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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JANE DOROTIK,

Plaintiff,

vs.

COUNTY OF SAN DIEGO, RICHARD EMPSON, JAMES BLACKMON, JANET RYZDYNSKI, BILL DONOHUE, CHARLES MERRITT, CONNIE MILTON, RON BARRY, AND DOES 1-10, INCLUSIVE,

Defendants.

Case No.: 23-CV-1045-CAB-DDL

FIRST AMENDED COMPLAINT FOR DAMAGES:

1) DEPRIVATION OF CIVIL RIGHTS BY INDIVIDUAL DEFENDANTS (42 U.S.C. § 1983)
2) DEPRIVATION OF CIVIL RIGHTS BY ENTITY DEFENDANT COUNTY OF SAN DIEGO (42 U.S.C. § 1983, *MONELL*)
3) DEPRIVATION OF CIVIL RIGHTS BY RON BARRY AND DOES 1-10 (42 U.S.C. § 1983, FAILURE TO SUPERVISE, TRAIN AND TAKE CORRECTIVE MEASURES CAUSING CONSTITUTIONAL VIOLATIONS)

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This civil rights action seeks compensatory and punitive damages from Defendants for causing Plaintiff to be deprived of rights, privileges, and immunities secured by the Constitution and laws of the United States and the State of California in relation to the wrongful investigation, arrest, prosecution, conviction, and incarceration of Plaintiff Jane Dorotik for a crime that she did not commit.

2. On the evening of February 13, 2000, Jane Dorotik reported her husband, Robert Dorotik, missing when he failed to return home from a Sunday afternoon jog. Through search and rescue efforts conducted by San Diego Sheriff's Department ("SDSD"), his body was discovered lying in a wooded area several miles from his home, attired in jogging clothes, early the following morning. SDSD immediately named Plaintiff as a suspect and investigated her, to the exclusion of all other leads and potential suspects, consciously disregarding numerous eyewitness accounts pointing to other perpetrators.

3. As a result, Plaintiff was arrested on February 17, 2000, less than 72 hours after her husband's body was found, with no eyewitness accounts implicating Plaintiff and before any forensic testing had been conducted. SDSD Detective Richard EMPSON testified under oath that he did not need to conduct a full investigation because he "knew" that Plaintiff killed her husband and that he ceased considering other possible suspects within two weeks of her arrest.

4. Plaintiff was charged and spent nearly two decades in prison before being released on a habeas petition. Her wrongful conviction was the result of police misconduct, set within a broader custom and practice within the San Diego Sheriff's Department ("SDSD"), the San Diego County Sheriff's Department Regional Crime Lab ("SDSDRCL"), and the San Diego District Attorney's Office ("SDDA") of deliberate indifference to the due process rights of individuals charged with crimes.

5. Before and after Plaintiff's arrest, SDSD sworn peace officers and

crime lab employees systematically suppressed and mischaracterized in police reports critical exculpatory evidence, including forensic evidence, that pointed to suspects other than Plaintiff and should have been turned over to Plaintiff and her defense counsel but was not. After Plaintiff's premature arrest, SDSD constructed its entire investigation around finding and fabricating evidence supporting Det. EMPSON's hunch that Plaintiff was guilty, including relying on the analyses of untrained, incompetent, and unqualified criminalists and evidence technicians, who—among other acts of malfeasance—mishandled and failed to document a chain of custody for critical blood evidence which was left unsealed and unsecured for weeks at a time, and selectively DNA tested only evidence that could support EMPSON's hunch while declining to DNA test fingernail clippings and the murder weapon (rope) that rendered exculpatory evidence years later when conducted during post-conviction proceedings. At Plaintiff's preliminary hearing in 2000 and trial in 2001, members of the SDDA, including Bonnie Howard-Regan and Kurt Mechals, elicited, and failed to correct false testimony, presented expert opinion testimony through witnesses who they knew and/or should have known were not qualified in the disciplines of their purported analyses, suppressed *Brady* material, and/or made improper arguments and misrepresented the evidence before the jury. The foregoing constitutional misconduct resulted in Plaintiff's wrongful conviction. Consequently, Plaintiff was wrongfully convicted and incarcerated for approximately 19 years and 7 months, and she remained in custody through ankle monitoring for an additional three months.

6. Plaintiff fought for years to prove her innocence. She repeatedly sought DNA testing on critical items of evidence, which was finally initiated in 2016 but was not concluded until years later due to malfeasance on the part of SDSDRCL, which conducted the testing in a manner designed to avoid obtaining exculpating evidence and misstated the findings, therefore requiring that the evidence be retested

by an independent forensic lab. The DNA testing ultimately revealed the presence of foreign DNA (i.e., DNA that could not have come from Plaintiff or her husband) under Robert Dorotik's fingernails, on the rope found wrapped around his neck, and on the clothing he was wearing when his body was found. In 2019, Plaintiff presented the DNA results and other substantial new exculpatory evidence in a petition for a writ of habeas corpus filed in San Diego County Superior Court.

7. On July 24, 2020, the SDDA conceded Plaintiff's conviction must be vacated in light of the post-conviction DNA test results, and because the SDDA had discovered voluminous *Brady* (exculpatory evidence) material, never provided to the defense, regarding SDSD crime lab employees who conducted forensic testing in Plaintiff's case and about whose competence and training crime lab supervisors had expressed serious and longstanding concerns. All that *Brady* material – which fundamentally undermined the evidentiary basis of the prosecution – was withheld from the prosecution and Plaintiff for nearly two decades.

8. In October 2020, DDA Kurt Mechals, who originally prosecuted Plaintiff in 2001 along with DDA Bonnie Howard-Regan, announced that the SDDA would re-prosecute Plaintiff for the murder of her husband based on the very same faulty evidence presented by the same incompetent and unqualified criminalists responsible for her wrongful conviction in 2001. DDA Mechals admitted that he had not read Plaintiff's petition for a writ of habeas corpus filed in 2019, which set forth substantial new evidence supporting her claim of innocence, prior to announcing his decision to re-try Plaintiff for the murder of her husband. Disregarding the new exculpatory DNA evidence entirely, the SDDA continued to suppress exculpatory and impeachment *Brady* evidence and subjected Plaintiff to another two years of criminal legal proceedings. Following a nearly year-long preliminary hearing and extensive pre-trial litigation, on May 16, 2022, the SDDA dismissed charges against Plaintiff, conceding they had insufficient evidence to

sustain a conviction beyond a reasonable doubt.

II. JURISDICTION AND VENUE

9. This action is brought by Plaintiff JANE DOROTIK ("Plaintiff" or "DOROTIK").

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1343 (civil rights jurisdiction), and 28 U.S.C. § 1367 (supplemental jurisdiction).

11. The acts and omissions complained of commenced in or around 2000 and continued through 2022 within the Southern District of California. Therefore, venue lies in this District pursuant to 28 U.S.C. § 1391.

12. With respect to the state law causes of action pled herein, Plaintiff timely filed administrative claims with the County of San Diego pursuant to California Government Code § 910. The County of San Diego denied Plaintiff's claim on February 14, 2023.

III. PARTIES

13. Plaintiff JANE DOROTIK ("Dorotik") is, and at all relevant times hereto was, a resident of the State of California.

14. Defendant COUNTY OF SAN DIEGO (hereinafter "COUNTY") is, and at all times relevant hereto was, a duly authorized public entity or political subdivision organized and existing under the laws of the State of California. The San Diego County District Attorney's Office (hereinafter "SDDA") is, and at all relevant times was, an agency or subdivision of Defendant COUNTY. The San Diego County Sheriff's Department (hereinafter "SDSD") is, and at all times was an agency or subdivision of Defendant COUNTY. The San Diego County Sheriff's Department Regional Crime Lab (hereinafter "SDSDRCL") is, and at all times was an agency or subdivision of Defendant COUNTY. The COUNTY, SDDA, SDSD and SDSDRCL are located within the State of California and within the jurisdiction

of the Southern District of California. At all relevant times, COUNTY, SDDA, SDSD and SDSDRCL possessed the power and authority to adopt policies and prescribe rules, regulations and practices affecting the operation of the SDDA, SDSD and SDSDRCL and the actions of employees of the SDDA, SDSD and SDSDRCL, including customs, policies and/or practices relating to police tactics, methods, investigations, arrests, evidence, and discovery; as well as to personnel supervision, performance evaluation, internal investigations, discipline, records maintenance, and/or retention. Defendant COUNTY is sued as a local government entity under 42 U.S.C. § 1983 because its customs, policies and/or practices with regard to the operation of the SDDA, SDSD and SDSDRCL were a moving force behind the constitutional violations claimed by Plaintiff herein.

15. At all times relevant herein, Defendant RICHARD EMPSON ("EMPSON") was employed by and working on behalf of the SDSD and resided within the jurisdiction of the State of California. In his capacity as a SDSD detective and employee, he acted under color of law and actively participated in the investigation resulting in the wrongful arrest, prosecution, conviction, and incarceration of Plaintiff. Defendant EMPSON is sued in his individual capacity.

16. At all times relevant herein, Defendant JANET RYZDYNSKI ("RYZDYNSKI") was employed by and working on behalf of the SDSD and resided within the jurisdiction of the State of California. In her capacity as a SDSD detective and employee, she acted under color of law and actively participated in the investigation resulting in the wrongful arrest, prosecution, conviction, and incarceration of Plaintiff. Defendant RYZDYNSKI is sued in her individual capacity.

17. At all times relevant herein, Defendant BILL DONOHUE ("DONOHUE") was employed by and working on behalf of the SDSD and resided within the jurisdiction of the State of California. In his capacity as a SDSD detective

and employee, he acted under color of law and actively participated in the investigation resulting in the wrongful arrest, prosecution, conviction, and incarceration of Plaintiff. Defendant DONOHUE is sued in his individual capacity.

18. At all times relevant herein, Defendant JAMES BLACKMON ("BLACKMON") was employed by and working on behalf of the SDSD and resided within the jurisdiction of the State of California. In his capacity as a SDSD Deputy and employee, he acted under color of law and actively participated in the investigation resulting in the wrongful arrest, prosecution, conviction, and incarceration of Plaintiff. Defendant BLACKMON is sued in his individual capacity.

