators who facilitated and elicited this false evidence, were aware that such  
17 evidence was likely to influence a jury's decision in the prosecution against Mr.  
18 Benavides (which it in fact did). This evidence was material, and likely influenced  
19 the decision of the jury to convict Mr. Benavides.

20 *4. Dr. Diamond's Subsequently Recanted Testimony At Mr.*  
21 *Benavides' Trial Was False And Resulted From The Failure To*  
22 *Advise Him Of All Relevant Medical Evidence.*

23 126. As explained previously, Dr. Jess Diamond provided reports and  
24 statements (and ultimately testified) that Consuelo had injuries to her genitalia  
25 resulting from rape, even though these injuries were more likely the result of  
26 trauma from medical interventions administered after her arrival at the hospital. Dr.  
27 Diamond later agreed in his habeas declaration that these and his related  
28 conclusions (e.g., that Consuelo's swelling ("edema") was a result of trauma to

1 these areas) were incorrect. The swelling was the result of Consuelo's medical  
2 condition at the time of Dr. Diamond's examination. Her edema was caused by her  
3 disseminated intravascular coagulation ("DIC"), a condition in which the blood  
4 loses the ability to clot, leading to uncontrolled bleeding and edema. Edema that  
5 affects the entire body will manifest more dramatically in areas where the fluid  
6 settles due to gravity, including the genital and anal areas. Dr. Diamond's  
7 conclusion that the lacerations of the anus he observed were the result of  
8 sodomy was also false; they were most likely caused by the extensive medical  
9 intervention she had undergone prior to his examination.

10 127. The tears Dr. Diamond observed were not noted earlier at either the  
11 DRMC or KMC emergency rooms and were not subsequently observed by Dr.  
12 Anthony Shaw of the UCLA on November 20, 1991, when he conducted an  
13 examination of Consuelo's anus and lower rectum. Nor are they apparent in  
14 photographs taken at UCLA on November 21, 1991. Any tears Dr. Diamond  
15 observed at the time of Dr. Diamond's examination on November 18, 1991  
16 would have been superficial, since they were not visible to or noted by Dr.  
17 Shaw two days later. Severe lacerations of the anus would not have healed  
18 between Dr. Diamond's examination and Dr. Shaw's. They were therefore most  
19 likely caused by insertions of rectal thermometers and digital examinations into  
20 her anus by medical personnel.

21 128. Dr. Diamond's conclusion (and trial testimony) that the blood he  
22 observed in Consuelo's rectum was evidence of injury due to sodomy was similarly  
23 erroneous. It was in fact a result of Consuelo's compromised medical condition.  
24 Reports indicated that Consuelo was in a state of DIC prior to Dr. Diamond's  
25 examination. She was oozing blood from her nose, mouth, vagina, and rectum  
26 when Dr. Diamond arrived to conduct his examination. This blood was all the  
27 result of DIC. Dr. Diamond was aware of Consuelo's critical medical condition  
28

1 but did not understand, in the absence of the DRMC records, its significance for  
2 his diagnosis of sexual abuse.

3 129. Dr. Diamond's reports/statements (and later testimony) that the laxity  
4 of Consuelo's anal sphincter muscle was due to sodomy was erroneous. It was most  
5 likely caused by the administration of paralytic agents by medical personnel prior  
6 to his examination. Laxity of the anal sphincter is a well-known side effect of  
7 paralytic agents. Given the course of her medical treatment prior to Dr. Diamond's  
8 examination, which included prolonged life-saving efforts and extensive surgery, it  
9 was improper and medically unsound for him to take the laxity of the anus as  
10 evidence of penetration.

11 130. The Delano police detectives and District Attorney investigators knew  
12 that Dr. Diamond's statements and conclusions were false or erroneous and were at  
13 least in part the result of his lack of knowledge of the DRMC records. They were  
14 aware from DRMC medical interviews and records they conducted or reviewed  
15 that, prior to Dr. Diamond's examination, medical personnel at DRMC and KMC  
16 had repeatedly and unsuccessfully attempted to insert a catheter into Consuelo's  
17 bladder to draw urine. In fact, in some of catheterization attempts, a catheter that  
18 was too large for her urethra was used. These repeated and unsuccessful attempts  
19 to insert catheters, along with the intensive digital manipulation of the genitalia  
20 that catheterization requires, most likely were the cause of the genital injuries he  
21 observed, a possibility/likelihood not considered by Dr. Diamond. These Delano  
22 police detectives and District Attorney investigators knowingly, recklessly or with  
23 deliberate indifference facilitated and promoted Dr. Diamond's false evidence and  
24 conclusions.

25 131. On information and belief, to the extent that Defendant Carbone was  
26 aware of the contents of the DRMC medical records, he learned this information  
27 early in the case while acting in an investigative capacity, and, again while acting  
28

1 in an investigative capacity, he conferred with experts while they were developing  
2 their opinions and encouraged them to reach conclusions that he knew or should  
3 have known were false, and that they would have rejected had they been aware of  
4 the contents of the DRMC medical evidence.

5 *5. All The Foregoing False Evidence Was Used At Mr. Benavides'*  
6 *Trial, And Important Exonerating Evidence Was Not Presented*  
7 *At The Trial.*

8 132. The observations of the critical DRMC percipient witnesses to  
9 Consuelo's condition were never presented at trial. Significantly, the jury did not  
10 hear any testimony about the invasive medical treatment undertaken of Consuelo  
11 after her admission to DRMC that produced the "signs" of sexual abuse used to  
12 convict Mr. Benavides. The jury similarly never heard that the cause of death about  
13 which Dr. Dibdin testified - blunt force penetrating injury of the anus - is  
14 anatomically impossible. None of this evidence was ever disclosed to the defense.

15 133. The prosecution persuaded the jury, through largely false medical  
16 testimony, that Mr. Benavides beat, shook, suffocated, squeezed, raped and  
17 sodomized Consuelo to death. The prosecution asserted that Consuelo sustained  
18 injuries to her abdomen, head, genitalia and anus. Through the testimony of Dr.  
19 Jess Diamond, the prosecution claimed the alleged injuries that Dr. Diamond  
20 observed during his limited examination of Consuelo on November 18, 1991, were  
21 attributable to sexual assault.

22 134. To further bolster the case against Mr. Benavides, the prosecution also  
23 elicited and presented to the jury the above described medical information from Dr.  
24 Dibdin and others that the injury to Consuelo's inner lip and bridge of her nose was  
25 a direct result of a hand being placed over her mouth. The prosecution argued this  
26 scenario was the method of suffocation used.  
27  
28

1 135. In addition, contrary to the prosecution's assertion that there was no  
2 evidence Consuelo suffered a seizure, the medical records from UCLA Medical  
3 Center are replete with notations of seizure activity observed in Consuelo.

4 136. The exculpatory evidence, reports, interviews and other material  
5 gathered throughout the Delano Police Department's and District Attorney's  
6 Investigators' investigation that would have established the falsity of the evidence  
7 on which the prosecution was relying was never provided to the defense or learned  
8 by the jury.

9 ///

10 ///

11 ///

12 ///

13 **I. Kern County Forensic Pathologist Dr. Dibdin And The Kern**  
14 **County Coroner's Office Had A Pattern And Practice Of**  
15 **Providing False Autopsy Reports, And The Kern County**  
16 **Coroner's Office Deliberately And Indifferently Failed To**  
**Adequately Screen, Supervise and Train Its Employees.**

17 137. The case against Mr. Benavides was premised upon the unreliable and  
18 professionally irresponsible autopsy conducted by Dr. Dibdin. The Kern County  
19 Coroner's Office, through its employee, Dr. Dibdin, had a custom and practice of  
20 falsifying evidence in criminal cases in order to assist prosecutors in securing  
21 convictions. The Kern County Coroner's Office had a custom and practice of  
22 recklessly or deliberately indifferently providing false and unreliable reports and  
23 evidence to further the prosecution agenda of aggressively asserting child sexual  
24 abuse without ensuring the reliability of its evidence.

25 138. Dr. Dibdin had a reputation for incompetence and unprofessionalism.  
26 His history included the following incidents of misconduct and incompetence.  
27 Prior to the events in this case, Dr. Dibdin (1) was fired from the Oklahoma City  
28 Medical Examiner's Office for the poor quality of his autopsies and for rendering

1 erroneous causes of death; (2) was fired from his post as a Medical Examiner in  
2 Tasmania, Australia for unacceptable practices and giving erroneous causes of  
3 death; (3) was fired from the San Bernardino County, California, Coroner's Office  
4 for the poor quality of his forensic practices and for the poor quality of his causes  
5 of death; and (4) was fired from the Brown County, Wisconsin, Medical  
6 Examiner's office for marking on death certificates that autopsies had been  
7 performed in cases when they had not and for offering questionable causes of  
8 death. Subsequent to the events in this case, Dr. Dibdin (5) was fired by the Kern  
9 County Coroner for questionable practices as a pathologist and for refusing to  
10 correct erroneous causes of death and had heated disagreements with staff in the  
11 Coroner's Office over causes of death because other staff members believed his  
12 findings were unsupported; and (6) his contract with Nevada County, California,  
13 was terminated after he made incorrect and misleading cause of death  
14 determinations in several cases and refused to revise them when requested to do so  
15 by the County Coroner. *See James D. Dibdin, MD. v. County of Nevada, State of*  
16 *California, et al.*, Sacramento County Superior Court, Case No. 96-AS-01697.

17 139. Dr. Dibdin incorrectly determined the cause of death in other cases  
18 involving children in Kern County. As in Mr. Benavides' case, Dr. Dibdin  
19 erroneously attributed the August 31, 1992, death of an 8-month-old boy to violent  
20 shaking. The boy's father told police he had attempted to resuscitate the boy by  
21 pressing on his chest and abdomen after he inexplicably stopped breathing. Dr.  
22 Dibdin concluded that this explanation was inconsistent with the injuries he  
23 observed at the autopsy. He testified at the father's trial that it would have taken 25  
24 to 30 minutes for the boy to die as a result of his injuries. Witnesses testified that  
25 the father had been alone with the boy for no more than 15 minutes. In light of Dr.  
26 Dibdin's false testimony, the judge made the unusual move of dismissing the case  
27 prior to closing arguments for lack of evidence.