19. At all times relevant herein, Defendant CHARLES MERRITT ("MERRITT") was employed by and working on behalf of the SDSDRCL and resided within the jurisdiction of the State of California. In his capacity as a SDSDRCL criminalist and employee, he acted under color of law and actively participated in the investigation resulting in the wrongful arrest, prosecution, conviction, and incarceration of Plaintiff. Defendant MERRITT is sued in his individual capacity.

20. At all times relevant herein, Defendant CONNIE MILTON ("MILTON") was employed by and working on behalf of the SDSDRCL and resided within the jurisdiction of the State of California. In her capacity as a SDSDRCL criminalist and employee, she acted under color of law and actively participated in the investigation resulting in the wrongful arrest, prosecution, conviction, and incarceration of Plaintiff. Defendant MILTON is sued in her individual capacity.

21. At all times relevant herein, Defendant RON BARRY ("BARRY") was employed by and working on behalf of the SDSDRCL and resided within the jurisdiction of the State of California. In his capacity as a SDSDRCL director and supervisor, he acted under color of law and actively participated in the investigation

resulting in the wrongful arrest, prosecution, conviction, and incarceration of Plaintiff. Defendant BARRY is sued in his individual capacity.

22. At the present time, the true names and capacities of Defendants sued herein as DOES 1 through 10 are unknown to Plaintiff. At all relevant times, DOES 1-10 were police officers, detectives, sergeants, captains, commanders, chiefs of police, civilian employees, agents, policy makers, and/or representatives of the SDDA, SDSD and SDSDRCL, as well as employees, agents, policymakers and representatives of Defendant COUNTY. At all relevant times, DOES 1-10 were acting under color of law and within the course and scope of their employment. DOES 1-10 are natural persons and are sued in their individual and official capacity. Upon information and belief, the true names, capacities, and acts/omissions of DOE Defendants are contained in records, documents, and other discovery that is unavailable to Plaintiff and can only be ascertained through the discovery process. Upon information and belief, each of the DOE Defendants was in some manner responsible for the violation of Plaintiff's rights and resulting injuries, as alleged herein, and Plaintiff will ask leave of this Court to amend the complaint to allege such names and responsibility when that information is ascertained.

IV. GENERAL ALLEGATIONS

23. At all relevant times, each and every Defendant was the agent and/or employee and/or co-conspirator of each and every other Defendant and was acting within the scope of such agency, employment and/or conspiracy and/or with the permission and consent of other co-Defendants and/or at the direction of the other co-Defendants and/or committed acts/omissions that were ratified by the other co-Defendants.

24. Each of the Defendants caused and is responsible for the unlawful conduct and resulting injury herein alleged by, *inter alia*, personally participating in the conduct; acting jointly and/or in concert with the conduct of others; authorizing

and/or acquiescing to the conduct; failing to intervene and/or take action to prevent the conduct; promulgating and implementing policies, procedures, and/or practices (including training) pursuant to which the conduct occurred; failing to promulgate policies, procedures, and/or practices which would have prevented the conduct; failing to initiate and maintain adequate training, supervision, policies, procedures and/or protocols; failing to implement and ensure compliance with policies, procedures and/or practices to prevent the violation of the rights of individuals, such as Plaintiff; and/or ratifying the conduct of persons under their direction and control.

25. Whenever and wherever reference is made in this complaint to any act/omission by a Defendant, such allegation and reference will also be deemed to mean the acts and omissions of each Defendant individually, jointly, and/or severally.

Each paragraph of this complaint is expressly incorporated into each cause of action which is a part of this complaint.

V. FACTUAL ALLEGATIONS

A. BACKGROUND

26. On the evening of February 13, 2000, Jane Dorotik reported her husband, Robert Dorotik, missing when he failed to return home from a Sunday afternoon jog. Through search and rescue efforts conducted by SDSD, his body was discovered on February 14, 2000, alongside North Lake Wohlford Road at the intersection of Woods Valley Road, Valley Center, CA 92082 – 2.4 miles from the Dorotiks' home.

27. SDSD immediately named Plaintiff as a suspect and investigated her, to the exclusion of all other leads and potential suspects, consciously disregarding numerous eyewitness accounts pointing to other perpetrators. Plaintiff was arrested on February 17, 2000, and charged with Robert's murder in the San Diego Superior Court.

B. SAN DIEGO SHERIFF'S DEPARTMENT INVESTIGATION

28. From the very beginning, SDSD ignored evidence pointing to other suspects, but instead recklessly conducted an investigation marred by falsified and tainted evidence in order to support their false, single-minded theory that Plaintiff had murdered her husband inside their home using a household hammer or hatchet.

29. Evidence fabricated, mishandled, or withheld by SDSD included, but is not limited to:

a. statements by eyewitnesses who reported seeing Plaintiff's husband alive and in areas consistent with his regular jogging route on Sunday afternoon, contradicting Det. EMPSON's theory that Plaintiff murdered her husband a day earlier;

b. K-9 scent dog debriefing reports and related information provided by search and rescue workers indicating that at least one search and rescue K-9 immediately alerted to a scent article from Robert Dorotik and took off trailing his scent along his regular jogging route, contradicting Det. EMPSON's theory that Robert Dorotik did not go jogging on Sunday because Plaintiff murdered her husband a day earlier;

c. a forensic report indicating that black paint consistent with paint from a crowbar was found on the skull bone of Robert Dorotik, contradicting Det. EMPSON's theory that Plaintiff murdered her husband in their bedroom using a household hammer: SDSDRCL Criminalist Melinda Bonta Ronka examined black material found on the skull bone segments collected at Robert Dorotik's autopsy on January 23, 29, 30, and 31, 2001, and reported that the black material "was found to be microscopically and chemically consistent with black

paint" following a comparison to her forensic testing on a reference crowbar belonging to SDSDRCL and consultation with an outside expert. She further examined a fire poker collected from the Dorotik residence—and suspected by law enforcement to be the murder weapon—for black paint and found none. On information and belief, this information was turned over to SDSD Detective Rick EMPSON, the detective in charge of the investigation. Det. EMPSON met with forensic odontologist Norm Sperber and asked him to "identify the weapon used in the bludgeoning" of Robert Dorotik, and did not provide Sperber with Ms. Ronka's information concerning the black paint on the skull bone being consistent with the type of paint found on crow bars. Sperber subsequently issued a report stating he had reviewed autopsy photographs and concluded that "the skull fracture and scalp injuries were caused by a high mass object such as a hammer or hammer/hatchet." Sperber reached this conclusion by "visit[ing] several home improvement centers in Escondido, San Diego, and Tiburon, and selected various hammer/hatches which might have caused the injuries," based on EMPSON having told him that the murder occurred in the home. Sperber's report does not mention that he was provided or ever considered the results of Ronka's testing/examination. Sperber later filed a declaration in Plaintiff's habeas proceeding to the effect that he would not have testified as he did had he known the contents of Ms. Ronka's report. On information and belief, the results from

the forensic testing on the crowbar and Ms. Ronka's subsequent consultation with an outside expert, which ultimately led her to conclude the material on the skull was consistent with black paint found on crowbars, were not ever disclosed to the SDDA or the defense. The information regarding the failure to disclose exculpatory evidence regarding SDSDRCL's consultation with outside experts was not disclosed or known to Plaintiff until after she filed a post-conviction discovery motion in 2019, and her independent testing on the reference crowbar was not disclosed or known to Plaintiff until October 4, 2021;

d. statements by Plaintiff and her family members addressing possible causes of staining in the Dorotiks' home (i.e., bleeding injuries the family's pets were experiencing and Robert Dorotik's recent bloody nose), which Det. EMPSON did not communicate to MERRITT, the criminalist tasked with analyzing the possible source of the stains and preparing a bloodstain pattern analysis;

e. a DNA report indicating that stains collected from furniture elsewhere in Plaintiff's home were inconsistent with human blood;

f. a report indicating that blood was detected in the bed of the Dorotik's Ford F-250 truck bed;

g. a rope found on the deck of Plaintiff's home, which Det. EMPSON unlawfully removed on the evening of February 14, 2000, without Plaintiff's consent or knowledge, just as he had unlawfully removed evidence at another scene earlier in

his career, as documented in the *Pitchess* material Plaintiff obtained pursuant to a *Pitchess* motion; and,

h. crime reports from January, March, and April 2000 related to several unprovoked, violent assaults in same vicinity where Robert Dorotik's body was discovered that were perpetrated by an area resident who pled guilty to those crimes in April 2000 and who was known to law enforcement as a heavy user of methamphetamine with a history of violence and which were made known to law enforcement during the course of Det. EMPSON's investigation in this case;

i. a statement BLACKMON took from eyewitness Clay Hunter, who reported seeing a jogger who fit the description of Robert Dorotik and his clothing (all red jogging suit) the afternoon Plaintiff reported her husband missing, which omitted the following information that contradicted EMPSON's theory that Robert Dorotik did not go jogging on Sunday because Plaintiff murdered her husband a day earlier: Hunter was close enough to the jogger that they exchanged words; Hunter rode with BLACKMON in his vehicle to the precise trail where he had seen the jogger in the all red jogging suit earlier that day—a location that was consistent with one of Robert Dorotik's regular jogging routes; BLACKMON had a photo of Robert Dorotik with him when he interviewed Hunter but failed to show it to Hunter to see if he could identify Robert as the jogger he had seen; BLACKMON's interview with Hunter led him to believe that Hunter actually had seen

Robert Dorotik jogging that day. This evidence was never disclosed to the DA;

j. a statement RYZDYNSKI took from eyewitness Lisa Singh on Monday morning just hours after Robert Dorotik's body was found, who reported seeing Robert on Sunday afternoon, sitting in a truck that was parked at the intersection near where his body was later found. RYZDYNSKI and BLACKMON interviewed Singh, who lived across the road from where Robert's body was found, and created a false report (written two months after the interview), claiming Ms. Singh observed a pickup truck with two Hispanic men and "there was a white male who *usually* sat between the two men inside the truck. She did not know if the white man was the same man as the missing person" (emphasis added). In reality, Ms. Singh told RYZDYNSKI and BLACKMON, and contemporaneously told local reporters on camera that she had seen a man fitting Robert's description sitting between two men in a black pickup truck that was parked at the very intersection where his body was found the afternoon before the murder. The man was wearing a red t-shirt, had a mustache, and had his head bent forward. In the days leading up to Lisa Singh's testimony at trial, Det. RYZDYNSKI called Singh and told her that her testimony was irrelevant and that she did not need to testify for the defense. Nonetheless, at trial, Ms. Singh testified she was adamant she had positively identified the man in the truck as Robert from the photograph. Detective