1 140. Dr. Dibdin's autopsy report concerning Consuelo's death fits into this  
2 pattern of unprofessionalism and is fundamentally unreliable, as he did not prepare  
3 it until January 21, 1992, nearly *two months after* November 26, 1991, the date on  
4 which he had conducted the autopsy. Rather than a direct record of his  
5 observations, this report was a reconstruction based upon Dr. Dibdin's memory  
6 of the autopsy, and as such was unreliable.

7 141. On information and belief, Kern County officials either knew, or  
8 should have known with minimal investigation, of these deficiencies. In hiring  
9 and supervising Dr. Dibdin, Kern County officials were deliberately indifferent  
10 to the risk of false evidence being used by him to inculcate Mr. Benavides and  
11 others. The Coroner's Office lacked policies, procedures and guidelines to  
12 ensure that false evidence was not used by its staff. Doe Defendant supervisors  
13 of Dr. Dibdin were deliberately indifferent to these risks even though, on  
14 information and belief, they were or should have been aware of Dr. Dibdin's  
15 custom and practice of falsifying evidence.

16 **J. The Kern County District Attorney's Office Lacked Policies**  
17 **And Procedures To Prevent The Use Of False Evidence And**  
18 **Ensure The Disclosure Of Exculpatory Evidence And Had A**  
19 **Custom And Practice Of Using False Evidence And**  
**Suppressing Exculpatory Evidence.**

20 142. As is elaborated in the Fifth Cause Of Action (*Monell* liability  
21 against the Kern County District Attorney's Office and County of Kern), Kern  
22 County lacked any policies, procedures or systems, including proper hiring,  
23 supervision and/or training, to prevent the use of false evidence and the  
24 suppression of exculpatory evidence, especially in child molestation cases. As  
25 a result, it systematically deprived defendants of their due process right to a  
26 fair trial. We have previously addressed the false evidence used by Dr. Dibdin.  
27 In this section, Plaintiff elaborates on the exculpatory evidence suppressed in  
28 this case as a result of these unconstitutional practices. The responsibility of

1 ensuring that proper policies, procedures, systems, and supervision were in  
2 place rested with the elected Kern County District Attorney, who had the sole  
3 responsibility for establishing and implementing such policies, procedures,  
4 systems, and supervision. In fulfilling that responsibility, the elected Kern  
5 County District Attorney acted and acts as a County agent in contrast to the  
6 prosecution of individual cases, in which the elected Kern County District  
7 Attorney acts as an agent of the State of California. This claim is premised  
8 solely on his administrative and supervisory responsibilities. The recitation of  
9 the withheld exculpatory in the following sub-section is to illustrate how and  
10 why these failures and custom and practice presented and were material in this  
11 case.

12  
13 *1. The District Attorney's Office Failed To Disclose Evidence*  
14 *From The Crime Lab That Was Consistent With Mr. Benavides'*  
15 *Statements That He Found Consuelo Outside.*

16 143. Jeanne Spencer, a Kern County Criminalist, testified that when she  
17 analyzed tissue containing vomit that she found at Ms. Medina's apartment she  
18 did not find any dirt or gravel consistent with it having been cleaned up from  
19 outside. Rather, she said she found nylon tri-level carpet fibers in the vomit  
20 indicating contact with some carpet-like fiber.

21 144. The prosecution argued during closing argument that this evidence  
22 contradicted Plaintiff's statement that he had found Consuelo laying outside the  
23 front door. In fact, Spencer's reports, which went undisclosed at trial, indicated  
24 that she found "small dirt particles" in a napkin in the kitchen wastebasket that  
25 was consistent with a tape lift from outside.

26 145. Spencer found dirt and debris in the napkins in the bathroom  
27 wastebasket. Her reports also showed that Consuelo's sweatshirt contained  
28 plant fibers, and that blood on Consuelo's shoe sole may have picked up dirt

1 and gravel. All of this evidence was consistent with Mr. Benavides version of  
2 events, that he had found Consuelo outside the front door. None of this  
3 evidence was disclosed to the defense at trial.

4 146. The defense was unable to counter the prosecution's challenge to  
5 Mr. Benavides' statements at trial that he had found Consuelo outside. Mr.  
6 Benavides' credibility was significantly undermined by the forensic evidence  
7 produced at trial that there was no evidence Consuelo had been outside.

8 147. Had the prosecution disclosed these reports, the defense would have  
9 been able to support Mr. Benavides' statements, bolstering his credibility and  
10 making his statements believable to the jury. Therefore, had this evidence been  
11 disclosed, there is a reasonable probability that the jury would have believed Mr.  
12 Benavides' version of events, and that the outcome of Plaintiff's trial would have  
13 differed.

14 148. Lay witnesses and medical personnel were tainted with the  
15 prosecution's theories of rape and sodomy during interviews and investigation.  
16 Law enforcement reports and notes, withheld from the defense, confirmed the  
17 existence of dirt and debris in the vomit found in the kitchen garbage can, lending  
18 credence to Plaintiff's version of events and directly undermining the prosecutor's  
19 argument.

20 *2. Medical And Other Evidence Favorable To Mr. Benavides'*  
21 *Defense Was Withheld*

22 149. The prosecution presented false testimony that Consuelo was in good  
23 health prior to November 17, 1991 and failed to disclose information that indicated  
24 possible causes of her injuries other than abuse by Mr. Benavides. At trial the  
25 prosecutor informed the jury that Consuelo was a "completely normal" twenty-  
26 one-month-old who was harmed by Plaintiff on November 17, 1991. He argued  
27 that the injuries allegedly inflicted by Mr. Benavides that night were connected  
28 to old injuries that were also inflicted by him.

1 150. District Attorney investigators were aware of numerous statements  
2 by Consuelo's caretakers making clear that she had significant, chronic health  
3 problems prior to November 17, 1991, which had no connection whatsoever to  
4 Mr. Benavides. On information and belief, this information was never  
5 presented to the prosecutor. Alternatively, if it was provided to the prosecutor,  
6 it was provided while he was working in an investigative capacity.

7 151. Delia Salinas, Ms. Medina's sister, told district attorney investigator  
8 Ray Lopez on May 14, 1992, that Consuelo was a "smart and lovable child who  
9 was clumsy and fell down a lot. She was an active child who bruised herself often,  
10 mostly on her legs." Diana Alejandro, Ms. Medina's other sister, also told  
11 Lopez on May 11, 1992, that Consuelo "was always rashed [i.e. she always  
12 had a rash] when she was living down ... on 1313 Albany." Diana explained  
13 that Consuelo always had a rash because her diaper was not changed at night  
14 by members of the Alejandro family.

15 152. Ms. Medina told the Delano Police and district attorney investigator  
16 Bresson that Consuelo was "always falling down, she's always getting into  
17 things. Even at my mom's house, you know, she's always bumping, she falls."  
18 None of the above statements were provided to the defense, either because they  
19 were not disclosed to the prosecutor, or the prosecutor learned it and did not  
20 disclose it.

21 153. Relying on this false, contrived foundation, the prosecution argued at  
22 trial that Consuelo's injuries on November 17, 1991 were not typical of her  
23 physical limitations and chronic illness, but rather were the culmination of Mr.  
24 Benavides' violent tendencies that began when he met Consuelo. During his  
25 questioning of Ms. Medina, the prosecutor implied that Consuelo began to get  
26 injuries only after Mr. Benavides came to live with her and her daughters, thereby  
27  
28

1 implying that Mr. Benavides had been the cause of all of Consuelo's past injuries  
2 and illnesses:

3 Carbone: “Ms. Medina, isn't it true that you knew what was  
4 happening with this man but you weren't reporting it?”

5 Ms. Medina: “No, I didn’t.” [meaning that she did not report it]

6 154. Moreover, Mr. Benavides was unlawfully denied access to exculpatory  
7 material evidence proving that no semen was ever found on or in Consuelo.  
8 Prevailing practice in Kern County in 1991 was for law enforcement to obtain  
9 samples of fluids from suspected sexual assault victims using what is termed to be  
10 a rape kit. Remarkably, although Consuelo was hospitalized within minutes of the  
11 alleged rape and sodomy and examined by the County's sex abuse expert, the  
12 prosecution asserted at trial that no such sampling was performed. Dr. Diamond  
13 testified that he did not perform a rape kit to test for the presence of semen in  
14 Consuelo's vagina and rectum because the blood oozing from them would have  
15 washed away any traces of semen that had been present.

16 155. Given the prevalence of the practice and the immediate determination  
17 of law enforcement that Consuelo had been the victim of a sexual assault, the  
18 prosecution's statements are not credible. Moreover, in light of the prosecution's  
19 callous disregard for fundamental fairness with respect to withholding *Brady*  
20 material, manufacturing testimony, and presenting false evidence, the  
21 prosecution’s statement was not supportable.

22 156. On information and belief, the prosecution did obtain a rape kit and  
23 withheld the results from the defense because they were exculpatory. In the  
24 alternative, if there was no rape kit, it was not done in order to prevent the presence  
25 of exculpatory evidence favorable to Mr. Benavides.

26 157. Furthermore, the Delano Police officers suspected that Mr.  
27 Benavides had committed a crime in Mexico and contacted the Mexican  
28

1 Federales for information regarding him. They were never able to corroborate  
2 statements that he had committed prior crimes. Indeed, the prosecution  
3 stipulated at trial that Mr. Benavides had no prior record of felony convictions  
4 in the United States or in Mexico.

5 158. Nonetheless, the prosecutor knowingly made false statements when  
6 he alleged that Mr. Benavides had committed prior similar crimes. These  
7 statements affected the jury's determinations during both the guilt phase and  
8 penalty phase of trial. The statements made in front of the judge biased the  
9 decision-maker, against Mr. Benavides.

10 159. The prosecutor knew at the time he made these statements that they  
11 were false. Statements of several witnesses, including the critical witnesses in  
12 the case, obtained by and in the possession of the prosecution, all contradicted  
13 the prosecutor's assertions that Mr. Benavides was a child molester. Several  
14 witnesses told the prosecution that he did not have the character of a molester,  
15 had never been known to harm children, was gentle and kind with children,  
16 and did not get angry or violent.

17 160. Ms. Medina stated in every recorded interview with the Delano  
18 police and the district attorney's office that she did not and could not believe  
19 that Mr. Benavides had in any way harmed her children. In her first interview  
20 she told the police, "I would never protect him. But I never, I swear to God, I  
21 never saw him do anything to my daughters like that. He loved her, he loved  
22 my baby." Eight months later, in an interview with a district attorney  
23 investigator, she told him "he never hit me, he never hit the girls. He ... treated  
24 the girls, you know, nice, like when I was, would be tired and he was home, he  
25 would feed the girls, he would make them something to eat.... He never  
26 mistreated them." She also said she had "no indication whatsoever" that would  
27 have indicated Plaintiff was molesting her daughter.

1 161. The prosecution withheld from the defense the statements of Mr.  
2 Benavides' brother Manuel Benavides that Plaintiff was not a child molester, was a  
3 gentle man, was very caring of small children, and was non-violent, even when  
4 drunk. These exculpatory statements were in the possession of the prosecution  
5 before trial. As a result of their nondisclosure, defense counsel did not present as  
6 character evidence the compelling statements of his brother who had regular  
7 contact with Mr. Benavides while he was around Consuelo, and who firmly  
8 believed he could not have harmed her, or any other child. Further, counsel did not  
9 present the testimony of Mr. Benavides' other brother, who had known him all his  
10 life, and who had several daughters who had grown up around Mr. Benavides  
11 without incident. While presumably Mr. Benavides was aware of his brother's  
12 opinions, the Defendants still had an obligation to provide this exculpatory  
13 evidence.

14 162. Moreover, the prosecution further failed to disclose and withheld from  
15 the defense any documentation of the second sex abuse exam of Cristina,  
16 conducted on December 10, 1991, by Dr. Diamond at KMC, at the request of  
17 Delano Police Department Detective Nacua. Dr. Diamond's report of this exam  
18 was exculpatory in that it confirmed that Consuelo's sister Cristina showed  
19 absolutely no physical signs of sex abuse or molestation and that Cristina denied  
20 ever having experienced sex abuse or molestation. On information and belief,  
21 Detective Nacua did not disclose this evidence to the prosecutor, or alternatively it  
22 was provided while he was working in an investigative capacity.

23 163. Withholding this exculpatory report prevented the defense from  
24 knowing that the exam had been conducted, and that it had conclusively  
25 established that Cristina had not been molested. This was highly prejudicial in light  
26 of the fact that the prosecution argued to the jury that Mr. Benavides had molested  
27  
28



1 Consuelo and Cristina. Mr. Benavides was thus deprived of his right to a  
2 fundamentally fair trial based on accurate information.

3 164. The prosecution withheld from the defense voluminous materials,  
4 containing overwhelming amounts of exculpatory evidence, especially evidence of  
5 State misconduct. Documents withheld included evidence that contradicted or  
6 undermined the autopsy report findings presented by the prosecution and evidence  
7 that the prosecution manufactured medical evidence.

8 165. The prosecution also withheld documents and information  
9 demonstrating that Mr. Benavides was not guilty and that Consuelo's prior and  
10 current injuries were most likely attributable to individuals other than Plaintiff,  
11 and/or to causes other than rape and sodomy.

12 166. The prosecution withheld a case report dated September 4, 1992, in  
13 which the prosecutor Robert Carbone harassed UCLA witnesses and pressured  
14 them to give statements regarding the case, thereby acting as an investigator by  
15 engaging in conduct more often associated with law enforcement. Specifically, on  
16 September 4, 1992, Deputy District Attorney Carbone went to UCLA with  
17 investigator Ray Lopez and attempted to interview Rick Harrison, Joylene  
18 Martinez, and Debra Ridling. When they stated they did not want to talk with him,  
19 District Attorney Carbone became very hostile, raised his voice at the witnesses,  
20 and was verbally abusive towards them. He engaged in these actions in his  
21 investigative capacity.

22 167. The report indicates that Deputy District Attorney Carbone and  
23 Investigator Lopez immediately requested to speak with the hospital administrator,  
24 and subsequently spoke to the patient relations liaison and then legal counsel. Due  
25 to his coercive tactics, legal counsel suggested to Harrison and Ridling that they  
26 talk to Deputy District Attorney Carbone, and the patient relations liaison for the  
27 hospital called Ridling into her office and required her to assist District Attorney  
28

1 Carbone. Harrison felt threatened enough to call hospital security and District  
2 Attorney Carbone's supervisor in Kern County.

3 168. Had this report been disclosed to the defense, the defense would have  
4 impeached not only Dr. Harrison, but also other UCLA witnesses and other  
5 medical and non-medical witnesses by questioning them regarding the tactics  
6 used by the prosecution to interview them and obtain their testimony. In  
7 conjunction with the misconduct engaged in by the prosecution with respect to  
8 obtaining Cristina's testimony and Ms. Medina's testimony, this incident  
9 demonstrated the lengths to which the prosecution would go to obtain  
10 information it deemed inculpatory.

11 169. Medical records indicate that four CT scans were conducted of  
12 Consuelo Verdugo. Only one was disclosed to the defense. Dr. Baumer testified  
13 that he could not see brain infarcts in the CT scans. Had the missing CT scans been  
14 disclosed, Dr. Baumer would have seen and assessed the brain infarcts. Hence, he  
15 could have been able to opine that the infarcts were due to Consuelo's medical  
16 condition on November 21, 1991, and to refute the false and inaccurate testimony  
17 presented by the prosecution that Consuelo had been suffocated and shaken.

18 170. The prosecution withheld evidence of interviews of medical personnel,  
19 including Anne Tait, Richard Harrison, and defense expert Warren Lovell because  
20 they produced exculpatory information.

21 171. The prosecution failed to disclose an interview of Dr. Anne Tait of  
22 DRMC by Gregg Bresson on December 11, 1991. Investigator Bresson stated in  
23 his testimony that he had interviewed Dr. Tait, a doctor at DRMC who observed no  
24 tearing, bleeding, swelling, or discharge consistent with sexual abuse when she  
25 treated Consuelo Verdugo on November 17, 1991.

26 172. The defense was therefore prevented from impeaching Dr. Tait with  
27 her statements that she had not seen evidence of sex abuse when she treated  
28

1 Consuelo. Had Dr. Tait's exculpatory statements been disclosed, the defense would  
2 have powerfully countered the prosecution's cause of death evidence with  
3 affirmative statements that there was no evidence of rape or sodomy within the  
4 first several hours after Consuelo was injured and would have demonstrated that  
5 the prosecution was presenting false testimony that Consuelo had been sexually  
6 abused.

7 173. The prosecution failed to disclose evidence that, on December 10,  
8 1991, Investigator Bresson had spoken to Dr. Rick Harrison, a doctor who treated  
9 Consuelo at UCLA. Investigator Bresson stated in his testimony that he was  
10 referring to a report of this interview, but the report was not disclosed to the  
11 defense. The defense was therefore prevented from using the report to counter the  
12 prosecution's cause of death evidence with Dr. Harrison's statements that he  
13 believed the cause of Consuelo's injuries and death was blunt force trauma to the  
14 abdomen, and not sodomy and rape. Had the report been disclosed, the defense  
15 would have impeached Dr. Harrison with his statements that undermined the  
16 prosecution's cause of death.

17 174. The district attorney, Robert Carbone, contacted defense expert Warren  
18 Lovell on April 8, 1993, and did not report the substance of this contact. Carbone  
19 implied to the jury that Lovell had been fired from his position as Chief Medical  
20 Examiner in Ventura County. Lovell had told Carbone prior to this, however, that  
21 he had not been fired from his job. Had the prosecution disclosed the contents of  
22 this phone conversation, the defense would have presented evidence of Mr.  
23 Carbone's actions and been able to successfully object to this statement as an  
24 example of misconduct. Because it was not disclosed, the defense objection was  
25 overruled. Had the evidence been available, the defense could have countered the  
26 prosecution's implications.

1 175. The prosecution also withheld evidence of prior interviews with Mr.  
2 Benavides' mother. On April 13, 1993, during trial, Al Valdez approached  
3 Plaintiff's mother and asked to interview her. He said to her "Maria, it's a while I've  
4 been here, right?" - implying that he had visited her before, a while ago. Valdez  
5 stated that this interview reconfirmed a prior interview in which an audiotape  
6 malfunctioned. Valdez stated at trial that he was reading from a declaration signed  
7 by Maria during that prior interview. In this interview, Valdez discussed Mr.  
8 Benavides' description of what happened to the little girl, and the specific  
9 description of events Plaintiff gave his mother regarding these events. No prior  
10 contact between Maria and Valdez was reported to the defense, and no declaration  
11 was ever disclosed.

12 176. The prosecution failed to report prior conversations with Ms. Medina,  
13 Cristina Medina, Diana Alejandro, and other members of Consuelo's family. On  
14 November 26, 1991, Investigator Gregg Bresson and Prosecutor Carbone were at  
15 UCLA Medical Center, where they talked with Ms. Medina and her son, Ruben  
16 Verdugo, about Consuelo, Mr. Benavides, and his case. This contact went  
17 unreported. Ms. Medina was questioned regarding allegations that Cristina had  
18 blood in her underwear and Mr. Benavides' decision to return to the United States  
19 from Mexico early that year.

20 177. Exculpatory evidence discussed during this conversation, such as Mr.  
21 Benavides' real reason for returning early to the United States, was not reported.  
22 Had the prosecution disclosed this evidence, the defense would have been able to  
23 prevent the prosecutor's misconduct at trial when he falsely implied that Mr.  
24 Benavides had returned early from Mexico because he was wanted by authorities  
25 there.

26 178. On July 21, 1992, Vicky talked with Ray Lopez about a prior interview  
27 of Cristina conducted by Al Valdez in which Valdez discussed the concept of rape  
28

1 with Cristina. Before and after that date, Ray Lopez visited Cristina regularly at the  
2 house of her cousin and aunt, in attempts to prepare her interview and trial  
3 testimony. Investigator Gregg Bresson also met with Cristina on December 20,  
4 1991 to obtain forensic evidence. No evidence of these interviews was disclosed  
5 before trial. Had evidence of these interviews been disclosed, the defense would  
6 have been able to adequately challenge the prosecution's improper removal of  
7 Cristina from her home that was orchestrated in order to coerce and manufacture  
8 her testimony for trial, as well as coerce her mother's statements. Had this evidence  
9 been disclosed, the outcome of the trial would have differed.