RYZDYNSKI testified to the contrary, and said that Ms. Singh had said what was in her report; and,

k. the fact that before BLACKMON came to Plaintiff's home to take her "missing person" report, he stopped and interviewed Plaintiff's neighbors and business competitors, Phil and Sue Schindler, whose business was failing—a fact they blamed on Plaintiff, who they believed was stealing business from them, and with whom Dep. BLACKMON himself had a personal and business relationship that was never disclosed to prosecutors or to Plaintiff;

l. an audio-recording of an interview with witness Susanne Bagby, who testified that Plaintiff said her husband was not feeling well the day he went missing, indicating that Susanne was drinking alcohol in the middle of the day when she and Plaintiff were conversing about Robert Dorotik. This fact was not noted in Det. DONOHUE'S written report from the interview and the audiotape was not provided to the defense. Det. DONOHUE had a pattern of failing to include in his written reports impeaching evidence learned during other witness interviews he conducted, and then providing those incomplete written reports to the defense while suppressing the audiotaped recordings themselves;

m. a statement by Sheri Newton, who told SDSD Sgt. Continelli she saw a man jogging on February 13th and also saw two "Indian" men in black pickup truck driving in the same area that appeared to be intoxicated and "scary-looking." This was never disclosed to the SDDA's office, and was not discovered by

the defense until the jury was deliberating – the Court refused to reopen evidence and denied a motion for new trial; andAn interview with Anna Cabrera, a neighbor of the Dorotiks who reported she often looked at their property and did not observe anything unusual on February 12-13th.

C. THE SDSD CRIME LAB (SDSDRCL)

30. The investigation and prosecution was also tainted by the San Diego Sherriff's Department's Regional Crime Lab's withholding of exculpatory evidence. Given the history of the SDSD Crime Lab, this is unsurprising. The lab had no *Brady* policy and conducted no effective training to ensure that technicians fulfilled their *Brady* obligations. SDSD's chain of custody protections were nearly nonexistent, with analysts leaving evidence unsealed and unsecured, intermixing evidence from victims and evidence from suspects, and evidence technicians using official vehicles intended to transport evidence from crime scenes to the crime lab for personal use. The lab failed to collect and deactivate access cards for departing employees, and criminalists took evidence home and stored it there, without detection by the SDSD Crime Lab or notation in the chain of custody for that evidence. The SDSDRCL's constitutionally-deficient policies and practices are detailed further below.

31. Moreover, there were numerous, serious, longstanding concerns about the core competency of criminalists Connie MILTON and Charles MERRITT, who handled and examined virtually every single item of the blood evidence collected in Plaintiff's case in 2000. (The SDDA ultimately issued *Brady* letters to the defense community in 2021 alerting defense lawyers of concerns over MILTON and MERRITT's competence.) The conduct MILTON and MERRITT engaged in in this case was a custom, habit, and ongoing pattern and practice in which they both

engaged throughout their careers, but which was not known to the prosecution or the defense until after Plaintiff initiated post-conviction proceedings in 2019.

32. Concerns over MILTON's incompetence as a forensic analyst examining blood and other evidence were so serious that her supervisors concluded in 1999—before the Dorotik investigation—that MILTON would need to be "retrained," once she returned to the lab following her maternity leave (as set forth more fully below).

33. MILTON testified in 2021 that she was never informed of any concerns over her competence and was never told she needed to be retrained prior to handling and examining the evidence in Plaintiff's case. Of the many concerns raised regarding MILTON's handling of evidence in Plaintiff's case is the fact that the vial of Robert Dorotik's blood that was collected at autopsy was inexplicably checked out of evidence and its whereabouts unaccounted for during the same two-week period that MILTON was handling and examining blood swab samples purportedly collected from the Dorotiks' residence (swabs for which there are also serious gaps in the documented chain of custody).

34. Indeed, throughout the Dorotik investigation, MILTON, whom peers were concerned was often "suspect-centric" as opposed to focusing on the evidence, failed to properly document testing protocols and test results. Consistent with concerns that were raised about her objectivity in testing, in the Dorotik investigation MILTON repeatedly and arbitrarily sent out evidence for DNA testing that did not yield probative results of human blood, but would be supportive of the police and prosecution's theory that Plaintiff murdered her husband. For instance, MILTON tested evidence item 193—swabs from the Dorotik truck bed—which the police and prosecution theorized contained Robert Dorotik's blood, consistent with their theory that Plaintiff put Robert Dorotik's body in the back of the truck. MILTON's notes indicate a presumptive negative, which was then crossed out and changed to positive with no explanation. There was no SDSCRCL policy requiring a lab technician to

document the reason for changing a negative result to positive one. Her notes on Ouchterlony confirmatory tests indicated that there was "no reaction," but MILTON still sent the item out for DNA testing. Although three swabs had been tested, MILTON fabricated a report that only recorded the supposed positive presumptive test, as opposed to the two additional swabs that were presumptive negative. Similarly, when MILTON was testing Item 96—a swab from an area of the house that the police and prosecution believed contained Robert Dorotik's blood—Ouchterlony confirmatory tests were negative, but MILTON nonetheless sent it out for DNA testing. In contrast, MILTON did not recommend other items that did not test presumptively positive for blood be sent out for testing because they did not conform to the police theory of Plaintiff killing her husband. Moreover, when MILTON tested other items where blood would not support the prosecution theory, she did not send them out for further testing, even when results indicated weak positives. The County's eventual concession that Plaintiff did not receive a fair trial was specifically based in part on issues relating to MILTON's work on the case. These actions are consistent with MILTON's documented history of overstating data and encouraging others to do the same. Because both senior- and trainee-level technicians frequently objected to her work product, MILTON specifically cherry-picked technical reviewers that would not identify objective errors in her work. This operated in conjunction with the lab's longstanding practice of permitting ineffective technical reviews, dating back to the early 1990s. Corrective Action 1 revealed that many of MILTON's errors in testing went undetected due the reviewers' (including BARRY) lack of forensic science background. When SDSCRCL finally implemented quality assurance practices (including finally acting on MILTON's career long history of sub-standard performance) in the late-2000's, MILTON was removed from active case work and forbidden to testify in court.

35. Consistent with its practice of failing to maintain the chain of custody of evidence, SDSD had failed to do so for the blood vial Forensic Evidence Technician (FET) John Farrell collected at autopsy, where it was unaccounted for from February 15, 2000, through its submission to SDSD Property & Evidence on February 29, 2000. The blood vial was not secured in tamper-proof packaging at any point in time, and the manila envelope containing the blood vial was not sealed until February 24, 2000, over a week after its collection at autopsy. At some point before the envelope was sealed, Farrell removed blood from the vial to create a reference sample in the same room and at the same time swabs of apparent bloodstains from the Dorotik residence were unsealed in the same room and he did so next to evidence collected from other crime scenes in other cases. He did not document this process, how much blood he removed, or how much blood was in the vial at any point in that time period. From June 5, 2000, to June 23, 2000, SDSD Crime Lab employee Marissa Ochoa, who was never assigned any role in the investigation and was never assigned any evidence to examine or analyze in Plaintiff's case, checked out the vial of Robert Dorotik's blood, with no reason for doing so, at the same time SDSD criminalist Connie MILTON was testing swabs collected from the Dorotiks' residence for the presence of blood. Ochoa failed to document the location of the vial during that time. An evidence viewing in 2021 revealed that Robert Dorotik's blood vial was half empty.

36. Similarly, SDSD failed to maintain chain of custody for the swabs collected from the Dorotiks' residence that the jury later heard were tested and shown to be Robert Dorotik's blood. Farrell failed to document the stains he collected or the whereabouts of those swabs from February 17, 2000, until they were submitted to Property & Evidence on March 2, 2000. The swabs remained unsealed and unprotected during that period, stored alongside the unsealed vial of Robert Dorotik's blood as well as evidence from other cases in the first call room. Evidence

items numbers 124 and 125, collected from stains at the exterior of the residence and in the storage room below, respectively, contained swabs that were not inventoried or accounted for and appeared for the first time when Connie MILTON began her serology testing in May and June 2000. Farrell's notes, the items' packaging, and the Property & Evidence history for items 124 and 125 indicate a total of two swabs were collected at each location—one control swab and one sample swab. MILTON, however, documented in her bench notes that there were a total of three swabs in each package—one control swab and two sample swabs.

37. Crime lab personnel further suppressed results of DNA testing from stains collected from the Dorotik residence—which was located on a working horse ranch where there were foaling mares and household pets with bleeding injuries—that were determined to be inconsistent with human blood. On March 19, 2001, the SDSDRCL received a request from Det. EMPSON for lab personnel to "conduct DNA analysis on" item #116, a fabric sample collected from a black and white striped mattress collected by SDSD investigators from the Dorotik residence on February 17, 2000. On March 27, 2001, SDSD Criminalist Connie MILTON consulted DDA Bonnie Howard-Regan about the laboratory request. In her bench notes, MILTON recorded that Howard-Regan indicated that item #116 was an item collected from the "daughter's bedroom" and instructed that the item be examined for blood, and if positive results were obtained, it should be subjected to DNA testing. MILTON indicated in her notes that she would notify Howard-Regan of the results.

38. On March 29, 2001, MILTON completed her examination of Item #116, indicating in her bench notes that several stains tested presumptively positive for blood. The sample was further subjected to Ouchterlony testing (a test to determine the species from which blood or other bodily fluid originated) to test for the presence of human blood, but gave negative results, indicating either the substance was not of

human origin or that the sample size was too limited. MILTON's bench notes indicate that she then spoke to Howard-Regan about these results and that Howard-Regan instructed her to "perform DNA analysis on this sample." A sample for DNA analysis was then collected by SDSD Criminalist Byron Sonnenberg. On March 30, 2001, MILTON issued her report stating that the stains on Item #116 "tested presumptive positive for blood; however, the presence of human blood was not confirmed."