10 179. The prosecution withheld voluminous documents at trial, including  
11 evidence supporting Mr. Benavides' statements at trial regarding the facts of the  
12 incident, documents illustrating the false medical testimony manufactured and  
13 introduced by the prosecution, and information provided by friends and family of  
14 Mr. Benavides that was exculpatory. The disclosure of this information, alone and  
15 in combination, would have changed the trial outcome.

16 180. As the term "the prosecution" is used herein, it encompasses any  
17 member of the prosecution team, including detectives and investigators. It does not  
18 imply by its terms whether the particular information was in fact known to Mr.  
19 Carbone, who prosecuted the case.

20 181. The foregoing information either a) was not disclosed to the prosecutor  
21 by the detectives or investigators who learned it; b) or it was provided to the  
22 prosecutor while he was working in an investigative capacity; or c) to the extent  
23 that any exculpatory evidence was withheld by the prosecutor acting in his  
24 prosecutorial capacity, the District Attorney's Office is liable for its failure to have  
25 in place procedures and systems to ensure that consulting experts were advised of  
26 all relevant and important information, and its failure to ensure the integrity of its  
27 investigations and to prevent reliance on false evidence. Further, the District  
28

1 Attorney's Office is liable for its failure to implement policies, systems and  
2 oversight to ensure that material evidence was provided to defendants, particularly  
3 in sexual molestation cases.

4 182. All of the evidence describe herein was material, i.e., there is a  
5 reasonable probability that, had the evidence been disclosed to the defense, the  
6 result of the proceeding would have been different. A "reasonable probability" of a  
7 different result exists where evidentiary suppression undermines confidence in the  
8 outcome of the trial. Evidence is material if, in the absence of the disclosure, the  
9 defendant did not receive a fair trial, which means a trial resulting in a verdict  
10 worthy of confidence.

11 **K. The Prosecution Prejudicially Failed To Disclose Benefits**  
12 **Offered To Witnesses In Exchange For Their Assistance With**  
13 **The Case.**

14 183. The prosecution presented the testimony of Darlene Salinas  
15 ("Darlene") and Virginia Salinas ("Vicky") at the penalty phase of the trial.  
16 Darlene helped the prosecution make its case for the imposition of death when she  
17 testified that Consuelo's family wanted "justice" to be done and stated that  
18 "nothing like this should happen to children again." Vicky testified that she took  
19 care of Cristina after her sister's death and described the impact of Consuelo's  
20 death on Cristina.

21 184. District Attorney investigators Lopez and Bresson arranged for Cristina  
22 to be removed from Ms. Medina's custody, which led to her eventual placement in  
23 the custody of Darlene and Reynaldo Salinas and later Vicky. These relatives  
24 received financial rewards in the form of welfare assistance for taking custody of  
25 Cristina. Ms. Medina was the subject of a lawsuit filed by the District Attorney's  
26 Office for an order requiring her to pay child support to her relatives for the  
27 involuntary removal of Cristina from her custody. These benefits provided an  
28 incentive for them to cooperate with the prosecution. The District Attorney's office

1 filed lawsuits against Ms. Medina to obtain welfare benefits for both Vicky and  
2 Darlene. This enabled Vicky to receive welfare benefits in the form of cash  
3 payments.

4 185. The prosecution was aware that both Darlene and Reynaldo Salinas had  
5 criminal records indicating a history of drug abuse. The prosecution overlooked  
6 their drug problems and other criminal convictions that indicated they were not  
7 safe placements for Cristina, in exchange for their cooperation and assistance with  
8 their investigation and their testimony at trial. This also bestowed a benefit onto  
9 Darlene and Reynaldo Salinas by assisting them in overcoming obstacles to  
10 receiving welfare benefits, such as a criminal and drug history, that they otherwise  
11 would not have been able to overcome.

12 186. At no time did the prosecution disclose to the defense the fact that  
13 Ms. Medina was sued for child support by the Office of the District Attorney  
14 for welfare benefits given to Darlene Salinas and Vicky Salinas while the case  
15 was pending.

16 187. The explanations at the conclusion of the preceding sub-section  
17 regarding the meaning of the term “prosecution,” the alternative forms of the  
18 non-disclosure of the evidence, and the meaning of materiality apply to the  
19 foregoing evidence as well.

20 **L. The Dismissal Of All Charges By The California Supreme Court**

21 188. For over two and a half decades, Mr. Benavides continued to proclaim  
22 his innocence and fight for his freedom. On November 12, 2002, represented by  
23 the Habeas Corpus Resource Center (“HCRC”), Mr. Benavides filed a Petition for  
24 Writ of Habeas Corpus in the Supreme Court for the State of California.

25 189. In response to the petition for habeas corpus relief, the Supreme Court  
26 issued an order to show cause on Mr. Benavides’ claims that his convictions were  
27 based on, *inter alia*, false evidence. Before the Supreme Court issued its final  
28



1 decision, Respondent Secretary of the Department of Corrections and  
2 Rehabilitation conceded that false evidence was introduced at trial and that Mr.  
3 Benavides' convictions of substantive sexual offenses, special-circumstance  
4 findings, and judgment of death must be vacated.

5 190. On March 12, 2018, the Supreme Court filed its decision on the  
6 Habeas Corpus case, granting the petition for writ of habeas corpus and vacating  
7 in its entirety the judgment of conviction in *People v. Vicente Figueroa Benavides*,  
8 (Super. Ct. Kern County, 1993, No. 48266).

9 191. The intentional and reckless acts and omissions of various officers and  
10 employees of the Kern County District Attorney's Office, CPS, and Kern County  
11 Medical Examiner's Office—acting in concert with law enforcement officers—  
12 caused Mr. Benavides to be wrongly convicted and sentenced to death.

13 192. Absent the actions of Defendants and their co-conspirators, Mr.  
14 Benavides would not have been wrongly convicted for the death of Consuelo and  
15 sentenced to death.

16 193. As a direct result of Defendants' misconduct, Mr. Benavides suffered  
17 injuries and damages including bodily and personal injuries; pain and suffering;  
18 mental anguish; emotional distress; loss of income; infliction of physical illness;  
19 inadequate medical care; humiliation of himself and his family; degradation;  
20 restrictions on all forms of personal freedom including but not limited to diet,  
21 sleep, personal contact, educational opportunity, and family relations.

22 194. Mr. Benavides now seeks redress for the egregious misconduct that  
23 cost him the best years of his life.

24 **VI. PARTICIPATION, STATE OF MIND, CAUSATION AND DAMAGES**

25 195. All Defendants acted without authorization of law.

26 196. Each Defendant participated in the violations alleged herein, or  
27 directed the violations alleged herein, or knew of the violations alleged herein and  
28

1 failed to act to prevent them. Each Defendant ratified, approved or acquiesced in  
2 the violations alleged herein.

3 197. As joint actors with joint obligations, each Defendant was and is  
4 responsible for the failures and omissions of the other.

5 198. Each Defendant acted individually and in concert with the other  
6 Defendants and others not named in violating Plaintiff's rights.

7 199. Each Defendant acted with a deliberate indifference to or, reckless  
8 disregard for, an accused's rights or for the truth in withholding evidence from  
9 prosecutors, and /or for the Plaintiff's right to due process of law.

10 200. The individual Defendants named herein, in engaging in the acts  
11 described, were not acting in a prosecutorial capacity but in an investigatory,  
12 administrative or supervisory capacity.

13 201. As a direct and proximate result of the aforesaid acts, omissions,  
14 customs, practices, policies and decisions of the Defendants, Plaintiff sustained the  
15 injurious events of his wrongful conviction, his sentencing to death, his denial of  
16 his appeal, and numerous discrete bodily and mental injuries throughout his  
17 imprisonment. Throughout Mr. Benavides' wrongful imprisonment, new and  
18 independent injuries were sustained for which the Defendants are directly  
19 responsible, including but not limited to Mr. Benavides' inability to grieve and loss  
20 of familial relations.

21 202. While wrongfully incarcerated, the extreme mental distress and  
22 anguish brought about by Mr. Benavides' imprisonment caused him numerous  
23 other bodily injuries while wrongfully incarcerated which were further exacerbated  
24 by poor conditions and improper medical treatment.

25 203. While Kern County and the City of Delano may not have intended or  
26 expected an innocent man would be convicted or sentenced to death or to inflict  
27 the injuries that Mr. Benavides sustained throughout his horrific ordeal, Kern  
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1 County and the City of Delano,—through its actions and omissions—is responsible  
2 for all the great mental and physical pain, suffering, anguish, fright, nervousness,  
3 anxiety, shock, humiliation, indignity, embarrassment, harm to reputation, and  
4 apprehension which Mr. Benavides sustained.

5 204. Due to the acts of the Defendants over decades, Plaintiff has suffered  
6 extreme and severe mental anguish as well as mental and physical pain and injury.  
7 For such injuries, Plaintiff will incur significant damages based on psychological  
8 and medical care.

9 205. Additionally, as a result of Mr. Benavides' wrongful incarceration,  
10 Plaintiff has lost past and future earnings in an amount to be determined according  
11 to proof at trial.

12 206. As a further result of the conduct of each of these Defendants, Plaintiff  
13 has been deprived of familial relationships, including not being able to raise a  
14 family.

15 207. The aforementioned acts of the Defendants, and each of them, was  
16 willful, wanton, malicious, oppressive, in bad faith or done with reckless disregard  
17 or with deliberate indifference or with gross negligence to the constitutional rights  
18 of the Plaintiff, entitling Plaintiff to exemplary and punitive damages from each  
19 Defendant in an amount to be proven at the trial of this matter.

20 208. By reason of the above described acts and omissions of Defendants,  
21 Plaintiff was required to retain an attorney to institute and prosecute the within  
22 action, and to render legal assistance to Plaintiff that he might vindicate the loss  
23 and impairment of his rights, and by reason thereof, Plaintiff requests payment by  
24 Defendants of a reasonable sum for attorney's fees pursuant to 42 U.S.C. § 1988  
25 and California Civil Code §52.

26 **FIRST CLAIM FOR RELIEF**

27 **42 U.S.C. § 1983 – FALSE EVIDENCE VIOLATIONS**

28 **(Against Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James**

**Dibdin, Robert Carbone and Does 1-10)**

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2 209. Plaintiff realleges all the foregoing and any subsequent paragraphs  
3 contained in the Complaint, as if fully set forth herein.

4 210. Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James  
5 Dibdin, Robert Carbone and Does 1 - 10, while acting under color of law, deprived  
6 Plaintiff of his right to due process of law under the Fifth and Fourteenth  
7 Amendments to the United States Constitution, by providing false non-testimonial  
8 evidence in reports and statements outside of live testimony that was forwarded to  
9 Mr. Benavides' prosecutor, which was likely to, and in fact did, influence the  
10 jury's decision to convict Mr. Benavides and resulted in a deprivation of liberty.  
11 The provision of such false evidence set in motion a reasonably foreseeable chain  
12 of events leading to the presentation of false evidence at Plaintiff's criminal trial.

13 211. Such false evidence includes but is not limited to:

14 a. Dr. James Dibdin's false autopsy report which included  
15 anatomically and medically impossible conclusions, and related statements,  
16 findings and conclusions inconsistent with existing reports and  
17 information, and which were created and used to support the prosecution's  
18 false and contrived theory of the manner and cause of Consuelo Verdugo's  
19 death.

20 b. The coerced and false addendum to the report of Dr. Chabra's  
21 radiological report indicating 2-3-week-old healing fractures to Consuelo  
22 Verdugo's 8th - 10th ribs on the right side of her body.

23 c. The coerced and false statements of Ms. Medina and Cristina  
24 Medina, which were the product of coercive and abusive interview  
25 techniques, and threats, intimidation, and acts depriving Ms. Medina of  
26 lawful custody of Cristina Medina, and depriving Cristina Medina the  
27 lawful protection and guardianship by her mother, Ms. Medina, which were  
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1 undertaken with the intent to produce false, inculpatory statements for use  
2 in Plaintiff's criminal trial.

3 212. Each Defendant knew or should have known such evidence was false,  
4 and the Defendants engaged in such conduct with deliberate indifference to and/or  
5 reckless disregard for the truth and for Plaintiff's rights secured by the United  
6 States Constitution and Amendments thereto.

7 213. The constitutional source against using false evidence is primarily the  
8 due process clause of the Fifth and Fourteenth Amendments, and Plaintiff's due  
9 process rights were violated by the conduct alleged herein. Plaintiff brings this  
10 claim as both a procedural and a substantive due process violation. To the extent  
11 that any court were to conclude that the source of Plaintiff's right to not have false  
12 evidence used against him is any constitutional source other than due process (such  
13 as the Fourth Amendment), this claim is brought on those bases as well.

14 **SECOND CLAIM FOR RELIEF**

15 **42 U.S.C. § 1983 – JOINT ACTION CONSPIRACY**

16 **(Against Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James  
17 Dibdin, Robert Carbone and Does 1-10)**

18 214. Plaintiff realleges all the foregoing and any subsequent paragraphs  
19 contained in the Complaint, as if fully set forth herein.

20 215. Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James  
21 Dibdin, Robert Carbone and Does 1 - 10 were each jointly and severally  
22 responsible for ensuring they, and each of them, did not use false evidence against  
23 Plaintiff, and each engaged in the unconstitutional conduct alleged herein, and  
24 failed to prevent it, which each had a responsibility to do, and each ratified,  
25 approved or acquiesced in it.

26 216. Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James  
27 Dibdin, Robert Carbone and Does 1 - 10, acting under color of state law, conspired  
28 and agreed to deprive Plaintiff of his rights under the Fifth and Fourteenth

1 Amendments to the United States Constitution against the creation and submission  
2 of false evidence, outside of live testimony which would result in a deprivation of  
3 liberty, because the provision of such false evidence would set in motion a  
4 reasonably foreseeable chain of events leading to the presentation of false evidence  
5 at Plaintiff's criminal trial. Each creation or submission of false evidence and  
6 information, as well as any act related to such creation or submission of such  
7 information, constitutes an overt act in furtherance of said conspiracy.

8 217. Alternatively, as joint actors with joint obligations, each of them was  
9 and is responsible for the failures and omissions of the other, in failing to refrain  
10 from creating or submitting false evidence.

11 218. As a result of the individual Defendants', and each of their, violations  
12 of Plaintiff's constitutional right against the creation or submission of false  
13 evidence, Plaintiff was damaged as alleged herein.

14 **THIRD CLAIM FOR RELIEF**  
15 **42 U.S.C. § 1983 BRADY VIOLATIONS**

16 **(Against Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James  
17 Dibdin and Does 1-10)**

18 219. Plaintiff realleges all the foregoing and any subsequent paragraphs  
19 contained in the Complaint, as if fully set forth herein.

20 220. Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James  
21 Dibdin, and Does 1 - 10, while acting under color of law, and deliberately or with  
22 reckless disregard for, or deliberate indifference to, the truth or Mr. Benavides'  
23 rights, deprived Plaintiff of his civil right to have material exculpatory evidence  
24 and information turned over to prosecutors, for disclosure to defense and use in his  
25 criminal trial, as required by *Brady v. Maryland*, 373 U.S. 83 (1963).

26 221. The actions of each defendant against whom this claim is made, in  
27 withholding evidence from prosecutors, and from defense counsel, were done with  
28 deliberate indifference to or reckless disregard for, Plaintiff's rights under the Fifth

1 and Fourteenth Amendments to the United States Constitution and were in  
2 violation of 42 U.S.C. § 1983. Plaintiff brings this claim as both a procedural and  
3 substantive due process violation. To the extent that any court were to conclude  
4 that the source of Plaintiff's right to *Brady* information is any constitutional source  
5 other than due process (such as the Fourth Amendment), this claim is brought on  
6 those bases as well.

7 222. The acts violative of the mandate of *Brady v. Maryland*, 373 U.S. 83  
8 (1963), include, but were not limited to:

9 a. Nondisclosure of communications between the Kern County  
10 District Attorney's Office, Delano Police Department, Kern County Child  
11 Protective Services, and the juvenile court, demonstrating that these  
12 agencies conspired to and coordinated efforts in ensuring that Cristina  
13 Medina was removed from and remained out of the custody of Ms. Medina,  
14 her mother, until Ms. Medina and Cristina Medina manifested an intent to,  
15 and did, falsely communicate to law enforcement and/or testify to, a belief  
16 in the guilt of Plaintiff;

17 b. Nondisclosure of documentation of one or more sex abuse  
18 examinations of Cristina Medina, conducted by Dr. Jess Diamond, which  
19 indicated that Cristina had suffered no prior sexual abuse;

20 c. Nondisclosure of Criminalist Jeanne Spencer's reports  
21 indicating findings of dirt, debris, and plant fibers on the person of  
22 Consuelo Verdugo, and at the scene, which was consistent with the defense  
23 theory of her manner and cause of death, and inconsistent with that of the  
24 prosecution;

25 d. Nondisclosure of the substance of interviews with Consuelo  
26 Verdugo's prior caretakers relating to Consuelo Verdugo's prior history of  
27 health problems, which was inconsistent with the prosecution's theory and  
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1 trial argument that Consuelo Verdugo's injuries were ahistorical and the  
2 culmination of violent behavior visited upon her by Plaintiff over a period  
3 of time;

4 e. Nondisclosure of exculpatory character evidence statements  
5 from interviews conducted by one or more Defendants;

6 f. Nondisclosure of reports relating to the harassment and  
7 intimidation of healthcare providers at UCLA Medical Center by  
8 Defendants Carbone and Lopez which were of impeachment value to the  
9 defense in challenging the testimony of the medical providers;

10 g. Nondisclosure of medical records, information, and imaging,  
11 including at least three (3) Computerized Tomography scans of Consuelo  
12 Verdugo which were of exculpatory value;

13 h. Nondisclosure of interviews with Ann Taite, Richard  
14 Harrison, and Warren Lovell, which generated exculpatory information and  
15 evidence;

16 i. Nondisclosure of evidence or information tending to show the  
17 lack of presence of any semen on the person of Consuelo Verdugo, by  
18 performance of a rape kit, which was prepared customarily by Kern County  
19 employees or agents following suspected child abuse;

20 j. Nondisclosure of statements of Ms. Medina, Cristina Medina,  
21 Diana Alejandro, and other members of their family, which produced  
22 exculpatory information relating to the presence or non-presence of blood  
23 in Cristina's underwear at some point in time, the real reason for Plaintiff's  
24 return to the United States from Mexico, and impeachment information  
25 relating to the preparation of Cristina for testimony at trial;

26 k. Nondisclosure of true findings of Defendant James Dibdin's  
27 autopsy examination of Consuelo Verdugo.  
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1 223. Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James  
2 Dibdin, and Does 1 - 10, were each jointly and severally responsible for providing  
3 material exculpatory information to the prosecutors, in order that it could be  
4 provided to defense counsel. Each responsible Defendant knew or should have  
5 known of the materiality and exculpatory nature of the evidence or information  
6 withheld, and the unconstitutional nature of such withholding of said information,  
7 and with knowledge, failed to prevent such withholding of evidence or  
8 information, which each had a responsibility to do, and each ratified, approved or  
9 acquiesced in it.

10 224. As result of the individual Defendants', and each of their, violations of  
11 Plaintiff's constitutional right to disclosure of known material, exculpatory  
12 evidence or information, Plaintiff was damaged as alleged herein.

13 **FOURTH CLAIM FOR RELIEF**

14 **42 U.S.C. § 1983 – RECKLESS INVESTIGATION IN VIOLATION OF MR.  
15 BENAVIDES' DUE PROCESS RIGHT TO A FAIR TRIAL**

16 **(Against Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James  
17 Dibdin and Does 1-10)**

18 225. Plaintiff realleges all the foregoing and any subsequent paragraphs  
19 contained in the Complaint, as if fully set forth herein.