39. On April 3, 2001, Criminalist Sonnenberg began DNA analysis on the sample from item #116. His bench notes indicate that the results obtained were "not interpretable." On April 26, 2001, a second attempt at DNA analysis was made on Item #116. Bench notes indicate that Criminalist MILTON assisted with this analysis. Bench notes dated May 21, 2001, indicate again that the results obtained were "not interpretable." On May 31, 2001, Criminalist Sonnenberg authored his report stating that "No interpretable DNA profile was obtained from probable blood identified on item 116." The report was not finalized until June 20, 2001, a week after the jury returned its verdict.

40. Criminalist Sonnenberg's report with the DNA results and supporting bench notes was suppressed until December 13, 2019, when it was finally turned over in post-conviction discovery. Post-conviction DNA Expert Mehul Anjaria stated in a sworn declaration dated October 7, 2020, that an explanation for the DNA result was that "blood from another species is present and responsible for the positive presumptive test result for blood." This result was material exculpatory evidence, as the presence of animal blood in her residence supported her assertion that her husband was not killed in the home by providing an alternate explanation for staining observed in the bedroom.

41. MILTON was ultimately placed on the SDDA's *Brady* Index in 2021 and she retired immediately thereafter, because of the incompetence Plaintiff's case

exposed. Complaints about MILTON's incompetence, including concerns identified by other criminalists who worked with her, were documented in hundreds of pages of *Brady* material disclosed to Plaintiff for the first time in July 2020 on the eve of the SDDA's concession that Plaintiff's conviction must be overturned.

42. The SDSD Crime Lab failed to disclose corrective action memoranda, quality incident reports, and other documented problems with its personnel from 2000 to 2021. In certain instances, the County, through SDSD, affirmatively instructed crime lab personnel not to disclose *Brady* material regarding Ms. MILTON to the DA's Office while Ms. MILTON was employed by SDSD and was actively being considered for inclusion in the County's *Brady* index.

43. SDSD Crime Lab directors were also aware of serious, longstanding concerns with testifying criminalist Charles MERRITT's core competency as a bloodstain pattern analyst and crime scene reconstruction expert between 1998 and 2009. In 1998, MERRITT was assigned to the murder investigation of Stephanie Crowe, but admitted he was "overwhelmed." A criminalist from another county was eventually assigned to assist him, but made sure that MERRITT was the one to author the reports and take notes, in order to cover up his incompetence.

44. Yet these concerns were not addressed, nor were they shared with law enforcement or the prosecution in Plaintiff's case. In 2000, having undergone no additional substantive training in bloodstain pattern analysis,[1] MERRITT was assigned to the investigation of Robert Dorotik's death. MERRITT admitted that when he arrived at the Dorotiks' residence—a location Det. EMPSON determined to be a crime scene even though Robert Dorotik's body was not found there—EMPSON led him through a side door directly into the Dorotiks' bedroom and pointed out to MERRITT staining EMPSON believed to be blood. At no point did MERRITT evaluate or even enter the living room or the master bathroom attached

[1] Merritt attended a session on documentation for bloodstain pattern analysis in 1999.

to the bedroom, which would have been the obvious location of any "clean up" under EMPSON's theory, nor did he enter or evaluate any other living area in the residence. MERRITT admitted he did not consider any known explanations for the staining in the bedroom, as is customary in bloodstain pattern analysis, including that Robert Dorotik had a nosebleed in his bedroom weeks before his death, routinely had nicks and cuts on his hands from his work, and had dogs with bleeding injuries who had access to the bedroom and slept on the bed. MERRITT admitted he did not consider whether the volume of blood Robert Dorotik lost from his injuries was consistent with the staining he observed in the bedroom; indeed, he never learned how much blood the victim lost.

45. MERRITT admitted that at the time of his work in this case, he had not conducted experiments with different target surfaces, a factor that affects how stains are characterized. He further admitted that he had *never* conducted experiments on the various types of target surfaces present in the Dorotik home in order to determine whether the conclusions he reached about those stains were consistent and replicable, as was standard practice in the bloodstain pattern community at the time. He stated he was not trained to exclude possibilities to narrow in on reasonable explanations for how a crime occurred: "You didn't exclude other possibilities, you just put down what you thought was the best explanation for what you saw."

46. MERRITT admitted he did not employ the accepted methodologies in the bloodstain pattern analysis community when conducting his analysis in this case and that his work in this case was "crude" and did not meet the standards of that community in place at the time. MERRITT stated that his terminology, methodology, documentation, and photography did not meet the standards of practice within the bloodstain pattern analysis community as applied in 2000. He admitted that the "simple" methodology he used instead in this case was not endorsed by the BPA community. He could not articulate why he used this "simple"

method, explaining only that "the reason I did it the way I did was I had my reasons." Deviating from accepted practices, MERRITT took no measurements and performed no calculations to lead him to his conclusions, nor did he confirm whether his assumptions about what happened could be supported by the staining he observed. MERRITT admitted that he conducted his analysis without confirming whether the staining he claimed to be "patterns" was, in fact, human blood, or if it contained Robert Dorotik's DNA. He did not review the results of presumptive, confirmatory, or DNA testing. In fact, MERRITT admitted he failed to document which stains he had collected from the areas he designated around the bedroom, and he does not know which were collected for later testing.

47. MERRITT conceded no technical or peer review of his analysis or conclusions in this case was ever conducted, even though peer review is necessary for an expert's work to be considered a valid scientific opinion. At the time he worked on this case, MERRITT had not undergone any proficiency testing. He further admitted that his documentation in this case was insufficient for peer review, and that the photographs taken for purposes of his bloodstain pattern analysis were of poor quality and that he failed to ensure that adequate photos were taken. He testified that he could not tell from the photographs what the stains looked like in various parts of the residence, including on the ceiling. All told, MERRITT's forensic reports were knowingly false or false and presented with a reckless disregard for the truth. Based on his false reports, MERRITT gave false testimony against Plaintiff, stating that the stains he observed and included in his report were confirmed through DNA testing to be Robert Dorotik's blood.

48. MERRITT signed his bloodstain analysis report before a single forensic test had been conducted confirming the presence of blood at his observation areas. The Dorotik family had previously explained that many of the "blood" stains found in the bedroom could have come from their family dog. He created a false

"reconstruction" of the crime scene – including explaining blood found on the mattress – based on the above false blood stain information and an unscientific method. The analysis used by MERRITT was already outdated at the time of his investigation (the defense at trial stipulated to MERRITT's qualifications and admissibility of scientific testing).

49. Although MERRITT falsely reported and later testified that stains he observed in the Dorotiks' bedroom *were all DNA tested and shown to be Robert's blood*, consistent with the prosecution's theory that Robert was violently beaten in their bedroom, lab reports showed most of the stains from the bedroom that MERRITT included in his report were only *presumptively* tested for possible blood, were never lab tested and shown to be *human* blood or Robert's blood or even consistent with Robert's blood type. Some of the stains were later determined not to be blood at all.

50. MERRITT's technical incompetence was combined with an established pattern of an inability to properly preserve, protect, and document crime scenes that he was evaluating, including failing to observe such basic protocol as wearing gloves when handling evidence. Examples include *People v. Lucas* (1984); *People v. Jernigan* (1986); SDSD Case #8715965H (1987); *People v. Dale* (1990-1992); *People v. Treadway* and *People v. Tuite* (Stephanie Crowe case) (1998).

51. In cases where the perpetrator or manner in which the crime was committed was in dispute, the County had a practice of calling outside BPA experts to testify instead of MERRITT, when MERRITT had been the bloodstain pattern analyst assigned to the case. For example, Brian Kennedy was called to testify where MERRITT had conducted a bloodstain pattern analysis in *People v. Cheri Hilner* (1995), *People v. Sally McNeil* (1996), and *People v. Tuite* (2004) for the murder of Stephanie Crowe. Tom Bevel was called to where MERRITT had conducted a bloodstain pattern analysis in *People v. Derlyn Ray Threats* (2005) and *People v.*

Kassim Alhimidi (2012). Plaintiff's preliminary hearing and trial were the first in which MERRITT testified under oath as to highly material bloodstain pattern evidence in an effort to reconstruct a crime scene, during which he gave demonstrably false testimony that prejudiced Plaintiff.[2]

52. SDSDRCL also contracted with outside forensics experts Forensic Science Associates, an unaccredited lab, to conduct DNA testing and analysis on various items of evidence collected during the investigation of Robert Dorotik's murder, and FSA employee Alan Keel was assigned to conduct the testing. Among the items of evidence Keel analyzed were three swabs collected from the bed of the Dorotiks' Ford F-250 truck bed. On September 1, 2000, Keel concluded in a written report, signed by FSA director Edward T. Blake, that "blood was detected" on two swabs collected from the truck and that DNA testing showed that Robert Dorotik could not be eliminated as the source of that blood. In fact, no scientific testing ever confirmed the presence of blood on the swabs collected from the truck. Keel admitted under oath in 2021 that the testing conducted in 2000 was based on an "inference" that blood was present in the truck, but blood was never confirmed to be present. Keel further admitted that the presence of the very low quantity of Robert Dorotik's DNA detected in the Dorotiks' truck bed could have come from a source other than blood, such as mucus or saliva.

53. Keel consumed the entire sample collected from the Dorotiks' truck bed, so further testing was not possible. Keel also destroyed his bench notes from the testing he conducted in 2000, making peer review of his work impossible. Based on Keel's analysis and the report singed by Blake in 2000, Plaintiff's trial counsel entered into a stipulation at trial in 2001, which stated, in part: "BLOOD FROM THE TRUCK BED: THIS BLOOD ORIGINATES FROM THE SAME MALE

[2] During Plaintiff's 2021 preliminary hearing, the SDDA's Office withdrew MERRITT as an expert witness and instead used him as a percipient witness to the crime scene.

INDIVIDUAL WHO IS THE SOURCE OF THE BLOOD FROM THE SYRINGE AND THE BLOOD FROM THE BEDROOM . . . ROBERT DOROTIK CANNOT BE ELIMINATED AS THE SOURCE OF BLOOD FROM THIS AREA . . .” Defense counsel entered into this stipulation based on the false representation by defendant Keel, directly or indirectly, that sufficient DNA testing had been done to determine the blood on the truck bed, on the syringe and the bedroom were all from the same male individual.