20 226. Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James  
21 Dibdin, and Does 1 - 10, were jointly and severally responsible as investigative law  
22 enforcement actors assigned to Plaintiff's criminal investigation, to share material  
23 case information with each other, and to ensure that material, exculpatory evidence  
24 and information was turned over to prosecutors handling the criminal investigation  
25 and prosecution.

26 227. Defendants Gregg Bresson, Ray Lopez, Al Valdez, Jeff Nacua, James  
27 Dibdin, and Does 1 - 10, acting under color of state law, conspired and agreed to  
28 deprive Plaintiff of his rights under the Fifth and Fourteenth Amendments to the

1 United States Constitution, to have material, exculpatory evidence and information  
2 of which they were aware, provided to prosecutors handling the criminal  
3 investigation and prosecution. Each failure to provide such material exculpatory  
4 evidence and information, as well as any act related to such withholding or  
5 suppression of such information, constitutes an overt act in furtherance of said  
6 conspiracy.

7 228. Alternatively, as joint actors with joint obligations, each of them was  
8 and is responsible for the failures and omissions of the other, in failing to provide  
9 and/or willfully suppressing the discovery and provision of material exculpatory  
10 evidence and information, to prosecutors.

11 229. As a result of the individual Defendants', and each of their, violations  
12 of Plaintiff's constitutional right to disclosure of known material, exculpatory  
13 evidence or information, Plaintiff was damaged as alleged herein.

14 **FIFTH CLAIM FOR RELIEF**

15 **42 U.S.C. § 1983 - *MONELL* VIOLATIONS - INCLUDING**  
16 **POLICY/CUSTOM ARISING FROM DEFENDANT KERN COUNTY'S**  
17 **POLICY AND CUSTOM OF FAILURE TO PRESERVE AND DISCLOSE**  
18 **EXCULPATORY EVIDENCE, FABRICATION OF EVIDENCE,**  
19 **RECKLESS INVESTIGATION, AND FAILURE TO TRAIN AND**  
20 **SUPERVISE REGARDING THE TRUTHFULNESS, INTEGRITY,**  
21 **PRESERVATION, RELIABILITY AND DISCLOSURE OF EVIDENCE,**  
22 **PARTICULARLY IN THE CONTEXT OF CHILD MOLESTATION**  
23 **INVESTIGATIONS.**

24 **(Against Defendant Kern County)**

25 230. Plaintiff realleges all the foregoing and any subsequent paragraphs  
26 contained in the Complaint, as if fully set forth herein.

27 231. Plaintiff is informed and believes and thereon alleges that, during all or  
28 portions of the period relevant to this case (the 1980's to at least the mid-1990's),  
and specifically including but not limited to the years 1991-93 (investigation and  
trial), Defendant Kern County, by and through the Kern County District Attorney's

1 Office, with deliberate indifference, and conscious and reckless disregard to the  
2 safety, security and constitutional and statutory rights of criminal suspects and  
3 defendants, including Plaintiff, had a) no established or clear administrative system  
4 in place, b) no stated, written or adequate policies, and c) no or inadequate training  
5 and supervision regarding, inter alia, the following issues:

6 a. ensuring that the law enforcement agencies, their  
7 officers, detectives or investigators, including the District Attorney's  
8 own investigators (hereafter collectively referred to as "investigating  
9 agents"), with which the District Attorney's Office was working  
10 provided all exculpatory evidence gathered during an investigation  
11 of a case presented to the District Attorney's Office and/or individual  
12 prosecutors for prosecution, as numerous cases over the years made  
13 clear was its obligation;

14 b. ensuring that the investigative agents with which the  
15 District Attorney's Office was working provided full investigative  
16 material and that that material is actually reviewed by an appropriate  
17 Deputy DA for the purpose of ensuring that false or unreliable  
18 evidence was not used and that exculpatory evidence was disclosed  
19 to the defense;

20 c. ensuring that exculpatory evidence was not buried in  
21 files provided to the trial attorney handling the case by the  
22 investigative agents with which the District Attorney's Office was  
23 working, and/or by members of its Office;

24 d. ensuring that information in related court cases relevant  
25 to a case being prosecuted was provided by the investigative agents  
26 with which the District Attorney's Office was working to the trial  
27 attorney prosecuting that case and/or was disclosed to the defense;

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e. ensuring that exculpatory information in related court cases relevant to a case being prosecuted was provided to the trial attorney prosecuting that case by the investigative agents with which the District Attorney’s Office was working and/or was disclosed to the defense;

f. ensuring that the investigative agents with which the District Attorney’s Office was working provided to the trial attorney prosecuting that case full and complete reports of the identification procedures and activities involved, including any conduct that might have tainted the identification, and/or that such information was disclosed to the defense;

g. ensuring that the investigative agents with which the District Attorney’s Office was working provided to the trial attorney prosecuting that case full and complete reports of any benefits (including but not limited to benefits in the form of monetary or other pecuniary benefits and leniency in other charges) provided to any witness, and/or that such information was disclosed to the defense;

h. ensuring that any benefits or monies paid to or for the benefit of witnesses was both known to the relevant people in the District Attorney’s Office, including the attorney assigned to try the case, and/or disclosed to the defense;

i. ensuring that false evidence was not being presented or relied upon by Deputy District Attorneys in prosecuting cases;

j. ensuring that the key investigative reports and other key case documents provided full and complete descriptions of witness

1 interactions and called attention to any irregularities, deviations from  
2 policy or evidence favorable to the defense;

3 k. ensuring that exculpatory evidence learned or  
4 discovered after trial and conviction (including between trial and  
5 sentencing and after sentencing) was disclosed to defendants and  
6 their counsel;

7 l. Ensuring that the investigative agents handling  
8 specialized investigations, particularly the investigative agents  
9 handling child molestation and child sex abuse cases, were  
10 adequately trained, including proper interview methods and  
11 techniques that would avoid leading, suggestive, improper  
12 questioning of witnesses in general and children in particular, and  
13 training in the need to identify independent corroborating evidence;

14 m. ensuring that exculpatory information known to Deputy  
15 District Attorneys would be identified, organized and maintained for  
16 production to the California Attorney General's Office for litigation  
17 in subsequent post-trial habeas and appellate proceedings;

18 n. establishing procedures or systems to track or identify  
19 known false witness statements or other known facts that would  
20 make them unsuitable as witnesses in other cases or would be  
21 exculpatory evidence undermining their credibility if they were used  
22 as witnesses;

23 o. failing to counsel or discipline personnel involved in  
24 dishonesty, particularly in enabling, encouraging, condoning or  
25 presenting false evidence that was known or should have been  
26 known to be false or that was utilized with a reckless disregard for,  
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1 or deliberate indifference towards, the truth and the rights of the  
2 accused;

3 p. establishing procedures so all exculpatory/impeachment  
4 evidence discovered by the investigative agents or the District  
5 Attorney after the preliminary hearing stage is provided to the  
6 defense;

7 q. establishing procedures so all exculpatory/impeachment  
8 evidence discovered by the investigative agents or the District  
9 Attorney after a conviction is provided to the defense.

10 232. Defendant County of Kern, by and through the Kern County District  
11 Attorney's Office, had the habit, custom, pattern and practice, during all or parts of  
12 the relevant time period (the 1980's to at least the mid-1990's, and specifically  
13 1991-93) of:

14 a. In child molestation cases, encouraging and condoning  
15 the use of abusive investigative techniques and false evidence, and  
16 routinely using and relying on false evidence and suggestive police  
17 and social worker interrogations of children and others involved in  
18 their investigations they knew or should have known were yielding,  
19 or were likely to yield, false evidence;

20 b. Condoning and encouraging the use of false,  
21 manufactured and unreliable evidence;

22 c. failing to disclose exculpatory evidence;

23 d. burying exculpatory material in obscure places in a file  
24 where it was unlikely that, even if the documents were disclosed to  
25 the prosecution or the defense, they would be missed;



1 e. not including exculpatory evidence in the key case  
2 reports and documents, in the hope and expectation that it would not  
3 be noticed or raised by the defense;

4 f. entering into benefits agreements with witnesses  
5 without disclosing them to the defense;

6 g. failing to adequately train and supervise the  
7 investigative agents handling specialized investigations, particularly  
8 the investigative agents handling child molestation and child sex  
9 abuse cases, were adequately trained, including proper interview  
10 methods and techniques that would avoid leading, suggestive,  
11 improper questioning of witnesses in general and children in  
12 particular, and training in the need to identify independent  
13 corroborating evidence.

14 233. The customs, policies, practices, failures, actions and inactions of the  
15 Kern County District Attorney's Office elaborated above were or should have been  
16 known to the policy makers responsible for the Kern County District Attorney's  
17 Office and occurred with deliberate indifference to either the recurring  
18 constitutional violations elaborated above, and/or to the strong likelihood that  
19 constitutional rights would be violated as a result of failing to adopt and implement  
20 systems, policies, training, supervision or discipline in areas where the need for  
21 such things to occur was obvious. Given the long and recurring history elaborated  
22 above, the Kern County District Attorney's Office and its policy makers were on  
23 notice of these deficiencies and failures.

24 234. One or more of the customs, policies, practices, failures, actions and  
25 inactions of the Kern County District Attorney's Office elaborated above were so  
26 closely related to the deprivation of the Plaintiff's rights as to be a moving force  
27 that caused the constitutional violations alleged herein.

1 235. As a direct and proximate result of Defendant Kern County's acts and  
2 omissions, condoning, encouraging, ratifying and deliberately ignoring the pattern  
3 and practice of district attorney's acts and omissions alleged above, Plaintiff  
4 sustained injury and damage to be proved at trial.

5 236. As a result of Defendants', and each of their, violations of Plaintiff's  
6 constitutional rights as set forth herein, Plaintiff was damaged as alleged above.

7 237. Kern County did not require investigative agents in general, and those  
8 assigned to child molestation cases in particular, to attend specialized training in  
9 which they would be trained in appropriate investigatory techniques and  
10 compliance with constitutional requirements in such investigations.