54. SDSD Crime Lab personnel failed to alert the SDDA and defense counsel of results of forensic testing favorable to Ms. Dorotik, including the FTIR spectroscopy testing conducted by Melinda Bonta Ronka, who determined particles on Robert Dorotik’s fractured skull bones were consistent with paint from a crowbar, not a household hammer as Dr. Sperber testified and the prosecution told the jury at trial.

D. THE SAN DIEGO DISTRICT ATTORNEY’S OFFICE

55. Plaintiff’s trial began May 15, 2001. In the leadup to the trial and during the trial itself, consistent with its nonexistent or unfollowed policy to ensure that all *Brady* material in the possession of law enforcement agencies was provided to them and subsequently disclosed to defense counsel, the SDDA failed to turn over numerous exculpatory materials, including but not limited to:

a. CAD files used by the California Highway Patrol Multidisciplinary Accident Investigation Team (MAIT) to create a diagram upon which SDSD criminalist Carolyn Gannett relied during her trial testimony asserting that the Dorotiks’ Ford F-250 matched the tire impressions left at the scene where Robert Dorotik’s body was found. Retired MAIT Sergeant Steve Toth, the individual who responded to the scene to collect data and create the diagram in February

2000, testified in 2022 that his diagram contained errors and did not accurately reflect the tire tracks at the scene. SDDA further carried out a policy of suppressing *Brady* material by claiming "expert work product" privilege protected from disclosure additional CAD files regarding the tire tracks in 2021 created by MAIT Sergeant Scott Parent that revealed additional information and data contradicting any conclusion by prosecution witnesses that Plaintiff's Ford F-150 "matched" the tire tracks left at the scene;

b. Impeachment regarding Criminalist MERRITT's prior cases. MERRITT had committed serious errors in other cases, including the Stephanie Crowe case, where crime scene contamination resulted in the case going unsolved;

c. Evidence logs establishing the chain of custody for the blood vial collected from Robert's autopsy and various swabs collected from the Dorotik residence**;**

d. The fact of a close personal relationship between Deputy BLACKMON and Phil Schindler (a neighbor who was not investigated despite having motive and opportunity to kill Robert and whose whereabouts on February 13th are still unknown). Deputy BLACKMON's interview with Phil Schindler was not disclosed until trial;

e. A debriefing form that a search and rescue scent dog picked up Robert's scent on his jogging route. Police reports show that as many as ten dog handlers assisted in the search and rescue of Robert; and

f. and

g. Numerous interviews of witnesses who reported seeing Robert on February 13th, including:

i. Clay Hunter (*see* ¶ 27(i)), BLACKMON's notes from his interview were never turned over;

ii. Lisa Singh's interview notes (*see* ¶ 27(j));

iii. Duane Sciarra, who recognized a photo of Robert on the news as a jogger he saw earlier on February 13th. Sciarra was interviewed by Dep. Lunsford, who showed him a black and white photo of someone, which has to date never been disclosed and which Sciarra stated did not look like the photo he had seen on the news. The interview notes and black and white photos were not disclosed to the defense. Sciarra was interviewed by post-conviction counsel and confirmed from the color photo that Dorotik was the man he saw jogging on February 13th, on the same road where his body was later discovered.

56. Throughout the trial, DDAs Bonnie Howard-Regan and Kurt Mechals failed to correct false and misleading evidence elicited at Plaintiff's preliminary hearing and trial. In addition, they misrepresented the evidence during closing argument. Examples include:

a. MERRITT's false testimony at the preliminary hearing and trial that all the stains he observed and included in his report were confirmed through DNA testing to be Robert Dorotik's blood;

b. Testimony and closing argument that the murder weapon was likely a household hammer, when forensic testing confirmed

that a crowbar or similar tool deposited particles on Robert Dorotik's fractured skull bones;

c. Testimony and closing argument that Observation Area 14 contained blood, when the presence of human blood was never confirmed;

d. Testimony and closing argument that blood had dripped on the cardboard box top under Observation Area, when the box had never been collected or swabbed for any forensic testing and had never been demonstrated to be blood;

e. Testimony and closing argument that swabs collected from the bed of the Dorotiks' Ford F-250 were tested and shown to be Robert Dorotik's blood, when the presence of human blood was never confirmed;

f. Closing argument that staining on the pillow sham was Robert Dorotik's blood, when no stains were tested or confirmed to be Robert Dorotik's blood at the time, and testing in 2020 and 2021 revealed the presence of non-blood red staining;

g. Closing argument that stains on the picture frame, lamp, and magazines on the nightstand, as well as the nightstand itself, were all Robert Dorotik's blood, when none of those stains were swabbed or tested at the time of trial, and many were tested and shown to be negative for blood in 2020 and 2021;

h. Closing argument that tire tracks found near Robert's body were "an absolute match" to the Dorotik's truck, when the prosecution's own expert testified that the track marks shared only "similar class characteristics;"

i. Argument that Plaintiff's emotional response to hearing Robert was dead was evidence of her guilt, as she did not show appropriate shock or outrage upon learning of her husband's brutal murder. In fact, the police lied and told Plaintiff that Robert had been hit by a car and Plaintiff did not find out he was murdered two days later.

57. On June 4, 2001, at the close of evidence in Plaintiff's trial and after the DNA testing of Item 116 had been completed, DDA Howard-Regan entered stipulations into the record, including that Criminalist MILTON would testify that "she examined a black and white striped fabric cutting that was obtained from Claire Dorotik's bedroom, scattered light brown staining was observed on several areas of the fabric cutting. All the stained areas tested presumptive positive for blood. However, the presence of human blood was not confirmed." The subsequent DNA testing and results consistent with the presence of animal blood were suppressed.

58. In addition, SDSD lab personnel failed to provide CAD files and underlying data created by the California Highway Patrol Multidisciplinary Accident Investigation Team (MAIT) upon which SDSD criminalist Carolyn Gannett relied during her trial testimony asserting that the Dorotiks' Ford F-250 matched the tire impressions left at the scene where Robert Dorotik's body was found. The computer-aided design files used to create the diagram, not disclosed until 2021, contained critical discrepancies that contradict Gannett's 2001 testimony. Retired MAIT Sergeant Steve Toth, the individual who responded to the scene to collect data and create the diagram in February 2000, testified in 2022 that his diagram contained errors and did not accurately reflect the tire tracks at the scene.

59. On June 12, 2001, the jury returned a verdict. On August 2, 2001, Plaintiff was sentenced to 25 years to life in prison for the murder of her husband Robert Dorotik.

E. POST-CONVICTION INVESTIGATION & PROCEEDINGS

60. Post-conviction DNA testing ultimately revealed the presence of foreign DNA (i.e., DNA that could not have come from Plaintiff or her husband) under Robert Dorotik's fingernails, on the rope found wrapped around his neck, and on the clothing he was wearing when his body was found.

61. On August 12, 2019, Plaintiff filed a petition for writ of habeas corpus seeking to vacate her conviction on the basis of new evidence of innocence, ineffective assistance of counsel, and prosecutorial failure to correct false trial testimony. On April 23, 2020, at the age of seventy-three, while her petition was pending, Plaintiff was released from custody due to a bond motion based on Covid-19.

62. On July 24, 2020, the SDDA conceded Plaintiff's conviction must be vacated in light of the post-conviction DNA test results, and because the SDDA had discovered voluminous *Brady* (exculpatory evidence) material, never provided to the defense and previously unknown to the prosecution, regarding SDSD crime lab employees who conducted forensic testing in Plaintiff's case and about whose competence and training crime lab supervisors had expressed serious and longstanding concerns. All that *Brady* material was withheld from Plaintiff for nearly two decades.

63. On July 24, 2020, the Court granted Plaintiff's petition for writ of habeas corpus and vacated her conviction.

64. In October 2020, DDA Kurt Mechals, who originally prosecuted Plaintiff in 2001 along with DDA Bonnie Howard-Regan, announced that the SDDA would re-prosecute Plaintiff for the murder of her husband based on the very same faulty evidence presented by the same incompetent and unqualified criminalists responsible for her wrongful conviction in 2001. DDA Mechals admitted that he had not read Plaintiff's petition for a writ of habeas corpus filed in 2019, which set

forth substantial new evidence supporting her claim of innocence, prior to announcing his decision to re-try Plaintiff for the murder of her husband. Disregarding the new exculpatory DNA evidence entirely, the SDDA continued to suppress exculpatory and impeachment *Brady* evidence and subjected Plaintiff to another two years of criminal legal proceedings. Following a nearly year-long preliminary hearing and extensive pre-trial litigation, on May 16, 2022, the SDDA dismissed charges against Plaintiff, conceding they had insufficient evidence to sustain a conviction beyond a reasonable doubt.

VI. PARTICIPATION, STATE OF MIND, AND DAMAGES

65. With respect to the acts and/or omissions alleged herein, each individual Defendant acted illegally and without authorization.

66. Each individual Defendant participated in the violations alleged herein, and/or directed the violations alleged herein, and/or knew or should have known of the violations alleged herein and failed to act to prevent them. Each Defendant ratified, approved or acquiesced in the violations alleged herein.

67. As joint actors with joint obligations, each individual Defendant was and is responsible for acts and/or omissions of the other.

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

69. With respect to the acts and/or omissions alleged herein, each Defendant acted deliberately, purposefully, knowingly, recklessly and/or with deliberate indifference. Each Defendant's acts and/or omissions were done with deliberate indifference to, or reckless disregard for, Plaintiff's rights or the truth in engaging in the conduct alleged herein.

70. As a direct and proximate result of the described acts, omissions, customs, practices, policies, and decisions of the Defendants, Plaintiff was wrongfully arrested, prosecuted, convicted, and incarcerated for over nineteen years.

71. As a direct and proximate result of her wrongful arrest, prosecution, conviction, and incarceration, Plaintiff lost her liberty and the quality and enjoyment of her life both during her period of incarceration and thereafter.

72. As a direct and proximate result of his wrongful arrest, prosecution, conviction, and incarceration, Plaintiff has suffered, continues to suffer, and is likely to suffer in the future, extreme and severe mental anguish, mental and physical pain and injury, fright, nervousness, anxiety, shock, humiliation, indignity, embarrassment, harm to reputation, and apprehension. For such injuries, he has incurred and will incur in the future significant damages.

73. As a direct and proximate result of her wrongful arrest, prosecution, conviction, and incarceration, Plaintiff has lost past and future earnings.

74. As a direct and proximate result of her wrongful arrest, prosecution, conviction, and incarceration, Plaintiff has been deprived of existing familial relationships, the society and companionship of existing friends and family.

75. The acts and/or omissions of Defendants, and each of them, were willful, wanton, malicious, oppressive, in bad faith, and done knowingly, purposefully, and/or with deliberate indifference to and/or reckless disregard for Plaintiff's constitutional rights or the truth, entitling Plaintiff to exemplary and punitive damages from each individual Defendant.

76. By reason of the acts and/or omissions of the Defendants, and the injuries caused thereby, Plaintiff was required to retain an attorney to institute and prosecute the within action, and to render legal assistance to Plaintiff, that she might vindicate the impairment of her rights and resulting injuries. By reason thereof, Plaintiff requests payment by Defendants of reasonable attorney's fees and costs.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

DEPRIVATION OF CIVIL RIGHTS BY INDIVIDUAL DEFENDANTS

42 U.S.C. § 1983

(Against All Individual Defendants and Does 1-10)

77. Plaintiff realleges all foregoing paragraphs and any subsequent paragraphs contained in this complaint, as if fully set forth herein.

78. Defendants EMPSON, BLACKMON, RYZDYNSKI, DONOHUE, MERRITT, MILTON, BARRY, and DOES 1 through 10, while acting under color of law, caused Plaintiff to be deprived of rights, privileges, and immunities secured by the Constitution and laws of the United States, including the Fourth, Fifth, Eighth, and Fourteenth Amendments by, inter alia, fabricating evidence, failing to disclose material exculpatory evidence, failing to correct false evidence, using suggestive and improper eyewitness identification techniques resulting in false and unreliable identifications, and conducting a reckless investigation into the murder of Robert Dorotik. Defendants' acts and/or omissions that caused these violations were done with deliberate indifference to or in reckless disregard of Plaintiff's rights and the truth. As a result of the acts and omissions of these individual Defendants, Plaintiff DOROTIK was deprived of her due process right to a fair trial.

79. Among other acts and omissions that violated Plaintiff's rights, Defendants, in particular Defendants EMPSON, RYZDYNSKI, BLACKMON, and DONOHUE, violated Plaintiff's right to a fair trial free of unreliable eyewitness identifications tainted by police suggestion and/or influence, as set forth in *Manson v. Brathwaite*, 432 U.S. 98 (1977), *Neil v. Biggers*, 409 U.S. 188 (1972), and their progeny.

80. Among other acts and omissions that violated Plaintiff's rights, Defendants, in particular Defendants EMPSON, BLACKMON, RYZDYNSKI,

DONOHUE, MERRITT, and MILTON, violated Plaintiff's rights by fabricating evidence, leading to the presentation of false evidence at Plaintiff's trial, and by failing to correct false evidence presented at Plaintiff's trial.

81. Among other acts and omissions that violated Plaintiff's rights, Defendants, in particular Defendants EMPSON, BLACKMON, RYZDYNSKI, DONOHUE, MERRITT, and MILTON violated Plaintiff's rights by failing to disclose material exculpatory and/or impeachment evidence, as required by *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny. Before and after Plaintiff's arrest, SDSD sworn peace officers and crime lab employees systematically suppressed and mischaracterized in police reports critical exculpatory evidence, including forensic evidence, that pointed to suspects other than Plaintiff and should have been turned over to Plaintiff and her defense counsel but was not. After Plaintiff's premature arrest, SDSD constructed its entire investigation around finding and fabricating evidence supporting Det. EMPSON's hunch that Plaintiff was guilty, including relying on the analyses of untrained, incompetent, and unqualified criminalists and evidence technicians, who—among other acts of malfeasance—mishandled and failed to document a chain of custody for critical blood evidence which was left unsealed and unsecured for weeks at a time. At Plaintiff's preliminary hearing in 2000 and trial in 2001, members of the SDDA's Office, including Bonnie Howard-Regan and Kurt Mechals, elicited and failed to correct false testimony, presented expert opinion testimony through witnesses who they knew and/or should have known were not qualified in the disciplines of their purported analyses, suppressed *Brady* material, and/or made improper arguments and misrepresented the evidence before the jury.

82. The SDSD Crime Lab had within its possession evidence that would have demonstrated that the majority of the stains that were considered to be Robert's blood had not in fact been tested for human blood, were not confirmed to be human

blood and/or were not human blood, undermining the prosecution theory that Robert had been murdered in the bedroom, as evidenced by the blood stains (most of which were not human blood and those few that were explained by the fact that Robert had had a nosebleed). The prosecution criminalist testified on the assumption that all the staining was human blood and linked to Robert, without reviewing any of the results of forensic testing on that staining.

83. Among other acts and omissions that violated Plaintiff's rights, Defendants, in particular Defendants EMPSON, RYZDYNSKI, BLACKMON, and DONOHUE violated Plaintiff's rights by continuing the investigation of Plaintiff and causing the arrest and prosecution of Plaintiff, when they knew, or were deliberately indifferent to or recklessly disregarded, the truth that Plaintiff was not the person who killed Robert Dorotik.

84. The constitutional source of the violations and obligations asserted herein is primarily the due process clause of the Fifth and Fourteenth Amendments, and Plaintiff asserts both procedural and substantive due process violations. To the extent that the source of Plaintiff's rights is any constitutional or statutory source(s) other than the Due Process Clause, this claim is also predicated on such source(s).

85. Defendants, and each of them, conspired and agreed to commit the above-described deprivations of Plaintiff's constitutional rights and acted jointly and in concert to deprive Plaintiff of his rights to be free from unreasonable seizures, to due process, to a fair trial, and to be free from groundless criminal prosecutions based on false and unreliable evidence.

86. Defendants, and each of them, engaged in, knew about, or should have known about the acts and/or omissions that caused the constitutional deprivations alleged herein and failed to prevent them and/or ratified/approved them and/or acquiesced to them.

87. Defendants, and each of them, committed the aforementioned acts and omissions in bad faith and with knowledge that their conduct violated well-established law.

88. As a direct and proximate result of Defendants' aforementioned acts and/or omissions, Plaintiff was injured as set forth in earlier paragraphs of this complaint and is entitled to compensatory damages according to proof.

89. The aforementioned acts and omissions of Defendants were committed by each of them knowingly, willfully, maliciously, oppressively, and/or in reckless disregard of Plaintiff's rights. By reason thereof, Plaintiff is entitled to punitive and exemplary damages from Defendants according to proof.

SECOND CLAIM FOR RELIEF

DEPRIVATION OF CIVIL RIGHTS BY ENTITY DEFENDANTS

42 U.S.C. § 1983 (*Monell* Violations)

(Against Defendant COUNTY)

90. Plaintiff realleges all foregoing paragraphs and any subsequent paragraphs contained in this complaint, as if fully set forth herein.

91. At all relevant times, Defendant COUNTY and the SDDA, SDSD and SDSDRCL, all agencies and subdivisions of Defendant COUNTY, possessed the power and authority to adopt policies and prescribe rules, regulations, and practices affecting the operation of the SDDA, SDSD and SDSDRCL, as well as the actions of employees and/or agents of the SDDA, SDSD and SDSDRCL, including customs, policies, and/or practices relating to police tactics, methods, investigations, arrests, evidence, and discovery; as well as to personnel supervision, performance evaluation, individual investigations, discipline, records maintenance, and/or retention.

92. Despite these powers and obligations, the County, with deliberate indifference and reckless disregard to the safety, security, and constitutional rights

of criminal suspects and defendants, including Plaintiff, had no established or clear policy, did not provide adequate training and supervision, failed to stop or correct widespread patterns of unconstitutional conduct, and/or otherwise failed to carry out their responsibilities regarding the following issues:

a. A basic and standardized *Brady* policy that outlines and identifies the *Brady* obligations of deputies, crime lab employees, and legal counsel;

b. The absence of any system, protocol or training to ensure that exculpatory evidence (both substantive and impeachment) was provided to the SDDA.

c. Ensuring that all exculpatory evidence disclosed to the defense was prominently communicated in a manner likely to ensure that it would be seen and understood by both the prosecution and defense;

d. Ensuring that its deputies, detectives, crime lab personnel, and other relevant employees provided their full investigative material in a case submitted to the District Attorney's Office, including but not limited to investigative materials and notes, complete lab reports and supporting bench notes, performance records, corrective action memoranda, quality incident reports, and other relevant documents;

e. Ensuring that all exculpatory and/or impeachment evidence was referenced in the key case reports and documents, especially those summarizing the evidence;

f. Ensuring that all exculpatory and/or impeachment evidence was promptly turned over to the prosecuting attorney instead of directing or allowing it to be hidden;

g. Ensuring that the interactions between detectives and/or deputies and witnesses are fully and completely provided in a prominent written report;

h. Ensuring that personnel, whether through inadvertence or design, did not provide information to witnesses and/or crime lab employees that influenced their statements and/or work;

i. Preventing false evidence by omission of material information;

j. Ensuring detectives' compliance with constitutional standards regarding false evidence and *Brady* procedures;

k. Establishing procedures to ensure that any evidence pertinent to criminal and/or habeas proceedings contained in its possession are discovered and produced to the SDDA, the petitioner and/or defendant, and the court;

l. Adequately investigating incidents involving the fabrication of evidence, suppression or burying of exculpatory information or other misconduct by its deputies, legal counsel, crime lab employees, or complaints of such conduct;

m. Ensuring that law enforcement, including crime lab employees, with which the SDDA was working provided all exculpatory evidence gathered during an investigation of a case is presented to the Office for prosecution;

n. Ensuring that SDSD, its officers, and agents, including crime lab personnel, with which the SDDA was working, provided its full and complete investigative materials and that material is actually reviewed by an appropriate Deputy DA;

o. Ensuring that information relevant to other cases being prosecuted by the DA's Office, including exculpatory and/or impeachment material, was provided by the SDSD with which the SDDA was working, to the trial attorney prosecuting the case and/or to the defense;

p. Ensuring that false evidence was not being presented or relied upon by DDAs in prosecuting cases;

q. Ensuring that key police reports and other key case documents provided full and complete descriptions of witness interactions and called attention to any irregularities, deviations from policy, or evidence favorable to the defense;

r. Ensuring that exculpatory evidence learned or discovered after trial and conviction (including between trial and sentencing and after sentencing) was disclosed to defendants and their counsel;

s. Establishing procedures so all exculpatory/impeachment evidence discovered by law enforcement or the DA after the preliminary hearing stage is provided to the defense;

t. Establishing procedures so all exculpatory/impeachment evidence discovered by law enforcement or the DA after a conviction is provided to the defense;

u. Establishing procedures to track cases in which a defendant contacts the SDDA in response to a *Brady* letter seeking the disclosure of the *Brady* information of which they were notified;

v. Ensuring case and trial files in murder cases are retained and are not "lost";

w. Establishing procedures to ensure all *Brady* and discoverable information, including email communications, are properly retained, preserved, and disclosed to defense counsel, rather than destroyed pursuant to the SDDA's 90-day email retention policy;

x. Failing to train, or to adequately train, regarding any of the foregoing issues; and

y. Failing to adopt policies and procedures (or alternatively failing to adopt adequate policies and procedures) regarding the foregoing issues.