11 238. Defendant Kern County caused the events which injured Plaintiff as a  
12 result of their lack of formal policies or directives describing and requiring  
13 compliance with Plaintiff's constitutional right to the disclosure of material  
14 exculpatory information and evidence, and his rights against the creation and  
15 presentation of false evidence. Likewise, Kern County had no mandatory training  
16 describing and requiring compliance with Plaintiff's constitutional right to the  
17 disclosure of material exculpatory information and evidence, and his rights against  
18 the creation and presentation of false evidence. Additionally, Kern County had no  
19 mandatory training addressing witness interviews in felony investigations in  
20 general and child molestation investigations in particular, including training  
21 addressing interviews techniques known to produce false evidence and  
22 requirements for memorializing and disclosing witness interview statements to  
23 ensure preservation of potentially material exculpatory information and  
24 evidence. The need for such training was obvious, as failure to train on these  
25 significant components of law enforcements responsibilities, which implicated and  
26 would ensure compliance with the constitutional rights of Plaintiff and others,  
27 carried the "highly predictable" consequence of due process violations. Beyond  
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1 lack of training, Kern County had no supervisory mechanism to ensure that  
2 investigating agents memorialized and relayed all potentially material exculpatory  
3 information and evidence to the District Attorney's Office, or that Deputy District  
4 Attorneys disclosed such evidence, or that there were any measures, including  
5 counseling or discipline, taken against District Attorney personnel who violated the  
6 rights of the accused entitled to the disclosure of exculpatory evidence and  
7 evidence that was known to be, or should have been known to be, false.

8 239. Defendant County of Kern, by and through the Kern County District  
9 Attorney's Office and Robert Carbone, had the habit, custom, pattern and practice,  
10 through the ongoing activities of Defendants Gregg Bresson and Ray Lopez,  
11 during the many years of their employment as Investigators for the District  
12 Attorney's Office, of:

- 13 a. Improperly influencing witness statements, including autopsy  
14 and forensic reports;
- 15 b. Fabricating evidence through the manipulation of witnesses to  
16 alter their "recollections" to fit "the prosecution's" theory of criminal  
17 liability; and
- 18 c. Failing to disclose potentially material exculpatory  
19 information and evidence.

20 240. During the many years of Defendants Gregg Bresson and Ray Lopez's  
21 employment as Investigators for the District Attorney's Office, Defendant County  
22 of Kern knew or should have known of Defendants Gregg Bresson and Ray  
23 Lopez's customs, and patterns of practice, as described above, and failed to address  
24 or prevent it.

25 241. The foregoing actions, omission and inactions of the County of Kern  
26 are known or should have been known to the policy makers responsible for  
27 ensuring the constitutional rights of citizens are upheld, and occurred with  
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1 deliberate indifference to either recurring constitutional violations elaborated  
2 above, and/or to the strong likelihood that constitutional rights would be violated  
3 as a result of failing to train, supervise or discipline in areas where the need for  
4 such training and supervision was obvious.

5 242. In particular, the then District Attorney, Ed Jagels, who was the policy  
6 maker for the Kern County District Attorney's Office and for the County of Kern  
7 on matters related to the District Attorney's Office, ratified, condoned, encouraged,  
8 approved and/or directed the foregoing unconstitutional policies and practices

9 243. As a direct and proximate result of the County of Kern's acts and  
10 omission, condoning, encouraging, ratifying, and deliberately ignoring  
11 unconstitutional patterns and practices of Defendants Gregg Bresson and Ray  
12 Lopez, Plaintiff sustained injury and damages as alleged herein.

13 **SIXTH CLAIM FOR RELIEF**

14 **42 U.S.C. § 1983 - *MONELL* VIOLATIONS - INCLUDING**  
15 **POLICY/CUSTOM ARISING FROM DEFENDANT CITY OF DELANO'S**  
16 **POLICY AND CUSTOM OF FAILURE TO PRESERVE AND DISCLOSE**  
17 **EXCULPATORY EVIDENCE, FABRICATION OF EVIDENCE,**  
18 **RECKLESS INVESTIGATION, AND FAILURE TO TRAIN AND**  
19 **SUPERVISE REGARDING THE TRUTHFULNESS, INTEGRITY,**  
20 **PRESERVATION, RELIABILITY AND DISCLOSURE OF EVIDENCE,**  
21 **PARTICULARLY IN THE CONTEXT OF CHILD MOLESTATION**  
22 **INVESTIGATIONS**

23 **(Against Defendant City of Delano)**

24 244. Plaintiff realleges all the foregoing and any subsequent paragraphs  
25 contained in the Complaint, as if fully set forth herein.

26 245. Defendant City of Delano, with deliberate indifference and/or  
27 conscious or reckless or grossly negligent disregard for the safety, security and  
28 constitutional and statutory rights of Plaintiff, and others accused of crimes,  
including their rights to due process of law under the Fourteenth Amendment to the  
United States Constitution, created, installed, maintained, enforced, tolerated,

1 ratified, permitted, acquiesced in, and/or applied the policies, practices and  
2 customs, actions, inactions and omissions regarding preservation of potentially  
3 material exculpatory evidence in child molestation investigations, failure to  
4 disclose potentially material exculpatory information and evidence, coercive  
5 interview techniques, and the creation and presentation of fabricated evidence that  
6 was deliberately, recklessly or deliberately indifferently created.

7 246. Plaintiff is informed and believes and thereon alleges that, during all or  
8 portions of the period relevant to this case (the 1980's to at least the mid-1990's),  
9 and specifically including but not limited to the years 1991-93 (investigation and  
10 trial), Defendant City of Delano, by and through the Delano Police Department,  
11 with deliberate indifference, and conscious and reckless disregard to the safety,  
12 security and constitutional and statutory rights of criminal suspects and defendants,  
13 including Plaintiff, had a) no established or clear administrative system in place, b)  
14 no stated, written or adequate policies, and c) no or inadequate training and  
15 supervision regarding, inter alia, the following issues:

16 a. a basic and standardized *Brady* policy that outlines and identifies  
17 the *Brady* obligations of officers;

18 b. ensuring that all exculpatory evidence was prominently  
19 communicated in a manner likely to ensure that it would be seen and  
20 understood by both the prosecution and defense;

21 c. ensuring that its police officers provided their full investigative  
22 material in a case submitted to the District Attorney's Office, including but  
23 not limited to any investigative materials or notes;

24 d. ensuring that all exculpatory evidence was referenced in the key  
25 case reports and documents, especially those summarizing the evidence;

26 e. ensuring that officers who hear false testimony call that fact to  
27 the attention of the prosecutor;

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1 f. ensuring that officers did not pressure, or use abusive  
2 investigative techniques, to induce witnesses to provide the testimony they  
3 consider helpful to their case;

4 g. ensuring that officers regularly memorialize false witness  
5 statements, false reports, and that the Delano Police Department maintains a  
6 system where such false statements are made known and available to the  
7 detectives and the prosecutors in any case where that person who previously  
8 made a false statement is a witness in a subsequent investigation or  
9 prosecution;

10 h. ensuring that the interactions between a witness and a detective  
11 are fully and completely provided in a prominent written report;

12 i. ensuring that police personnel, whether through inadvertence or  
13 design, did not provide information to potential witnesses that influenced  
14 their testimony;

15 j. preventing false evidence by omission of material information;

16 k. preventing the use of misleading descriptions of events that  
17 provide a false impression;

18 l. establishing procedures to ensure that any benefits or monies  
19 paid to or for the benefit of witnesses were treated as exculpatory evidence  
20 and forwarded prominently to the District Attorney's Office and the trial  
21 Deputy District Attorney;

22 m. ensuring detectives' compliance with constitutional standards  
23 regarding false evidence and *Brady*;

24 n. ensuring that the investigative agents handling specialized  
25 investigations, particularly the investigative agents handling child  
26 molestation and child sex abuse cases, were adequately trained and  
27 supervised, including proper interview methods and techniques that would  
28

1 avoid leading, suggestive, improper questioning of witnesses in general and  
2 children in particular, and training in the need to identify independent  
3 corroborating evidence;

4 o. establishing procedures to ensure that any evidence pertinent to  
5 habeas claims contained in its files are discovered and produced to the  
6 District Attorney's Office, the petitioner and the Court;

7 p. adequately investigating incidents involving the fabrication of  
8 evidence, wrongful influence of witnesses, suppression or burying of  
9 exculpatory information or other misconduct by its deputies, or complaints  
10 of such conduct;

11 q. conducting investigations in such a manner as to conceal the  
12 misconduct of its officers;

13 r. condoning and encouraging the fabrication of evidence,  
14 including but not limited to the presentation of materially false investigative  
15 reports

16 247. Defendant City of Delano, by and through the Delano Police  
17 Department, had the habit, custom, pattern and practice, during all or parts of the  
18 relevant time period (the 1980's to at least the mid-1990's, and specifically 1991-  
19 93) of:

20 a. In child molestation cases, encouraging and condoning the use of  
21 abusive investigative techniques and false evidence, and routinely using and  
22 relying on false evidence and suggestive police and social worker  
23 interrogations of children and others involved in their investigations they  
24 knew or should have known were yielding, or were likely to yield, false  
25 evidence;

26 b. condoning and encouraging the use of false, manufactured and  
27 unreliable evidence;

28



1 c. failing to disclose exculpatory evidence;

2 d. burying exculpatory material in obscure places in a file where it  
3 was unlikely that, even if the documents were disclosed to the prosecution or  
4 the defense, they would be missed;

5 e. not including exculpatory evidence in the key case reports and  
6 documents, in the hope and expectation that it would not be noticed or raised  
7 by the defense;

8 f. entering into benefits agreements with witnesses without  
9 disclosing them to the defense.

10 248. The customs, policies, practices, failures, actions and inactions of the  
11 Delano Police Department elaborated above were or should have been known to  
12 the policy makers responsible for the Delano Police Department and occurred with  
13 deliberate indifference to either the recurring constitutional violations elaborated  
14 above, and/or to the strong likelihood that constitutional rights would be violated  
15 as a result of failing to adopt and implement systems, policies, training, supervision  
16 or discipline in areas where the need for such things to occur was obvious. Given  
17 the long and recurring history elaborated above, the Delano Police Department and  
18 its policy makers were on notice of these deficiencies and failures.