93. As explained above, the SDSDRCL had no *Brady* policy or training, no chain of custody protections, and conducted no effective training to ensure that technicians fulfilled their *Brady* obligations. In fact, at the time of Plaintiff's prosecution, the lab was still unaccredited. This was in marked contrast to the Los Angeles Sheriff's Department Scientific Services Bureau (accredited in 1989), the Orange County Crime Lab (accredited in 1992), the San Bernardino County Sheriff's Department Scientific Investigations Division (accredited in 1995), and the LAPD Forensic Science Division (accredited in 1998). A lab can only be accredited by meeting standards for personnel, facilities, protocols, documentation, training, evidence control, and quality assurance. But the COUNTY did not pursue accreditation until 2003 (after Plaintiff's prosecution), as SDSDRCL was woefully deficient in each of these categories. At the time of Plaintiff's prosecution, there were no required or consistent corrective action reports, peer review, quality assurance, or policies to ensure the integrity of evidence, or for the proper procedures to be followed by criminalists or lab technicians. Proper training of criminalists and lab technicians was nonexistent: the SDSDRCL did not even have a manual until August 2001. There were no forms to document discrepancies between evidence

collected, the criminalist case notes, and evidence received. Criminalists were routinely promoted and given additional responsibilities regardless of their competence—there were no proficiency tests required. This, combined with the practice of failing to take corrective or remedial measures for criminalists with documented histories of producing incorrect and baseless reports ensured that unreliable reports would continue to issue.

94. Despite MILTON's well-documented history of falsely reporting test results, putting the COUNTY on notice that her reports were flawed, no action was taken, and she was never properly trained. MILTON's baseless reports regarding forensic evidence in Plaintiff's case contributed to her wrongful conviction and incarceration. MILTON repeatedly cross-contaminated evidence, including with her own DNA (as she did not wear a mask, consistent with the lab's lack of policies for evidence protection). In fact, there were five instances of her contaminating evidence in a two-year period, but she was never reprimanded or retrained. Moreover, she was permitted to continue to work on the same investigations for which her earlier work was specifically already under review.

95. Consistent with SDSDRCL practices and lack of and training, MERRIT failed to wear gloves, booties, or a mask while handling evidence at the Dorotik residence, touching evidence with his bare hands thus risking the transfer of DNA and cross-contamination of evidence, and—emblematic of his disregard for the integrity of the evidence in this case—even walking around the residence with a red evidence tag stuck to his pants. MERRITT did not collect any swabs until the end of his twelve hours at the scene, and testified that there was no County policy or training to prevent using a single swab to collect multiple samples from a crime scene, or to decontaminate equipment brought to the crime scene. He also repeatedly left out critical information from his reports, as he had not been properly trained to include it. This is consistent with MERRITT's previously-documented history of

failing to follow proper protocols such as wearing gloves and cross-contaminating evidence, as he had done so in a high-profile murder investigation of Stephanie Crowe. But because the COUNTY did nothing to properly train him after his actions came to light, he was permitted to flout proper protocol once more, leading to Plaintiff's conviction.

96. Upon information and belief, and as alleged above, the SDDA and Defendant COUNTY had knowledge of repeated allegations and instances of misconduct by members of the prosecution team, including prosecutors, police officers, and employees and/or agents of the SDSD and SDDA in relation to the investigation of criminal offenses prosecuted by the SDDA, including fabrication of evidence, use of unduly suggestive and improper eyewitness investigation techniques, suppression of exculpatory and impeachment evidence, dishonesty, and abuse of authority. All of the foregoing customs, policies, practices and failures occurred with deliberate indifference to the rights of criminal defendants, including Plaintiff, and even though members of the supervisory staff of the District Attorney's Office were or should have been aware of these customs, policies practices and failures.

97. Moreover, Defendant COUNTY had a policy and practice, carried out by SDSD law enforcement officers, legal counsel, and crime lab employees, of repeatedly burying exculpatory material throughout criminal investigations and legal proceedings and failing to correct the widespread misconduct of suppressing *Brady* material. As set forth above, SDSD Det. EMPSON, Det. RYZDYNSKI, and Dep. BLACKMON hid and/or failed to report critical evidence inconsistent with their theory of the case, which pointed to Plaintiff's innocence, including: (1) statements from eyewitnesses who reported seeing Robert Dorotik jogging the day after EMPSON claimed he had been killed; (2) a report from a scent dog handler detailing that his dog alerted on Robert Dorotik's jogging route, indicating that he

had been jogging the day after EMPSON believed he had been killed; (3) exculpatory results of SDSD Criminalist Melinda Bonta Ronka's FTIR testing of a reference crowbar and comparison to the black particles from Mr. Dorotik's skull bones, concluding that they were consistent, instead leading prosecution expert Dr. Norm Sperber to render an expert opinion and trial testimony based on false, incomplete and inaccurate information fed to him by SDSD officers; and (3) the results of DNA testing in April and May 2001 that were exculpatory to Plaintiff.

98. At all relevant times from February 13, 2000, to July 24, 2020, SDSD failed to disclose exculpatory information regarding crime lab employees Connie MILTON and Charles MERRITT. At the time of Ms. Dorotik's first trial in 2001, Connie MILTON's performance had been reviewed by SDSD crime lab quality assurance manager Kathy Wagner and other criminalists including Mary Buglio and Jodi Clough, who determined MILTON required remedial training in 1999. The fact of the review, in addition to its substance and conclusions, were not disclosed to Ms. Dorotik at the time of trial, and Ms. MILTON testified under oath in 2022 that she never received such training. That review was formally memorialized in 2002 in Corrective Action 1, in anticipation of the lab's pending accreditation in 2003. Corrective Action 1, and numerous other corrective action memoranda and quality incident reports regarding MILTON's performance in the lab were suppressed until July 2020, when the SDDA conceded that Ms. Dorotik's conviction must be overturned.

99. From 2002 to at least 2021, SDSD continued to suppress *Brady* material related to Connie MILTON. In 2011, for example, counsel for defendant Marc Jernigan, now the Honorable Chris Plourd, filed discovery motions pre-trial and writs in the appellate court expressly seeking disclosure of such material related to MILTON. It was never disclosed. Similarly, corrective action memoranda pertaining to SDSD Criminalist Charles MERRITT's technical inabilities in the area

of bloodstain pattern analysis were likewise suppressed until 2020. Deputy District Attorney Karl Husoe stated on the record before Judge Elias that his office "was previously unaware" of this "information regarding lab personnel" before 2020, thus confirming that no disclosure of this material was made at any point prior to July 2020, and SDSD failed to provide it to the SDDA.

100. Following the late disclosure of *Brady* materials regarding SDSD crime lab employees Connie MILTON and Charles MERRITT in July 2020, the SDDA initiated an investigation into MILTON to determine whether to place her on the office's *Brady* index and notify the defense community of her lack of credibility and incompetence. In October 2020, the SDDA notified MILTON, who was at the time still employed by the SDSD crime lab, that she would be placed on the SDDA *Brady* index. From October 2020 through January 2021, while opposing Plaintiff's motion to dismiss the charges against for her outrageous government conduct, based in part on the failure to disclose *Brady* material related to MILTON, the SDDA continued to conceal from the court and from Plaintiff the fact that its office had already placed MILTON on the *Brady* index. Plaintiff was not notified of this decision until February 26, 2021.

101. Just weeks before MILTON was placed on the *Brady* index, while the SDDA investigation into MILTON was active, SDSD crime lab employee Michelle Hassler, who was the technical lead of the Forensic Biology section and a longtime colleague of MILTON, notified SDSD crime lab director Jennifer Harmon that she had in her possession a compilation of documents, emails, and notes she had personally compiled related to MILTON's problematic performance in the lab—the very subject of the SDDA's *Brady* investigation, which was ongoing at the time. Hassler testified under oath that she was instructed by SDSD legal counsel that, because those documents were considered her personal notes, they were privileged or not discoverable and thus she need not provide them to the SDDA. SDSD

suppressed these documents, which are material under *Brady* because they provide critical impeachment evidence regarding MILTON's documented record of incompetence, her promotion to a supervisor position over the objection of colleagues who documented that she did not employ adequate techniques or analysis, and concerns with her testimony in court under oath. There is no "personal documents" exception to disclosure under *Brady*, and the advice of SDSD legal counsel to the contrary exhibits SDSD's failure to train and supervise their own personnel of their legal and constitutional obligations.

102. Further, the suppression of Hassler's compilation of documents regarding MILTON directly contradicted SDSD legal counsel's stated position regarding the discoverability of personal documents in the possession of other crime lab employees. Just a few months after SDSD legal counsel instructed Hassler to suppress *Brady* material, SDSD legal counsel filed several motions to quash subpoenas issued by Plaintiff for the production of documents in the personal possession of retired SDSD crime lab employees, including Charles MERRITT and Carolyn Gannett. SDSD legal counsel objected to the subpoenas on the basis that the requested documents were "Sheriff's Department records" and thus were required to be produced through the normal discovery process set forth in Penal Code section 1054. At the very time SDSD legal counsel insisted in sworn statements that personal files of crime lab employees were SDSD records subject to disclosure pursuant to the discovery statutes, SDSD continued to suppress Ms. Hassler's files regarding Ms. MILTON in direct contravention of its own statements under oath and interpretation of applicable law.

103. These customs, policies practices and failures were so closely related to the deprivation of Plaintiff's rights as to be a moving force that caused her wrongful conviction. Due to these customs, policies, practices and failures, Plaintiff was deprived of her right to a fair trial. Had the prosecutors and members of their team

here been properly trained and supervised, and had there been proper systems and policies in place, they would have learned and disclosed the use of false evidence, the suppression of exculpatory evidence, and the practices of influencing witness testimony, contrary to their constitutional obligations, and such disclosures would have been routine practice.

104. The SDDA had a practice of overlooking, ignoring, or failing to ask for *Brady* evidence in the possession of law enforcement agencies and ensuring its timely disclosure. The SDDA failed to learn of favorable, exculpatory results from forensic testing conducting by its criminalists, including the conclusion by Melinda Bonta Ronka that black particles on Mr. Dorotik's fractured skull were consistent with a crowbar, contrary to the opinion offered by Dr. Norm Sperber, retained by SDDA as an expert to testify at trial, that Mr. Dorotik's injuries could *not* have been made by such a tool and were instead made by a hammer. In addition, SDDA failed to learn of exculpatory DNA results on red staining from the Dorotiks' residence immediately before Ms. Dorotik's trial in 2001 and ensure their timely disclosure, despite DDA Bonnie Howard-Regan's express instruction to conduct that DNA testing.

105. The SDDA policies failed to ensure that all *Brady* material was timely disclosed. (Notably, during Plaintiff's prosecution in 2020, DDA Mechals indicated that he would be "shocked" if *Brady* required him to review his expert's casework to determine if it contained impeachment evidence.) The SDDA did not have or did not follow a policy of preserving or retaining trial files, representing to Plaintiff in post-conviction proceedings that her entire case file had been "lost," including any additional *Brady* material that had not been disclosed at the time of trial. Further, in 2022, when the court directed the SDDA to produce to Plaintiff certain communications between its various bloodstain pattern experts that occurred four months earlier, the SDDA stated it was unable to produce those emails because it

has a 90-day retention policy for email communications and therefore destroys all emails after the 90-day period, including *Brady* material and other discoverable information, if not specifically preserved by County personnel. In Plaintiff's case, the SDDA destroyed email communications between DDAs Kurt Mechals and Chris Campbell and prosecution experts that the court ordered to be disclosed to Plaintiff. Those emails have not been retrieved or disclosed to this date.

106. The SDDA did not have or did not follow a policy to ensure that all *Brady* material in the possession of law enforcement agencies was provided to them and subsequently disclosed to defense counsel. DDA Karl Husoe stated on the record that the SDDA was unaware of corrective action memoranda pertaining to crime lab personnel, including Connie MILTON and Charles MERRITT, maintained in the normal course of business by the SDSD Crime Lab—as required by the lab's accrediting bodies—until its disclosure in July 2020. The absence of any policy or procedure to learn of and disclose these materials affected numerous other cases, including *People v. Marc Jernigan*, in which defense counsel specifically sought such materials in discovery and was denied.

107. During the SDDA's investigation into Connie MILTON to determine whether she would be included in the office's *Brady* index, the SDDA failed to request and/or ensure that SDSD and the SDSD crime lab provided to them all documents and materials relevant to that inquiry, including Michelle Hassler's personal file documenting concerns with MILTON's casework and performance over a period of years. Rather, while MILTON, an active SDSD employee, was under a *Brady* investigation, SDSD legal counsel instructed SDSD crime lab personnel *not* to turn over those materials. Following the SDDA's issuance of a *Brady* letter to alert the defense community to the longstanding problems with MILTON's casework, the SDDA admitted to the San Diego Union-Tribune that their

policy was not to track any inquiries made by defense counsel or defendants regarding the *Brady* letter.

THIRD CLAIM FOR RELIEF

DEPRIVATION OF CIVIL RIGHTS

42 U.S.C. § 1983

FAILURE TO SUPERVISE, TRAIN AND TAKE CORRECTIVE MEASURES CAUSING CONSTITUTIONAL VIOLATIONS

(Against RON BARRY and Does 1-10)

108. Plaintiff realleges all foregoing paragraphs and any subsequent paragraphs contained in this complaint, as if fully set forth herein.

109. Defendant BARRY, who had no background or training in serology or DNA, was Director of SDSDRCL until 2003. For the vast majority of this time—including during the investigation of the Dorotik murder—the crime lab did not have a manual in effect. In addition to his failure to correct the multitude of constitutional violations detailed above, BARRY personally reviewed and signed off on multiple error-ridden reports written by MILTON prior to the Dorotik investigation. These reports became the basis for Corrective Action 1, which called for remedial training that MILTON testified she never received.

110. On numerous occasions, criminalists in the Forensic Biology section approached BARRY to raise concerns about MILTON, but believed that BARRY and his management staff were either ignoring what was taking place, or were woefully ignorant of the day-to-day operations of the lab. Nevertheless, BARRY continued to sign off on laudatory performance evaluations for MILTON, and failed to take any corrective action.

111. In June of 1999, BARRY, who had conducted all of MILTON's performance reviews since she joined that SDSDRCL, convened and participated in a meeting dedicated to his comprehensive review of MILTON's pre-2000 casework,

the result of which was BARRY's determination that MILTON needed to be retrained. But BARRY never directed or ensured that it occur—and in fact never even had a conversation with MILTON about it. Errors that the review brought to light—more fully detailed in the Corrective Action 1 memo—recurred in the Dorotik murder investigation, including MILTON's failure to write reports that were "detailed…professional and scientific," her failure "to report results or not reporting results because problems with the technique or nebulous results," and her tendency to "abandon the results" if they were problematic. These are precisely the deficiencies that plagued MILTON's work in the Dorotik investigation, which BARRY personally assigned MILTON to, notwithstanding his previous determination that she needed to be retrained.

112. Many of these errors were evident in reports that BARRY personally reviewed and signed off on. In a March 12, 1997 report personally approved and signed by BARRY, MILTON's antigen tests indicated that H antigens were not present, but "H antigens were reported anyways," due to MILTONS's "misleading speculation." In a March 13, 1997 report personally approved and signed by BARRY, MILTON mislabeled blood types and saliva samples as a result of deficient testing practices. A September 2, 1998 report by MILTON that clearly shows that there were no controls taken was personally approved and signed by BARRY. A MILTON report from January 7, 1999, personally approved and signed by BARRY, was found to be riddled with errors indicating "difficulty with ABO typing and interpretation." Numerous other MILTON reports from before the Dorotik investigation also suffered from reporting results as confirmed when they were inconclusive. Again, these were the same sorts of errors that marred the Dorotik investigation, and directly contributed to Plaintiff's wrongful conviction. BARRY's failure to address MILTON's incompetence was therefore a contributing cause of Plaintiff's wrongful conviction.

113. BARRY similarly failed to take action to correct MERRITT's incompetence, of which he was fully aware, given that the County was forced to call outside BPA experts to testify in cases where MERRITT had been the assigned analyst. As detailed above, by the time of the Dorotik investigation, MERRITT had a well-documented pattern of failing to properly preserve, protect, and document crime scenes that he was evaluating, including failing to observe such basic protocol as wearing gloves when handling evidence. These issues were documented in cases going back to the mid-1980s, yet BARRY failed to intervene in his capacity as Director, and assigned MERRITT to work the Dorotik investigation. MERRITT's failure to observe these protocols, and thus BARRY's longstanding failure to correct MERRITT's techniques and methods, was accordingly a cause of Plaintiff's wrongful conviction.

114. BARRY also failed to implement or enforce policies or procedures to ensure that the constitutional rights of suspects were upheld and failed to train and ensure that SDSDRCL staff followed proper procedures. BARRY's disregard of the actual performance of the lab and its staff, or his failure to adequately investigate and discover and correct such acts or failures to act was a moving force which caused the violation of Plaintiff's constitutional rights.

115. Instead, with reckless disregard of the rights of suspects, and with deliberate indifference to their constitutional rights, BARRY acquiesced in the constitutionally-deficient practices of the SDSDRCL. He knew, or in the exercise of reasonable care should have known, of this pattern or practice of unconstitutional violations, or the existence of facts which create the potential of unconstitutional acts, and BARRY and DOES 1-10 had a duty to train and instruct their subordinates to prevent similar acts to other suspects, but failed to take steps to properly train, supervise, investigate or instruct agents or employees.

116. BARRY and DOES 1-10 either directed his or her subordinates in conduct that violated Plaintiff's rights, OR set in motion a series of acts and omissions by his or her subordinates that the supervisor knew or reasonably should have known would deprive Plaintiff of her rights, OR knew or should have known his subordinates were engaging in acts likely to deprive Plaintiff of rights and failed to act to prevent his or her subordinate from engaging in such conduct, OR disregarded the consequence of a known or obvious training deficiency that he or she knew or should have known would cause subordinates to violate Plaintiff's rights, and in fact did cause the violation of those rights. Furthermore, each is liable in their failures to intervene in their subordinates' apparent violations of Plaintiff's rights as a consequence of the policies, practices and customs set forth above.

VIII. PRAYER FOR RELIEF

WHEREFORE Plaintiff JANE DOROTIK prays for judgment against each Defendant and requests relief against Defendants, jointly and severally, and according to proof, as follows:

1. General and compensatory damages in an amount according to proof;
2. Special damages in an amount according to proof;
3. Exemplary and punitive damages against each individual Defendant in amounts according to proof;
4. Costs of suit, including attorneys' fees, as provided by, *inter alia*, 42 U.S.C. § 1988;

Such other relief as may be warranted or as is just and proper.

Respectfully submitted,

McLANE, BEDNARSKI & LITT, LLP

DATED: January 29, 2024 By: */s/ Ben Shaw*

BARRETT S. LITT
KEVIN J. LaHUE
BEN SHAW
Attorneys for Plaintiff JANE DOROTIK

JURY DEMAND

Trial by jury of all issues is demanded.

McLANE, BEDNARSKI & LITT, LLP

DATED: January 29, 2024

By: /s/ *Ben Shaw*
BARRETT S. LITT
KEVIN J. LaHUE
BEN SHAW
Attorneys for Plaintiff JANE DOROTIK