19 249. As a direct and proximate result of Defendant City of Delano's acts and  
20 omissions, condoning, encouraging, ratifying and deliberately ignoring the pattern  
21 and practice of Delano Police Department's acts and omissions alleged above,  
22 Plaintiff sustained injury and damage to be proved at trial.

23 250. As a result of Defendants', and each of their, violations of Plaintiff's  
24 constitutional rights as set forth herein, Plaintiff was damaged as alleged above.

25 251. Defendant City of Delano did not require investigating officers and  
26 detectives in general, and those assigned to child molestation cases in particular, to  
27 attend specialized training for detectives in which they would be trained in  
28

1 appropriate investigatory techniques and compliance with constitutional  
2 requirements in homicide investigations.

3         252. Defendant City of Delano caused the events which injured Plaintiff as  
4 a result of their lack of formal policies or directives describing and requiring  
5 compliance with Plaintiff's constitutional right to the disclosure of material  
6 exculpatory information and evidence, and his rights against the creation and  
7 presentation of false evidence. Likewise, City of Delano had no mandatory  
8 training describing and requiring compliance with Plaintiff's constitutional right to  
9 the disclosure of material exculpatory information and evidence, and his rights  
10 against the creation and presentation of false evidence. Additionally, City of  
11 Delano had no mandatory training addressing witness interviews in investigations  
12 in general and child molestation investigations in particular, including training  
13 addressing interview techniques known to produce false evidence and requirements  
14 for memorializing and disclosing witness interview statements to ensure  
15 preservation of potentially material exculpatory information and evidence. The  
16 need for such training was obvious, as failure to train on these significant  
17 components of law enforcements' responsibilities, which implicated and would  
18 ensure compliance with the constitutional rights of Plaintiff and others, carried the  
19 "highly predictable" consequence of due process violations. Beyond lack of  
20 training, the City of Delano had no supervisory mechanism to ensure that officers  
21 memorialized and relayed all potentially material exculpatory information and  
22 evidence to the District Attorney's office.

23         253. One or more of these policies, customs, practices, failures and/or  
24 omissions caused the deprivation of Plaintiff's rights by the City of Delano; that is,  
25 one or more of them was so closely related to the deprivation of Plaintiff's rights as  
26 to be a moving force that played a part in causing the ultimate injury.

1           254. Defendant City of Delano, by and through the City of Delano Police  
2 Department, had the habit, custom, pattern and practice, through the ongoing  
3 activities of Defendants Jeff Nacua and Al Valdez, during the many years of their  
4 employment, of:

5           a. Improperly influencing witness statements, including autopsy  
6 and forensic or medical reports;

7           b. Fabricating evidence through the manipulation of witnesses to  
8 alter their “recollections” to fit “the prosecution’s” theory of criminal  
9 liability; and

10           c. Failing to disclose potentially material exculpatory  
11 information and evidence.

12           255. Defendant City of Delano, by and through the City of Delano Police  
13 Department, acted with reckless indifference, and conscious and reckless disregard  
14 for the safety, security and constitutional and statutory rights of criminal suspects  
15 and criminal defendants, including Plaintiff, and had no established or clear policy,  
16 and did not provide adequate training and supervision, and/or otherwise failed to  
17 carry out their responsibilities regarding the following issues:

18           a. Failing to properly screen candidates for hire as police officers  
19 and failing to properly train and supervise them once hired;

20           b. Failing to implement policies or procedures for taking  
21 remedial action once aware that officers had or would engage in improper  
22 conduct, including manipulating, altering, influencing, or fabricating  
23 evidence, or failing to disclose or relay potentially material exculpatory  
24 evidence;

25           c. Ensuring that there was adequate, independent review and  
26 supervision of investigations.

1 256. During the many years of Defendants Jeff Nacua and Al Valdez's,  
2 employment as a police officers and/or detectives, Defendant City of Delano, by  
3 and through the City of Delano Police Department, knew or should have known of  
4 Defendants Jeff Nacua and Al Valdez's customs, and patterns of practice, as  
5 described above, and failed to address or prevent it.

6 257. The foregoing actions, omission and inactions of the City of Delano  
7 are known or should have been known to the policy makers responsible for  
8 ensuring the constitutional rights of citizens are upheld, and occurred with  
9 deliberate indifference to either recurring constitutional violations elaborated  
10 above, and/or to the strong likelihood that constitutional rights would be violated  
11 as a result of failing to train, supervise or discipline in areas where the need for  
12 such training and supervision was obvious.

13 258. The actions of the City of Delano as set forth herein were a moving  
14 force behind the violations of Plaintiff's constitutional rights as alleged and  
15 described in this complaint.

16 259. As a direct and proximate result of the City of Delano's acts and  
17 omission, condoning, encouraging, ratifying, and deliberately ignoring  
18 unconstitutional patterns and practices, Plaintiff sustained injury and damages as  
19 alleged herein.

20 **SEVENTH CAUSE OF ACTION**  
21 **CLAIM UNDER CALIFORNIA CODE § 815.2 FOR NEGLIGENT HIRING,**  
22 **SUPERVISION, PROMOTION, RETENTION, AND TRAINING**  
23 **(Against Defendants Kern County and Does 1-10)**

24 260. Plaintiff realleges all the foregoing and any subsequent paragraphs  
25 contained in the Complaint, as if fully set forth herein.

26 261. Kern County and its employees and agents acted recklessly, grossly  
27 negligently, and/or negligently in hiring, retaining, and promoting Defendants  
28

1 Gregg Bresson, Ray Lopez, James Dibdin and Robert Carbone, and/or others,  
2 including Does 1 through 10, and failing to train, supervise, and discipline them.

3 262. Plaintiff's conviction, sentencing, and wrongful imprisonment were the  
4 direct result of Kern County's practices and procedures and the result of Kern  
5 County's reckless or negligent hiring, retaining, promoting, and failing to train and  
6 supervise Defendants Gregg Bresson, Ray Lopez, James Dibdin and Robert  
7 Carbone, and/or others, including Does 1 through 10. These errors and omissions  
8 were the actual and proximate cause of Plaintiff's injuries and damages.

9 263. In engaging in the foregoing negligent hiring, supervision, promotion,  
10 retention and training, the Defendants named in this cause of action were not  
11 engaged in investigative or prosecutorial conduct.

12 264. As a direct and proximate result of Defendant Kern County's hiring,  
13 retaining, promoting, and failing to train and supervise incompetent and unfit  
14 employees, Plaintiff sustained injuries and damage as alleged herein.

15 **EIGHTH CLAIM FOR RELIEF**  
16 **NEGLIGENCE**

17 **(Against Defendants Kern County, Defendants Lopez, Bresson, Dibdin,**  
18 **Carbone and Does 1 - 10)**

19 265. Plaintiff realleges all the foregoing and any subsequent paragraphs  
20 contained in the Complaint, as if fully set forth herein.

21 266. Defendants had an obligation to exercise reasonable and due care in  
22 engaging in the activities described previously.

23 267. Through its policies, practices, and procedures and failure to supervise  
24 and discipline its employees and agents during the investigation, and its failure to  
25 oversee the investigation to ensure Plaintiff was protected from foreseeable harm,  
26 County of Kern violated its legal duty to Plaintiff.

27 268. Defendants breached their duty of care to Plaintiff through the conduct  
28 of Kern County employees and agents, including Defendants Gregg Bresson, Ray

1 Lopez, James Dibdin, Robert Carbone, and/or others, including Does 1 through 10,  
2 which actually and proximately caused Plaintiff's injuries and damages as alleged  
3 herein.

4 269. As a direct and proximate result of Defendant Kern County's  
5 negligence as described above, Plaintiff sustained injuries and damage as alleged  
6 herein.

7 **NINTH CLAIM FOR RELIEF**  
8 **CLAIM UNDER CALIFORNIA CIVIL CODE § 52.1**  
9 **(Against Defendants Gregg Bresson, Ray Lopez, James Dibdin, and Does 1-**  
10 **10)**

11 270. Plaintiff realleges all the foregoing and any subsequent paragraphs  
12 contained in the complaint, as if fully set forth herein.

13 271. Defendants interfered or attempted to interfere with Mr. Benavides'  
14 rights secured by the United States and California constitution and laws, including  
15 through the use of threats, intimidation, or coercion.

16 272. As a direct and proximate cause of Defendants' recurring failure to  
17 come forward with exonerating evidence in their possession, Mr. Benavides  
18 suffered exposure to prison conditions and avoidable physical, mental, and  
19 pecuniary injuries, for which the individual Defendants are liable.

20 273. As a direct and proximate cause of the aforementioned acts of  
21 Defendants, Plaintiff was injured as set forth above and is entitled to statutory  
22 damages under California Civil Code §52, as well as compensatory damages and  
23 attorney's fees.

24 **TENTH CLAIM FOR RELIEF**  
25 **CALIFORNIA GOVERNMENT CODE § 835.4 ARTICLE 2 CLAIM**  
26 **(Against Defendants Kern County and Does 1 – 10)**

27 274. Plaintiff realleges all the foregoing and any subsequent paragraphs  
28 contained in the Complaint, as if fully set forth herein.





1 DATED: April 29, 2019

Respectfully submitted,

2 KAYE, McLANE, BEDNARSKI &  
3 LITT, LLP  
4 BARRETT S. LITT  
5 RONALD O. KAYE

6 ZAVALA LAW GROUP, P.C.  
7 SALOMON ZAVALA

8 LAW OFFICE OF DO KIM APLC,  
9 DO KIM

10 By: /s/ Barrett S. Litt  
11 Attorneys for Plaintiff  
12 VICENTE BENAVIDES FIGUEROA

13 **JURY DEMAND**

14 Trial by jury of all issues is demanded.

15 DATED: April 29, 2019

Respectfully submitted,

16 KAYE, McLANE, BEDNARSKI &  
17 LITT, LLP  
18 BARRETT S. LITT  
19 RONALD O. KAYE

20 ZAVALA LAW GROUP, P.C.  
21 SALOMON ZAVALA

22 LAW OFFICE OF DO KIM APLC  
23 DO KIM

24 By: /s/ Barrett S. Litt  
25 Attorneys for Plaintiff  
26 VICENTE BENAVIDES FIGUEROA  
27